

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") is made as of the ___th day of December, 2013, between the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of the Wisconsin Statutes, ("Seller") and **WANGARD PARTNERS, INC.**, a Wisconsin corporation, its successors and/or assigns ("Buyer"), together known as the "Parties."

FOR AND IN CONSIDERATION of the premises and the undertakings and mutual covenants of the Parties set forth herein, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby covenant and agree as follows:

1. PROPERTY. Seller hereby agrees to sell and convey unto Buyer and Buyer hereby agrees to buy and pay for the certain parcels of real property located on 116th Street and Rogers Street in the City of West Allis, Milwaukee County, Wisconsin, consisting of approximately 9.3 acres of real estate as more particularly described and depicted as City of West Allis tax key parcels:

Address	Parcel Number	Owner
11528 W. Rogers St.	481-9993-010	CDA
11406 W. Rogers St.	481-9993-013	CDA

The legal description of such parcels is attached hereto as **Exhibit A** and made a part hereof; TOGETHER with all of Seller's interest in each and every easement, access right, privilege and appurtenance thereto, currently in existence (or to be created pursuant to this Agreement) serving the Property subject to Section 2.1 (collectively, the "Property").

1 2. **PURCHASE PRICE.** The purchase price for the Property shall be Eight
2 Hundred and Forty-Five Thousand and NO/100 Dollars (\$845,000.00) (the "Purchase Price"), to
3 be paid as follows:

4 A. The Buyer, at time of signing this Agreement, will provide a payment in
5 the amount of Five Thousand and NO/100 Dollars (\$5,000.00) with Advantage
6 America Title & Closing Services, Inc. (the "Title Company") in the form of a
7 refundable deposit to secure the Property and commence the development
8 agreement process (the "Earnest Money").

9 B. The Buyer will pay, at the time of Closing (as defined below) on the
10 Property, the amount of \$145,000 to the Seller for environmental investigation
11 and remediation costs associated with obtaining WDNR closure for the portion of
12 the Property known as 11406 W. Rogers Street.

13 C. The Buyer will pay, at the time of Closing on the Property, the amount of
14 \$200,000.00 to the Seller for demolition worked performed to prepare the
15 Property for development.

16 D. The Buyer will pay to the Seller at the time of Closing on the Property the
17 amount of \$495,000 for the purchase of the Property.

18
19 **2.1 CONVEYANCE.** Seller shall at Closing and upon receiving payment of the
20 Purchase Price, convey the Property to Buyer by Warranty Deed.

21
22 **2.2 SITE PREPARATION.** Seller shall convey the Property "AS IS" except as
23 expressly provided for in the Environmental Addendum attached as Exhibit C or
24 elsewhere in this Agreement. Buyer shall be responsible for all costs associated with

1 environmental remediation, foundation removal and all general site preparation unless
2 expressly provided otherwise in this Agreement.

3
4 **3. CONTINGENCIES and CONDITIONS TO CLOSING.**

5 **A. Buyer's Conditions to Closing.** The obligation of Buyer to consummate
6 the transaction contemplated hereby is subject to satisfaction of all of the
7 following conditions as of Closing (which may be waived by Buyer in whole or
8 in part, in its sole discretion):

9 (1) **Compliance with Agreement.** Seller shall have performed
10 and complied with all of its obligations under this Agreement to the extent
11 such obligations are to be performed or complied with by Seller on or
12 before the Closing Date (as defined below).

13 (2) **No Misrepresentation or Breach of Covenants and Warranties.**
14 There shall have been no breach by Seller in the performance of any of its
15 covenants herein, and each of the representations and warranties of Seller
16 outlined or referred to in this Agreement shall be true and correct in all
17 respects on the Closing Date as though made on the Closing Date.

18 (3) **No Litigation.** There shall be no litigation, threat, investigation, or
19 other proceeding challenging or affecting the legality of the transactions
20 contemplated by this Agreement, or seeking the restraint, prohibition,
21 damages or other relief in connection with this Agreement or the use
22 intended for the Property by Buyer, and none of the same shall have been
23 instituted or threatened by any person, agency, or other entity prior to
24 Closing. Such litigation or threat thereof shall include, but not be limited
25 to, challenges to Seller's right to take the Property or the rights of tenants

1 or occupants of the Property to remain.

2 (4) **Financing.** Buyer will have obtained from the First-ring Industrial
3 Redevelopment Enterprise, Inc. (FIRE) an allocation of \$14 million in New
4 Market Tax Credits to the Project outlined within Exhibit B - Development
5 Agreement (the "NMTC Transaction") and Seller or one of Seller's affiliates
6 shall have unconditionally committed to Buyer's use of double-tax exempt bonds
7 as a source of the leverage loan for the NMTC Transaction. Seller agrees to use
8 good faith in assisting Buyer in satisfying this condition. Additionally, the Seller
9 will provide to Buyer up to an \$800,000 economic development loan in
10 accordance with United States Environmental Protection Agency regulations
11 regarding Buyer's qualifications for the loan at a 1.5% interest rate with a term of
12 at least seven (7) years, which is interest only for at least the first eighteen (18)
13 months of the term of the loan (or as long as necessary to ensure compliance with
14 the NMTC Transaction and on a twenty (20) year amortization thereafter.

15 (5) Buyer shall have received or obtained satisfactory evidence that
16 the railroad spur and any rights associated therewith has been or will be
17 terminated. Seller agrees to cooperate with Buyer in Buyer's efforts, if any, to
18 terminate any rights associated with the railroad spur. Buyer agrees to cooperate
19 with Seller in Seller's efforts, which currently include condemning the property
20 related to the spur. Should Seller be successful in its condemnation efforts, Seller
21 will transfer the property associated with the spur to Buyer. Should Buyer enter
22 into an agreement to purchase the railroad spur rights, the Purchase Price shall be
23 offset by the cost of Buyer's doing so.

24 (6) **Change.** There shall be no change in the condition of the Property

1 other than changes as contemplated by this Agreement (ie, demolition) between
2 the time that Buyer waives its contingencies and Closing.

3 (7) **Environmental.** The Seller shall have complied with all its
4 obligations under the Environmental Addendum required to be complied with by
5 Seller on or before Closing.

6 **B. Buyer's Contingencies.** The obligation of Buyer to consummate the
7 transaction contemplated hereby is subject to satisfaction by Buyer, in Buyer's
8 sole and absolute discretion, of all of the following contingencies within the
9 timeframe set forth below (which may be waived by Buyer in whole or in part, in
10 its sole discretion)

11 (1) **Title Evidence and Documents.**

12 (a) Seller shall have delivered to Buyer within fifteen (15) calendar days after the date of this
13 Agreement a commitment (the "Title Commitment") from the Title Company to issue an owner's
14 policy of title insurance ("Title Policy") to Buyer in the amount of the Purchase Price of the
15 Property, which Title Commitment shall show Seller's title to the Property to be merchantable as
16 of the Closing Date, subject only to such liens as will be paid out of the proceeds of Closing and
17 such exceptions to title which will not, in Buyer's opinion, unreasonably inhibit, prohibit or
18 impair Buyer's use of the Property for Buyer's intended uses.

19 (b) Seller shall have delivered to Buyer within fifteen (15) calendar
20 days after the date of this Agreement an ALTA/ASCM Survey
21 containing Table A items 1, 2, 3, 4, 5, 6(b), 7(a), 8, 9, 11(b) 13, 14,
22 16, 17, 18, 19, 20(a), 20(b) (the "Survey") in form and substance
23 approved by Buyer and otherwise in conformance with the
24 Agreement

1 (c) Buyer shall have been satisfied, in its sole discretion, with all
2 title and title-related matters, and satisfied with the Survey .
3

4
5 (d) The Buyer, within fifteen (15) calendar days after receipt of
6 the later of the Title Commitment or Survey shall submit to Seller
7 in writing a list of matters affecting the Property to which the
8 Buyer objects ("Title and Survey Objections"). Seller shall have
9 fifteen (15) calendar days to remove or cause the Title Company to
10 insure over the Title and Survey Objections. Buyer reserves the
11 right to approve the means and methods by which Seller proposes
12 to remove or cause the Title Company to insure over the Title and
13 Survey Objections. In the event that Seller is unable or unwilling
14 to remove any or all of the Title or Survey Objections during the
15 time set forth above, Buyer shall have five (5) days from the
16 expiration of such time, to deliver written notice waiving the Title
17 or Survey Objections. If Buyer does not waive the Title and
18 Survey Objections, then this Agreement shall be null and void, the
19 Earnest Money shall be returned to Buyer and Buyer and Seller
20 shall have no further liabilities under this Agreement (except those
21 liabilities that expressly survive expiration or termination of this
22 Agreement).
23

24 (2) **Seller's Approvals, Test, and Reports.** Seller shall have

1 furnished to Buyer such documents in Seller's possession or under its
2 control, or which Seller may obtain hereafter, which could reasonably be
3 expected to be useful in evaluating the Property and Buyer's ability to use
4 the Property for the use intended by Buyer. As a condition precedent to
5 Seller's obligations under this provision, Buyer shall furnish to Seller,
6 within fifteen (15) calendar days after the date of the Effective Date of this
7 Agreement, a complete list of documents, test results, studies and reports
8 ("Document List") referred to or described above that are already in the
9 possession of Buyer or its agents, and Seller shall not be obligated to
10 provide anything to Buyer which is contained on the Document List.
11 Seller shall provide such documents to Buyer within five (5) calendar days
12 of receipt of the Document List if such documents are currently in Seller's
13 possession and within three (3) calendar days of receipt of such documents
14 if such documents are not currently in Seller's possession.

15
16 (3) **Government Approvals.** Buyer shall have confirmed that Buyer
17 has obtained all governmental permits, easement agreements, licenses, and
18 approvals that are or may be necessary to develop and use the Property in
19 the manner intended by Buyer. Seller, to the extent Seller is able, shall
20 use good faith to assist Buyer in obtaining such permits, easement
21 agreements, licenses and approvals.

22
23 (4) **Utilities.** Buyer shall have been satisfied, in its sole discretion,
24 with the location, availability and suitability of municipal and other

1 utilities in connection with Buyer's intended use of the Property. Seller
2 makes no representation or warranties concerning the condition of utilities.

3
4 (5) **Lease.** Buyer shall have entered into a lease with a tenant leasing approximately 40,000
5 square feet of space on such terms as Buyer, in its sole discretion, finds acceptable.

6 (6) **Other Due Diligence.** Buyer has otherwise satisfied itself that the
7 Property is suitable for Buyer's intended use of the Property.

8 (7) **Termination.** If Buyer fails to waive or acknowledge the
9 satisfaction or waiver of the conditions in (1) through (6) in writing
10 within ninety (90) days of acceptance of this Agreement, or such other
11 period as expressly provided for herein, then neither party shall have any
12 further liability under this Agreement, except as expressly set forth in this
13 Agreement. Closing on the Property shall be deemed Buyer's satisfaction
14 or waiver of the said conditions. The Seller acknowledges and agrees that
15 in the event the Buyer terminates this Offer due to a failure to meet the
16 conditions or contingencies under this Agreement, the satisfaction or
17 waiver of which were diligently pursued, the Seller shall authorize the
18 Title Company under 2.A. to return the Earnest Money to Buyer within ten
19 (10) days of the date of Buyer's failure to waive or acknowledge the
20 satisfaction or waiver of the conditions or contingencies or notification to
21 Seller that this Agreement has been terminated. Upon termination, all
22 accumulated interest for funds held by the Title Company shall be the
23 Buyers.
24

1 **B. Seller's Contingencies.** The obligation of Seller to consummate the
2 transaction contemplated hereby is subject to the fulfillment of all of the
3 following conditions as of Closing (which may be waived by Seller in whole or in
4 part in its sole discretion):

5 (1) **No Litigation.** There shall be no litigation, threat, investigation, or
6 other proceeding challenging or affecting the legality of the transactions
7 contemplated by this Agreement, or seeking the restraint, prohibition,
8 damages or other relief in connection with this Agreement or the use
9 intended for the Property by Buyer, and none of the same shall have been
10 instituted or threatened by any person, agency, or other entity prior to
11 Closing.

12 (2) Buyer shall pay all parts of the Purchase Price outlined in the
13 above Section 2.

14 (3) Buyer shall have executed, accepted the terms, and signed the
15 Purchase and Sale Agreement, the Development Agreement, and
16 Memorandum of Agreement.

17 (65). **Termination.** In the event the conditions in subparagraph 3(B)
18 above have not been satisfied or waived by Seller, Seller, by written notice
19 to Buyer on or before the Closing Date, may terminate this Agreement. In
20 case of such termination, all Earnest Money and interest thereon shall be
21 returned to Buyer and neither party shall have any further liability under
22 this Agreement, except as expressly set forth in this Agreement. Closing
23 on the Property shall be deemed a satisfaction or waiver of the said
24 conditions.

1 **4. TAX INCREMENT FINANCING**

2 **A. Tax Incremental District.** Pursuant to the Wisconsin Tax Increment
3 Law, Wis. Stats. §66.1105 *et seq.* the Common Council of the City of West Allis
4 created by resolution Tax Incremental District Number Ten, City of West Allis, as
5 of August 5, 2008 (the "District") and approved the project plan for the District.
6 The Property is within the boundaries of the District and the transaction
7 contemplated by this Agreement and the Development Agreement are essential to
8 the viability of the District.

9 **B. Shortfall Agreement.**

10 (1.) Buyer guarantees that the Property's minimum assessed values listed
11 below will be reached by the listed dates. Buyer will guarantee the
12 following minimum assessed values by January 1, 2015 and continuing for
13 six (6) years thereafter.

14 The minimum assessed values are as follows:

<u>Schedule</u>	<u>Minimum Assessed Value</u>
January 1, 2015	\$3,000,000
January 1, 2016	\$6,000,000
January 1, 2017	\$8,000,000
January 1, 2018	\$9,000,000
January 1, 2019	\$9,000,000
January 1, 2020	\$9,000,000
January 1, 2021	\$9,000,000
until termination pursuant to (2) below (six years after the completion of construction on the Property)	

28 (2.) To the extent that the general property taxes from the Property in
29 the calendar year set forth above and for six years after the completion of
30 construction on the Property are less than the equivalent of the Minimum

1 Assessed Value multiplied by the year's mill rate, Buyer shall pay the
2 difference between that year's actual tax payment and tax payment that
3 would have been generated by the Minimum Assessed Value.

4 (3.) Buyer's obligation to guarantee the payment of any property tax
5 shortfall against the Minimum Assessed Value shall continue for the years
6 outlined above.

7 (4) Buyer agrees to the following:

8 (a) Any amount of property tax shortfall will be treated as a
9 special charge as defined in Wis. Statute 74.01(4)) due and owing to the
10 City of West Allis extended upon the tax roll for the year which it is due
11 and owing only against the Property and not against Buyer's other assets,
12 interests, claims or rights of Buyer or its affiliates. All proceedings in
13 relation to collection, return and sale of the Property for delinquent real
14 estate taxes shall apply to any such special charge. Buyer, its successors,
15 heirs, and assigns waive the right to contest the validity of this provision.

16
17 **5. PAYMENT IN LIEU OF TAXES.** Ownership of the Property by any person,
18 partnership, corporation, or entity, which in any manner renders any part of the Property
19 exempt from taxation during the life of the District shall result in a payment in lieu of
20 taxes from the owner to the City of West Allis each year in an amount equal to the
21 amount of taxes that would be due and owing on the Property if it was not tax exempt and
22 in no event less than the tax based upon an assessed value as set forth in Section 4.B.
23 Such payment shall be due, payable and collected in the same manner as real property
24 taxes. Buyer, its successors, heirs, and assigns waive the right to contest the validity of

1 this provision

2 **6. City of West Allis 3rd Party Beneficiary.** City of West Allis shall be entitled to
3 enforce the terms and receive the benefit of Section 4.B. and Section 5 as a third party
4 beneficiary.

5
6 **7. MEMORANDUM OF AGREEMENTS.** The Seller and Buyer agree that they
7 will execute a memorandum of the Purchase and Sale Agreement and Development
8 Agreement to be recorded in the Office of the Register of Deeds of Milwaukee County,
9 Wisconsin in the form attached hereto as **Exhibit D**. The Memorandum of Agreement
10 shall be executed by the Parties at the time of Closing. The Parties further agree that the
11 Memorandum of Agreement shall be recorded prior to Buyer attaching any mortgage,
12 lien, or other encumbrance on the Property, except for any Mortgage or lien granted
13 pursuant to the NMTC Transaction. The Seller will subordinate Sellers loans to any loans
14 directly related to the NMTC Transaction.

15
16 **8. DEVELOPMENT AGREEMENT.** Simultaneously with the execution of this
17 Agreement, Buyer and Seller shall execute a development agreement (the "Development
18 Agreement") in the form attached hereto as **EXHIBIT B**.

19 **9. ENVIRONMENTAL.** The provisions of this Agreement with regard to
20 environmental matters are set forth on the Environmental Addendum, attached hereto and
21 incorporated herein by reference hereto as **EXHIBIT C**.

22 **10. CLOSING.** The closing of the sale and purchase of the Property (the "Closing")
23 shall be held at the offices of the Title Company (or such other place as the Parties may mutually
24 agree), on March 31, 2014, or the date and at a time specified in writing by mutual agreement of

1 the Parties (the "Closing Date").

2 **11. REPRESENTATION AND WARRANTIES.**

3 **A. Seller's Warranties.** Seller hereby represents and warrants that as of the
4 date hereof and as of the Closing Date:

5 (1) **Organization; Good Standing.** Seller is a Community
6 Development Authority duly organized and validly existing under
7 Sec.66.1335 of the laws of the State of Wisconsin. Seller has full power
8 and authority to sell, own, or hold under lease its properties and assets and
9 to carry on its business as presently conducted, to enter into this
10 Agreement, and to carry out the transactions contemplated hereby.

11 (2) **Authorization.** The execution and delivery of this Agreement and
12 the consummation by Seller of the transaction contemplated hereby is
13 within the power and authority of Seller and have been duly authorized by
14 all necessary actions on the part of Seller and the persons executing this
15 Agreement on behalf of the Seller have been duly authorized.

16 (3) **No Violation or Conflict.** The execution, delivery, and
17 performance of this Agreement by Seller does not and will not conflict
18 with or violate any law, regulation, judgment, deed restriction, order,
19 decree, or any contract or agreement to which Seller is a party or by which
20 it is bound.

21 (4) **Floodplain.** No part of the Property is located in a floodplain,
22 flood hazard area, shoreland, wetland, or similarly restricted area.

23 (5) **Liens.** All work performed or materials furnished for lienable
24 work on the Property contracted for by Seller or at Seller's expense shall

1 have been fully paid for, and Seller shall provide Buyer with appropriate
2 lien waivers or releases from any and all contractors, laborers, or
3 materialmen furnishing labor or material for lienable work on the Property
4 during the six (6) months preceding the Closing Date.

5 (6) **Brokers.** Other than an affiliate of Buyer, Seller has not dealt with
6 or engaged any brokers or finders or others to whom a commission might
7 be owing upon closing of this transaction. Seller agrees to indemnify and
8 hold Buyer harmless from any claim for commission made by any agent or
9 broker claiming to have acted on Seller's behalf other than as disclosed
10 herein.

11 (7) **Assessments.** As of the date hereof and as of the Closing Date,
12 there are no special assessments or charges outstanding for public
13 improvements, which remain unpaid have been made or will have been
14 made against the Property. Buyer shall pay all taxes, special assessments,
15 and charges accruing after the Closing Date.

16 (8) **Leases.** There are no written or oral leases affecting the Property.

17 (9) **Service Agreements.** There are no existing service, maintenance,
18 management or any other agreements with regard to the Property.

19 (10) **No Default, Violation or Litigation.** Regarding the Property, to
20 Seller's knowledge, the Seller is not in violation of any regulation, law,
21 order of any court, federal, state, or municipal, or other governmental
22 department, commission, board, bureau, agency or instrumentality, or
23 restriction or covenant contained in any agreement or document of title
24 (including, without limitation, legislation, regulations and agreements

1 applicable to environmental protection, civil rights, public and
2 occupational health and safety), nor has the Seller received any notice of
3 noncompliance that has not been remedied, except as set forth in Section
4 11, Laws. There are no lawsuits, proceedings, claims, governmental
5 investigations, citations or actions of any kind pending or, to Seller's
6 knowledge, threatened against the Seller or against the Property, nor is
7 there any basis known to the Seller for any such action, and there is no
8 action, suit or proceeding by any governmental agency pending or
9 threatened which questions the legality, validity or propriety of the
10 transactions contemplated hereby nor is there any basis known to the
11 Seller for any such action.

12 (11) **Laws.** Except as disclosed in the exhibits and schedules attached to
13 this Agreement relating to environmental condition and any documents
14 listed thereon, there is no government agency or court order requiring
15 repairs, alterations, or corrections of or relating to the Property or any
16 condition which might be cause for any such order, and to Seller's
17 knowledge, the Property complies with all laws. Further, except as
18 disclosed in the exhibits and schedules attached to this Agreement relating
19 to the environmental condition and any documents listed thereon, to the
20 Seller's knowledge, there is no violation of any law or any building,
21 zoning, environmental, or other ordinance, code, rule, or regulation and no
22 notice from any governmental body or other person has been served upon
23 the Seller or upon the Property claiming the violation of any such law,
24 ordinance, code rule, or regulation; there are no legal actions, suits, or

1 administrative proceedings, including condemnation, pending or
2 threatened against the Property.

3 (12) **Access and Utilities.** The Seller makes no warranty or
4 representation with respect to access or the availability or adequacy of
5 public and private utilities required for the operation of the facility to be
6 constructed on the Property. Buyer acknowledges that it is purchasing the
7 Property on the basis of its own investigation of the availability, access,
8 and adequacy of such utilities.

9 (13) **Zoning.** Seller shall provide to Buyer, evidence from the
10 Department of Development of the City of West Allis of approval from
11 the Plan Commission that the Property and all improvements to be
12 constructed thereon by Buyer pursuant to this Agreement and the
13 Development Agreement conform and comply in all respects without need
14 of a variance or similar approval with the zoning of the Property as
15 contemplated in the Development Agreement.

16 (14) **Warranty.** Seller acknowledges that the warranties and
17 representations made here and by Seller are a material inducement to
18 Buyer entering into this Agreement, the Buyer is entitled to rely upon
19 these warranties and representations despite independent investigation
20 undertaken by Buyer and that the warranties and representations made
21 here and by the Seller shall survive the Closing and the execution and
22 delivery of the Deed.

23
24 **B. Buyer's Warranties.** Buyer hereby represents and warrants that as of the

1 date hereof and as of the Closing Date:

2 (1) **Organization; Good Standing.** Buyer is a Wisconsin limited
3 liability company duly organized and validly existing under the laws of
4 the State of Wisconsin and authorized to do business in the State of
5 Wisconsin. Buyer has full power and authority to acquire and own real
6 estate and to carry on its business as presently conducted, to enter into this
7 Agreement, and to carry out the transactions contemplated hereby.

8 (2) **Authorization.** The execution and delivery of this Agreement and
9 the consummation by Buyer of the transaction contemplated hereby are
10 within the power and authority of Buyer and have been duly authorized by
11 all necessary actions on the part of Buyer, and the persons executing this
12 Agreement on behalf of the Buyer have been duly authorized.

13 (3) **No Violation or Conflict.** The execution, delivery, and
14 performance of this Agreement by Buyer does not and will not conflict
15 with or violate any law, regulation, judgment, deed restriction, order,
16 decree, or any contract or agreement to which Buyer is a party or by which
17 it is bound.

18 (4) **Brokers.** Other than an affiliate of Buyer, Buyer has not dealt
19 with or engaged any brokers or finders or others to whom a commission
20 might be owing upon closing of this transaction. Buyer agrees to
21 indemnify and hold Seller harmless from any claim for commission made
22 by any agent or broker claiming to have acted on Buyer's behalf other than
23 as disclosed herein. As required by law, Seller is hereby advised that one
24 or more principals of the Buyer are licensed real estate brokers and/or

1 salespersons in the State of Wisconsin.

2 (5) **Litigation.** To Buyer's knowledge, there are no lawsuits,
3 proceedings, claims, governmental investigations, citation or action of any
4 kind pending or threatened against the Buyer, nor is there any basis known
5 to the Buyer for any such action, and there is no action, suit or proceeding
6 by any governmental agency pending or threatened which questions the
7 legality, validity or propriety of the transactions contemplated hereby nor
8 is there any basis known to the Buyer for any such action.

9 (6) **Warranty.** Buyer acknowledges that the warranties and
10 representations made here and by Buyer are a material inducement to
11 Seller entering into this Agreement, the Seller is entitled to rely upon these
12 warranties and representations despite independent investigation
13 undertaken by Seller and that the warranties and representations made here
14 and by the Buyer shall survive the Closing and the execution and delivery
15 of the Deed.

16 C. **Waiver and Release.** Except to matters otherwise specifically set forth
17 herein, including Section 2.2 of this Agreement and Sellers representations,
18 warranties and covenants, which shall survive Closing for one (1) year, if this
19 transaction closes, Buyer agrees that it waives, releases and forever discharges the
20 Seller, the Seller's officers, employees and agents or any other person acting on
21 behalf of Seller, of and from any claims, actions, causes of action, demands,
22 rights, damages, costs, expenses or compensation whatsoever, direct or indirect,
23 known or unknown, foreseen or unforeseen, which Buyer now has or which may
24 arise in the future on account of or in any way growing out of or connected with

1 this transaction. This waiver and release does not extend to any matter with
2 respect to which Seller had actual notice or knowledge prior to Closing and failed
3 to disclose to Buyer or to any breach of this Agreement.

4 **13. TIME OF THE ESSENCE.** Time is of the essence with respect to all
5 obligations arising hereunder.

6 **14. CLOSING DOCUMENTATION.** The purchase and sale of the Property shall
7 be held at the offices of the Title Company (or such other place as agreed to by the Parties), on
8 the date specified in the notice required under Section 11 above (the "Closing").

9 **A.** At the Closing, Seller shall deliver to Buyer the following:

10 (1) **Possession.** Legal and physical possession of the Property.

11 (2) **Warranty Deed.** A General Warranty Deed to the Property.

12 (3) **Title Policy.** The Title Policy updated through and including
13 the Closing Date, issued pursuant to and in every respect conforming with the
14 requirements for the Title Commitment and Title Policy hereunder.

15 (a) At the time of delivery of the Title Commitment to Buyer,
16 Seller shall also be required to obtain, certify and deliver to Buyer
17 and the Title Company, the Survey, in such form acceptable to
18 Buyer and as necessary to cause the Title Company to issue an
19 extended coverage endorsement to the Title Policy to be issued to
20 Buyer at Closing . As a condition of Closing, the Seller will obtain
21 and provide Buyer with an ALTA owner's extended title insurance
22 policy with a face amount equal to the purchase price of the
23 Property , in form and substance approved by Buyer.

24 (b) Seller will deliver such title affidavits to the Title Company as

1 are necessary for Seller to comply with its delivery obligations
2 hereunder.

3 (4) **Closing Statement**. A closing statement setting forth a summary
4 of the Purchase Price and debits and credits to Buyer and Seller.

5 (5) **Transfer Return Receipt**. Seller shall provide a properly
6 completed Wisconsin Real Estate Transfer Return Receipt.

7 (6) **Payout Letter**. Seller shall deliver a payout letter for any
8 mortgages or other liens being satisfied as of the Closing Date.

9 (7) **Development Agreement**. The Development Agreement
10 required under Section 9, above. (8) **Memorandum of Agreements**. The
11 Memorandum of Agreements required under Section 7 in the form attached hereto
12 as Exhibit C.

13 **B.** At the Closing, Buyer shall deliver to Seller the following:

14 (1) Purchase Price set forth in Section 2.

15 (2) **Development Agreement**. The Development Agreement
16 required under Section 9, above.

17 (3) **Memorandum of Agreements**. The Memorandum of Agreements
18 required under Section 4 in the form attached hereto as Exhibit C.

19 **15. CLOSING COSTS.**

20 **A.** Buyer shall pay the cost to record the Deed and its loan documents;

21 **B.** Seller shall pay all title insurance premiums for the owner's Title Policy
22 and required endorsements;

23 **C.** Seller shall pay any transfer fee, if any, arising by reason of transfer of the
24 Property;

1 **D.** Seller shall pay the recording fee for any satisfaction of its existing liens
2 and encumbrances and Memoranda of Agreements;

3 **E.** Each Party shall pay its own attorney's fees; and

4 **F.** The parties shall split equally any costs charged by Title Company to act
5 as escrow agent or to close the transaction contemplated by this Agreement.

6 **G.** All other non-specified closing costs shall be paid by Buyer.

7 **16. CONDEMNATION.** If, prior to the Closing Date, an authority other than Seller
8 itself takes the Property (other than the railroad spur) or any portion thereof by power or exercise
9 of eminent domain, or institutes any proceedings to effect such a taking, Seller shall immediately
10 give Buyer notice of such occurrence, and Buyer shall have the option to terminate this
11 Agreement at its option, whereupon neither Party shall have any obligation to the other under
12 this Agreement. If this Agreement is not so terminated, the conveyance that is the subject of this
13 Agreement shall be completed and Buyer shall receive all proceeds of such condemnation.

14 **17. NOTICES.** All notices permitted or required by this Agreement shall be given in
15 writing and shall be considered given upon receipt if hand delivered to the party or person
16 intended, or one calendar day after deposit with a nationally recognized overnight commercial
17 courier service, airbill prepaid, or two (2) business days after deposit in the United States mail,
18 postage prepaid, by certified mail, return receipt requested, addressed by name and address to the
19 party or person intended as follows:

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21
22 To Seller: Community Development Authority of the City of West Allis
23 Office of the Executive Director
24 7525 West Greenfield Avenue
25 West Allis, WI 53214
26 Attn: Executive Director
27
28 with a copy to: City of West Allis
29 Office of the City Attorney

1 7525 West Greenfield Avenue
2 West Allis, WI 53214
3 Attn: City Attorney
4

5 To Buyer: Wangard Partners, Inc.
6 1200 Mayfair Rd., Ste. 220
7 Milwaukee, WI 53226
8 Attn: Stewart Wangard, President
9

10 with a copy to: Wangard Partners, Inc.
11 1200 Mayfair Rd., Ste. 220
12 Milwaukee, WI 53226
13 Attn: Corporate Counsel
14
15

16 **18. FURTHER ASSURANCES.** Following the Closing Date, each of the Parties
17 will take such further actions and execute and deliver such additional documents and instruments
18 as may be reasonably requested by any other Party in order to perfect and complete the purchase
19 and sale of the Property as set forth herein as well as any other transactions specifically
20 contemplated herein. This obligation shall survive expiration or termination of this Agreement.

21 **19. WAIVER OF TERMS.** Except as otherwise provided herein, any of the terms
22 or conditions of this Agreement may be waived at any time by the Party or Parties entitled to
23 benefit thereof, but only by a written notice signed by the Party or Parties waiving such terms or
24 conditions. The waiver of any term or condition shall not be construed as a waiver of any other
25 term or condition of this Agreement.

26 **20. RIGHT OF ENTRY.**

27 **A. To Buyer.** Seller grants to the Buyer, its agents and contractors, the right
28 to enter upon the Property at all reasonable times prior to Closing for the purpose
29 of performing the physical and environmental tests (which includes subsurface
30 testing), examinations and inspections identified in this Agreement. Seller
31 authorizes Buyer, at Buyer's own risk and expense, to immediately commence
32 construction of footings and foundations.

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2 **B. Cooperation.** The Parties shall cooperate with each other and their
3 respective agents and contractors to facilitate the timely and accurate completion
4 of the aforesaid tests, examinations, inspections and remedial activities.

5 **C. License.** The Parties acknowledge that this right of entry is a license only
6 and does not constitute a lease of or grant of any easement or other interests in
7 real property; and each agree that in the exercise of such right they shall comply
8 with all valid laws, ordinances, rules, orders or regulations of the United States,
9 the State of Wisconsin, the County of Milwaukee, the City of West Allis or any
10 agencies, departments, districts or commissions thereof.

11 **21. AMENDMENT OF AGREEMENT.** This Agreement may be amended,
12 supplemented, or modified at any time, but only by a written instrument duly executed by Seller
13 and Buyer.

14 **22. GOVERNING LAW AND VENUE.** This Agreement shall, in all respects
15 whether as to validity, construction, capacity, performance, or otherwise, be governed by the
16 laws of the State of Wisconsin. Any suit or proceeding arising out of or related to this Agreement
17 shall be commenced and maintained only in a court of competent jurisdiction in the state or
18 federal courts located in Milwaukee County, Wisconsin. Each party irrevocably consents to
19 submit to the exclusive jurisdiction of such courts.

20 **23. AS IS, WHERE IS.**

21 **A. Sale.** The sale of the Property to Buyer hereunder shall be **AS IS,**
22 **WHERE IS,** with all faults, and without representation or warranty of any kind
23 except as expressly provided in this Agreement (including but not limited to the
24 Environmental Addendum). Any other warranties or representations of any kind

1 made either orally or in writing by any agent or representative of Seller or anyone
2 purporting to be an agent or representative of Seller shall be of no force and
3 effect. Buyer hereby acknowledges that it does not rely upon any representation
4 or warranty made by Seller or by Seller's agents, and that none have been made,
5 except as expressly provided in this Agreement.

6 **B. Buyer Investigation.** Prior to Closing, Buyer, with the cooperation and
7 assistance of Seller as provided in this Agreement, will have investigated and will
8 have knowledge of operative or proposed governmental laws and regulations
9 (including, but not limited to, zoning, environmental and land use laws and
10 regulations) to which the Property is or may be subject and, based upon the
11 foregoing, Buyer shall accept the Property upon the basis of its review and
12 determination of the applicability and effect of such laws and regulations, except
13 as expressly provided in this Agreement.

14 **C. Warranties.** The Buyer further acknowledges that the Seller, its agents
15 and employees and other persons acting on behalf of Seller have made no
16 representation or warranty of any kind in connection with any matter relating to
17 the condition, value, fitness, use or zoning of the Property upon which the Buyer
18 has relied directly or indirectly for any purpose other than as may be expressly
19 provided in this Agreement.

20 **24. SUCCESSORS AND ASSIGNS.** This Agreement and all rights and obligations
21 therein, including but not limited to the indemnification provisions thereunder, may be assigned
22 by Buyer to an affiliated entity upon notice to Seller. In all other events, this Agreement may not
23 be assigned or otherwise transferred by either party hereto without the other's prior written
24 consent. Such consent may not unreasonably be withheld.

1 **25. EXECUTION IN COUNTERPARTS.** This Agreement may be executed
2 simultaneously in one or more counterparts, each of which shall be deemed an original
3 Agreement, but all of which together shall constitute one and the same instrument.

4 **26. TITLES AND HEADINGS.** Titles and headings to sections or subsections are
5 for purposes of references only and shall in no way limit, define, or otherwise affect the
6 provisions herein.

7 **27. ENTIRE AGREEMENT.** This Agreement, including the schedules and
8 Exhibits annexed hereto, and listed as follows: Exhibit A – Legal Description of the Real
9 Property, Exhibit B - Development Agreement, Exhibit C – Environmental Addendum, Exhibit
10 D- Memorandum of Agreement constitutes the entire agreement and supersedes all other prior
11 agreements and understandings, both written and oral, by the Parties or any of them, with respect
12 to the subject matter hereof.

13 **28. INTERPRETATION.** Unless the context requires otherwise, all words used in
14 this Agreement in the singular number shall extend to and include the plural, all words in the
15 plural number shall extend to and include the singular, and all words in any gender shall extend
16 to and include all genders.

17 **29. CONSTRUCTION.** Seller and Buyer acknowledge that each party and its
18 counsel have reviewed and revised this Agreement and that the normal rule of construction to the
19 effect that any ambiguities are to be resolved against the drafting party shall not be employed in
20 the interpretation of this Agreement or any amendments or exhibits hereto.

21 **30. SEVERABILITY.** If any term or provision of this Agreement is determined to be
22 invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other
23 conditions and provisions of this Agreement shall nevertheless remain in full force and effect. If
24 the Buyer or its successors or assigns challenge or obtain a ruling those provisions of Section 4,

1 5, or 6 are invalid, the Agreement shall be void and the provisions of Section 31 shall apply.

2
3 **31. DEFAULT PROVISIONS AND REMEDIES.**

4 A. Except as provided herein, should Buyer default under this Purchase and Sale
5 Agreement, in addition to all other rights and remedies provided for in this Agreement
6 and the Development Agreement, Seller shall have the following specific rights and
7 remedies:(1) with respect to matters that are capable of being corrected by the Seller, the
8 Seller may at its option enter upon the Property for the purpose of correcting the default
9 and the Seller's reasonable costs in correcting same, plus interest as provided in the
10 Development Agreement, shall be paid by Buyer to the Seller immediately upon demand;
11 (2) injunctive relief; (3) action for specific performance; (4) action for direct money
12 damages; and (5) and and all other rights available at law or equity.

13 B. Should Seller default under this Purchase and Sale Agreement, in addition to
14 all other rights and remedies provided for in this Agreement and the Development
15 Agreement, Buyer shall be entitled to a return of its Earnest Money or in the alternative,
16 Buyer shall have the following specific rights and remedies: (1) with respect to matters
17 that are capable of being corrected by Buyer, the Buyer may at its option correct the
18 default and Buyer's reasonable costs in correcting same, plus interest as provided in the
19 Development Agreement, shall be paid by Seller to the Buyer immediately upon demand
20 or offset against the purchase price; (2) injunctive relief; (3) action for specific
21 performance; (4) action for direct money damages; and (5) and and all other rights
22 available at law or equity.

23 C. Neither party shall be liable to the other for consequential, indirect, incidental
24 or exemplary damages, whether based on contract, negligence, strict liability or

1 otherwise. In any action to enforce this Agreement, the prevailing party shall be entitled
2 to cost, including statutory attorney's fees. Actual attorney's fees shall not be awarded.

3 **D.** The following shall constitute a Buyer Default under this Agreement:

4 (1) Buyer fails to perform or satisfy any of its obligations under this
5 Agreement or the Development Agreement within ten (10) days following
6 written notice from Seller; provided, however, if the default is not
7 reasonably susceptible of cure within such ten (10) day period, then Buyer
8 shall have such additional time to cure the default as may be reasonably
9 necessary so long as Buyer is diligently pursuing such cure to completion.

10 (2) Buyer becomes insolvent or generally does not pay or becomes
11 unable to pay or admits in writing to its inability to pay, its debts as they
12 mature.

13 (3) Buyer makes an assignment for the benefit of creditors or to an
14 agent authorized to liquidate any substantial amount of assets.

15 (4) Buyer becomes the subject of an "order for relief" within the
16 meaning of the United States Bankruptcy Code or files a petition in
17 bankruptcy, for reorganization or to affect a plan or other arrangement
18 with creditors.

19 (5) Buyer has a petition or application filed against it in bankruptcy or
20 any similar proceeding or have such a proceeding commenced against it,
21 and such petition, application or proceeding shall remain undismissed for
22 a period of ninety (90) days or Buyer shall file an answer to such petition
23 or application, admitting the material allegations thereof.

24 (6) Buyer applies to a court for the appointment of a receiver or

1 custodian for any of its assets or properties or has a receiver or custodian
2 appointed for any of its assets or properties, with or without consent, and
3 such receiver shall not be discharged within ninety (90) days after his
4 appointment.

5 (7) Buyer adopts a plan of complete liquidation of its assets.

6 E. In addition to all other remedies the Seller may have under this Agreement
7 or at law or in equity, and as an alternative thereto, in the event Buyer does not
8 commence and/or complete construction of the Project as set forth above, the Seller may,
9 but shall not be required to, purchase the Property for the price paid to the Seller by
10 Buyer, including the sums paid towards environmental remediation and demolition
11 (assuming no construction has occurred on the Property), if another price is not willingly
12 agreed to in writing by the Seller and Buyer, by giving written notice to Buyer of its
13 intention to repurchase. If construction of the Project has begun, the repurchase price
14 shall include the lesser of the cost or the fair market value of the construction and the
15 Property including the sums paid towards environmental remediation and demolition. If
16 the Seller and Buyer are not able to reach agreement as to the fair market value, such fair
17 market value shall be determined by appraisal as follows: Either party may by notice to
18 the other, appoint a disinterested MAI appraiser as one of the appraisers, which appraiser
19 shall have at least ten (10) years of experience appraising similarly situated properties in
20 the metro Milwaukee area. Within ten (10) days thereafter the other party shall, by
21 written notice to the party appointing the first appraiser, appoint another disinterested
22 MAI appraiser with the same qualifications as set forth above as a second appraiser. The
23 appraisers thus appointed shall appoint a third disinterested MAI appraiser with the same
24 qualifications as set forth above, and such three appraisers shall as promptly as possible

1 determine such value, provided however that:

2 (a) if the second appraiser shall not have been appointed as
3 aforesaid, the first appraiser shall proceed to determine such value; and

4 (b) if, within five (5) days after the appointment of the second
5 appraiser, the two appraisers appointed by the parties shall be unable to
6 agree upon the appointment of a third appraiser, they shall give written
7 notice of such failure to agree to the parties, and, if the parties fail to agree
8 upon the selection of such third appraiser within five (5) days after the
9 appraisers appointed by the parties gave notice as aforesaid, then within
10 five (5) days thereafter either of the parties upon written notice to the other
11 party hereto may apply for such appointment to the highest court of
12 general jurisdiction in the county in which the Property is located.

13 The parties shall each be entitled to present evidence and argument to the
14 appraisers. The average market value of the two appraisers with the appraisal
15 values that are closest together or the sole appraiser, as the case may be, shall be
16 conclusive upon the parties. The appraisers shall give written notice to the parties
17 stating their determination, and shall furnish to each party a copy of such
18 determination signed by them. The expense of such appraisal(s) shall be borne
19 equally by the parties. In the event of the failure, refusal or inability of any
20 appraiser to act, a new appraiser shall be appointed in his stead, which
21 appointment shall be made in the same manner as provided above for the
22 appointment of the appraiser so failing, refusing or unable to act.

23 The notice of intention to exercise the repurchase right can be given at any
24 time after failure of Buyer to comply with this section and before this section

1 terminates as provided below. Title to the Property shall be conveyed to the
2 Seller in the same condition as conveyed by the Seller to Buyer, subject to any
3 improvements made to the Property by Buyer, and a title insurance policy shall be
4 provided at the expense of Buyer in the amount of the repurchase price and
5 insuring the Seller's title is in the aforementioned condition. This Construction
6 Remedy under Section 16 shall terminate upon final completion of construction of
7 the Project and related improvements on the Property.

8 The term "commence construction" as used in this Agreement shall mean
9 the pouring of footings for a building on each parcel within the Property. The
10 term "completion" as used in this Agreement shall mean the issuance of an
11 occupancy certificate by the City for each of buildings on the applicable parcel
12 within the Property.

13 **32. DAMAGES.** In the event of a default, neither Buyer nor Seller shall be liable to
14 the other for consequential, indirect, incidental or exemplary damages, whether based on
15 contract, negligence, strict liability or otherwise.

16 **33. INTENTIONALLY LEFT BLANK.**

17 **34. NO RELIANCE.** No third party, except the City of West Allis, is entitled to
18 rely on any of the representations, warranties, or agreements of Buyer or Seller contained in this
19 Agreement. Buyer and Seller assume no liability to any third party because of any reliance on
20 the representations, warranties and agreements of Buyer and Seller contained in this Agreement.

21 **35. SURVIVE THE CLOSING.** The agreements, covenants, warranties and
22 representations contained herein which are specifically stated to survive Closing or termination
23 of this Agreement shall survive the closing or termination.

24 **36. REPRESENTATIONS AND WARRANTIES.** All statements contained in any

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AGREED TO BY AND BETWEEN Buyer and Seller on the date first set forth above.

**SELLER: COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS**

By: 
John F. Stibal, Executive Director

Dated: 12-17-13

BUYER: Wangard Partners, Inc.

By: _____
Stewart Wangard, President

Dated: _____

Approved as to form this 17 day
of Dec., 2013.


Scott E. Post, City Attorney

Exhibits Table

- Exhibit A – Legal Description**
- Exhibit B - Development Agreement**
- Exhibit C – Environmental Addendum**
- Exhibit D – Memorandum of Agreements**

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3 **Exhibit A – Legal Description**
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5 **Address:** 11528 W. Rogers St., West Allis, WI 53227
6

7 **Tax Key Number:** 481-9993-010
8

9 **Description:** Lot 1 of Certified Survey Map No. 749, recorded on October 19, 1967, on Reel
10 386, Image 686, as Document No. 4351894, being a part of the Southeast ¼ of Section 6, in
11 Town 6 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of
12 Wisconsin EXCEPTING THEREFROM THE FOLLOWING: A part of Lot 1, of Certified
13 Survey Map No. 749, being a part of the Southeast ¼ of Section 6, in Town 6 North, Range 21
14 East, in the City of West Allis, County of Milwaukee, State of Wisconsin, bounded and
15 described as follows: Beginning at the Northwest corner of said lot; thence North 88° 59' 10"
16 East along the North line of said Lot, 14.00 feet; thence South 4° 15' 19" West 130.46 feet to a
17 point which is 3.00 feet East of the West line (measured at right angles) of said Lot; thence South
18 0° 04' 05" East 277.00 feet; thence South 89° 24' 55" West 0.50 feet; thence North 0° 35' 05"
19 West along the West line of said Lot, 406.88 feet to the point of beginning.
20

21 PIN: 481-9993-010
22

23 **Address:** 11406 W. Rogers St., West Allis, WI 532217
24

25 **Tax Key Number:** 481-9993-013
26

27 Lot "A" of Certified Survey Map No. 943, recorded on November 29, 1968, or Reel 453, Image
28 200, as Document No. 4432438, being a division of Lot 3 of Certified Survey Map No. 749,
29 recorded October 19, 1967, on Reel 386, Image 686, as Document No. 4351894, and being part
30 of the Southeast ¼ of Section 6, in Town 6 North, Range 21 East, in the City of West Allis,
31 County of Milwaukee, State of Wisconsin.
32

33 PIN: 481-9993-013
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EXHIBIT B

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), made and entered into as of the ____ day of December __, 2013, by and between **WANGARD PARTNERS, INC.**, a Wisconsin corporation, its successors or assigns ("Buyer"), and the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, (the "Seller"), collectively referred to as the "Parties".

WHEREAS, on even date herewith, the Seller and Buyer have executed a Purchase and Sale Agreement for the purchase by Buyer and the sale by the Seller of the "Property" described therein; and,

WHEREAS, Buyer intends to develop a \$14-million project consisting of approximately 165,000 square feet of multi-tenant industrial space which will include approximately 7,500 square feet of office and approximately 157,500 square feet of manufacturing and warehouse space. The Project will include two (2) buildings. The West Building will be built on 11528 W. Rogers and will be approximately 72,500 square feet with 5,000 square feet of office. The East Building will be built on 11406 W. Rogers St. and will be approximately 40,000 square feet with 2,500 square feet of office with the ability and intention to expand another 52,000 square feet. The development will be generally consistent with the attached preliminary site plan and rendering hereby attached as **Exhibit 1 – Rendering and Preliminary Site Plan**, which Seller agrees is acceptable to Seller in all respects and satisfies, in Seller's opinion, the standards set forth in this Development Agreement. The development described above is hereinafter described as the "Project" located within the 116th and Rogers Redevelopment Area in the City of West Allis, Wisconsin and will be developed pursuant to the terms of this Agreement; and,

WHEREAS, the sale of the Property is contingent upon Buyer's commitment to constructing the Project on the Property; and,

WHEREAS, Buyer and the Seller desire to set forth in writing the terms and conditions under which Buyer has agreed to develop and maintain the Project.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein and in the Purchase and Sale Agreement signed herewith, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. **SELLER'S OBLIGATIONS.** Seller shall be obligated as follows:

A. **Sale of the Property.** Subject to the obligations and contingencies set forth in the Purchase and Sale Agreement, Seller shall close the sale of the Property to Buyer.

B. **Zoning and Planning Approvals.** Prior to Closing (as defined in the Agreement) and after Closing (if necessary), Seller shall use its best efforts to expedite the zoning and plan review process of the City of West Allis to accommodate Buyer's development schedule for the construction of the Project. To the extent not already approved on or prior to the date of this Agreement, all such required approvals are subject to final approval of the Common Council of the City of West Allis and the City Plan Commission, as well as Seller and Seller agrees to use its best efforts to assist Buyer in obtaining these approvals (and the approvals required of any other entity related to Seller) and to expedite them. The commencement date for construction shall be no later than the date referred to in the PROJECT SCHEDULE hereby attached as **Exhibit 2 – Project Schedule**. Failure of Buyer to commence construction as required by this Section and as set forth in **Exhibit 2** shall constitute a breach of this Agreement.

C. **Leave Blank**

2. **BUYER'S OBLIGATIONS.** Buyer shall be obligated as follows:

A. **Purchase of the Property.** Subject to the obligations and contingencies set forth in the Purchase and Sale Agreement, Buyer shall close the purchase of the Property from the Seller as provided in the Purchase and Sale Agreement.

B. Financing.

(1). Tax Credits. Provide a project with costs of up to \$14-million in order to secure and demonstrate an ability to close a \$14-million New Market Tax Credit allocation from First-Ring Industrial Redevelopment Enterprise, Inc (FIRE).

(2). EPA Revolving Loan. Pursuant to the terms of any applicable program, the Buyer must document necessary and eligible “capping” costs to secure a subordinate loan in the amount of up to \$800,000 from the City of West Allis Revolving Loan Fund (RLF) that is funded with grant funds from the U.S. Environmental Protection Agency(EPA). The buyer must provide the necessary match funds in relationship to the final loan amount.

(a) In order to qualify for a RLF from the City, BUYER will be subject to eligibility requirements per the EPA including:

- i. Not suspended or debarred from receiving federal funding;
- ii. Not potentially liable under CERCLA 107 (in this case the BUYER need to be a bona fide prospective purchaser, which generally includes performing an environmental assessment that complies EPA’s All Appropriate Inquiry
- iii. Must meet continuing obligations, such as: 1) complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls; 2) taking reasonable steps with respect to hazardous substances releases; 3) providing full cooperation, assistance and access to persons that are authorized to conduct cleanup actions; 4) complying with information requests and administrative subpoenas; and 5) complying with legally required notices.
- iv. The Property must be eligible for RLF funds by being a Brownfield in accordance with and set forth in Section 238.13(1)(a) of Wisconsin Statutes.

(b) As the recipient of the RLF, the BUYER will be required to:

- i. Determine/document that the environmental cleanup is eligible for EPA Brownfield funds;

- ii. Conduct and document community involvement (includes a 30-day public notice);
- iii. Establish an administrative record that will include: 1) an Analysis of Brownfield Cleanup Alternatives (ABCA) report; 2) a site-specific community relations plan; 3) a response to public comments; 4) verification that shows that the cleanup is complete; and 5) additional data and information that may form a basis for the selection of the cleanup, including sampling data, site investigation reports and technical and engineering evaluations;
- iv. Meet all applicable federal and state environmental laws;
- v. Perform the environmental cleanup in a manner that is protective of human health and the environment; and
- vi. Complete and document the environmental cleanup.

(4). Other Financing. The Buyer must satisfy all other financing and equity requirements required from PNC Bank and FIRE to commence closing.

B. Environmental Remediation. Buyer shall be responsible for any additional environmental remediation, geotechnical and site preparation beyond what Seller is responsible for in the Environmental Addendum to the Purchase and Sale Agreement.

C. Construction of Project. Buyer will undertake the following;

(1) Construct two (2) industrial buildings with a total of 165,000 square feet of space with an approximate value of \$9 –million.

(2) Construct and landscape the Project in accordance with an approved site, landscaping, architectural, and building plans and specifications according to the City of West Allis review and approval procedures as herein referenced. The building elevations & materials and the landscaping plan will be in accordance with Exhibit 1 Building Rendering and Site Plan.

D. Schedule. Buyer shall commence construction of the Project no later than the date referred to in Project Schedule **Exhibit 2** of this Agreement and shall proceed with due diligence to completion and occupancy no later than the date referred to in **Exhibit 2** of this Agreement.

E. Information Sharing. Buyer has prepared a budget for the preparation, construction and landscaping of the Project and has submitted the same to the Seller for its approval. Buyer shall maintain records such that its actual expenditures for the preparation, construction and landscaping of the Project may be ascertained and reconciled against said budget. From time to time, upon reasonable notice from Seller, Seller shall be entitled to examine such records to monitor construction costs.

F. Availability of Funds and Approval for Construction. Prior to the execution of this Agreement, and from time to time thereafter, upon reasonable request of the Seller not more than once every 12 month period, Buyer shall provide to Seller evidence satisfactory to the Seller, in Seller's reasonable discretion, that Buyer has available to it necessary corporate approvals and sufficient funds for the completion of the Project upon the schedule set forth herein.

G. Conveyance. Until after the Occupancy Permit has been issued for the first building of the Project, Buyer shall not sell, transfer or convey the Property to anyone other than an Affiliate (as hereinafter defined). For purposes of this Agreement "Affiliate" shall mean an entity controlling, controlled by or in common control with Buyer. Nothing herein shall preclude Buyer from selling a majority membership interest in the owner of the Property.

H. Nondiscrimination. No owner or occupant of the Property shall restrict the use or enjoyment of the Property or the Project upon the basis of sex, race, creed, color, or national origin in the sale, use or occupancy thereof.

I. Intentionally Left Blank

J. **Environmental:** The Purchase & Sale Agreement and Exhibit C – Environmental Addendum outlining Buyer’s and Seller’s responsibilities is attached as a part of this Development Agreement and sets forth Buyer’s and Seller’s environmental responsibilities.

3. **CONSTRUCTION QUALITY GUARANTEE.** Buyer shall provide the following:

A. **Building Design.** The design and placement of industrial buildings shall respond to the general characteristics of the surroundings as well as to the vision of the Light Industrial Area. Building Form and Scale

(1.) In order to relate to other nearby buildings, incorporate interesting building elements from surrounding buildings.

(2.) Buildings shall contain the three traditional parts of a building in appropriate proportions: base, mid-section, and top.

(3.) The scale of new buildings shall be compatible with adjacent buildings. Use transitions to achieve compatibility between larger buildings next to small scale buildings; transition techniques shall include building elements of different heights, building or roof articulation, and building projections such as covered walkways.

(4.) Franchise architecture is generally discouraged, although the use of corporate identifying elements may be appropriate on a building that otherwise reflects the desired vision of the area.

B. **Building Elements.** A consistent architectural style shall be used for a building, auxiliary structure, and all related site elements, such as screen walls, planters, trellises, and street furniture.

(1.) **Building Base.** The lowest portion of a building at grade creates opportunity to establish an architectural base. This base may be a projection, a change in surface texture, or a change in material or color. The size of the base shall be in proportion to the overall size of the building.

a. Base materials shall be highly resistant to damage, defacement, and general wear and tear. Pre-cast decorative concrete, stone masonry, brick, slate, and commercial grade ceramic tile are examples of excellent base materials. The use of anti-graffiti coating on base materials is encouraged.

b. In general, the base materials shall appear “heavier” and “darker” in appearance than the materials and color used for the building’s main exterior.

(2.) **Windows, Doors and Openings.** Windows, doors, and other openings shall be detailed to emphasize them as important parts of the building.

C. Building Facades.

(1.) Building entries shall be framed with architectural embellishment for articulation, be visible from the street, and be easily recognizable.

(2.) Incorporate articulation (insets, pop outs, wing walls, etc.) to avoid unrelieved blank walls.

D. Roofs. Roofs shall be an integral part of the building design and overall form of the structure.

(1.) Roof design shall have the appearance of a full roof reflecting traditional forms (i.e., hipped, gabled, flat, etc.) and be integrated to the building, particularly on parapet walls and roof elements used to screen equipment.

(2.) Decorative cornices and parapet walls shall be used to screen flat roofs and to delineate the building’s profile.

(3.) Vertical roof elements shall be used to add interest to horizontally-oriented rooflines.

(4.) Roof overhangs and arcades are encouraged in that they complement a building's design.

E. Finish Materials. Industrial buildings shall be constructed using durable but attractive materials which convey a substantial quality appearance.

(1.) Exterior building treatments, including colors, materials, and architectural detailing, shall be consistent throughout the building.

(2.) Exterior building colors shall generally consist of earth-toned or neutral colors, with vibrant or bright colors reserved for trim or accent use.

(3.) Building materials reflecting natural elements, such as stone or wood, are strongly encouraged.

F. Signage Areas. Signage placement shall be considered in the façade design.

G. Discouraged Building Elements. The following building elements and materials are discouraged in that they generally lack architectural interest.

Square "box-like" buildings

Large, blank, flat wall silhouettes

Unrelieved flat roofs

Brightly-colored roofs

Unpainted concrete or cinder block

Highly reflective surfaces

Corrugated metal as a primary building exterior

Exposed pipe columns

Red or orange tiled roofs

Pre-fabricated metal walls

Plain aluminum siding

H. Parking Lots - Parking to be distributed around the building and no more than 30% of total parking shall be located on any side facing a street. Landscaping shall be used to define parking areas, primary vehicular drives and pedestrian areas in an aesthetically and environmentally pleasing manner.**4. NO ASSIGNMENT.** The Buyer may not assign its rights in this Agreement prior to obtaining an Occupancy Permit for the first building built as part of the Project without the prior written consent of the Seller, except that Buyer may assign this Agreement to an Affiliate without the Seller's consent

5. BUILDING STANDARDS AND UTILITIES. All buildings and other site improvements (collectively "Improvements") to be constructed under this Agreement shall comply with the following minimum standards:

A. Improvements shall be designed by an architect or engineer. No side, elevation or facade of the building is exempt from public view; consequently, all sides, elevations or facades of the building shall be visually pleasing and architecturally and aesthetically compatible with the surrounding environment. Building Improvements are subject to architectural review and approval by the Plan Commission of the City as provided herein.

B. No building Improvements or structures shall be constructed on the Property until a site plan therefore (showing location, land coverage, building intensity, landscaping and off-street parking) have been submitted to and approved by the Planning Commission of the

City (the "Site Plan"). Improvements shown and determined on the Site Plan shall include, but not be limited to:

- (1.) All finished grade levels;
- (2.) Location of all building and other structures (to include a schedule showing: lot area and total square feet in building (each floor) ;
- (3.) Sidewalks and driveways (including types of materials);
- (4.) Parking and access drive dimensions and locations, stall numbers and dimensions, curbs, loading docks, and snow storage areas;
- (5.) Loading areas (including types of materials);
- (6.) Utility and storage areas (including types of materials);
- (7.) Lawns and landscaped areas (including types of materials);
- (8.) Water impoundments;
- (9.) Fences (including types of materials);
- (10.) Lights (including types);
- (11.) Areas of fill or cuts;
- (12.) Storm water drainage plans and facilities;
- (13.) On-site sewer, water and other utility locations, sizes and easement locations;
- (14.) Location, screening and type of refuse collection facilities; and
- (15.) All exterior signs and all other signs visible from the exterior of the building and other structures.
- (16.) Dimensions of all front, side, and rear yards, drives, etc.
- (17.) Other paved areas and uses, fencing and walls, outdoor lighting (location and direction of beams).

(18.) A landscaping and screening plan showing the location, common and botanical names, planting size, root condition and quantity of all plant material. The plan shall also show all ground cover and mulch areas and landscape construction materials.

(19.) Locations and dimensions of all easements.

(20.) Surface details of all outside areas, such as paving.

(21.) Signs: design, size, location, and illumination.

(22.) Designation of future expansion areas.

(23.) Locations of all hydrants within the Site.

(24.) Grading Plan.

(a) Existing and proposed grades and contours.

(b) Surface water drainage and detention and/or retention.

(c) Finished grade at building.

(d) Catch basins and storm sewer locations.

(e) Connection to existing utilities.

6. Intentionally Left Blank.

7. REFUSE. All trash containers, including dumpsters, must be enclosed by a solid masonry wall that matches the building facade and provide a suitable visual screen. Enclosure areas will also feature a rooftop structure/covering to limit sight lines into the refuse area from housing units on site and adjacent to the property. Such wall shall be of sufficient height to cover the material stored and shall be maintained so as to present an aesthetically appealing appearance at all times. All trash enclosures to be permitted in side and rear yards only.

8. UTILITIES AND SITE LIGHTING. All existing and proposed utility lines within the Site shall be installed underground in easements provided therefore. No overhead electric power, telephone or cable service will be permitted. Any existing or proposed utilities shall be located underground. Parking and roadway

lighting (fixture, height, type and intensity) where provided shall be approved by the City Plan Commission. Area lighting shall not be mounted on the building. Full cut off fixtures shall be utilized to prevent light splay onto surrounding properties.

9. **LANDSCAPING.** Landscaping improvements shall be required as an integral part of the Property. All areas on the Property not used for building, storage, parking, walks, and access roads, shall be suitably graded and drained, seeded or sodded, and maintained in grass and landscaped areas as provided in Sec. 12.13 of the Revised Municipal Code. Landscaped areas shall contain trees, shrubs, grass and/or other suitable groundcover in accordance with a landscape plan for the Property approved in writing by the Plan Commission. All required landscaping shall be completed within one year of the completion of construction of the second principal building on the Property and shall, thereafter, be maintained in a manner reasonably acceptable to the City. Buyer will maintain the site landscaping in accordance with the final plans approved by the Plan Commission. Approved plans will run with the land and will remain in effect regardless of changes in ownership of the subject property.

10. **ARCHITECTURAL DESIGN AND URBAN FORM.** The project shall create a quality development to fit the context and vitality of the surrounding industrial neighborhood while utilizing innovative “new urbanism” design standards. The development shall substantially increase the tax base and enhance the neighborhood. Building plans and specifications, including architectural elevations, for the Project, to include construction materials, are subject to review and final approval by the City's Plan Commission pursuant to the provisions of this Agreement. The basic design and exterior construction materials of the Project shall be in conformity with **Exhibit 1** Building Rendering and Preliminary Site Plan, which is attached hereto and made a part hereof. Facade treatments must be compatible with site standards and aesthetically appropriate. Final colors are subject to review and final approval by the City’s Plan Commission.

At a minimum, the architectural portion of the Plan Commission submittal will consist of Architectural Elevations and plans that are generally consistent with the attached **Exhibit 1** Building Rendering and Site Plan.

11. PEDESTRIAN AND VEHICULAR ACCESS.

A. All curb cuts and service drives shall be designed to minimize disruption of pedestrian activity and movements and subject to the approval of the Common Council Board of Public Works;

B. Pedestrian and vehicle linkages and crossing access are encouraged between existing neighborhoods and the proposed development area in an effort to promote walkability, traffic safety, and reduction of the number of new driveways on major street arterials; and,

C. Loading docks and refuse areas shall be screened and concealed from street view.

12. PROPERTY IMPROVEMENTS.

All building and improvement plans and specifications shall be approved by the Plan Commission prior to construction. Seller agrees that the approval of Buyer's site, landscaping, architectural, building plans and specifications and other plans by the City's Plan Commission or other applicable City entity shall also constitute Seller's satisfaction of Buyer's compliance with the requirements set forth in Sections 3, 5, 7-13.

13. ACCESSORY STRUCTURES. The location, size and design compatibility of all permitted accessory structures in the Project, such as garages, maintenance buildings, etc., shall be approved in writing by the Plan Commission pursuant this Agreement, before construction. The term "accessory structure" includes, but is not limited to, the following (if such structures are to be located within the required setbacks): ground-mounted telephone and electrical transformers, gas meters, ground-mounted air conditioners, exhaust ducts and similar structures.

14. INTENTIONALLY LEFT BLANK

15. MAINTENANCE RESPONSIBILITIES

A. The Buyer shall keep the Property, all contiguous street right-of-way to edge of pavement, and easement areas in a well maintained, safe, clean, and attractive condition commensurate with the condition of surrounding properties at all times. Such maintenance includes, but is not limited to, the following:

- (1.) The removal of all litter, trash, refuse, and wastes.
- (2.) The mowing of all lawn areas to a height of less than five (5) inches unless otherwise approved in writing by the Plan Commission. Those designated and approve unused lot areas shall be cut a minimum of three (3) times per year.
- (3.) The maintenance of lawn and landscape areas in a weed-free, healthy and attractive condition.
- (4.) The care and pruning of trees and shrubbery outside of easements within property boundaries.
- (5.) The maintenance of exterior lighting, signs, and mechanical facilities in working order.
- (6.) The keeping of all exterior building surfaces in a clean, well maintained condition.
- (7.) The striping and sealing of parking and driveway areas.
- (8.) The removal of unlicensed or inoperable vehicles.
- (9.) Snow and ice removal.

B. During construction, it shall be the responsibility of the Buyer to ensure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials; and that construction materials, trailers, and the like are kept in a neat and orderly manner. Burning of excess or scrap construction material is prohibited. Construction site erosion control practices shall be implemented to

prevent erosion, sedimentation and pollution of air or water during construction. Erosion control plan to be submitted and approved by the Building Inspection & Neighborhood Services Department.

C. Storm Water Management and Controls. Upon BUYER'S acquisition of the Property, the BUYER will need to meet the City of West Allis, WDNR and Milwaukee Metropolitan Sewerage District (MMSD) storm water management requirements. The requirements generally include removal of 40% of the total suspended solids (WDNR regulation) and storm water detention that accounts for a 20% reduction in the runoff rate from the Project compared to the year 2000 development conditions (a MMSD requirement). SELLER acknowledges and agrees that storm water may be handled offsite and agrees to cooperate with BUYER in BUYER's pursuits to do so.

16. REMEDIES.

A. In the event Buyer does not commence and/or complete construction of the Project as hereinabove set forth, because of the public interest involved, Seller shall have the right to specific performance of the covenants and obligations of Buyer to be performed hereunder by it, in addition to all other remedies Seller may have under this Agreement, the Purchase and Sale Agreement, or at law or in equity.

B. In addition to all other remedies the Seller may have under this Agreement or at law or in equity, and as an alternative thereto, in the event Buyer does not commence and/or complete construction of the Project as set forth above, the Seller may, but shall not be required to, purchase the Property in accordance with the provisions of Section 31 of the Purchase and Sale Agreement.

C. Should Seller fail to comply with any of its obligations or duties hereunder, Buyer shall be entitled to exercise any rights or remedies of Buyer under the Purchase and Sale Agreement.

17. **PURCHASE AND SALE AGREEMENT TO GOVERN.** All other terms and conditions of the Purchase and Sale Agreement signed contemporaneously with this Agreement shall govern the interpretation and application of this Agreement. Where the terms of this Agreement and the Purchase and Sale Agreement are in conflict, the terms of the Purchase and Sale Agreement shall govern.

18. **CLOSING:** In addition to all other terms and conditions of the Purchase and Sale Agreement, including, without limitation, conditions and contingencies to the Closing, the Closing of the transactions contemplated by the Purchase and Sale Agreement and this Development Agreement will occur after Plan Commission architectural review and approval of the Site Plan, Buyer providing evidence of firm financing with no contingencies and/or unfulfilled equity requirements and with term and conditions satisfactory to Buyer in its sole discretion, approval by both parties of the Purchase & Sale Agreement, and satisfaction of each of the other pre-conditions and contingencies to Closing set forth therein.

19. **DEFINED TERMS:** the defined terms contained in the Development Agreement shall, unless a specific definition is given, be governed by the definitions contained in the Purchase and Sale Agreement.

20. **Community Benefit Reporting:** Parties hereby agree and acknowledge that as a condition of the New Market Tax Credit financing required for the Project and First Ring Industrial Redevelopment Enterprise, Inc. ("FIRE") making a \$14-million allocation of New Markets Tax Credits resulting in a subordinated loan to the Buyer, the Buyer shall be responsible in providing and sharing with the Seller on an annual basis the Community Impacts Report that is submitted to FIRE pursuant to a Community Benefits Agreement to be entered into between FIRE and Buyer at Closing. The report is required by FIRE to meet its reporting requirements associated with its receipt of New Markets Tax Credits the NMTC Transaction.

IN WITNESS WHEREOF, the Parties have executed this Agreement the date first above written.

SIGNATURES CONTINUED ON NEXT PAGE)

AGREED TO BY AND BETWEEN Buyer and Seller on the date first set forth above.

**SELLER: COMMUNITY DEVELOPMENT AUTHORITY OF THE
CITY OF WEST ALLIS**

By: John F. Stibal
John F. Stibal, Executive Director

Dated: 12-17-13

BUYER: Wangard Partners, Inc.

By: _____
Stewart Wangard, President

Dated: _____

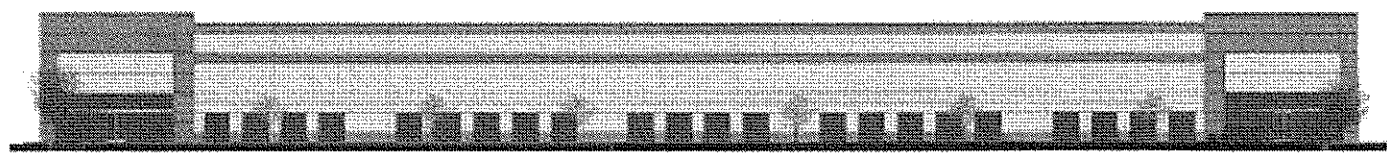
List of Exhibits

- Exhibit 1 – Building Rendering and Site Plan
- Exhibit 2 - Project Schedule

Exhibit I – Building Rendering and Site Plan



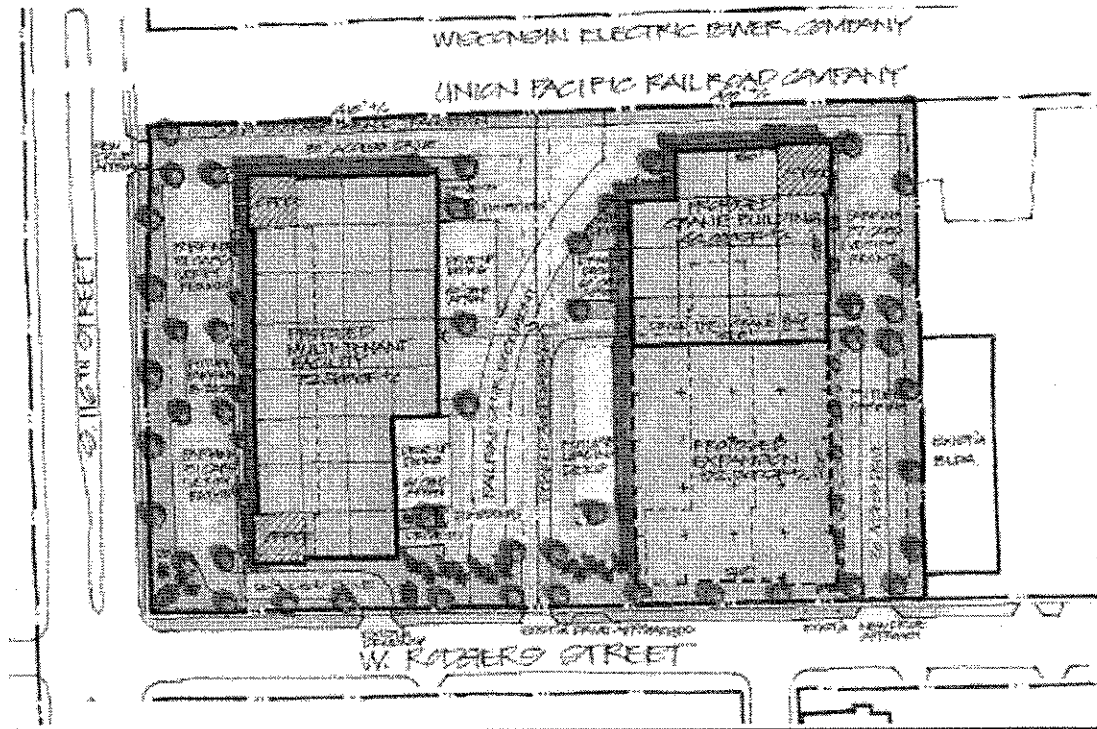
PERSPECTIVE



FRONT ELEVATION



WEST ALLIS INDUSTRIAL DEVELOPMENT
116TH AND ROGERS
PRELIMINARY BUILDING DESIGN



WANGARD

WEST ALLIS INDUSTRIAL DEVELOPMENT
 116TH AND ROGERS
 PRELIMINARY SITE PLAN

Exhibit 2 - Project Schedule

Performance Schedule			
Item	Description	Date	Entity
a	Memorandum of Understanding	By September 2013	Executive Director(SELLER) / BUYER
b	Rendering	30 days following full execution of MOU	BUYER/SELLER
c	Purchase and Sale Agreement/Development Agreement	30 days following full execution of MOU	SELLER/BUYER
d	Public Hearing to Sell Land	15 days following full execution of Purchase and Sale Agreement	Common Council
e	Site, Landscaping, Architectural Plan	105 days following full execution of Purchase and Sale Agreement	Plan Commission/ BUYER
f	Construction Drawings	105 days following full execution of Purchase and Sale Agreement	BUYER Submits to Building Inspection & Neighborhood Services
g	Closing	120 days following execution of Purchase and Sale Agreement	SELLER/BUYER
h	Commence Construction	120 days following execution of Purchase and Sale Agreement	BUYER
i	Project Completion	18 months following Closing	BUYER

EXHIBIT C - ENVIRONMENTAL ADDENDUM

This Environmental Addendum describes the environmental conditions of the Property (defined below), the extent of environmental reports and investigations, and obligations of each party in order to facilitate the redevelopment of the Property.

1. **Property.** The Property consists of the following:

Address	Parcel Number	Owner
11528 W. Rogers St.	481-9993-010	CDA
11406 W. Rogers St.	481-9993-013	CDA

As more fully described in the Agreement.

2. **Contingent on Sale of Property.** This Environmental Addendum and the obligation of SELLER and BUYER hereunder are contingent upon the closing of the sale of the Property by Buyer. To the extent the Property is not sold and conveyed by the Seller to BUYER as contemplated by the Agreement, this Environmental Addendum shall be void and of no force or effect. To the extent the Property is sold and conveyed by the SELLER to BUYER, the terms of this Environmental Addendum shall govern in the event of any inconsistency between this Environmental Addendum and the Memorandum of Understanding described in the Agreement.
3. **Assessments and Investigations.** The SELLER contracted with a consultant to perform environmental investigations of the Property. Site investigation, soil and groundwater remediation testing was conducted. Properties were assessed for the presence of asbestos, which will be abated prior to demolition as required by law. **Appendix I-List of Environmental Reports**, provides a list of all reports and communications generated for the Property.
 - A. The SELLER will provide to BUYER a copy of all environmental reports for the Property listed in Appendix I-List and the Seller represents and warranties that such reports are the only items in Seller's possession related to the environmental condition of the Property.

4. **Pre-Closing Demolition Work.**

- A. Asbestos and Other Hazardous Materials
 1. Assessments of on-site structures have been completed to identify and quantify asbestos containing building materials (ACBM) and other hazardous materials.
 2. Friable and potentially friable ACBM and other hazardous

materials referenced above will be removed by Seller prior to building demolition and disposed in a licensed disposal facility or recycled, as appropriate to the material and as required by law.

- B. Demolition of Structures. On-site buildings and related structures will be demolished and removed from the site by Seller. Foundations and structures located within 6 feet of existing grade, including, but not limited to the concrete slab(s) underneath any structures on the Property (but specifically excluding any asphalt surface pavement), at the time of demolition will be removed by Seller.
- C. Asphalt surface pavement ~~or concrete~~ will remain in place on the Property. The foregoing provision shall not apply to concrete slabs underneath structures on the Property, which shall be removed. Maintenance of surface pavement will prevent soil erosion and ponding/drainage problems, as well as retain a temporary cap above impacted soils.
- D. On-site utility laterals and connections to on-site structures will be shut-off/abandoned and terminated/removed at the site boundary as determined by the City and/or individual utility. There are existing utilities that remain in place because of their use and placement within easements. Various storm water controls will be left in place subject to removal by a future development if necessary.
- E. On-site excavations produced by building demolition will be backfilled and compacted to 95% modified proctor.

5. Environmental Conditions and Actions.

- A. The SELLER has completed extensive work to facilitate redevelopment of the Property. The work completed includes, but is not limited to, environmental investigations with the collection of soil and groundwater samples. The following is a summary of the environmental conditions associated with the Property:
 - i.. The SELLER has submitted to the Wisconsin Department of Natural Resources (WDNR) a Technical Assistance Request and received a No Further Action Letter from WDNR on July 26, 2010 relative to the YF-West (11528 W. Rogers Street). With this letter, the WDNR agreed that no additional action was required except for the final remedy which is maintenance of the site cap, which was part of the LUST case closure described below.
 - ii. Final case closure was granted by the Department of Commerce on April 28, 2008 for the LUST release on the YF-West property with a

Land Use Limitation. The Land Use Limitation requires a barrier cap to be maintained in accordance with the Barrier Maintenance Plan, attached as **Appendix II. iii.** Investigation of a LUST/ERP case in the southwest portion of the YF-East (11406 W. Rogers Street) property was conducted by the prior owner (YRC North American Transportation). Final case closure was granted by the WDNR on September 20, 2011 with continuing obligations. The continuing obligations for the YF-East property include a barrier cap to be maintained in accordance with the Barrier Maintenance plan, attached as **Appendix II**, evaluation of vapor intrusion potential while planning future redevelopment and notification prior to disturbance of the barrier.

- iv. Additional investigation conducted by the SELLER indicates that limited low-level contaminants and non-exempt fills are present in the eastern portion of the YF-East property. Additional investigation was requested by the WDNR in their letter dated April 8, 2013 to determine the extent of materials requiring a barrier cap and to confirm groundwater quality conditions relative to MW-3 and MW-4. Both parties agree to use reasonable efforts to ensure that to the fullest extent possible through the planning and construction phase of the Project that efforts will be coordinated between the BUYER and SELLER to minimize excavation and/or removal of impacted soils wherever practicable. The SELLER agrees that incremental costs incurred relative to the monitoring and disposal of contaminated soil as identified in the GIS registry and generated as part of the proposed construction, will be the responsibility of the SELLER which obligation shall survive Closing. Any impacted soils left in place will be managed by the BUYER in accordance with **Appendix II**.

6. SELLER's Remedial Obligation. The SELLER agrees, at its sole cost and expense, to the following actions which address the conditions outlined in the "WDNR Letter" of April 8, 2013 regarding the property at 11406 W. Rogers Street (the "YF East Property"):

- A. The SELLER will prepare a case closure request for the YF East Property which will include a GIS Registry Package for placement on the WDNR's Registry of Closed Remediation Sites. The GIS Package will include identification of the trimethylbenzene impacts located near the northeast corner of the garage/maintenance building on the YF East Property.
- B. Per item 2 of the WDNR Letter, no additional action is required relative to the trace VOC impacts in the soil samples near the northeast corner of the YF Property, as this appears to be related to the presence of the foundry sand fill.

- C. The presence of the foundry sand fill is noted and will require the presence and maintenance of a cap on the YF East Property, per item 3 of the WDNR Letter. The current cap requirement area can be limited to the eastern 120-foot wide portion of the YF Property. The extent of cap could be reduced if additional testing/sampling is conducted that shows a more limited extent of foundry sand fill on the YF Property. The SELLER agrees to conduct additional testing to more closely define the extent of the foundry sand fill and to provide the results of said testing to the WDNR and BUYER for their use in complying with BUYER's Remedial Obligation (item 10 below).
- D. The SELLER has conducted the additional groundwater monitoring requested by WDNR at MW-3 and MW-4 and will provide the additional data to WDNR as part of SELLER'S case closure request. Based on the results of the additional testing (no detections above NR 140 groundwater quality standards) case closure is anticipated.
- E. The SELLER will provide additional information, if requested, to WDNR to achieve case closure relative to the identified items. The SELLER will provide documentation evidencing that the SELLER has achieved case closure to the BUYER. If Seller is unable to achieve case closure prior to Closing and, notwithstanding this fact, Closing occurs, then Buyer agrees to permit Seller such access to the Property as Seller deems necessary to achieve case closure; provided, however, Seller agrees to indemnify Buyer for any and all damage suffered by Buyer as a result of such access.

7. Soils Management. Except for any soils that may be removed in connection with the SELLER's environmental work under paragraph 5.v. above (which shall be the responsibility of the SELLER), BUYER shall be responsible for managing all contaminated soils on the 116th and Rogers Redevelopment Area.

8. BUYER's Release and Waiver of Claims. BUYER acknowledges that BUYER has had the opportunity to undertake such studies and investigations, conduct such tests and surveys, and engage such specialists as BUYER deems appropriate to evaluate the Property and its risks from an environmental standpoint. Accordingly, except as set forth in this Environmental Addendum or the Agreement, BUYER is acquiring the Property "as is, where is," without representation or warranty of any kind, express or implied, as to the environmental condition of the Property. In addition to and not by way of limitation of the sale of the Property on an "as is, where is," basis, and except for a claim to enforce the SELLER's obligation under paragraph 5 above, BUYER, on its own behalf and on behalf of any successors, heirs or assigns, hereby releases the SELLER, the City of West Allis, their elected officials, agents and contractors (collectively "Released Parties") from, and waives all claims and liability against the Released Parties arising out of or related to the environmental condition of the Property, the presence of

contamination thereon or migration there from, including, but not limited to, claims for Remedial Action except to the extent that the Released Parties i) caused or contributed to the contamination, ii) were negligent in completing or performing Remedial Action or iii) breached a representation, covenant or warranty in the Purchase Agreement. The waiver and release shall apply to all claims and causes of action of any type whatsoever, known or unknown, arising in contract, common law, or under applicable statutory law. 9. **No Admission of Liability.** Nothing in the SELLER's completion of the demolition work in paragraph 2 or agreement to undertake the Remedial Action in paragraph 3 shall be construed as an admission or acknowledgment of any kind that the SELLER is liable or responsible for any contamination on the Property, such liability and responsibility is expressly denied. The SELLER is making the commitments in this Environmental Addendum to facilitate the redevelopment of the Property.

10. **BUYER's Remedial Obligation.** BUYER will, to the extent required by WDNR, be responsible for constructing any reasonable and necessary engineered barriers at the Property and adhering to the terms of any WDNR approved engineered barrier maintenance plans for the Property ("Buyer's Remedial Obligation").

The BUYER agrees to complete and submit an application for Development at Historic Fill Sites (Form 4400-226) for redevelopment of the YF-East property and to comply with the conditions required by the WDNR as part of that exemption to construct.

BUYER agrees to take all practicable and cost effective actions necessary to design and redevelop the Property in a manner that will maximize on-site reuse of contaminated soil, consistent with any conditions of reuse required by the WDNR.

11. **Survival of Rights and Obligations.** The parties' respective rights and obligations under this Environmental Addendum shall survive Closing.

12. **Severability.** If any provision, clause or part of this Environmental Addendum is held invalid, such clause shall be struck and the remainder of this Environmental Addendum shall not be affected.

13. **Relationship of the Parties.** Nothing in this Environmental Addendum shall be construed as creating, between the parties, a partnership, joint venture or relationship other than as described herein. The SELLER and BUYER each acknowledges that it is not an agent for the other party hereto and may not bind or enter into agreements for such other party.

Appendix I

Environmental Addendum Environmental Report and Letter List

Consultant:

AECOM Technical Services, Inc.
1555 N. River Center Drive
Milwaukee, WI 53212
Contact: Donna Volk, P.G., C.P.G., Senior Hydrogeologist
Direct: 414-944-6171
Fax: 414-944-6081
donna.volk@aecom.com

11528 W. Rogers St. Reports:

GIS Registry Information w/Pavement Barrier Maintenance Plan	April 28, 2008
Asbestos & Demolition Waste Streams Report	February 10, 2010
Phase I ESA	February 15, 2010
Phase II ESA	March 19, 2010
Letter Report –Groundwater Sampling Results	May 25, 2010
Technical Assistance Request	June 7, 2010
WDNR Letter - No Further Action Determination	July 26, 2010
ALTA Survey	March 2013

11406 W. Rogers St. Reports:

GIS Registry Information w/Pavement Cover Maintenance Plan	September 20, 2011
Phase I ESA	June 29, 2012
Phase II ESA	June 29, 2012
Asbestos Survey & Hazardous Materials Inventory	July 2, 2012
Site Investigation Report	December 13, 2012
ALTA Survey	March 2013
WDNR Letter – Site Investigation Approved	April 8, 2013

Appendix II
Barrier Maintenance Plan

See Attached

Exhibit D

Document Number _____

MEMORANDUM OF AGREEMENTS

NOTICE IS HEREBY GIVEN that a Purchase and Sale Agreement Development Agreement have been made and entered into as of the _____ day of November, 2013, by and between the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS ("Seller"), and Wangard Partners Inc., and its successors and assigns, wherein the parties have set forth the terms, conditions, restrictions and property owner guarantees governing the development and use of certain lands located in the City of West Allis, Milwaukee County, State of Wisconsin, legally described on Exhibit "A", attached hereto and made a part hereof.

This space is reserved for recording data

Return to

City Attorney's Office
 City of West Allis
 7525 West Greenfield Avenue
 West Allis, WI 53214

Parcel Identification Number/Tax Key Number

481-9993-010 and 481-993-013

IN WITNESS WHEREOF, the undersigned have executed and delivered this Memorandum of Agreements.

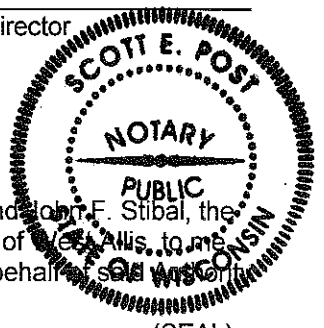
COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS

By: *Gerald C. Matter*
 Gerald C. Matter, Chairman

Attest: *John F. Stibal*
 John F. Stibal, Executive Director

State of Wisconsin)
) ss
 Milwaukee County)

Personally came before me this 17 day of Dec., 2013, Gerald C. Matter and John F. Stibal, the Chairman and Executive Director, respectively, of the Community Development Authority of the City of West Allis, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same on behalf of said City of West Allis.



Scott Post (SEAL)
 ()
 Notary Public, State of Wisconsin
 My Commission Expires: 15 years

(SIGNATURES CONTINUED)

Exhibit A – Legal Description

Address: 11528 W. Rogers St., West Allis, WI 53227

Tax Key Number: 481-9993-010

Description: Lot 1 of Certified Survey Map No. 749, recorded on October 19, 1967, on Reel 386, Image 686, as Document No. 4351894, being a part of the Southeast ¼ of Section 6, in Town 6 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin EXCEPTING THEREFROM THE FOLLOWING: A part of Lot 1, of Certified Survey Map No. 749, being a part of the Southeast ¼ of Section 6, in Town 6 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin, bounded and described as follows: Beginning at the Northwest corner of said lot; thence North 88° 59' 10" East along the North line of said Lot, 14.00 feet; thence South 4° 15' 19" West 130.46 feet to a point which is 3.00 feet East of the West line (measured at right angles) of said Lot; thence South 0° 04' 05" East 277.00 feet; thence South 89° 24' 55" West 0.50 feet; thence North 0° 35' 05" West along the West line of said Lot, 406.88 feet to the point of beginning.

PIN: 481-9993-010

Address: 11406 W. Rogers St., West Allis, WI 532217

Tax Key Number: 481-9993-013

Lot "A" of Certified Survey Map No. 943, recorded on November 29, 1968, or Reel 453, Image 200, as Document No. 4432438, being a division of Lot 3 of Certified Survey Map No. 749, recorded October 19, 1967, on Reel 386, Image 686, as Document No. 4351894, and being part of the Southeast ¼ of Section 6, in Town 6 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin.

PIN: 481-9993-013