

**2G. Consideration of adopting Resolution No. 2022-91 approving a Business Subsidy Agreement contained within a Contract for Private Development between the City of Monticello Economic Development Authority (EDA) and Willi Hahn Corporation dba Wiha Tools**

<b>Prepared by:</b> Economic Development Manager	<b>Meeting Date:</b> 8/22/2022	<input checked="" type="checkbox"/> <b>Consent Agenda Item</b> <input type="checkbox"/> <b>Regular Agenda Item</b>
<b>Reviewed by:</b> Community Development Director, City Clerk	<b>Approved by:</b> City Administrator	

**ACTION REQUESTED**

Motion to adopt Resolution No. 2022-91 approving a Business Subsidy Agreement contained within a Contract for Private Development between the City of Monticello Economic Development Authority (EDA) and Willi Hahn Corporation dba Wiha Tools.

**PREVIOUS COUNCIL ACTION:**

**July 11, 2022:** The City Council adopted Resolution No. 2022-77 authorizing the creation of Economic Development TIF District No. 1-46 in support of a new manufacturing, assembly, and warehouse facility development proposal by Wiha Tools at a vacant site along 7<sup>th</sup> Street East.

**REFERENCE AND BACKGROUND**

A Business Subsidy Agreement is required when a developer or business receives funding exceeding \$150,000 as part of a financial assistance package. The developer must acknowledge the amount of the “Business Subsidy” granted to the Developer and the City must take action to approve the subsidy. The subsidy and this Agreement are needed due to the extraordinary costs of land acquisition and site improvements necessary to construct the Project on the proposed site. The construction of the project is not sufficiently feasible for the Developer to undertake without the Business Subsidy.

In approving a Business Subsidy, the City also makes a finding regarding its public purpose. The public purpose of the Business Subsidy to Willi Hahn Corporation is to increase the tax base in the City and State, increase the number of jobs (including construction jobs) in the City and State, and help an existing business remain and expand in the City and the State.

The EDA held the required public hearing for the Business Subsidy to Wiha Tools as part of its consideration of the Contract for Private Development at its July 13, 2022, meeting. The EDA

authorized entering into the contract with Wiha Tools at the July 13, 2022 meeting.

The City Council is asked to consider adopting Resolution 2022-91 approving the Business Subsidy Agreement contained in the Contract for Private Development. The language in the Contract for Private Development (TIF Development Agreement) identified the TIF assistance (Section 3.1(c)) as well as the additional funding, a Minnesota Investment Fund (MIF) Grant and a Job Creation Fund (JCF) Grant, both of which are from MN-DEED, for the proposal (Section 3.5(f)). In exchange for the financial assistance, Wiha Tools must complete its 78,400 square foot development project and operate the new facility for five years. It must also create 31 new FTE (full time equivalent) jobs within two years of receiving a certificate of occupancy (CO). The wages of the new jobs must average \$16.50 per hour with benefits totaling \$9.85 per hour.

The total assistance being provided to Wiha Tools is shown below:

Tax Increment Financing (TIF)	\$1,151,000 (includes both Phase I and Phase II)
JCF – MN-DEED (PFP Grant)	\$ 660,000
MIF – MN-DEED (FL)	<u>\$ 220,000</u>
<b>Total Assistance</b>	<b>\$2,031,000</b>

The estimated total cost of Phase I development proposal is \$13,000,000 +/- . This amount includes the purchase of \$2,000,000 of new equipment. The Phase II expansion of an additional 78,400 square feet in 4 to 5 years is expected to cost nearly \$10,000,000 including equipment purchases. It is also expected to create an additional 28 FTE jobs. A summary Funding Sources and Uses of the Wiha Tools proposal is shown below.

**Wiha Tools Development Project Funding Sources and Uses**

<u>Sources of Funds</u>		<u>Uses of Funds</u>	
Owner Equity Cash	\$ 5,719,000	Land Purchase	\$ 799,000
Internal Corporate Loan	\$ 5,000,000	Site Prep-Improvement	\$ 1,201,000
Tax Increment Financing	\$ 1,151,000	New Construction	\$ 9,000,000
JCF – MN-DEED (PFP Grant)	\$ 660,000	Machinery & Equipment	<u>\$ 2,000,000</u>
MIF – MN-DEED (FL)	\$ 220,000	<b>Total</b>	<b>\$13,000,000</b>
GMEF Loan	<u>\$ 250,000</u>		
<b>Total</b>	<b>\$13,000,000</b>		

City staff have developed a scoring system to evaluate the merits of economic development projects. It has been used consistently since 2016. Based on the metrics, the score for the Wiha

Tools' development proposal is 34.5. This score is among the highest ranking of numerous compared proposals over the past several years.

- I. **Budget Impact:** The budgetary impact related to the City Council consideration of Resolution 2022-91 approving a Business Subsidy Agreement related to the Wiha Tools facility development is minimal. Wiha Tools submitted the required TIF application escrow funds to cover consultant fees involved in the review and approval of the various financing tools.
- II. **Staff Workload Impact:** The EDA attorney, financial advisor, Economic Development Manager, Community & Economic Development Coordinator, and the Community Development Director have been involved in the work tasks related to the funding assistance for the Wiha Tools' development proposal. The EDA attorney prepared the City Council resolution as part of these work tasks.
- III. **COMPREHENSIVE PLAN IMPACT:** Continuing to support Monticello industrial firms who meet the City's goals for employment and tax base is consistent with the Monticello 2040 Value Statement of "A diversified and strong local economy competitive at regional, state and national levels." The Monticello 2040 Plan's Economic Development Chapter includes numerous statements aligning with this proposed expansion, including those for business retention, reinvestment, tax base expansion and workforce development.

#### **STAFF RECOMMENDED ACTION**

Staff recommends that the City Council approve the Business Subsidy Agreement contained the Contract for Private Development between the EDA and Wiha Tools as required under state statutes. But for the assistance, this project would not be feasible.

#### **SUPPORTING DATA**

- A. Resolution 2022-91
- B. Contract for Private Development related to TIF District 1-46

**CITY OF MONTICELLO, MINNESOTA**

**RESOLUTION NO. 2022-91**

**RESOLUTION APPROVING BUSINESS SUBSIDY AGREEMENT CONTAINED WITHIN  
A CONTRACT FOR PRIVATE DEVELOPMENT BETWEEN THE CITY OF MONTICELLO  
ECONOMIC DEVELOPMENT AUTHORITY AND WILLI HAHN CORPORATION**

BE IT RESOLVED by the City Council (“Council”) of the City of Monticello, Minnesota (“City”) as follows:

Section 1. Recitals.

1.01. The City has approved the creation of Tax Increment Financing District No. 1-46 (Wiha Tools) (the “TIF District”) within the Central Monticello Redevelopment Project (the “Project”), pursuant to Minnesota Statutes, Sections 469.174 to 469.1794, as amended.

1.02. To facilitate development of certain property in the TIF District (the “Development Property”), the City of Monticello Economic Development Authority (the “Authority”) has approved a Contract for Private Development (the “Contract”) between the Authority and Willi Hahn Corporation, a Minnesota corporation, or an affiliate thereof or entity related thereto (the “Developer”), under which among other things the Authority will issue to the Developer its Tax Increment Financing Note (the “TIF Note”) to assist in the payment of the cost of land acquisition and site preparation on the Development Property necessary to complete construction of an approximately 156,800 square foot building to provide a facility for manufacturing to be constructed in two phases (the “Project”).

1.03. The provision of the TIF Note to the Developer in accordance with the terms of the Contract constitutes a “business subsidy” exceeding \$150,000 within the meaning of Minnesota Statutes, Section 116J.993 to 116J.995, as amended (the “Business Subsidy Act”).

1.04. The “business subsidy agreement” as required under the Business Subsidy Act is included as one section of the Contract, and on July 13, 2022, the Authority conducted a duly noticed public hearing regarding the business subsidy agreement, at which all interested persons were given an opportunity to be heard.

1.05. The City finds and determines that the business subsidy to the Developer is for a public purpose and is in the public interest because it will further the objectives of the Project, will facilitate the expansion of a successful business and the creation of new jobs in the City, and will increase the tax base.

Section 2. Business Subsidy Approved; Further Proceedings.

2.01. The Council approves the business subsidy agreement contained within the

Contract, subject to modifications that do not alter the substance of the transaction and that are approved by the President and Executive Director of the Authority, provided that execution of the documents by those officials shall be conclusive evidence of their approval.

Approved by the City Council of the City of Monticello, Minnesota this 22nd day of August, 2022.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

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**CONTRACT FOR PRIVATE DEVELOPMENT**

**By and Between**

**CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY**

**And**

**WILLI HAHN CORPORATION**

**Dated as of: \_\_\_\_\_, 2022**

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This document was drafted by:  
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EXHIBIT C Certificate of Completion

EXHIBIT D Qualified Costs



## CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the \_\_\_th day of \_\_\_\_\_, 2022, by and between the CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic and a political subdivision under the laws of the state of Minnesota (the “Authority”), and WILLI HAHN CORPORATION, a Minnesota corporation and its permitted successors and assigns (the “Developer”).

WITNESSETH:

WHEREAS, the Housing and Redevelopment Authority in and for the City of Monticello (the “HRA”) has undertaken a program to promote economic development and job opportunities and to promote the redevelopment of land which is underutilized within the City of Monticello, Minnesota (the “City”), and in connection with this has created the Central Monticello Redevelopment Project No. 1 (the “Redevelopment Project”) pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “HRA Act”), and adopted a redevelopment plan for the Redevelopment Project; and

WHEREAS, the Authority was established pursuant to Minnesota Statutes, Sections 469.090 to 469.1081, as amended (the “Authority Act”), and was authorized to transact business and exercise its powers by a resolution of the City Council of the City, which also transferred the control and responsibility for the Redevelopment Project from the HRA to the Authority; and

WHEREAS, pursuant to the HRA Act and the Authority Act (collectively, the “Act”), the Authority is authorized to undertake certain activities to facilitate the redevelopment and development of real property by private enterprise; and

WHEREAS, the City and the Authority have established within the Redevelopment Project, Tax Increment Financing (Economic Development) District No. 1-46 (Wiha Tools) (the “TIF District”) pursuant to Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the “TIF Act”), and have adopted a tax increment financing plan therefor (the “TIF Plan”) on July 13, 2022; and

WHEREAS, the Developer has proposed to construct an approximately 156,800 square foot building to provide a facility for manufacturing in two phases on certain property within the TIF District more particularly described herein (the “Development Property”); and

WHEREAS, the Authority believes that the construction of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are vital and are in the best interests of the City and the health, safety, morals, and welfare of its residents, and will result in preservation and enhancement of the tax base, and increase employment opportunities, and is in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Redevelopment Project has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Act, Minnesota Statutes, Section 116J.993 through 116J.995, as amended (the “Business Subsidy Act”), apply to this Agreement; and

WHEREAS, the City and the Authority have previously adopted criteria for awarding business subsidies that comply with the Business Subsidy Act, after public hearings for which notice was published; and

WHEREAS, in connection with the assistance provided under this Agreement, this agreement constitutes a subsidy agreement under the Business Subsidy Act.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

## ARTICLE I

### Definitions

Section 1.1. Definitions. In addition to those terms defined in the text, in this Agreement, unless a different meaning clearly appears from the context:

“Act” means, collectively, the Economic Development Authority Act, Minnesota Statutes, Sections 469.090 to 469.1081, as amended, and the Housing and Redevelopment Authority Act, Minnesota Statutes, Sections 469.001 to 469.047, as amended.

“Affiliate” means with respect to any entity (a) any corporation, partnership, limited liability company, or other business entity or person controlling, controlled by or under common control with the entity, and (b) any successor to such party by merger, acquisition, reorganization or similar transaction involving all or substantially all of the assets of such party (or such Affiliate). For the purpose hereof the words “controlling,” “controlled by” and “under common control with” shall mean, with respect to any corporation, partnership, limited liability company or other business entity, the ownership of 50% or more of the voting interests in such entity or possession, directly or indirectly, of the power to direct or cause the direction of management policies of such entity, whether ownership of voting securities or by contract or otherwise.

“Agreement” means this Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Authority” means the City of Monticello Economic Development Authority, or any successor or assign.

“Authority Representative” means the Executive Director of the Authority, or any person designated by the Executive Director to act as the Authority Representative for the purposes of this Agreement.

“Available Tax Increment” means 90% of the Tax Increment.

“Business Day” means any day except a Saturday, Sunday, legal holiday, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

“Business Subsidy Act” means Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

“Certificate of Completion” means the certification provided to the Developer pursuant to Section 4.4 of this Agreement.

“City” means the City of Monticello, Minnesota.

“Construction Plans” means the plans, specifications, drawings and related documents for the construction work to be performed by the Developer on the Development Property which (a) shall be as detailed as the plans, specifications, drawings and related documents which are

submitted to the appropriate building officials of the City, and (b) shall include at least the following for each building: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) such other plans or supplements to the foregoing plans as the Authority may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means the County of Wright, Minnesota.

“Developer” means Willi Hahn Corporation, a Minnesota corporation, or its permitted successors and assigns.

“Development Property” means the real property described in **Exhibit A** of this Agreement.

“Event of Default” means an action by the Developer listed in Article VIII of this Agreement.

“Final Payment Date” means the date set forth in Section 3.2(a) of this Agreement.

“Payment Date” means August 1, 2024, and each February 1 and August 1 thereafter through and including the Final Payment Date.

“Phase I Project” means the acquisition, construction, and equipping of an approximately 78,400 square foot building to provide a facility for manufacturing to be constructed by the Developer on the Development Property, in addition to any other necessary site improvements on the Development Property.

“Phase II Project” means the acquisition, construction, and equipping of an approximately 78,400 square foot addition to an existing building to provide a facility for manufacturing to be constructed by the Developer on the Development Property, in addition to any other necessary site improvements on the Development Property.

“Phase” means the Phase I Project and the Phase II Project, individually or collectively.

“Project” means, collectively, the Phase I Project and the Phase II Project.

“Qualified Costs” means the cost of land acquisition and site preparation eligible to be reimbursed under the TIF Act on the Development Property necessary to complete the Project as set forth in Exhibit D.

“Qualified Facility” means a manufacturing facility, including office space necessary for and related to the manufacturing facility, all within the meaning of Section 469.176, subd. 4c of the TIF Act.

“Redevelopment Plan” means the Authority’s Development Plan for the Redevelopment Project, as amended.

“Redevelopment Project” means the Authority’s Redevelopment Project No. 1.

“Reimbursement Amount” has the meaning provided in Section 3.3(b) hereof.

“State” means the State of Minnesota.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the TIF District and which is actually remitted to and retained by the Authority as tax increment pursuant to the TIF Act. The term “Tax Increment” does not include any amounts retained by or payable to the State auditor under Section 469.177, subdivision 11 of the TIF Act.

“Termination Date” means the earlier of (a) February 1, 2033; (b) date of the Authority’s last receipt of Tax Increment from the TIF District in accordance with Section 469.176, subd. 1b(3) of the TIF Act or the date on which the TIF District otherwise expires or is terminated; or (c) the date the TIF Note has been paid in full or terminated in accordance with the terms of this Agreement.

“TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 to 469.1794, as amended.

“TIF District” means the Authority’s Tax Increment Financing (Economic Development) District No. 1-46 (Wiha Tools).

“TIF Note” means the Taxable Tax Increment Revenue Note (Wiha Tools Project), substantially in the form attached hereto as **Exhibit B**, to be delivered by the City to the Developer in accordance with Sections 3.1 and 3.2 hereof.

“TIF Plan” means the Authority’s Tax Increment Financing Plan for Tax Increment Financing (Economic Development) District No. 1-46 (Wiha Tools) within the Central Monticello Redevelopment Project No. 1, as approved by the Authority on July 13, 2022, and by the City on July 11, 2022.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of war, terrorism, strikes, other labor troubles, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, unusually severe or prolonged bad weather, acts of God, or acts of any federal, state or local governmental unit (other than the Authority in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Developer’s obtaining of permits or governmental approvals necessary to enable construction of the Project by the dates such approvals and construction is required under Sections 4.2 and 4.3 of this Agreement.

(The remainder of this page is left intentionally blank.)

## ARTICLE II

### **Representations and Warranties**

Section 2.1. Representations and Warranties by the Authority. The Authority makes the following representations and warranties

(a) The Authority is an economic development authority duly organized and existing under the laws of the State. Under the provisions of the Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The activities of the Authority are undertaken to foster the development and redevelopment of certain real property which for a variety of reasons is presently underutilized, to create increased tax base in the City, to increase employment opportunities in the City and State, to help an existing business in the City expand, and to stimulate further development of the Redevelopment Project as a whole.

(c) The Authority makes no representation or warranty, either express or implied, as to the Development Property or its condition, or that the Development Property shall be suitable for the Developer's purposes or needs.

(d) No member of the Board of Commissioners of the Authority, or officer of the Authority, has either a direct or indirect financial interest in this Agreement.

Section 2.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a corporation duly organized and in good standing under the laws of the State of Minnesota, is not in violation of any provisions of its organizational documents or the laws of the State, is duly authorized to transact business within the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its officers.

(b) The Developer has received no notice or communication from any local, state or federal official that the activities of the Developer or the Authority in the Redevelopment Project may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the Authority is aware). The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, state or federal environmental law, regulation or review procedure.

(c) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will use commercially reasonable efforts to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before each Phase of the Project may be lawfully constructed.

(d) The Developer will own the Development Property and will cause the Phase I Project to be constructed and operated as a manufacturing facility in accordance with this

Agreement. In addition, if the TIF Note amount is increased as provided in Section 3.1(c), the Developer will cause the Phase II Project to be constructed and operated as a manufacturing facility in accordance with this Agreement.

(e) The Developer will cause the construction, operation and maintenance of the Phase I Project and, if constructed and if the TIF Note amount is increased as provided in Section 3.1(c), will cause the Phase II Project to be constructed, operated and maintained in accordance with this Agreement and all local, state and federal laws and regulations (including without limitation environmental, zoning, building code, housing code, and public health laws and regulations).

(f) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate or organizational restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(g) Whenever any Event of Default occurs and if the Authority shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the Authority prevails in such action, the Developer agrees that it shall, within ten (10) days of written demand by the Authority, pay to the Authority the reasonable fees of such attorneys and such other expenses so incurred by the Authority.

(h) The proposed development by the Developer hereunder would not occur but for the tax increment financing assistance being provided by the Authority hereunder.

(i) The Developer understands that the Authority and the City may subsidize or encourage the development of other developments in the City, including properties that compete with the Development Property and the Project, and that such subsidies may be more favorable than the terms of this Agreement, and that neither the Authority nor the City has represented that development of the Development Property will be favored over the development of other properties.

(j) The Developer is not currently in default under any business subsidy agreement with any grantor, as such terms are defined in the Business Subsidy Act.

## ARTICLE III

### Tax Increment Assistance

#### Section 3.1. Preconditions to Payment of Assistance.

(a) The Developer represents that it will own the Development Property and cause the Phase I Project to be constructed on the Development Property. In addition, the Developer will cause the Phase II Project to be constructed on the Development Property in order to obtain an increase in the amount of the TIF Note as provided in Section 3.1(c). In order to assist with the costs of constructing the Project, the Authority agrees to provide tax increment assistance to the Developer as further set forth in this Agreement. Tax increment assistance shall be paid to the Developer on a pay-as-you-go basis on the terms and conditions set forth in Section 3.2 below; provided however, that the Authority shall be under no obligation to provide any of the assistance contemplated in this Agreement unless the Developer shall be in material compliance with all the terms and provisions of this Agreement.

(b) *Phase I Project.* Within 30 days after satisfaction of the following conditions precedent: (i) the issuance by the Authority of a Certificate of Completion for the Phase I Project; (ii) delivery of Acknowledgement Regarding TIF Note in the form attached to **Exhibit 1** to the TIF Note; and (iii) delivery to the Authority of written proof and other documentation as may be reasonably satisfactory to the Authority of the exact nature and amount of the particular Qualified Costs of the Project and the Development Property actually incurred and paid, together with such other information or documentation necessary to enable the Authority to substantiate its tax increment expenditures and/or to comply with its tax increment reporting obligations to the Commissioner of Revenue, the Office of the State Auditor or other applicable official (the documentation shall include specific invoices for the particular work for the Project from the contractor or other provider and shall include paid invoices, cancelled checks, copies of remittances and/or other suitable documentary proofs of the payment thereof by the Developer), the Authority will issue the TIF Note to the Developer in an initial principal amount equal to the lesser of (i) sum of the Qualified Costs of the Project and the Development Property certified by the Developer and accepted by the Authority pursuant to this Section 3.1(b) or (ii) \$576,012.

(c) *Phase II Project.* Within 30 days after satisfaction of the following conditions precedent: (i) the issuance by the Authority of a Certificate of Completion for the Phase II Project and (ii) delivery to the Authority of written proof (in the same manner as set forth in Section 3.1(b)) of any additional Qualified Costs of the Project and the Development Property actually incurred and paid in connection with the Phase II Project, the principal amount of the TIF Note will be increased by a principal amount equal to \$575,022 (the "Phase II Advance") provided that the aggregate principal amount of the TIF Note issued pursuant to Sections 3.1(b) and 3.1(c) shall not exceed the lesser of (1) \$1,151,034 or (2) the sum of the Qualified Costs of the Project and the Development Property certified by the Developer and accepted by the Authority pursuant to Sections 3.1(b) and 3.1(c). The Phase II Advance shall be evidenced by the Authority in the form of an Advance Certificate as set forth in **Exhibit 2** attached to the TIF Note.



(d) The principal amount of the TIF Note advanced and outstanding shall bear simple, non-compounding interest, except during any period that the payment on the TIF Note has been suspended, from and after the date of the advance at the rate of 4.00% per annum. All of the terms and provisions of the TIF Note are incorporated herein by reference.

Section 3.2. Procedures for Payment of Assistance. The assistance to the Developer as set forth in Section 3.1(1) above shall be on a “pay as you go” basis, according to the following terms, conditions, and limitations:

(a) On February 1 and August 1 in each year, commencing on August 1, 2024 through and including the Termination Date, provided that no Event of Default shall have occurred and be continuing hereunder, the Authority shall pay to the Developer 90% of the Tax Increment that it received and retained during the preceding 6-month period. Such payments by the Authority to the Developer shall continue until the earliest of (i) February 1, 2033 (the “Final Payment Date”), (ii) such date (if any) as the Authority shall have terminated this Agreement pursuant to its terms or (iii) until the Developer has received the principal amount of the TIF Note plus accrued interest thereon.

(b) Notwithstanding anything in this Agreement to the contrary, the obligation of the Authority to make the payments on the TIF Note are payable solely from the applicable percentage of the Tax Increment set forth in paragraph (a) above, and to the extent that such Tax Increment is insufficient to make such payments, there shall be no liability on the part of the Authority to make such payments. If on any February 1 or August 1, the applicable percentage of the Tax Increment is not sufficient to pay the accrued interest due on the Note such date, the unpaid accrued interest shall be carried forward, without interest, to the next Payment Date. All Tax Increment in excess of the Available Tax Increment necessary to pay the principal and accrued interest on the TIF Note are not subject to this Agreement, and the Authority retains full discretion as to any authorized application thereof. To the extent that the Tax Increment is insufficient through the Final Payment Date, to pay all amounts otherwise due on the TIF Note, said unpaid amounts shall then cease to be any debt or obligation of the Authority whatsoever.

(c) The TIF Note shall be a special and limited revenue obligation of the Authority and not a general or moral obligation of the City or the Authority, and only Available Tax Increment shall be required to be used to pay the amounts due on the TIF Note.

(d) The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in **Exhibit B**. In the event of any conflict between the terms of the TIF Note and the terms of this Section 3.2, the terms of the TIF Note shall govern.

(e) Following any termination of this Agreement by the Authority pursuant to Section 8.2 hereof, no further or unpaid amounts of the TIF Note shall then or thereafter be due and payable by the Authority under this Section or the TIF Note but shall thereupon be extinguished.

(f) The Authority’s obligation to make payments on the TIF Note shall be conditioned upon the requirement that there shall not at the time have occurred and be

continuing an Event of Default; provided, however, that (unless the Authority shall have terminated this Agreement) if such Event of Default shall subsequently have been cured to the reasonable satisfaction of the Authority, such unpaid obligations shall thereupon be reinstated and thereby become due and payable.

(g) Notwithstanding anything to the contrary in this Agreement, if the conditions for delivery of the TIF Note are not met by date five (5) years after certification of the TIF District, the Authority's obligation to deliver the TIF Note shall terminate; provided that the remainder of this Agreement shall remain in full force and effect. Notwithstanding anything to the contrary in this Agreement, if the conditions for delivery of the Advance Certificate for Phase II Project in accordance with Section 3.1(c) are not met by date five (5) years after certification of the TIF District, the Authority's obligation to deliver the Advance Certificate shall terminate; provided that the remainder of this Agreement shall remain in full force and effect.

(h) The Authority acknowledges that the Developer may assign the TIF Note to one or more lenders that provide part of the financing for the construction of the Project. The Authority consents to such an assignment, conditioned upon the satisfaction of the conditions set forth in the TIF Note, the receipt of an Acknowledgement Regarding TIF Note from such third party in substantially the form attached to the TIF Note and an assignment in a form approved by the Board of Commissioners of the Authority.

(i) The Developer understands and acknowledges that the Authority makes no representations or warranties regarding the amount of Available Tax Increment, or that revenues pledged to the TIF Note will be sufficient to pay the principal amount of and interest on the TIF Note. Developer further acknowledges that estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District or this Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely. If the Qualified Costs exceed the maximum aggregate principal amount of the TIF Note, such excess is the sole responsibility of Developer.

### Section 3.3. Environmental Conditions.

(a) Developer acknowledges that the Authority makes no representations or warranties as to the condition of the Development Property or the fitness of the Development Property for construction of the Project, respectively, or any other purpose for which the Developer may make use of such property, and that the assistance provided to Developer under this Agreement neither implies any responsibility by the Authority or the City for any contamination of the Development Property or poor soil conditions, nor imposes any obligation on such parties to participate in any cleanup of the Development Property or correction of any soil problems.

(b) Without limiting its obligations under Section 7.2 of this Agreement Developer further agrees that it will indemnify, defend, and hold harmless the Authority, the City, and their governing body members, officers, and employees (the "Indemnified Parties"), from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants on the Development Property as a result of the actions or omissions of the

Developer, unless and to the extent that such hazardous wastes or pollutants are present as a result of the actions or omissions of the Indemnified Parties. Nothing in this section will be construed to limit or affect any limitations on liability of the City or Authority under State or federal law, including without limitation Minnesota Statutes Sections 466.04 and 604.02, as amended.

Section 3.4. Payment of Authority Costs. The Authority acknowledges that Developer has deposited \$12,000 with the Authority. The Authority will use such deposit to pay “Administrative Costs,” which term means out of pocket costs incurred by the Authority together with staff costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the development of the Development Property. At Developer’s request, but no more often than monthly, the Authority will provide Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within twenty (20) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If any balance of funds deposited remains upon issuance of the Certificate of Completion pursuant to Section 4.4 of this Agreement, the Authority shall promptly return such balance to Developer; provided that Developer remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by Developer. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this section for Administrative Costs.

Section 3.5. Business Subsidy Act.

(a) *Public Purpose.* In order to satisfy the provisions of the Business Subsidy Act, the Developer acknowledges and agrees that the amount of the “Business Subsidy” granted to the Developer under this Agreement is the Reimbursement Amount and that the Business Subsidy is needed because the construction of the Project is not sufficiently feasible for the Developer to undertake without the Business Subsidy due to the extraordinary costs of land acquisition and site improvements necessary to construct the Project on the proposed site. The public purpose of the Business Subsidy is to increase the tax base in the City and State, increase jobs (including construction jobs) in the City and State, and help an existing business remain and expand in the City and the State.

(b) *Qualified Facility.* The Developer must continue operation of the Project as a “Qualified Facility” for at least 5 years after the Benefit Date (defined hereinafter), subject to the continuing obligation described in Section 9.3 of this Agreement. The improvements will be a Qualified Facility as long as the Project is operated by the Developer for the aforementioned qualified uses. During any period when the Project is vacant and not operated for the aforementioned qualified uses, the Project will not constitute a Qualified Facility.

(c) *Job and Wage Goals.* The “Benefit Date” of the assistance provided in this Agreement is the earlier of the date of issuance of the Certificate of Completion or the date the Project is occupied by Developer. By or before the “Compliance Date”, defined as the date two years after the Benefit Date, the Developer shall cause to be created at least [31]

full-time jobs permanent to the Development Property. The Developer shall cause the average hourly wage of the new jobs to be at least \$16.50 per hour, with benefits equal to at least \$9.85 per hour. Notwithstanding anything to the contrary herein, if the wage and job goals described in this paragraph are met by the Compliance Date, those goals are deemed satisfied despite the Developer's continuing obligations under Sections 3.5(b). The Authority may, after a public hearing, extend the Compliance Date by up to one year, provided that nothing in this section will be construed to limit the Authority's legislative discretion regarding this matter.

(d) *Remedies.* If the Developer fails to meet the goals described in Section 3.5(b) and 3.5(c), the Developer shall repay to the Authority upon written demand from the Authority a "pro rata share" of the outstanding principal amount of the TIF Note together with interest on that amount at the implicit price deflator as provided in Section 116J.994, subd. 6 of the Business Subsidy Act, accrued from the date of substantial completion of the Project to the date of payment. The term "pro rata share" means percentages calculated as follows:

(i) if the failure relates to the number of jobs, the jobs required less the jobs created, divided by the jobs required;

(ii) if the failure relates to wages, the number of jobs required less the number of jobs that meet the required wages, divided by the number of jobs required;

(iii) if the failure relates to maintenance of the facility as a Qualified Facility in accordance with Section 3.5(b) 60 less the number of months of operation as a Qualified Facility (where any month in which the Qualified Facility is in operation for at least 15 days constitutes a month of operation), commencing on the Benefit Date and ending with the date the Qualified Facility ceases operation as determined by the Authority Representative, divided by 60; and

(iv) if more than one of clauses (i) through (iii) apply, the sum of the applicable percentages, not to exceed 100%.

Nothing in this Section shall be construed to limit the Authority's remedies under Article VIII hereof. In addition to the remedy described in this Section and any other remedy available to the Authority for failure to meet the goals stated in Section 3.5), the Developer agrees and understands that it may not receive a business subsidy from the Authority or any grantor (as defined in the Business Subsidy Act) for a period of 5 years from the date of the failure or until the Developer satisfies its repayment obligation under this Section, whichever occurs first.

(e) *Reports.* The Developer must submit to the Authority a written report regarding business subsidy goals and results by no later than February 1 of each year, commencing February 1, 2024 and continuing until the later of (i) the date the goals stated in Section 3.5(c) are met; (ii) 30 days after expiration of the period described in Section 3.5(b); or (iii) if the goals are not met, the date the subsidy is repaid in accordance with

Section 3.5(d). The report must comply with Section 116J.994, subdivision 7 of the Business Subsidy Act. The Authority will provide information to the Developer regarding the required forms. If the Developer fails to timely file any report required under this Section, the Authority will mail the Developer a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, the Developer fails to provide a report, the Developer must pay to the Authority a penalty of \$100 for each subsequent day until the report is filed. The maximum aggregate penalty payable under this Section is \$1,000.

(f) *Other assistance.* There are no other state or local government agencies providing financial assistance for the Project other than the Authority and the Minnesota Department of Employment and Economic Development, which is providing a Minnesota Investment Fund forgivable loan in the amount of \$220,000 and a Jobs Creation Fund grant in the amount of \$660,000.

(g) *Parent Corporation.* The Developer's parent corporation is Wiha Werkzeuge GmbH.

## ARTICLE IV

### **Construction of Project**

Section 4.1. Construction of Project. The Developer agrees that it will construct the Project on the Development Property in accordance with the approved Construction Plans and will operate and maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

#### Section 4.2. Construction Plans.

(a) Before commencing construction of the Project, the Developer shall submit the Construction Plans to the Authority. The Construction Plans shall provide for the construction of the Project, as applicable, and shall be in conformity with this Agreement and all applicable State and local laws and regulations. The Authority will approve such Construction Plans in writing if: (i) such Construction Plans conform to the terms and conditions of this Agreement; (ii) such Construction Plans conform to all applicable federal, state and local laws, ordinances, rules and regulations; (iii) such Construction Plans are adequate to provide for construction of the Project; and (iv) no Event of Default has occurred and remains uncured. No approval by the Authority shall relieve the Developer of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations, or to construct the Project in accordance therewith. No approval by the Authority shall constitute a waiver of an Event of Default, or waiver of any State or City building or other code requirements that may apply. Within 30 days after receipt of complete Construction Plans and permit applications for the Project, as applicable, the Authority will either approve such Construction Plans in writing or deliver to Developer an initial review letter describing any comments or changes requested by Authority staff; provided, however that if the Authority staff provide neither a review letter describing any comments or requested changes nor written approval of such Construction Plans within such 30 day period, such Construction Plans will be deemed approved by the Authority. If the Authority provides comments or changes to such Construction Plans, then, thereafter, the parties shall negotiate in good faith regarding final approval of such Construction Plans. The Authority's approval shall not be unreasonably withheld, conditioned or delayed. Said approval shall constitute a conclusive determination that the Construction Plans (and the Project to be constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto but any approvals by the Authority hereunder will not constitute approval by any City officials regarding any City requirement related to construction of the Project.

(b) The Developer hereby waives any and all claims and causes of action whatsoever resulting from the review of the Construction Plans by the Authority and/or any changes in the Construction Plans requested by the Authority. Neither the Authority nor any employee or official of the Authority shall be responsible in any manner whatsoever for any defect in the Construction Plans or in any work done pursuant to the Construction Plans, including changes requested by the Authority.

(c) If the Developer desires to make any material change in the Construction Plans or any component thereof after their approval by the Authority, the Developer shall submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 of this Agreement with respect to such previously approved Construction Plans, the Authority shall approve the proposed change and notify the Developer in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to Developer, setting forth in detail the reasons therefor. Such rejection shall be made within 30 days after receipt of the notice of such change. The Authority's approval of any such change in the Construction Plans will not be unreasonably withheld. Nothing in this paragraph will relieve Developer of the obligation to comply with any City ordinances or procedures regarding changes in Construction Plans, and any approvals by the Authority hereunder will not constitute approval by any Authority officials regarding any City requirement related to construction of the Project.

(d) The approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the Authority does not constitute a representation or warranty by the Authority that the Construction Plans or the Project comply with any applicable building code, health or safety regulation, zoning regulation, environmental law, labor law or regulation, or other law or regulation, or that the Project will meet the qualifications for issuance of a certificate of occupancy, or that the Project will meet the requirements of the Developer or any other users of the Project. Approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the Authority will not constitute a waiver of an Event of Default. Nothing in this Agreement shall be construed to relieve the Developer of its obligations to receive any required approval of the Construction Plans from any City department

#### Section 4.3. Commencement and Completion of Construction.

(a) *Phase I Project.* Subject to Unavoidable Delays, the Developer must commence construction of the Phase I Project not later than May 15, 2023 and must substantially complete construction of the Phase I Project by December 31, 2023.

(b) *Phase II Project.* Subject to Unavoidable Delays, the Developer must commence construction of the Phase II Project not later than May 15, 2028 and must substantially complete construction of the Phase II Project by December 31, 2028.

(c) The construction of each Phase will be considered substantially complete on the date when (i) the Developer has received a certificate of occupancy issued by the City for the Phase, as applicable, and (ii) the Authority has determined the Phase has been constructed in accordance with the approved Construction Plans are provided in Section 4.2 hereof. Completion shall be evidenced by a Certificate of Completion as described in Section 4.4. The Project shall be considered complete when the Developer has received a Certificate of Completion for both the Phase I Project and the Phase II Project.

(d) The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall promptly begin and diligently prosecute to completion, the development of the Development Property through the construction of the Project thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.3. Until construction of the Project has been completed, the Developer shall make reports, in such detail and at such times as may reasonably be requested by the Authority, as to the actual progress of the Developer with respect to such construction.

#### Section 4.4. Certificate of Completion.

(a) Promptly after substantial completion of each Phase in accordance with those provisions of the Agreement relating solely to the obligations of the Developer to construct said Phase (including the dates for beginning and completion thereof), the Authority will furnish the Developer with a Certificate of Completion in substantially the form provided in **Exhibit C**. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement with respect to the obligations of the Developer, and its successors and assigns, to construct the Phase and the dates for the beginning and completion thereof.

(b) The Certificate of Completion provided for in this Section 4.4 of this Agreement shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4 of this Agreement, the Authority shall, within 30 days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Phase, in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain such certification.

(c) The construction of the Project will be considered substantially complete as provided in Section 4.3(c).

#### Section 4.5. Records and Reports.

(a) The Authority, through any authorized representatives, shall have the right at all reasonable times after reasonable written notice to inspect, examine and copy all books and records of Developer relating to the Project. Such records shall be kept and maintained by Developer through the Termination Date.

(b) Upon request, the Developer also agrees to submit to the Authority written reports so as to allow the Authority to remain in compliance with reporting requirements under state statutes.



## ARTICLE V

### Insurance

#### Section 5.1. Insurance.

(a) The Developer will provide and maintain at all times during the process of constructing the Project an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) together with an Owner's Policy with limits against bodily injury and property damage of not less than \$1,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used). The Authority shall be listed as an additional insured on the policy; and

(iii) Workers' compensation insurance, with statutory coverage, provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(b) Upon completion of construction of the Phase I Project and prior to the Termination Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Project under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$1,000,000, and shall be endorsed to show the City and Authority as additional insureds.

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided

that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in Article V of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Developer that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V of this Agreement each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Project.

(d) The Developer agrees to notify the Authority immediately in the case of damage exceeding \$250,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty. In such event the Developer will forthwith repair, reconstruct, and restore the Project to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer shall complete the repair, reconstruction, and restoration of the Project, regardless of whether the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Developer.

(e) In lieu of its obligation to reconstruct the Project as set forth in this Section, the Authority shall have the option of terminating the TIF Note as provided in Section 8.2 hereof.

(f) The Developer and the Authority agree that all of the insurance provisions set forth in this Article V shall terminate upon the Termination Date.

## ARTICLE VI

### **Delinquent Taxes and Review of Taxes; Financing**

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the City is providing substantial aid and assistance in furtherance of the development through reimbursement of Qualified Costs. The Developer understands that the Tax Increment pledged to payment on the Note is derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors, and assigns, that in addition to the obligation pursuant to statute to pay real estate taxes, it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Project. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority through the Termination Date to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In any such suit in which the Authority is the prevailing party, the Authority shall also be entitled to recover its costs, expenses, and reasonable attorney fees.

Section 6.2. Review of Taxes. The Developer agrees that prior to the Termination Date, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (1) it will not seek through petition or other means to have the estimated market value for the Development Property reduced; (2) it will not seek administrative review or judicial review of the applicability of any real property tax statute determined by any Tax Official to be applicable to the Project or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; (3) it will not seek administrative review or judicial review of the constitutionality of any real property tax statute determined by any Tax Official to be applicable to the Project or the Developer or raise the unconstitutionality of any such real property tax statute as a defense in any proceedings, including delinquent tax proceedings; and (4) it will not (A) cause willful destruction of the Project or any part thereof; (B) willfully refuse to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof; (C) apply to the Commissioner of Revenue of the State requesting an abatement of real property taxes pursuant to Minnesota Statutes, Chapter 270; (D) transfer the Development Property or Project, or any part thereof, to an entity exempt from the payment of real property taxes under State law; or (E) engage in any other proceedings, whether administrative, legal or equitable, with any administrative body within the County or the State or with any court of the State or the federal government to reduce or defer the amount of real property taxes assessed against the Development Property and the Project, except that nothing in this Section 6.2 shall prevent the Developer from taking any action it may choose with respect to any income tax matters. .

Section 6.3. Financing. Before commencing construction of the Project, the Developer shall submit to the Authority evidence of one or more commitments for mortgage financing which, together with committed equity for such construction, is sufficient for the construction of the Project. Such commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing. Such commitment or commitments for short-term or long-term mortgage financing shall be subject only to such conditions as are normal and customary in the mortgage banking industry.

(b) If the Authority finds that the mortgage financing is sufficiently committed and adequate in amount to provide for the construction of the Project, then the Authority shall notify the Developer in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within thirty (30) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Developer shall submit adequate evidence of financing within thirty (30) days after such rejection.

Section 6.4. Authority's Option to Cure Default on Mortgage. In the event that there occurs a default under any Mortgage, Developer shall cause the Authority to receive copies of any notice of default received by the Developer from the holder of such Mortgage. The Developer will use its reasonable efforts to include in any Mortgage a provision that the Authority shall have the right, but not the obligation, to cure any such default on behalf of the Developer within such cure periods as are available to the Developer under the Mortgage documents. In the event there is an event of default under this Agreement, the Authority will transmit to the Holder of any Mortgage a copy of any notice of default given by the Authority pursuant to Article VIII hereof.

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## ARTICLE VII

### **Prohibitions Against Assignment and Transfer; Indemnification**

Section 7.1 Prohibition Against Developer's Transfer of Development Property and Assignment of TIF Note and Agreement. The Developer represents and agrees that until the Termination Date:

(a) The Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity (collectively, a "Transfer"), without the prior written approval of the Authority's Board of Commissioners. The term "Transfer" does not include (i) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Project; or (ii) an assignment to an Affiliate.

(b) In the event the Developer, upon Transfer of the Development Property, seeks to be released from its obligations under this Agreement, the Authority shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such Transfer that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the Authority of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Project; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Project that the Authority would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority to the contrary, no such transfer or approval by the Authority thereof shall be

deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Project, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VII, shall be in a form reasonably satisfactory to the Authority.

(iv) The Developer and its transferees shall comply with such other conditions as the Authority may reasonably require in order to achieve and safeguard the purposes of the TIF Act and this Agreement.

(v) The Developer agrees to pay all reasonable costs and expenses, including fees of legal counsel retained by the Authority, to review the documents submitted to the Authority in connection with any such transfer.

Section 7.2. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold harmless the Authority and the governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Development Property.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Project.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any governing body member, officer, agent, servant or employee of the Authority or the City in the individual capacity thereof.

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## ARTICLE VIII

### **Events of Default**

Section 8.1. Events of Default Defined. The following shall be “Events of Default” under this Agreement, and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within such thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that it is proceeding with due diligence to cure such default and the event will be cured as soon as reasonably possible:

(a) any failure by any party to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement or under any other agreement entered into between the Developer and the Authority in connection with development of the Development Property.

(b) the Developer:

(i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

(ii) makes an assignment for benefit of its creditors;

(iii) admits in writing its inability to pay its debts generally as they become due;  
or

(iv) is adjudicated as bankrupt or insolvent.

(c) failure by the Developer to timely pay any ad valorem real property taxes assessed with respect to the Development Property.

(d) If the holder of any mortgage on the Development Property for which the Developer is the mortgagor or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of default under the applicable mortgage documents.

Section 8.2. Remedies on Default. Whenever any Event of Default referred to in Section 8.1 of this Agreement occurs, the non-defaulting party may exercise its rights under this Section 8.2:

(a) Suspend its performance under the Agreement.

(b) The Authority may cancel and rescind or terminate the Agreement and/or the TIF Note.

(c) The Authority may suspend its performance under this Agreement and the TIF Note. Interest on the TIF Note shall not accrue during the period of any suspension of payment.

(d) The Authority may take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article VIII.

Section 8.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

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## ARTICLE IX

### Additional Provisions

Section 9.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Authority shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 9.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project provided for in the Agreement it will comply with all applicable federal, state, and local equal employment and non-discrimination laws and regulations.

Section 9.3. Restrictions on Use. The Developer agrees that until the Termination Date, the Developer, and such successors and assigns, shall use the Development Property for the operation of the Project for uses described in the definition of such term in this Agreement and as a Qualified Facility, and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 9.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 9.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 9.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 1348 Dundas Circle, Monticello, MN 55362; and

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 505 Walnut Street, Suite 1, Monticello, Minnesota 55362, Attn: Executive Director; or at such

other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 9.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.8. Recording. The Authority may record this Agreement and any amendments thereto with the Wright County recorder. The Developer shall pay all costs for recording.

Section 9.9. Amendment. This Agreement may be amended only by written agreement approved by the Authority and the Developer.

Section 9.10. Authority Approvals. Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative as determined by the Authority in their sole discretion.

Section 9.11. Termination. This Agreement terminates on the Termination Date. Upon termination of the Agreement, the Authority shall promptly execute any reasonable documents necessary to remove this Agreement from the title records of the Development Property. Notwithstanding the foregoing, the Developer's obligations under Sections 3.2(b) and 7.2 shall survive termination.

Section 9.12. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed and the Developer has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

CITY OF MONTICELLO ECONOMIC  
DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Its President

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF WRIGHT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ and \_\_\_\_\_, the President and Executive Director of the City of Monticello Economic Development Authority, a public body corporate and politic, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

WILLI HAHN CORPORATION, a Minnesota corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, the \_\_\_\_\_ of Willi Hahn Corporation, a Minnesota corporation, on behalf of the company.

\_\_\_\_\_  
Notary Public

## **SCHEDULE A**

### **Development Property**

The real property in the City of Monticello, County of Wright, State of Minnesota, legally described as follows:

- Lot 9, Block 2, Luring Hillside Terrace
- Lot 10, Block 2, Luring Hillside Terrace
- Lot 11, Block 2, Luring Hillside Terrace
- Lot 12, Block 2, Luring Hillside Terrace
- Lot 13, Block 2, Luring Hillside Terrace

**EXHIBIT B**

FORM OF NOTE

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF DAKOTA  
CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY

No. R-1

[\$\_\_\_\_\_]

TAXABLE TAX INCREMENT REVENUE NOTE  
(WIHA TOOLS PROJECT)

Rate  
4.00%

Date  
of Original Issue

The CITY OF MONTICELLO ECONOMIC DEVELOPMENT AUTHORITY (the “Authority”) for value received, certifies that it is indebted and hereby promises to pay to Willi Hahn Corporation or registered assigns (the “Owner”), to the extent and in the manner hereinafter provided, the principal sum of [\$\_\_\_\_\_], or so much thereof as has been advanced from time to time and remains unpaid.

The principal amount of this Note shall equal from time to time the principal amount advanced, as reduced to the extent that such principal shall have been paid in whole or in part pursuant to the terms hereof. Capitalized terms shall have the meanings provided in the Contract for Private Development between the Authority and the Owner, dated as of July 13, 2022 (the “Agreement”), unless the context requires otherwise.

The original stated and outstanding principal amount of this Note shall bear interest from the Date of Original Issue stated above and the additional principal amount of the Phase II Advance, as evidenced by the Authority by the Advance Certificate, in the form attached as **Exhibit 2**, delivered pursuant to Section 3.1(c) of the Agreement, from the date of such Advance Certificate.

1. Payments. Principal and interest payments (“Payments”) shall be paid on August 1, 2024 and each February 1 and August 1 thereafter to and including February 1, 2033 (“Payment Dates”) in the amounts and from the sources set forth in Section 3 herein. All payments made by the Authority under this Note shall first be applied to accrued interest and then to principal.

Payments are payable by mail to the address of the Owner or such other address as the Owner may designate upon 30 days written notice to the Authority. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. The unpaid principal amount hereof shall bear interest from the date of this Note at the rate of 4.00% per annum. Interest accruing from the date of issuance of this Note up to the receipt of the first increment will be compounded semiannually on February 1 and August 1 of each year and added to principal. Interest shall be computed on the basis of a year of 360 days and twelve 30-day months. To the extent that Available Tax Increment is insufficient to pay principal and interest on any Payment Date, unpaid interest will not be added to principal.

3. Available Tax Increment. (a) Payments on this Note are payable on each Payment Date solely from and in the amount of Available Tax Increment, which shall mean 90% of the Tax Increment (as defined in the Agreement) which is paid with respect to the Authority's Tax Increment Financing (Economic Development) District No. 1-46 (Wiha Tools) (the "TIF District") and which is remitted by Wright County to, and retained by, the Authority in the six months preceding each Payment Date on the Note and which remains on hand on such Payment Date, pursuant to Section 3.2 of the Agreement.

(b) The Authority shall have no obligation to pay principal of this Note on each Payment Date from any source other than Available Tax Increment and the failure of the Authority to make Payments on any Payment Date shall not constitute a default hereunder as long as the Authority pays principal hereof to the extent of the Available Tax Increment. If on any Payment Date there is available to the Authority insufficient Available Tax Increment to pay the accrued and unpaid interest on this Note on such date, the amount of such deficiency shall be deferred and paid, without interest thereon, on the next Payment Date on which the Authority has available to it Available Tax Increment in excess of the amount necessary to pay the accrued and unpaid interest on this Note on such subsequent Payment Date. The Authority shall have no obligation to pay any unpaid balance of principal or interest that may remain after the final Payment on February 1, 2033.

4. Default. If on any Payment Date there has occurred and is continuing any Event of Default under the Agreement, the Authority may, notwithstanding any notice and cure provisions in the Agreement, withhold from Payments hereunder all Available Tax Increment. If the Event of Default is thereafter cured in accordance with the Agreement, the Available Tax Increment withheld under this Section shall be deferred and paid, without interest thereon, within 30 days after the Event of Default is cured. If on any date there has occurred and is continuing, after notice and opportunity to cure have been provided in accordance with the Agreement, any Event of Default under the Agreement, the Authority may exercise its remedies under the Agreement, including but not limited to terminating this Note. Reference is hereby made to all of the provisions of the Contract for Private Development, including without limitation Section 8.2 thereof, for a fuller statement of the rights and obligations of the Authority to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

5. Prepayment. The principal sum payable under this Note is prepayable in whole or in part at any time by the Authority without premium or penalty.

6. Nature of Obligation. This Note is issued to aid in financing certain Qualified Costs of a Redevelopment Project pursuant to the Agreement and Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the "TIF Act"). This Note is a special, limited obligation of the Authority which is

payable solely from Available Tax Increment pledged to the payment hereof. This Note shall not be deemed to constitute a general obligation of the State of Minnesota, the City of Monticello, Minnesota (the “City”), or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota, the City, or any political subdivision thereof is pledged to the payment of the principal of this Note or other costs incident hereto.

7. Estimated Tax Increment Payments. Any estimates of Tax Increment prepared by the Authority or its financial advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely.

8. Termination. At the City’s option, this Note shall terminate be suspended and the City’s obligation to make any payments under this Note shall be discharged in accordance with Sections 8.1 and 8.2 of the Agreement.

9. Registration and Transfer. This Note is issuable only as a fully registered note without coupons. This Note is transferable upon the books of the Authority kept for that purpose at the principal office of the Executive Director, by the Owner hereof in person or by such Owner’s attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the Authority, duly executed by the Owner.

Except as otherwise provided in Section 7.1 of the Agreement, this Note shall not be transferred to any person or entity, unless the Authority has provided written consent to such transfer. The Note may only be assigned if the assignee shall (i) execute and deliver to the City the Acknowledgment Regarding TIF Note in the form included in **Exhibit 1** hereto and (ii) surrender this Note to the Authority either in exchange for a new fully registered Note or for transfer of this Note on the registration records for the Note maintained by the Authority. Each Registered Owner of this Note which assigns, transfers or otherwise grants any interest herein agrees to comply with all applicable laws in so doing, including without limitation all applicable state and federal registration and securities laws and regulations. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein and the Agreement.

THE CITY MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF THIS NOTE.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the Authority according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.



IN WITNESS WHEREOF, the Board of Commissioners of the City of Monticello Economic Development Authority has caused this Note to be executed with the manual signatures of its President and Executive Director, all as of the Date of Original Issue specified above.

CITY OF MONTICELLO ECONOMIC  
DEVELOPMENT AUTHORITY

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
President

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the Executive Director, in the name of the person last listed below.

Date of Registration	Registered Owner	Signature of Executive Director
_____, 20__	Willi Hahn Corporation 1348 Dundas Circle Monticello, MN 55362	
	Federal Tax ID No. _____	

**Exhibit 1**  
**To Taxable TIF Note**

**ACKNOWLEDGMENT REGARDING TIF NOTE**

The undersigned, \_\_\_\_\_ a \_\_\_\_\_ (“Note Holder”), hereby certifies and acknowledges that:

A. On the date hereof the Note Holder has [acquired from]/[made a loan (the “Loan”) [to/for the benefit] of] Willi Hahn Corporation, a Minnesota Corporation (the “Developer”), [secured in part by] the Taxable Tax Increment Revenue Note (Wiha Tools Project), a pay-as-you-go tax increment revenue note in the original principal amount of \$\_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ of the City of Monticello Economic Development Authority (the “Authority”), a copy of which is attached hereto (the “Note”).

B. The Note Holder has had the opportunity to ask questions of and receive all information and documents concerning the Note as it requested, and has had access to any additional information the Note Holder thought necessary to verify the accuracy of the information received. In determining to [acquire the Note]/[make the Loan], the Note Holder has made its own determinations and has not relied on the Authority or information provided by the Authority.

C. The Note Holder represents and warrants that:

1. The Note Holder is acquiring [the Note]/[an interest in the Note as collateral for the Loan] for its own account, and without any view to resale or other distribution.

2. The Note Holder is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, and as further described in **Exhibit 1A** hereto and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of acquiring [and holding the Note] [an interest in the Note as collateral for the Loan].

3. The Note Holder understands that the Note is a security which has not been registered under the Securities Act of 1933, as amended, or any state securities law, and must be held until its sale is registered or an exemption from registration becomes available.

4. The Note Holder is aware of the limited payment source for the Note and interest thereon and risks associated with the sufficiency of that limited payment source.

D. The Note Holder understands that the Note is payable solely from certain tax increments derived from certain properties located in a tax increment financing district, if and as received by the Authority. The Note Holder acknowledges that the Authority has made no representation or covenant, express or implied, that the revenues pledged to pay the Note will be

sufficient to pay, in whole or in part, the principal and interest due on the Note. Any amounts which have not been paid on the Note on or before the final maturity date of the Note shall no longer be payable, as if the Note had ceased to be an obligation of the Authority. The Note Holder understands that the Note will never represent or constitute a general obligation, debt or bonded indebtedness of the City, the State of Minnesota, or any political subdivision thereof and that no right will exist to have taxes levied by the City, the State of Minnesota or any political subdivision thereof for the payment of principal and interest on the Note.

E. The Note Holder understands that the Note is payable solely from certain tax increments, which are taxes received on improvements made to certain property (the “Project”) in a tax increment financing district from the increased taxable value of the property over its base value at the time that the tax increment financing district was created, which base value is called “original net tax capacity”. There are risk factors in relying on tax increments to be received, which include, but are not limited to, the following:

1. Value of Project. If the contemplated Project constructed in the tax increment financing district is completed at a lesser level of value than originally contemplated, it will generate fewer taxes and fewer tax increments than originally contemplated.

2. Damage or Destruction. If the Project is damaged or destroyed after completion, its value will be reduced, and taxes and tax increments will be reduced. Repair, restoration or replacement of the Project may not occur, may occur after only a substantial time delay, or may involve property with a lower value than the Project, all of which would reduce taxes and tax increments.

3. Change in Use to Tax-Exempt. The Project could be acquired by a party that devotes it to a use which causes the property to be exempt from real property taxation. Taxes and tax increments would then cease.

4. Depreciation. The Project could decline in value due to changes in the market for such property or due to the decline in the physical condition of the property. Lower market valuation will lead to lower taxes and lower tax increments.

5. Non-payment of Taxes. If the property owner does not pay property taxes, either in whole or in part, the lack of taxes received will cause a lack of tax increments. The Minnesota system of collecting delinquent property taxes is a lengthy one that could result in substantial delays in the receipt of taxes and tax increments, and there is no assurance that the full amount of delinquent taxes would be collected. Amounts distributed to taxing jurisdictions upon a sale following a tax forfeiture of the property are not tax increments.

6. Reductions in Taxes Levied. If property taxes are reduced due to decreased municipal levies, taxes and tax increments will be reduced. Reasons for such reduction could include lower local expenditures or changes in state aids to municipalities. For instance, in 2001 the Minnesota Legislature enacted an education

funding reform that involved the state increasing school aid in lieu of the local general education levy (a component of school district tax levies).

7. Reductions in Tax Capacity Rates. The taxable value of real property is determined by multiplying the market value of the property by a tax capacity rate. Tax capacity rates vary by certain categories of property; for example, the tax capacity rates for residential homesteads are currently less than the tax capacity rates for commercial and industrial property. In 2001 the Minnesota Legislature enacted property tax reform that lowered various tax capacity rates to “compress” the difference between the tax capacity rates applicable to residential homestead properties and commercial and industrial properties.

8. Changes to Local Tax Rate. The local tax rate to be applied in the tax increment financing district is the lower of the current local tax rate or the original local tax rate for the tax increment financing district. In the event that the Current Local Tax Rate is higher than the Original Local Tax Rate, then the “excess” or difference that comes about after applying the lower Original Local Tax Rate instead of the Current Local Tax Rate is considered “excess” tax increment and is distributed by Wright County to the other taxing jurisdictions and such amount is not available to the Authority as tax increment.

9. Legislation. The Minnesota Legislature has frequently modified laws affecting real property taxes, particularly as they relate to tax capacity rates and the overall level of taxes as affected by state aid to municipalities.

F. The Note Holder acknowledges that the Note was issued pursuant to a Contract for Private Development between the Authority and the Developer dated July 13, 2022 (“Agreement”), and that the Authority has the right to suspend payments under this Note and/or terminate the Note upon an Event of Default under the Agreement.

G. The Note Holder acknowledges that the Authority makes no representation about the tax treatment of, or tax consequences from, the Note Holder’s acquisition of [the Note]/[an interest in the Note as collateral for the Loan].

WITNESS our hand this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**Note Holder:**

\_\_\_\_\_  
By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its \_\_\_\_\_

Exhibit 1A  
To Acknowledgment Regarding TIF Note

The Note Holder understands that the representations contained below are made for the purpose of qualifying the Note Holder as an “accredited investor” as that term is defined in Regulation D of the General Rules and Regulations under the Act and for the purpose of inducing a sale of securities to the Note Holder. The Note Holder agrees to furnish any additional information which the City of Monticello Economic Development Authority (the “Authority”) deems necessary to verify the answers set forth below. The Note Holder hereby represents that the **statement or statements checked or initialed below** are true and correct in all respects. The Note Holder understands that a false representation may constitute an Event of Default as defined in that certain Contract for Private Development, dated as of \_\_\_\_\_, 2022 (as the same may be amended from time to time, the “Development Agreement”), between the Authority and Willi Hahn Corporation, a Minnesota corporation, or its registered assigns (the “Developer”).

For purposes of this letter an Accredited Investor shall mean any one of the following entities which by check mark or initials the Note Holder represents that it qualifies:

\_\_\_\_\_ The Note Holder is a natural person whose individual net worth, or joint net worth with his or her spouse, exceeds \$1,000,000, exclusive of the fair market value of primary residence of the Note Holder, at the time of the purchase.

\_\_\_\_\_ The Note Holder is a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with the Note Holder’s spouse in excess of \$300,000 in each of those years and who reasonably expects to reach the same income level in the current year.

\_\_\_\_\_ The Note Holder hereby certifies that all of the equity owners of the Note Holder qualify as accredited individual investors. (Please submit a copy of this page countersigned by each such equity owner if relying on this item).

\_\_\_\_\_ The Note Holder is a bank or savings and loan association as defined in Sections 3(a)(2) and 3(a)(5)(A), respectively, of the Act acting either in its individual or fiduciary capacity.

\_\_\_\_\_ The Note Holder is an insurance company as defined in Section 2(13) of the Act.

\_\_\_\_\_ The Note Holder is an investment company registered under the Investment Company Act of 1940, as amended, or a business development company as defined in Section 2(a)(48) of that Act.

\_\_\_\_\_ The Note Holder is a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958.

\_\_\_\_\_ The Note Holder is an employee benefit plan within the meaning of Title I of the Employee Retirement Security Act of 1974 and either (check one or more, as applicable):

\_\_\_\_\_ the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser; or

\_\_\_\_\_ the employee benefit plan has total assets in excess of \$5,000,000; or

\_\_\_\_\_ the plan is a self-directed plan with investment decisions made solely by persons who are “Accredited Investors” as defined under the Act.

\_\_\_\_\_ The Note Holder is a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.

\_\_\_\_\_ The Note Holder has total assets in excess of \$5,000,000, was not formed for the specific purpose of acquiring the Note and is one or more of the following (check one or more, as appropriate):

\_\_\_\_\_ an organization described in Section 501(c)(3) of the Internal Revenue Code; or

\_\_\_\_\_ a corporation; or

\_\_\_\_\_ a Massachusetts or similar business trust; or

\_\_\_\_\_ a partnership.

\_\_\_\_\_ The Note Holder is a trust with total assets exceeding \$5,000,000, which was not formed for the specific purpose of acquiring the TIF Note and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the investment in the TIF Note.

**EXHIBIT 2**  
**to Taxable TIF Note**

**ADVANCE CERTIFICATE**

\_\_\_\_\_, 202\_\_

Willi Hahn Corporation  
1348 Dundas Circle  
Monticello, MN 55362

Dear \_\_\_\_\_:

This letter is to certify that as of \_\_\_\_\_, 202\_\_, the principal amount of the Taxable Tax Increment Revenue Note, Series 202\_ (Wiha Tools Project) has been increased by \$\_\_\_\_\_, pursuant to Section 3.1(c) of the Contract for Private Development (the "Agreement") in connection with the completion of the Phase II Project. Willi Hahn Corporation has provided the City of Monticello Economic Development Authority with all the necessary invoices or cancelled checks evidencing payments due for the Qualified Costs for the Project, required under the Agreement between the parties. Accordingly, interest on the principal amount of \$\_\_\_\_\_ began accruing on \_\_\_\_\_, 202\_\_.

Sincerely,

\_\_\_\_\_  
Its Executive Director

City of Monticello Economic Development Authority

**EXHIBIT C**

**FORM OF CERTIFICATE OF COMPLETION**

**CERTIFICATE OF COMPLETION**

WHEREAS, the City of Monticello Economic Development Authority (the “Authority”) and Willi Hahn Corporation (“Developer”) entered into a certain Contract for Private Development dated July 13, 2022 (the “Contract”), recorded at the office of the County Recorder of Wright County as Document No. \_\_\_\_\_; and

WHEREAS, the Contract contains certain covenants and restrictions set forth in Articles III and IV thereof related to constructing the [Phase I Project/Phase II Project], as defined in the Contract; and

WHEREAS, the Developer has performed said covenants and conditions insofar as it is able in a manner deemed sufficient by the Authority to permit the execution and recording of this certification;

NOW, THEREFORE, this is to certify that all construction and other physical improvements related to the [Phase I Project/Phase II Project] specified to be done and made by the Developer have been completed and the agreements and covenants in Articles III and IV of the Contract relating to such construction have been performed by the Developer, and this Certificate is intended to be a conclusive determination of the satisfactory termination of the covenants and conditions of Articles III and IV of the Contract related to completion of the [Phase I Project/Phase II Project], but any other covenants in the Contract shall remain in full force and effect.



Dated: \_\_\_\_\_, 20\_\_.

CITY OF MONTICELLO ECONOMIC  
DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Authority Representative

STATE OF MINNESOTA )  
 ) SS.  
COUNTY OF WRIGHT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Monticello  
Economic Development Authority, a public body corporate and politic under the laws of the  
State of Minnesota, on behalf of the authority.

\_\_\_\_\_  
Notary Public

This document was drafted by:  
KENNEDY & GRAVEN, Chartered (GAF)  
150 South 5th Street, Suite 700  
Minneapolis, MN 55402  
Telephone: (612) 337-9300

(Signature page to Certificate of Completion)

**EXHIBIT D**  
**QUALIFIED COSTS**

	<i>Phase I</i>	<i>Phase II</i>	<i>Total</i>
<i>Land Acquisition</i>	\$576,012	\$222,988	\$799,000
<i>Site Prep</i>	\$0	\$352,034	\$352,034
<i>Total</i>	\$576,012	\$575,022	\$1,151,034