



JID# 00653

T. Wall Properties

A proud supporter of the American Family Children's Hospital

December 9, 2004

Mr. Bradley J. Murphy
City of Madison Dept. of Planning & Dev.
City/County Building
215 Martin Luther King, Jr. Blvd.
P O. Box 2985
Madison, WI 53701-2985

*Reperated out
Communication
Refer to City Atty
& Bd of Est.*

RE: The Center for Industry and Commerce, Proposed Amendment

Dear Mr. Murphy:

Attached is a copy of our proposed amendment to the Agreement to Purchase and Undertake of Development of Northeast Industrial Property. I have also enclosed a copy of the original resolution and the agreement as signed on November 21, 2002.

The bullet points below provide a summary of the proposed changes to the amendment.

Extension of Time (2. e.):

- Change term from 10 years to 14 years.

Future Notices (2. u.):

- The Developer receives written notice from the City of any action the City may take (or has knowledge of), which could have a material impact on the Property.

Non-Compete:

- City agrees to modify the Developer's terms to be at least as favorable as the terms offered to the owner of competing industrial parcels, if said parcels are within 2,500 feet.

Price:

- Price escalator decreased from 10% to 8% per year to match escalator in Competing Property.

Sincerely,

The Center for Industry and Commerce L.L.C.

By: T. Wall Properties Master Corp
Its Manager

By: _____
Terrence R. Wall, President

TRW:sap

Enclosure: City of Madison, Second Substitute Resolution RE: 165-acre Northeast Industrial Property Agreement to Purchase and Undertake Development of the Northeast Industrial Property First Amendment to Agreement (Draft 003 517920 2)

cc: Michael P. May, City of Madison Attorney
Alderson Santiago Rosas, City of Madison Common Council

2-22-05
 Reperated
 Referred to City Atty, BOE
 Reported Back
 Accepted
 Does Suspended
 Referred to
 Placed on File

Creating Places Where People Interact

*c: City Atty (2-23)
Deb Swanson*

**FIRST AMENDMENT TO AGREEMENT TO PURCHASE AND
UNDERTAKE OF DEVELOPMENT OF NORTHEAST INDUSTRIAL PROPERTY**

This FIRST AMENDMENT TO AGREEMENT TO PURCHASE AND UNDERTAKE DEVELOPMENT OF NORTHEAST INDUSTRIAL PROPERTY (“**Amendment**”) is entered into as of this ____ day of November, 2004 by and between THE CENTER FOR INDUSTRY & COMMERCE, LLC, Wisconsin limited liability company (“**Developer**”), its successors and assigns, and the City of Madison, a Wisconsin municipal corporation located in Dane County, Wisconsin (“**City**”).

RECITALS

WHEREAS, the City and the Developer entered into that certain Agreement to Purchase and Undertake Development of Northeast Industrial Property dated November 15, 2002 (the “**Agreement**”);

WHEREAS, pursuant to the Agreement the City has committed to selling 161 acres, commonly referred to as the Northeast Industrial Property (“**Property**”) for primarily industrial development to the Developer as is more fully set forth in the parties’ Agreement;

WHEREAS, pursuant to the Agreement the Developer will purchase the Property from the City in phases over the next ten (10) years;

WHEREAS, the City recently entered into an Agreement to Purchase approximately 59 acres north of Hoepker Road (the “**Competing Property**”) for future development for industrial uses. Under the terms of said agreement, the City will acquire the Competing Property from Gregory A. Rice, John R. Brigham, Rice & Associates, Brigham Woods Corporation and Barbara Hoel (collectively the “**Sellers**”). Pursuant to the terms and provisions of the City’s agreement with the Sellers, the City entered into an agreement(s) offering the Sellers incentives very similar to those granted to the Developer in the Agreement;

WHEREAS, the City wishes to mitigate any potential adverse effect that the addition of 59 acres of competing industrial property within the City of Madison may have on the Developer’s and the City’s efforts to sell and develop lots within the Property.

AGREEMENT

NOW, THEREFORE, in exchange for the mutual covenants and conditions contained herein, and other good and valuable considerations the receipt and sufficiency of which are hereby acknowledged and agreed to, the parties agree as follows:

1. **Recitals.** The terms and provisions of the above Recitals are hereby incorporated by reference. Terms used in this Amendment but not otherwise defined herein shall have the meaning ascribed to them in the parties’ Agreement. In the event of any conflicts or inconsistencies between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment shall control to the extent of such conflicts or inconsistencies.

2. **Extension of Time.** The first sentence of Paragraph 2e of the Agreement is hereby deleted in its entirety and replaced with the following language: "The Developer shall acquire the property in not more than seven (7) stages over fourteen (14) years commencing from _____ ("Start Date")." Likewise, the reference to ten (10) years in the second to last sentence of paragraph 2e of the Agreement is hereby amended to refer to fourteen (14) years.

3. **Future Notices.** Section 2u of the Agreement is deleted and replaced in its entirety with the following language: "Prior to the Developer closing on all phases of the Property, the City shall make best efforts to assure that the Developer receives written notice from the City of any action the City may take or which the City has knowledge of, which could have a material impact on the Property and, furthermore, the City shall make efforts to assure that the Developer is on record to receive all public notices as though the Developer was the owner of the entire property from the date this Agreement is signed. As used herein, the term "material" is defined as any act or action or other matter which might have an adverse financial effect on the Developer."

4. **Non-Compete.** The parties acknowledge and agree that with the addition of the 59 acres comprising the Competing Property, the City should have sufficient land available for industrial development on the east side as was anticipated by the Hanson Road Neighborhood Development Plan. Furthermore, the parties acknowledge and agree that the development of any more land for industrial uses within 2,500 feet of the Property or the Competing Property within the next fifteen (15) years could have a significantly negative impact the potential future development of the Property and the Competing Property. Therefore, in the event the City participates in, encourages or otherwise offers incentives for any competing industrial development on terms and conditions more favorable to such owner than as set forth in the Agreement and this Amendment, the City agrees to modify the Agreement with the Developer so that the terms and provisions thereof are at least as favorable as the terms and provisions offered to the owner of a competing industrial parcel or parcels. Furthermore, the City agrees that in the event any lands for industrial use are added within 2,500 feet of the Property or the Competing Property, the time in which the Developer has to buy the final phases of the Property shall be extended by one (1) year for every ten (10) acres of additional industrial land.

5. **Price.** The price escalator listed in Exhibit B of the Agreement is decreased from ten percent to eight percent per year. The purchase price per acre therefore are as follows:

Year 1	\$35,578.00
Year 2	\$38,424.24
Year 3	\$41,498.18
Year 4	\$44,818.03
Year 5	\$48,403.47
Year 6	\$52,275.75
Year 7	\$56,457.81
Year 8	\$60,974.43
Year 9	\$65,852.38
Year 10	\$71,120.57
Year 11	\$76,810.22
Year 12	\$82,955.04

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Year 13	\$89,591.14
Year 14	\$96,758.43

6. **Counterparts.** This Agreement may be executed in any number of counterparts each of which constitute an original.

7. **Amendments.** This Agreement may be supplemented or amended by written instrument only, executed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

THE CENTER FOR INDUSTRY AND
COMMERCE, LLC, a Wisconsin limited
liability company

By: T. Wall Properties Master Corp.

By: _____
Terrence R. Wall, President

CITY OF MADISON, a Wisconsin municipal c
corporation

By: _____
David Cieslewicz, Mayor

By: _____
Ray Fischer, City Clerk

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