

## **PURCHASE AND DEVELOPMENT AGREEMENT**

This purchase and development agreement (the Agreement) is entered into as of June 4th, 2014, between City of Menasha, a Wisconsin Municipality, of 140 Main Street, Menasha, Wisconsin 54952-3151 (Seller), and Christine A. Sohns, 934 Sussex Ct., Nekoosa, Wisconsin 54457 (Buyer), for the transfer, repurposing and reuse of the real estate and equipment located in the City of Menasha, County of Winnebago, State of Wisconsin, described in Exhibit A (the Premises). The parties enter into this Agreement subject to the terms and conditions set forth below.

### **PURPOSE OF AGREEMENT**

The parties are entering into the Agreement for the transfer, repurposing and reuse of the real estate and equipment located at 198 River Street, City of Menasha, Wisconsin, formerly known as the "Steam Plant" as a food processing plant for Simply Incredible Foods, LLC.

The Common Council of the City of Menasha has determined that the public interest is served by transferring the property to the Buyer as the following benefits will be realized by the City of Menasha and its citizens:

- The ongoing costs for maintaining the facility in a mothballed state will be eliminated.
- The costs for environmental cleanup and building demolition costs will be avoided.
- The Buyer's assumption of environmental risk.
- The Menasha Power Plant has been identified as an historically significant structure whose historical and architectural integrity will be preserved.
- The transfer will enable the adaptive reuse of the facility for food processing creating jobs and income opportunities for Menasha residents.
- The sales, income and employment associated with this business is estimated to have a \$25.7 million economic impact on the local economy.
- The transfer will bring formerly tax exempt property onto the tax role helping to finance city facilities and services.
- The electric power and water consumption associated with this business will increase revenues to the Menasha Electric and Water Utilities.

### **SALE OF THE PREMISES**

Seller agrees to sell all fixtures, improvements, appurtenances, tenements, hereditaments and the real estate described in Exhibit A (the Premises) subject to the easements, railroad right of way and restrictions of record, to zoning laws, ordinances affecting the Premises, and State and Federal Laws. Seller also agrees to sell to Buyer the equipment identified in the Request for Proposal for Menasha Utilities dated August 22, 2013 located at and associated with the Premises in accordance with the terms of this Agreement. The property included and excluded shall be identified on Exhibit B, which shall be incorporated herein and attached hereto.

## **POSSESSION**

Buyer shall receive possession of the Premises at the closing.

## **CONDITION OF THE PROPERTIES**

The Buyer represents and warrants to Seller that it has inspected the Premises and agrees to accept the Premises in their present "AS IS" condition, with no warranties concerning its condition or permitted use.

The Buyer acknowledges that it has had the opportunity to investigate the environmental condition and history of the Premises and that it has had the opportunity to conduct its own investigation, and that Seller has furnished to the Buyer reports concerning the Premises. These reports are referred to as the "Seller's Disclosure." The documents that comprise the Seller's Disclosure are listed in Exhibit C, attached to this Agreement and made a part of it. The Buyer further acknowledges that: (i) the Seller has made no representation or warranty, express or implied, about the accuracy or completeness of the Seller's Disclosure; (ii) the Buyer is not relying on the accuracy or completeness of the Seller's Disclosure; and (iii) the Buyer is relying entirely on its own investigations and professional advice with respect to the Premises and entering into this Agreement. The Buyer acknowledges that environmental contamination has been identified at various parcels of the Premises and that it has agreed to take the Premises subject to any and all environmental contamination, whether known or unknown.

From and after closing: (i) the Buyer shall bear all responsibility and liability arising in respect of the Premises from any cause, whether or not such cause arose out of, or in connection with, acts or omissions prior to closing; (ii) the Buyer shall bear full responsibility for compliance with all environmental and all other requirements of federal, state, and local laws and regulations pertaining to the Premises, including, but not limited to, the requirements of the federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") and the State of Wisconsin Environmental Protection Statute, each as amended, regardless of whether the requirement for such compliance arose, or was caused by acts or omissions, prior to closing; (iii) the Buyer shall defend, indemnify, and hold harmless the Seller, whether in Seller's capacity as owner, operator, generator, or any other capacity, from any and all responsibility and liability, including reasonable attorney and other professional fees and expenses, arising out of, or in connection with, (a) Seller's purchase, ownership, use, possession, or sale of the Premises, or (b) any activities on the Premises by Seller or any of its predecessors in title and their respective officers, directors, employees, agents, members or shareholders; and (iv) the Buyer shall indemnify, and hold harmless the Seller from any and all damages, costs, charges, fees, assessments, remediation costs, legal fees or expenses or any kind or nature that may arise out of any environmental contamination or subsidence now or hereafter existing on the Premises, whether known or unknown, including any claims by persons who are not a part to this contract, and shall undertake any additional remediation.

Buyer has independently determined that it will not utilize the Baseline Environmental Assessment provisions, and that it will not claim in any action or demand made by Seller or any third party any defense or exemption from liability under either State law or CERCLA, each as

amended, to the extent any such claim or defense, if successful, would result in a claim being made against Seller. Buyer further agrees that it will not assert in any action brought against it by Seller or any third party, the defense of Baseline Environmental Assessment or any other defense available to it under Part 201 or CERCLA.

If Seller should receive notification from any third party, including local, state or federal environmental or mine safety agencies, regarding the environmental or safety status of the Premises, it will promptly provide Buyer with a copy of the notice or a written report summarizing any oral notification. Buyer shall promptly and affirmatively respond to the notice and undertake any remediation required by law. Seller agrees to cooperate with Buyer by providing non-privileged information it has in its possession relevant in responding to any such notice, but the duty of response rests with the Buyer. If Buyer receives notice from any third party, including local, state or federal environmental or safety agencies, relating to the environmental or mine safety status of the Premises, it will promptly notify Seller and provide Seller assurance that Buyer will promptly and affirmatively address the identified matters.

Buyer acknowledges that it is aware of railroad right of way that runs across or thru the premises.

#### **ADDITIONAL CONSIDERATION**

- i) On or before 90 days from closing, Buyer shall enter into a contract for the removal of asbestos from the premises with a Wisconsin licensed asbestos removal contractor.
- ii) Prior to closing or at the time of closing, Buyer or Simply Incredible Business Developments, LLC, shall enter into a lease with option to purchase of the premises with Simply Incredible Foods, LLC, 140 Market Street, Port Edwards, WI 54469, for a term of not less than 5 years with additional renewal periods.

#### **BUYER OBLIGATIONS**

1. Acquisition of the Premises. On or before [date], 2014, Buyer or Simply Incredible Business Developments, LLC, a Wisconsin limited liability company of which Christine Sohns is a member, will acquire fee simple title to the Premises. The purchase price is \$1.00.
2. Conditions Precedent to Closing.

~~A. Buyer shall have provided to the Administrative Services Director for review, audited a signed, personal financial statements (if available, and if audited financial statements are not available, financial statements in a form reasonably acceptable to the Administrative Services Director) (and documentation) for the two most recent fiscal years prior, listing all liabilities and assets, plus two years complete tax returns (2011 and 2012 are acceptable), including all schedules for Buyer, and for all businesses with which she is associated. The financial statements must show a financial condition acceptable to the City of Menasha, in the judgment of the~~

Administrative Services Director.

- B. Buyer shall enter into a personal guaranty agreement, (or other security acceptable to the Administrative Services Director) in a form approved by the City Attorney, with the City of Menasha, naming the City of Menasha as beneficiary, pledging sufficient assets to ensure the performance of the asbestos removal, abatement, remediation and dumping/disposal in a Federal or State regulated facility of not less than \$400,000.00 net value.
- C. The personal guaranty or other security accepted by the City of Menasha shall be the guarantee of performance of the asbestos removal, abatement, remediation and dumping/disposal in a Federal or State regulated facility. The personal guaranty must allow for direct draw by the City of Menasha upon presentment without court action and without approval by Buyer, if the Buyer has not completed the asbestos removal within 2 years of closing as demonstrated within the files of Wisconsin Department of Natural Resources. The personal guaranty must contain as part of its provisions that it will be maintained constantly in force as an obligation to the City of Menasha until the asbestos project completion as reasonably determined by the common council.
- D. The common council may, upon documented request of Buyer, review the pertinent facts and decide to reduce the amount of the required personal guaranty in accordance with work completed or threats mitigated.
- E. In addition to the personal guaranty agreement, Buyer shall deposit \$100,000.00 into an Escrow Account. Up to twenty-two thousand (\$22,000.00) of the Escrowed funds may be used to meet the Personal Guaranty requirement. The remaining Escrow Account funds, not subject to the Personal Guaranty requirement, shall only be used after the closing for the following costs/expenses:
- i. Creating food grade interior:
    - a. Epoxy coat all exposed concrete in all parts of the building;
    - b. Insulate and install sheeted roofing in the entire facility;
    - c. Install process flooring, drains, sub-floors, where the turbines and furnaces sit;
    - d. Install walls to partition off the construction site from the deconstruction site;
    - e. Install new lighting throughout the facility;
    - f. Build out corporate offices on the first and second floor;
    - g. Install landscaping, signage, and clean up the canal area, including plantings and repair of the canal wall;
    - h. Install two loading docks on the south and west side of the building;
    - i. Build out the bathrooms, lunchrooms, and employee locker areas;
    - j. Build and install a cooler to hold 250,000 pounds of finished product;

- k. Build and install a freezer to hold 500,000 pounds of finished product;
        - l. Build out second and third floor mezzanine to house Culinary Center, Human Resources, Sales, and Research and Development;
      - ii. Installation of new electric service to the building;
      - iii. Asbestos removal, abatement and dumping/disposal in a Federal or State regulated facility;
      - iv. The removal, purchase and installation of new windows on the premises.
3. Buyer will cause DEVELOPMENT IMPROVEMENTS to the Premises to create a suitable food processing plant for Simply Incredible Foods, LLC. DEVELOPMENT IMPROVEMENTS means environmental abatement of asbestos, renovation of part of the existing building, demolition of part of the existing building, removal and disposal of equipment and appurtenances/fixtures unnecessary to a food production plant, parking lot paving, lighting, landscaping, stormwater management, and the installation of facilities and equipment necessary to the operation of a food processing plant constructed by Buyer in compliance with IMPLEMENTATION PLAN.
4. On or before forty-five (45) days from closing, Buyer will prepare and file with the appropriate City of Menasha offices, an IMPLEMENTATION PLAN for review and approval by the City of Menasha as per City of Menasha ordinances. IMPLEMENTATION PLAN means detailed plans, drawings, specifications and other information as required for the site plan or special use permit review under City of Menasha ordinances regarding the construction/demolition of DEVELOPMENT IMPROVEMENTS. The IMPLEMENTATION PLAN shall be attached to this Agreement as EXHIBIT E upon approval by the City of Menasha.
  - a. Buyer will initiate DEVELOPMENT IMPROVEMENTS no later than ten (10) business days after closing.
  - b. Buyer will complete construction of the DEVELOPMENT IMPROVEMENTS within two (2) years of the closing date.
  - c. The development will be operating as a food processing plant within forty-five (45) days after closing.
  - d. INSURANCE. Buyer and its agents and contractors shall maintain insurance policies during the period of the asbestos removal, abatement, remediation and dumping/disposal providing coverage for the work performed in the following minimum amounts: Pollution Legal Liability – One Million Dollars (\$1,000,000.00) each loss where risk is presented of exacerbation of existing environmental pollution or discharge of any hazardous waste to the environment or asbestos removal, abatement, remediation, or dumping/disposal in a Federal or State regulated facility is required; Umbrella Liability – One Million Dollars (\$1,000,000.00) over the primary insurance coverage listed above.

## **CITY OBLIGATIONS**

1. **Certification of Completion.** Upon completion and review of the DEVELOPMENT IMPROVEMENTS by the City of Menasha, the City of Menasha will provide Buyer with an appropriate instrument certifying that the improvements have been made in accordance with this Agreement and any amendments or modifications thereto.
2. **City Performance Subject to Required Government Approvals.** The Buyer acknowledges that various specific undertakings of the City of Menasha described in this Agreement require approvals from the City's Common Council and/or Planning Commission as well as from governmental bodies external to the City of Menasha, some of which approvals may require public hearings and other legal proceedings as conditions precedent thereto. The City of Menasha's obligations are conditioned upon the obtaining of all such approvals in the manner required by law. The City of Menasha cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

## **TAXES AND PRORATED ITEMS**

All personal property taxes shall be prorated with the Seller paying from the first of the year to the date of closing and the Purchaser paying thereafter. All tax pro-rations shall be done on the basis of a calendar year retrospectively in accordance with local custom.

## **CLOSING**

Closing shall take place at City of Menasha. If title can be conveyed in the condition required under this Agreement and all contingencies have been satisfied or waived, closing shall take place on a date and time as is mutually agreeable to the parties and as dictated by the ability and availability of Buyer's lender, if any, to close, provided, however, that closing shall occur not later than 30 days after the signing of this agreement.

All closing and other documents relating to the purchase will be available and approved before any closing takes place.

## **PAYMENT OF FEES, CLOSING COSTS, ETC.**

Buyer shall pay all closing fees and all costs associated with the recording of the Warranty Deed. Buyer shall further pay the required transfer tax, if any, cost of any owner's title commitment policy.

## **RISK OF LOSS**

Seller and Buyer agree that the Risk of Loss shall follow the delivery of title.

Agreement.

## **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Buyer represents and warrants to and covenants with the City of Menasha and the City of Menasha represents and warrants to and covenants with Buyer as respectively follows:

Each of the parties will use its best efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement.

Each party will give any notices to, make any filings with, and use its best efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies in connection with the matters referred to in this Agreement.

Buyer will permit representatives of the City of Menasha (including legal counsel, accountants, inspectors and consultants) to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of Buyer, to all premises, properties, agents, consultants, contractors and personnel of or pertaining to Buyer's business and the DEVELOPMENT IMPROVEMENTS.

The City of Menasha represents and warrants it is a municipality, duly organized and validly existing under the laws of the State of Wisconsin.

Buyer represents and warrants that Buyer is a member of Simply Incredible Business Developments, LLC, a limited liability company organized and validly existing under the laws of the State of Wisconsin.

The City of Menasha and Buyer have full power and authority to execute and deliver this Agreement and to perform their obligations hereunder.

The execution and delivery of this Agreement, the consummation of the transactions contemplated in this Agreement, and the execution and delivery of the documents required to be executed, delivered or acknowledged by Buyer at the closing will not violate any provision of Buyer's articles or bylaws or any applicable statute, rule, regulation, judgment, order or decree of the State of Wisconsin or a court having jurisdiction over Buyer or its properties.

Buyer represents and warrants there is no action, suit, proceeding, claim, arbitration against Buyer, its activities or assets before any court or governmental agency except as disclosed in writing to the City of Menasha.

The Representations and Warranties set forth herein shall be true and correct in all material respects at and as of the Closing Date.

## NOTICES

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

To the Buyer:

With a copy to:

To the CITY:

City of Menasha, Wisconsin  
City Hall  
140 Main Street  
Menasha, WI 54952  
Attn:CITY Clerk

With a copy to:

Greg Keil, Community Development Director  
City Hall  
140 Main Street  
Menasha, WI 54952

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

## MISCELLANEOUS PROVISIONS

**FAILURE TO ENFORCE NOT A WAIVER.** Failure of the CITY to enforce any provision contained herein will not be deemed a waiver of the City's right to enforce such provision or any other provision in the event of a subsequent default.

**GOVERNING LAW.** This AGREEMENT will be governed by, enforced and construed in accordance with the domestic laws of the State of Wisconsin.

In the event of default or any legal proceedings instituted arising out of the AGREEMENT, Buyer, agrees to submit to jurisdiction in the State of Wisconsin, venue in Winnebago County, Wisconsin.

**NO PARTNERSHIP.** This AGREEMENT specifically does not create any partnership or joint venture between the parties.

**CONSTRUCTION.** The parties have participated jointly in the negotiation and drafting of this AGREEMENT. In the event an ambiguity or question of intent or interpretation arises, this AGREEMENT will be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this AGREEMENT.

INCORPORATION OF EXHIBITS. The **EXHIBITS** identified in this AGREEMENT are incorporated herein by reference and made a part hereof.

ACCORDINGLY, Seller and Buyer have executed this Purchase Agreement as of the date written below.

Seller

\_\_\_\_\_  
CITY OF MENASHA by

Dated: \_\_\_\_\_

Buyer

\_\_\_\_\_  
CHRISTINE A. SOHNS

Dated: \_\_\_\_\_