

RESOLUTION NO. 2010-14

A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BETWEEN ANDIS COMPANY AND ANDIS FAMILY LIMITED PARTNERSHIP ("ANDIS"), AND COMMUNITY DEVELOPMENT AUTHORITY OF THE VILLAGE OF STURTEVANT AND THE VILLAGE OF STURTEVANT ("VILLAGE")

The Village Board of the Village of Sturtevant, Racine County, Wisconsin, resolves as follows:

WHEREAS, Andis intends to construct an approximate 50,000 square foot, single story, high bay warehouse addition to the south side of its existing facility located at 1800 Renaissance Boulevard in the Village of Sturtevant, Racine County, Wisconsin, described as Parcel I.D. No. 181-03-22-16-428-140 (the "Development"); and

WHEREAS, On September 27, 1994, the Village established Tax Incremental District No. 3 ("the District"), the boundaries of which include the Development, which District was subsequently approved by the Joint Review Board, and which will assist in financing project costs, as permitted by Wis. Stat. Section 66.1105 related to the installation of private and public improvements within the District; and

WHEREAS, Andis has been weighing various options for its warehousing needs, including continued use of its St. Louis facility or locating at other sites within Racine County, but would prefer to expand at its present location within the Village of Sturtevant if TIF assistance can be secured to reduce a portion of its construction costs; and

WHEREAS, the Village is willing to offset a portion of Andis' costs of constructing its warehouse addition, provided that any assistance is made on a "pay-as-you-go" basis out of tax increment actually collected on the increased value of the Development.

NOW THEREFORE, the Village Board of the Village of Sturtevant, Racine County, Wisconsin does hereby resolve:

1. That the execution of an agreement with Andis Company as set forth in Exhibit A which is attached hereto and incorporated herein by reference is authorized and approved subject to final review by the Village Administrator:
 - The Village will make a payment or payment(s) to Andis Company in the amount of \$130,000 as described below.
 - Payments shall only be made after a minimum 50,000 square foot building addition with an estimated cost of construction of \$2.3 million is substantially complete on the Andis Company owned parcels in the Renaissance Park and only out of actual tax increment related to the building addition.
 - That Andis Company will create at least 4 new jobs as a result of this building expansion.

- Village shall pay an amount equal to 95% of tax increment derived from said building addition, until such time as such payment or payments equal \$130,000 or until the TID is closed.
 - Village only is obligated to make this payment if this payment is an eligible expenditure per state statues and the TID Plan for the Renaissance Park.
2. That the Village President and the Village Clerk are authorized to sign any agreements or other documents necessary to carry out the intent of this resolution.

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 16th day of February 2010.

VILLAGE OF STURTEVANT

Steve Jansen, Village President

Mary Cole, Village Clerk/Deputy Treasurer

Adopted by the Community Development Authority of the Village of Sturtevant, Racine County, Wisconsin, this 16th day of February 2010.

**COMMUNITY DEVELOPMENT
AUTHORITY FOR THE VILLAGE OF
STURTEVANT**

Daryl Lynaugh, Chairman

Mark Janiuk, Executive Director

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the **ANDIS COMPANY AND ANDIS FAMILY LIMITED PARTNERSHIP** ("Andis"), and **COMMUNITY DEVELOPMENT AUTHORITY OF THE VILLAGE OF STURTEVANT** and the **VILLAGE OF STURTEVANT**, a municipal corporation located in Racine County, Wisconsin, their successors and assigns (collectively referred to as the "Village");

RECITALS:

A. Andis intends to construct an approximate 50,000 square foot, single story, high bay warehouse addition to the south side of its existing facility located at 1800 Renaissance Boulevard in the Village of Sturtevant, Racine County, Wisconsin, described as Parcel I.D. No. 181-03-22-16-428-140 (the "Development").

B. On September 27, 1994, the Village established Tax Incremental District No. 3 ("the District"), the boundaries of which include the Development, which District was subsequently approved by the Joint Review Board, and which will assist in financing project costs, as permitted by Wis. Stat. Section 66.1105 related to the installation of private and public improvements within the District.

IT IS MUTUALLY AGREED AS FOLLOWS:**1 Recitals and Defined Terms.**

(a) The above recitals are true and correct and are incorporated herein by reference.

(b) Definitions.

“Property Tax Increment” shall mean the gross amount of tax increment actually received by the Village (as defined in Section 66.1105 Stats.) generated by the Value Increment of the Development.

“Development Tax Incremental Base Value” shall mean \$4,664,152.95.

“Value Increment” shall mean the full (equalized) value of the Development in any year minus the Development Tax Incremental Base Value. In any year Value Increment is positive if the Development Tax Incremental Base Value is less than the full value of the Development; it is negative if the Development Tax Incremental Base Value exceeds the full value of the Development.

2 **Conditions of Agreement.** This Agreement is conditioned upon the occurrence of all of the following:

- (a) Approval by the Village Board, upon recommendation of the Plan Commission, of Andis’ Site Plan, attached as Exhibit A, and incorporated herein by reference; and,
- (b) Andis obtaining all necessary local, county, state and federal approvals and permits, including without limitation, approval by the Village of architectural and engineering grading, design and construction plans and specifications.

3 **Construction Schedule and Responsibility for Costs.** Andis shall commence design and construction of the Development as soon as reasonably possible after all of the conditions in Paragraph Two (2) above have been satisfied. Except for the

obligations of the Village, described below in Paragraph Six (6), Andis shall be solely responsible for all costs of design and construction.

4. Completion. Subject to the force majeure provisions of Paragraph 19, Andis shall achieve Completion of the building construction by December 1, 2010. "Completion" means that the work is sufficiently complete to enable Andis or its tenants to legally occupy and utilize the building for its intended use.

5. Minimum Value Increment. Andis expects a minimum Value Increment for the Development of \$2,300,000.00 by December 31, 2010.

6. Municipal Revenue Obligation. Andis and Village have each determined and agree that Andis was weighing different options for its warehousing needs, and that the Development would not occur unless the Village agreed to provide the assistance set forth herein. The Village agrees to reimburse Andis for a portion of its project costs by paying to Andis 95% of the Property Tax Increment generated by the Development subject to the following conditions:

- (a) The Municipal Revenue Obligation shall be payable solely from Property Tax Increment generated by the Development and shall be non-interest bearing.
- (b) The Village's obligation to make payments under the Municipal Revenue Obligation shall cease upon the termination of Tax Incremental District No. 3, which is expected to take place by 2015, but in no event shall the Village be obligated to pay more than a cumulative total of \$130,000 pursuant to its Municipal Revenue Obligation. Payments to Andis shall be

made within sixty (60) days of receipt by the Village of Property Tax Increment.

- (c) The Municipal Revenue Obligation is deemed to be a project cost of TID No. 3.
- (d) The Village's obligation to make payments on the Municipal Revenue Obligation shall be contingent on continued compliance with the terms of this Agreement.
- (e) Any payments on the Municipal Revenue Obligation which are due on any payment date shall be payable solely from, and only to the extent that the Village shall have received as of such payment date "Property Tax Increment" as that phrase is defined in this Agreement and as appropriated by the Village Board to payment of the Municipal Revenue Obligation. The Village herein and hereby expresses its intent to appropriate funds in the future if the Andis is not in default under this Agreement.

7. Legal Action. In addition to the provisions set forth in this Agreement, the Village and Andis may take any and all other appropriate action at law or equity to enforce compliance with the provisions of this Agreement.

8. Utilities and Site Grading Andis is responsible for all costs associated with utilities required for the Development including, without limitation, the cost of underground installation of cables, including fiber optic cables, wires, pipes, laterals, etc. for electric, gas, telephone, and cable television services, if any, serving the Development. Andis shall fully restore, at its expense, any Village right-of-way that has been disturbed due to its installation of utilities, lighting or landscaping.

9. Construction Compliance. The building and improvements to be constructed in the Development and their uses shall be in compliance with all applicable municipal zoning ordinances of the Village, and with any pertinent provision of the approved plans and specifications. All work or obligations to be performed by Andis pursuant to the terms of this Agreement shall be done in accordance with all applicable local, state, and federal laws, rules and regulations.

10. Impact Fees Andis agrees to pay applicable impact fees at the time of the issuance of building permit in such amounts as are then in effect.

11. Laws To Be Observed. Andis shall at all times observe and comply with all federal, state and local laws, regulations and ordinances (collectively, the “Laws”) which are in effect or which may be placed in effect and impact the conduct of the work to be accomplished under this Agreement (the “Work”). Andis shall indemnify and save harmless the Village and its agents, contractors, officers, consultants and employees, against any claims, costs and liability of every kind and nature, including reasonable attorney fees, for liability directly or indirectly arising from or based on the violation of any such Laws by Andis or its principals, agents, employees or contractors, except to the extent any such claims, costs or liability arise by virtue of the negligence or willful misconduct of the Village or any of its agents, contractors, officers, consultants or employees. Andis shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to the lawful prosecution of the Work to be completed under this Agreement.

12. Public Protection and Safety Andis shall be responsible for all damage, bodily injury or death arising out of the Work whether from maintaining an “attractive nuisance” or otherwise, except as caused by the negligence or willful misconduct of the Village or any of its

agents, contractors, consultants, officers or employees. Where apparent or potential hazards actually known by Andis occur incident to the conduct of the Work, Andis shall provide reasonable safeguards.

13. Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the Village officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the Village.

14. Indemnification/Hold Harmless Agreement. Andis hereby expressly agrees to indemnify and hold the Village and its agents, consultants, officers and employees harmless from and against all claims, judgments, damages, penalties, fines, costs or loss (including reasonable fees for attorneys and consultants) and liability of every kind and nature, for injury (including death) or damage received or sustained by any person or entity in connection with, or on account of the performance of Work at or for the development site pursuant to this Agreement, except as caused by the negligence or willful misconduct of the Village or any of its agents, contractors, consultants, officers or employees. Andis further agrees to aid and defend the Village or its agents, officers and employees (at no cost to the Village or its agents, officers and employees) in the event they are named as a defendant in an action concerning the performance of work by Andis pursuant to this Agreement except where such suit is brought by Andis. Andis is not an agent or employee of the Village.

15. Indemnification for Environmental Contamination Andis shall indemnify, defend, and hold the Village and its agents, consultants, officers and employees harmless from and against all claims, judgments, damages, penalties, fines, costs, or loss (including reasonable

fees for attorneys and consultants) and liability of every kind and nature, that arise as a result of the presence in or on property owned by either the Village (“Village Parcels”) or the Development of any toxic or hazardous substances in excess of the minimum levels allowed by applicable law (collectively, the “Substance”) arising from any activity conducted by Andis and/or Andis’ employees, agents or contractors upon or near the Village Parcels or the Development, except as caused by the negligence or willful misconduct of the Village or any of its agents, contractors, consultants, officers or employees. Without limiting the generality of the foregoing, this indemnification shall include costs incurred by the Village in connection with any remedial, removal, or restoration work required by any local, state, or federal agencies because of the presence of the Substances on or in the Village Parcels or Development, whether in the soil, groundwater or air.

The Village agrees that it will immediately deliver written notice to Andis of the Village’s discovery of the Substances in or on the Village Parcels. Following delivery to Andis of written notice of the Village’s claim as required under this paragraph, the Village shall make all reasonable accommodations to allow Andis to examine the Village Parcels and conduct such clean-up operations as may be required by appropriate local, state, or federal agencies to comply with applicable laws.

In the event Andis is obligated to indemnify the Village against claims arising under this paragraph, the Parties hereby agree that Andis shall have no further liability or obligations pursuant to the terms and provisions of this paragraph upon the Village’s receipt of written confirmation from the appropriate governmental authority of the satisfactory completion of the required remediation, removal or restoration work including, without limitation, a no further action letter, final case closure letter or confirmation that the presence

of such toxic or hazardous Substances affecting the Village Parcels migrated from an offsite source (the “Closure Documents”). The Closure Documents may be predicated upon any contingency or restriction approved by the appropriate governmental authority for groundwater or any use or as a deed restriction or registration in any registry including, without limitation, the GIS Registry.

16. Erosion Control. During the course of the development of the Development, Andis shall be responsible to ensure that reasonable steps are taken to prevent erosion from lands within the Development and the siltation therefrom being carried into street rights-of-way, street side ditches, drainage ditches, easements, culverts, drains, waterways, lakes and streams. To prevent such erosion and siltation Andis shall conform to the practices as set forth in the Village Code of Ordinances and *The Wisconsin Storm Water Manual* promulgated by the Department of Natural Resources, as modified from time to time. In the event of any such erosion or siltation, Andis shall be responsible for removing all such siltation from and restoring all such rights-of-way, ditches, easements, culverts, drains, waterways, lakes and streams. All such compliance and work hereunder shall be done without cost to the Village. Andis shall be responsible for ensuring that its contractors utilize construction means and methods that minimize, to the extent possible, nuisance-type impacts to the surrounding landowners. Prior to the start of construction, Andis shall submit to the Village Engineer for approval, a written plan addressing such things as work hours, work days, dust control, construction debris on highways, etc.

17. Andis Default. In the event Andis fails to timely perform any one or more of its obligations under this Agreement (an “Andis Default”), the Village shall promptly provide

written notice to Andis to the extent known by the Village of the action or omission constituting the basis for the default. The notice set forth in the preceding section shall provide Andis at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty (60) day period may be extended to the period of time reasonably necessary to cure the default if Andis promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no event shall the period of time to cure the default exceed one-hundred and twenty (120) days from the date of the Village's notice.

In the event an Andis Default is not fully and timely cured by Andis, the Village shall have all of the rights and remedies available at law and in equity.

18. Village Default. In the event the Village fails to timely perform any one or more of its obligations under this Agreement (a "Village Default"), Andis shall promptly provide written notice to the Village to the extent known by Andis of the action or omission constituting the basis for the Village Default.

The notice set forth in the preceding section shall provide the Village at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty (60) day period may be extended to the period of time reasonably necessary to cure the default if the Village promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no event shall the period of time to cure the default exceed one-hundred and twenty (120) days from the date of Andis' notice.

In the event a Village Default is not fully and timely cured by the Village, Andis

shall have all of the rights and remedies available at law and in equity.

19. Force Majeure. In the event that Andis or Village shall be delayed or

hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, fire, earthquake, flood, terrorism, war, acts of God, or other reason beyond Andis' or Village's reasonable control, then performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, prevention or stoppage.

20. Successors and Assignment. This Agreement is binding upon and enforceable against the Parties' respective successors and permitted assigns. The Village may assign its interest in this Agreement to any successor entity or entities, including any municipality or municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the Village.

21. Agreement Runs with the Land. This Agreement shall be binding upon Andis, and its successors in title or assigns, and the provisions hereof shall be covenants running with the land and shall be binding upon the present owners and all subsequent owners of the Development or any portion thereof.

22. Taxability. Andis shall not sell, transfer, convey or use the Development in any manner that would render it exempt from the imposition of general property taxes under the statutes of the State of Wisconsin, except where taken in whole or in part by the exercise of eminent domain under federal or state statutes, laws and regulations. Andis agrees that in the event the Development were deemed to be tax exempt, it shall make payments in lieu of taxes to the Village in an amount equivalent to the amount of tax that would have been collected on the assessed value of the Development.

23. Binding Effect. Andis warrants that it is to be the owner of the Development

