

DEVELOPMENT AGREEMENT

This Development Agreement (as amended from time to time, this “Agreement”) is entered into between EMMI ROTH USA, INC., a Wisconsin corporation (“Owner”), and the CITY OF PLATTEVILLE, WISCONSIN, a Wisconsin municipal corporation (the “City”), on this ___ day of _____, 2012, under the following circumstances:

RECITALS

WHEREAS, on the 26th day of September 2006, the Common Council of the City of Platteville, pursuant to Wis. Stat. §66.1105, adopted Resolution No. 06-08, creating Tax Incremental District No. 6 (the “District”) and approving the Project Plan for the District (the “Project Plan”), which Project Plan, as so approved, and may be amended from time to time, is hereby incorporated by reference in this Agreement; and

WHEREAS, the City has expressed a desire to promote development, stimulate commercial and industrial development, create jobs, develop a portion of the City, enhance the value of property, and broaden the property tax base, and

WHEREAS, Owner desires to purchase an approximately 19-acre parcel described as Lot 1, located in the City of Platteville Industry park, as shown on the map which is attached hereto as EXHIBIT 1 and incorporated herein by reference (the “Property”); and

WHEREAS, the Property is located within the boundaries of Tax Incremental District No. 6, City of Platteville, Grant County, Wisconsin; and

WHEREAS, Owner wishes to undertake the construction of an artisanal cheese manufacturing and storage building and certain related site improvements on or about the Property and the acquisition of related equipment and fixtures (the “Project”); and

WHEREAS, the Project as proposed by Owner will be in furtherance of the goals of the proposed Project Plan and is likely to significantly increase the value of the property in TID No. 6; and

WHEREAS, the City believes that the development of TID No. 6 and the Project, pursuant to this Agreement, and the jobs resulting therefrom are in the best interests of the City and its residents and is in accordance with the public purposes and conditions of the applicable state and local laws and requirements under which the Project Plan has been undertaken and is being carried out; and

WHEREAS, the Project Plan contemplates that eligible Project Costs (as defined in Section 66.1105(2)(f), Wis. Stats.) may include cash grants made by the City to owners, lessees, or Owners of land that is located within District; and

WHEREAS, this Agreement is intended to provide for the making of one or more cash grants by the City to Owner to impose certain duties and responsibilities of the City and Owner in order to cause the construction and operation of the Project within the District; and

WHEREAS, the City is willing to proceed with expenditures and improvements as stated in this Agreement, and is willing to reimburse Owner for expenses as stated in this Agreement, provided that Owner proceeds with and completes the Project as provided in this Agreement; and

WHEREAS, the parties believe it to be in their mutual best interest to enter into a written Development Agreement which sets forth the terms of understanding.

NOW, THEREFORE, it is hereby agreed as follows:

1. OWNER'S OBLIGATIONS. Owner shall have the following duties and obligations:

A. Building. Owner shall construct a manufacturing and storage building on the Property that is, upon completion, in compliance with the Platteville Municipal Code and has a minimum size of 70,000 square feet (together with any expansion thereof, the "Building"), which is further described on EXHIBIT 2 and incorporated herein by reference.

B. Site Improvements. Owner shall complete any site improvements on or about the Property that are determined by Owner to be necessary for the construction and/or operation of the Building (together with any additions thereto, the "Site Improvements"; the Building and Site Improvements, collectively, the "Improvements") in compliance with the Platteville Municipal Code. The Site Improvements may include, but are not limited to, the following:

1. Site preparation, earth work & grading.
2. Public and private utilities.
3. Storm water management and site drainage.
4. Vehicle parking and access improvements.
5. Site lighting.
6. Fire hydrants.
7. External storage tanks and silos.

Owner and the City understand that neither the Building nor any of the Site Improvements will be located in a public right-of-way nor will they be dedicated to the City. Owner agrees to, at its expense, make any changes to, or extensions of, the sewer lateral running through the Property that are required for the construction and operation of the Building (the "Sewer Lateral"). So that the Sewer Lateral is not treated as a public improvement, the City agrees to terminate the easement on the Property across which the Sewer Lateral is currently located and otherwise relinquish any rights it has in or to the Sewer Lateral.

- C. Project. For all purposes under this Agreement, the term "Project" shall include the Building and all future expansions of the Building, the Site Improvements and all future additions to the Site Improvements, and all personal property, including equipment and fixtures, of the Owner and its affiliates located on or about, or affixed to, the Property.
- D. Permits. Owner shall obtain all necessary permits and approvals from the City of Platteville and the State of Wisconsin before undertaking the construction of Building and the Site Improvements or the operation of the Project.
- E. Erosion Control. Owner shall comply with Chapter 46 of the Platteville Municipal Code and provide a plan for minimizing soil erosion and sedimentation on the Property during construction of Improvements. Owner shall comply with the plan during the course of construction. Owner shall use all care possible to prevent siltation and other pollution of the waters of the State of Wisconsin even if measures exceeding those set forth on approved plans prove necessary.
- F. Insurance. Until the Termination Date, Owner shall keep Improvements insured against loss or damage occasioned by fire and extended coverage perils (or, during the construction of the Improvements, by builder's completed value risk insurance against "all risks of physical loss") in such amounts as would ordinarily be carried by a reasonably prudent owner and operator of a comparable property. In the event that all or any portion of the Improvements are damaged or destroyed, Owner shall have the option to pay to the City an amount which, together with any Tax Increments then held by the City, is sufficient to allow the City to redeem or defease in full the Securities (as hereinafter defined), and, if it does, Owner will not be required to rebuild, repair or replace the Improvements.
- G. Construction Safety. At all times during the construction of Improvements, Owner and its contractors and subcontractors as aforesaid, shall conduct their work in such manner as to insure that there is a minimum obstruction to traffic and inconvenience of the general public, the residences and/or the commercial establishments adjacent to the Property. No materials shall be stored upon any streets unless such storage is absolutely necessary and approved by the City Manager. Any materials which must be stored upon such streets shall be placed so as to cause as little obstruction to traffic as possible. Fire hydrants on or adjacent to the Property shall be kept accessible to fire apparatus at all times, and no materials or obstructions shall be placed within fifteen (15) feet of any such hydrant. All storm drainage and storm sewer inlets shall be kept unobstructed at all times. Owner shall maintain such barricades and warning lights or flares as are necessary during the course of construction to protect traffic and the public in general. Any work in a street which is unfinished for any reason whatsoever shall be left in such a condition as to make the Property accessible at all points to fire and other emergency apparatus.

- H. Damage to Existing Streets. In the event any existing City streets, sidewalks, curb and gutter, drainage structures, utilities, or other facilities are disturbed, subjected to excessive wear and tear, damaged or destroyed during the course of the construction of Improvements, including but not limited to damages resulting from openings into streets to install underground facilities or resulting from travel or use by vehicles or construction equipment, Owner agrees, at its cost, to repair or, if necessary, replace such facilities.
- I. Waste Management. At all times during the construction of Improvements, Owner shall collect and properly discard all waste material, such as paper, cartons and the like, and shall prevent the same from being deposited, and then either thrown or blown upon the lands adjacent to the Property or upon the Property itself. In addition, Owner shall require that all contractors, subcontractors, and material suppliers shall comply with the provisions of this subsection. All rubbish and unused materials and tools shall be removed promptly from Improvements and, as work progresses, the Property shall be kept clean of any rubbish or refuse. Owner shall maintain the Property in a clean condition by removing all debris from the Property or otherwise disposing of such debris in an appropriate fashion.
- J. Construction Completion. Owner shall construct, install and complete the Improvements by no later than the second annual anniversary date of this Agreement (the "Completion Deadline"). "Complete" shall mean that the City's building department has issued a certificate of occupancy for the Improvements certifying the Improvements' compliance with the Platteville Municipal Code. Notwithstanding the preceding paragraph, if by reason of Force Majeure (as hereinafter defined), Owner fails to complete the Improvements by the Completion Deadline, Owner shall not be deemed to be in default under this Agreement. In that event, Owner will give notice promptly to the City of an event of Force Majeure and will use its best efforts to remedy that event with all reasonable dispatch; provided that Owner will not be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of any opposing person, when in Owner's judgment, that course would be unfavorable to it; and no suspension will constitute a default hereunder if that suspension is a result of the application of Federal or State wage, price or economic stabilization controls, cost containment requirements, restrictions on rates, charges or revenues of Owner, which prevents Owner from observing and performing the applicable covenant, agreement or obligation. "Force Majeure" means acts of God; fires; epidemics; landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any cause or event not reasonably within the control of Owner.

- K. Grant Application Assistance. Owner shall cooperate with the City in attempts to obtain grant funding to assist with the costs of developing the Project and related infrastructure on or about the Property. This assistance shall be in the form of providing letters of support and the providing of such non-confidential information as is reasonably requested by the City.
- L. Job Creation. Owner shall create a minimum of thirty (30) full-time equivalent (FTE) jobs by no later than the second annual anniversary date of this Agreement. Provided that Owner completes the Improvements as required by this Agreement, the failure of Owner to create such jobs shall not constitute a default under this Agreement. However, Owner agrees to reimburse the City for the amount of any grant funds that were awarded to the City, but that must be returned, if the number of jobs created by Owner in respect to the Project is fewer than thirty (30) FTE jobs. Owner further agrees that it will also pay to the City the amount of any job loss penalties imposed upon the City by the State of Wisconsin or any other governmental entity in respect to any grants obtained by the City for the Project if the number of jobs created by Owner in respect to the Project is fewer than thirty (30) FTE jobs.
- M. Guaranteed Tax Increments. Owner reasonably expects that the Project will, after completion, have an assessed value for real estate tax and personal property tax purposes sufficient to generate annual Tax Increments (as defined in Section 66.1105(2)(i), Wis. Stats.) in an amount not less than the Minimum Amount (as hereinafter defined), and that, such assessed valuation will be achieved by no later than January 1, 2014 (for taxes payable in 2015). If the assessed value of the Project is not sufficient to generate annual Tax Increments at least equal to the lesser of (i) the annual principal and interest payments due under the Securities, or (ii) \$ _____ (the "Minimum Amount") with respect to any year ending on or after December 31, 2016, then Owner will, until the Termination Date, make supplemental payments in lieu of taxes (the "Supplemental Payments") to the City equal to the amount by which the Tax Increments actually generated by the Project during that year are less than the Minimum Amount. Each Supplemental Payment shall be due and payable by Owner, upon demand by the City, in immediately available funds, on or before January 31 of the year following the year of assessment, commencing on or before January 31, 2015. Should the initial Owner assign its rights and obligations under this Agreement to a Special Purpose Entity (as hereinafter defined) pursuant to Section 20 hereof, the initial Owner shall execute and deliver to the City a guaranty of the payment and performance by the Special Purpose Entity of its obligations as "Owner" under this Agreement, including its obligations to pay Supplemental Payments, which shall be in a form mutually acceptable to the initial Owner and the City.

2. **CITY OBLIGATIONS.** In consideration of the construction to be undertaken by Owner, the City agrees to do the following:

- A. Cash Grants. The City shall provide funds to Owner to reimburse the Owner for costs incurred by the Owner in constructing the Improvements pursuant to Sections 1A and 1B of this Agreement and the acquisition by Owner of cheese production equipment (“Project Costs”). The funds shall be in the form of cash grants in the aggregate amount of \$2,000,000 (the “Cash Grants”) and Pay As You Go Financial Assistance (as hereinafter defined), all of which shall constitute cash grants as contemplated by the Project Plan. The City will pay the Cash Grants to Owner, upon the demand of Owner, in immediately available funds, as follows: (i) \$1,000,000 upon the opening of the curing cellar in the Building, which Owner estimates will occur on or about February 1, 2013, and (ii) \$1,000,000 upon the completion of the Building, which Owner estimates will occur on or about July 1, 2013. The City will issue notes or bonds to fund the Cash Grants (the “Securities”). The terms of the Securities shall be approved by Owner, such approval not to be unreasonably withheld, before the Securities are issued.
- B. Pay As You Go Financial Assistance. In addition to the Cash Grants, the City will pay to Owner 80% of the amount by which the Tax Increments generated by the Project during any year exceed the Minimum Amount (the “Pay As You Go Financial Assistance”), provided that the Pay As You Go Financial Assistance shall not exceed the aggregate amount of \$1,600,000 plus interest accrued thereon, from July 1, 2013 until such amount and interest thereon has been paid in full, at the rate of 6.0% per annum calculated on the basis of the actual number of days elapsed in a year of 360 days. The City shall pay the Pay As You Go Financial Assistance to Owner, if any, upon demand by Owner, in immediately available funds, on or before March 1 and September 1 of each year following the year of assessment, commencing on March 1, 2015. The Pay As You Go Financial Assistance will be reduced dollar for dollar by the amount of funds that are committed to the Project by the State of Wisconsin or the Wisconsin Economic Development Corporation to assist with the cost of constructing the Improvements other than Excluded Commitments (as hereinafter defined). “Excluded Commitments” shall mean funds committed to the Project by the State of Wisconsin or the Wisconsin Economic Development Corporation or set forth in a term sheet on or before April 19, 2012.
- C. Grant Applications. The City shall, at its option, complete and submit applications for Transportation Economic Assistance Grants and other applicable programs in an attempt to obtain funds in conjunction with this Project.
- D. Sale of Land. The City or the Platteville Area Industrial Development Corporation (the “Seller”) shall sell the Property to Owner at a price determined by the Platteville Industrial Park Land Price Formula. The price and other terms for the sale of the Property to Owner, including the right of the City to repurchase any of the Property not used by Owner for the expansion of the Building, shall be set forth in a separate purchase agreement and related documents to be entered into between Owner and Seller.

3. **TERM.** This Agreement shall terminate on the earlier of (a) the repayment in full or defeasance of the Securities and the payment of all of the Cash Grants and Pay As You Go Financial Assistance by the City to Owner in accordance with this Agreement, or (ii) the termination or expiration of the life of the District, as extended by the City (the "Termination Date"), provided that the City shall not attempt to terminate or dissolve the District without the prior written consent of Owner. The duties, obligations and benefits of the parties as specified herein shall exist for the entire term of this Agreement unless otherwise provided herein.
4. **INDEMNIFICATION, HOLD HARMLESS AND WARRANTY.** Owner and its successors and assigns shall assume, pay and hold the City harmless from and against any and all claims, demands, suits, liens, or causes of action for injury or damage to persons or property (the "Claims") which may be made or asserted against the City at any time, arising from or in connection with the Project, regardless of whether such Claims are false, fraudulent, meritless or meritorious, except to the extent that the Claims are determined to be caused by the negligence or willful misconduct of the City. Owner further agrees, on behalf of itself and its successors and assigns to investigate, handle, respond to, provide defenses for and defend the City against any such Claims at its sole expense and agrees to bear all costs and expenses related thereto, including the City's reasonable attorneys fees and other expenses, even if such Claims are false, groundless or fraudulent, except to the extent that the Claims are determined to be caused by the negligence or willful misconduct of the City.
12. **STATUS OF PARTIES.** It is understood and agreed between the parties that this Agreement does not and shall not be construed, interpreted or argued by either of them, in a court of law or otherwise, to create any principal/agent, master/servant, employer/employee or partnership relationship of any kind between Owner or its successors and the City or its successors.
13. **MODIFICATION.** It is understood and agreed between the parties that there shall be no waiver or modification of this Agreement unless such waiver or modification is first reduced to writing and signed by both parties herein.
14. **SEVERANCE.** If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, then in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
15. **SUCCESSORS.** The terms, provisions, conditions, covenants and obligations contained in this Agreement shall be binding upon and inure to the benefit of Owner's successors. This Development Agreement shall be recorded to provide notice to Owner's successors, assigns, or subsequent purchasers of the Property of the provisions of this Agreement.
16. **LAWS OF WISCONSIN.** It is understood and agreed between the parties that this Agreement, the performances required herein and all proceedings that flow therefrom, shall be construed according to and controlled by the laws of the State of Wisconsin. In any proceeding that may be brought arising out of, in connection with, or by reason of

this Agreement, the laws of the State of Wisconsin shall be applicable, controlling and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any such proceeding may be instituted.

17. **MATTERS DISREGARDED.** The titles of the several sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only and they shall be disregarded in construing or interpreting any of the provisions of this Agreement.
18. **SIGNATURE AUTHORITY.** Owner hereby promises and states that in the event it is a corporation or partnership, the individual whose name and signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and conditions of this Agreement.
19. **NOTICES.** Any notice, demand or communication required, permitted, or desired to be given hereunder shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earlier of (a) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (b) receipt if given by email or personal delivery (or on the next business day after receipt if receipt occurs on a day other than a business day or after 5:00 p.m. Central Standard Time on a business day): (i) if addressed to the City, at 75 N. Bonson Street, P.O. Box 780, Platteville, Wisconsin 53818, Attn: City Manager, and (ii) if addressed to Owner, at 657 2nd Street, Monroe, WI 53566, Attn: Project Manager.
20. **ASSIGNMENT.** The rights and obligations contained in this Agreement may not be assigned by either party without the written approval of the other party, which approval shall not be unreasonably withheld, except that, without the written approval of the City, the initial Owner (Emmi Roth USA, Inc.) may assign its rights under this Agreement to a Special Purpose Entity, provided that the initial Owner executes and delivers the guaranty to the City required by Section 1M hereof. As used herein, the term “Special Purpose Entity” shall mean an entity to which the Owner conveys fee title to the Property and which is wholly-owned by Owner and/or one or more affiliates of Owner. Upon any assignment of this Agreement by Owner in compliance with the terms of this Section, the assignee may assume the obligations of Owner under this Agreement and, thereupon, shall become the “Owner” for all purposes under this Agreement.
21. **SALE OF PROPERTY TO NON-PROFIT ENTITY.** Notwithstanding anything in this Agreement to the contrary, if the Owner sells the Property to a non-profit entity that is exempt from real estate and personal property taxation in the State of Wisconsin, the Owner shall, upon the demand of the City, pay to the City an amount which, together with any Tax Increments then held by the City, is sufficient to allow the City to redeem or defease in full the Securities.

IN WITNESS WHEREOF, the parties hereto have set their hands below.

"OWNER"

EMMI ROTH USA, INC.

By: _____
Name:
Title:

BE IT REMEMBERED, that on this _____ day of _____, 2012, before me, the undersigned, a notary public in and for the county and state aforesaid, came _____, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public (SEAL)
My Appointment Expires: _____

"CITY"

CITY OF PLATTEVILLE, WISCONSIN

ATTEST:

By: _____
Larry Bierke, City Manager Jan Martin, City Clerk (SEAL)

BE IT REMEMBERED, that on this _____ day of _____, 2012, before me, the undersigned, a notary public in and for the county and state aforesaid, came Larry Bierke, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Notary Public (SEAL)
My Appointment Expires: _____