

**SETTLEMENT AGREEMENT**

This Settlement Agreement (this “Agreement”) is made and entered into by and between CFT NV Developments, LLC, a Nevada limited liability company (“CFT NV”), and the City of Waukesha, a Wisconsin municipal corporation (the “City”). CFT NV and the City are collectively referred to herein as the “Parties” and each individually as a “Party.” The Effective Date of this Agreement is the date that the last Party executes this Agreement.

WHEREAS, CFT NV is proposing to develop property (the “Project”) consisting of the following tax parcels near 2720 N. Grandview Boulevard, located in the City:

Tax Key No. WAKC 0974-985  
Address: 2720 North Grandview Boulevard

Tax Key No. WAKC 0974-985-001  
Address: North Grandview Boulevard

Tax Key No. WAKC 0974-983  
Address: North Grandview Boulevard

Tax Key No. WAKC 0974-986-001  
Address: Meadow Lane

Tax Key No. WAKC 0947-981-002  
Address: North Grandview Boulevard

(together with the parcel described in Paragraph 4 below (collectively, the “Property”); and

WHEREAS, on July 13, 2016, the City’s Plan Commission denied Panda Express’ (CFT NV’s) Application for a Conditional Use Permit for the Property (the “CUP Application I); and

WHEREAS, on July 13, 2016, the City’s Plan Commission also denied CFT Waukesha’s (CFT NV’s) Application for Preliminary Site Plan & Architectural Review for the Property (the “Site Plan Application I”); and

WHEREAS, CFT NV filed an appeal with the City’s Board of Zoning Appeals (“BOZA”) on August 2, 2016; and

WHEREAS, the ~~decision~~decisions of the City's Plan Commission ~~was~~were affirmed by the City's BOZA on January 9, 2017; and

WHEREAS, on February 8, 2017, CFT NV filed a lawsuit against the City, the City's Plan Commission, and the City's BOZA, which was assigned Waukesha County Circuit Court Case No. 17-CV-234 (the "Lawsuit"); and

WHEREAS, subsequent to the filing of the Lawsuit CFT NV submitted revised plans to the City's Plan Commission for approval of two (2) Conditional Use Permits for the Property (the "CUP Application II") and for Preliminary Site Plan & Architectural Review for the Property (the "Site Plan Application II"); and

WHEREAS, on July 26, 2017, the City's Plan Commission approved the CUP Application II and the Site Plan Application II, both with conditions; and

WHEREAS, on March 14, 2018, the City's Plan Commission approved the Certified Survey Map combining the tax parcels that comprise the Property with conditions; and

WHEREAS, the Parties wish to avoid further litigation and have reached an agreement to resolve their dispute regarding development of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Dismissal of Lawsuit. Upon the completion of the items set forth in Paragraphs 2-10 (collectively, the "Conditions Precedent"), the Parties shall dismiss the Lawsuit, with prejudice, without further cost to any Party, in the form attached hereto, incorporated herein, and marked as Exhibit 1. The Stipulation for Dismissal shall reference this Agreement, it being intended that the circuit court may enforce the terms of this Agreement. Counsel for both Parties

shall confirm in writing that the Conditions Precedent have been completed, and upon said confirmation, counsel for CFT NV will file the Stipulation for Dismissal and the Order for Dismissal within five (5) days.

2. Payment for Future Traffic Control Measures. CFT NV shall make a payment to the City in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) for future traffic control measures, future traffic improvements, and/or future offsite road improvements that may be necessary on Grandview Boulevard and Silvernail Road (collectively, the "Traffic Control Measures"). ~~None~~Neither CFT NV (or its successors and assigns), the Property, the Project, nor any portion of the property that comprises the Certified Survey Map addressed in Paragraph 5 would be responsible for any future payment for any Traffic Control Measures, regardless of what future traffic studies may show, including, but not limited to, the imposition of any special assessments.

3. Approval of Civil Plans, Architectural Plans, and Sign Plan. Provided they are complete and meet all City requirements for approval, as communicated to CFT NV prior to the date of this Agreement, ~~t~~The City shall approve the ~~following plans~~Civil Plans for the Project ~~on or before April 12, 2018:~~

~~\_\_\_\_\_ (a) \_\_\_\_\_ Civil Plans within ten (10) business days after the City's receipt of same.~~  
The City has already approved the Architectural Plans for the Project as submitted to the City on \_\_\_\_\_;

~~\_\_\_\_\_ (b) \_\_\_\_\_ Architectural Plans as submitted to the City on \_\_\_\_\_;~~ \_\_\_\_\_ and

~~\_\_\_\_\_ (c) \_\_\_\_\_ the Sign Plan for City's gateway monument sign as submitted to the City on \_\_\_\_\_.~~

4. Meadow Lane Parcel. The City shall convey the parcel depicted on the drawing attached hereto, incorporated herein, and marked as Exhibit 2, as soon as practicable after the appropriate resolution is passed with regard to the Meadow Lane Parcel.

5. Certified Survey Map. The City shall execute, acknowledge, and deliver to CFT NV and all other applicable governmental authorities, in recordable form, the Certified Survey Map as approved by the City's Plan Commission on March 14, 2018, and by the Common Council on March 20, 2018, with the addition of a cross access easement to and from the Walgreens parcel, as soon as practicable after the appropriate resolution is passed with regard to the Meadow Lane Parcel.

6. Conditional Use Permits. The City shall grant, execute, and deliver to CFT NV and all other applicable governmental authorities, the conditional use permits approved at the City's July 26, 2017, Plan Commission meeting upon terms mutually agreeable to the Parties, on or before April ~~12~~30, 2018.

7. Storm Water Management. ~~On or before April 12, 2018, the~~The City shall ~~approve~~has approved the storm water management plan for the Project within ten (10) business days after the City's receipt of the same, provided the plan complies with the City's engineering comments as given to CFT NV prior to the date of this Agreement, as submitted to the City on \_\_\_\_\_. ~~On or before April 12, 2018~~ \_\_\_\_\_, 2018. Within ten (10) business days after the City's receiptapproval of same, the City shall approve-prepare and submit to CFT NV a the storm water management practices maintenance agreement, containing the usual provisions for similar development projects, as submitted to the City on \_\_\_\_\_, and the Parties shall execute said agreement forthwith.

8. Developer's Agreement. On or before April ~~1230~~, 2018, the City and CFT NV shall enter into a Developer's Agreement for the Project containing the usual provisions for developments of this nature, and upon other terms as are mutually agreeable to the Parties.

9. Permits. On or before ~~April 18, 2018~~the dates set forth below, the City shall issue the following permits for the Project:

(a) Building Permit – upon completion of the items set forth in Paragraphs 2, 3, 6, 7, 8, and 10;

(b) Erosion Control Permit - within ten (10) business days after the City's receipt of the application for same;

(c) Engineering Construction Permit; - within ten (10) business days after the City's receipt of the a complete application for same that meets City's requirements, including a traffic control plan;

(d) Engineering Street Opening Permit - within ten (10) business days after the City's receipt of the a complete application for same that meets City's requirements; and

(e) Demolition Permit – upon the execution of this Agreement.

10. Escrow Payment. CFT NV shall pay to the City the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) toward the costs of the City working with the property located at \_\_\_\_\_, Waukesha, Wisconsin (the "Dave's Mobil Property") to provide the Dave's Mobil Property with a change to its access to Silvernail Road and/or with additional access to Silvernail Road (collectively, the "Dave's Mobil Access"). Upon completion of the Dave's Mobil Access work, but no later than one (1) year after the Effective Date, the City shall provide CFT NV with a detailed, itemized accounting, together with receipted invoices and reasonably detailed supporting documentation, of all work performed for the Dave's Mobil Access, and if that amount

and/or the amount actually expended by the City or the owner of the Dave's Mobil Property is less than \$50,000.00, then the City shall return ~~the~~that difference to CFT NV along with the accounting.

If the amount is more than \$50,000.00, then the City shall be responsible for the excess.

11. Occupancy Permit. The occupancy permits for the buildings on the Property will not be issued until the items in Paragraphs 4 and 5 are completed. The City represents that it has begun the process to pass a resolution to vacate the portion of Meadow Lane that will be transferred to CFT NV.

12. No Admissions. By entering into this Agreement, neither Party is admitting any wrongdoing or any violation of law, right, or contract.

13. Representations of the Parties. Each Party represents to the other Party that: (a) in the case of both Parties, they are duly organized and validly existing under the laws of the jurisdiction of its incorporation/organization and in good standing; (b) in the case of both Parties, the Parties have power to execute and perform its obligations under this Agreement and have taken all necessary action to authorize such execution, delivery, and performance; (c) in the case of both Parties, such execution, delivery, and performance does not violate or conflict with any law applicable to it, any provision of its charter or bylaws, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and (d) as to both Parties, the obligations under this Agreement constitute its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

14. Amendment. This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by or on behalf of each Party hereto.

15. Binding Effect. This Agreement is binding upon, inures to the benefit of, and is enforceable by the Parties and their respective successors and assigns.

16. Entire Agreement. This Agreement supersedes all prior discussions, representations, warranties, and agreements, both written and oral, among the Parties with respect to the subject matter hereof, and contains the sole and entire agreement among the Parties with respect to the subject matter hereof. No prior drafts of this Agreement and no words or phrases from any such prior drafts shall be admissible into evidence in any action, suit, or other proceeding involving this Agreement.

17. Recitals; Headings; Interpretation. The above recitals are fully incorporated in the terms of this Agreement. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof. The Parties acknowledge their mutual participation in the drafting of this Agreement and its terms shall not be construed more strictly against one Party or the other as the author of the document.

18. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future laws, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom.

19. Governing Law. This Agreement shall be interpreted under the laws of the State of Wisconsin.

20 20. Dispute Resolution and Enforcement. The Parties agree that they will work in good faith to resolve any disputes arising from the performance of this Agreement before resorting to further enforcement action. In the event any Party needs to take action to enforce this Agreement, regardless of whether or not the Party actually has to commence litigation, the prevailing party in any such action taken shall be entitled to recover from the non-prevailing party the costs and attorney fees reasonably incurred by the prevailing party in enforcing this Agreement.

21. No Waiver of Ordinary Requirements. No provision of this Agreement shall be construed as a waiver of any requirements of the City's municipal code or state statutes for construction of the Development.

22. Counterparts; Delivery. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Party; it being understood that not all Parties need sign the same counterpart. The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf"), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of an original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means shall be deemed their original signatures for all purposes.



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

CFT NV Developments, LLC,  
a Nevada limited liability company

By: \_\_\_\_\_  
Charlie Shen  
Manager

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

CITY OF WAUKESHA,  
a Wisconsin municipal corporation

By: \_\_\_\_\_  
Shawn N. Reilly  
Mayor

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**EXHIBIT 1**

**Stipulation for Dismissal and Order for Dismissal**

attached

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**EXHIBIT 2**

**Meadow Lane Parcel Map**

attached

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