

Supplemental Development Agreement
Mad Dog Properties, LLC

Parcel ID Nos. WAKC 1343 302
 WAKC 1343 304
 WAKC 1343 307

After recording return to:
City of Waukesha
Dept of Community Development
201 Delafield St Ste 200
Waukesha WI 53188

This Supplemental Development Agreement, referred to herein as the Agreement, is made by and between the **City of Waukesha, a Wisconsin municipal corporation**, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; and **Mad Dog Properties, LLC, a Wisconsin limited-liability company**, 1177 Quail Court, Suite 100, Pewaukee, Wisconsin, referred to herein as the Developer. The Developer and the City together are referred to herein as the Parties.

This Agreement supersedes the Agreement to Contribute to Remediation Expenses between the City of Waukesha and Fleetfoot Investments, LLC, dated July 15, 2008.

The real property subject to this Agreement is described as follows:

Lot 2 and Outlot 2 of Certified Survey Map No. 10537 as recorded in Volume 101 of Certified Survey Maps on pages 1-4 as Document Number 3564927, being a part of the NW¼ and NE¼ of the SW¼, and the SE¼ of the NW¼, of Section 12, T6N, R19E in the City of Waukesha, Waukesha County, Wisconsin;

and

Lot 2 of Certified Survey Map No. 10608 as recorded in Volume 102 of Certified Survey Maps, beginning at page 25, as Document Number 4157315, being a part of the SW¼ of Section 12, T6N, R19E in the City of Waukesha, Waukesha County, Wisconsin.

Recitals

Developer is the successor to a prior developer, on whose behalf the City expended TIF funds for environmental remediation of the site which Developer intends to develop. Developer acknowledges that it has realized a significant benefit from the City's expenditure and subsequent clean-up of the site, and that it should compensate the City for that benefit.

To do so, Developer agrees that it will guaranty to the City the assessed value of the Development, as defined below, and to pay the City an amount equal to the taxes that would be payable on any shortfall between the actual assessed value and the guaranteed assessed value, until the closing of Tax Incremental District 18, referred to herein as TID 18, or the retirement of the debt funding City expenditures in TID 18, whichever is later.

Now, therefore, in consideration of the mutual promises of the Parties contained in this Agreement, the Parties agree and contract as follows:

Part One – Construction of the Development

1. **The Development.** The Development is defined as the real estate known as Tax Key Numbers WAKC 1343 302, WAKC 1343 304 and WAKC 1343 307, and the improvements to that real estate presented by Developer to the Plan Commission, as amended and approved by the Plan Commission.

2. **Construction of Development.** Developer shall complete construction of the Development, according to the plans and specifications approved by the Plan Commission, no later than December 31, 2023. Material deviations from the approved plans and specifications shall not be made unless approved by the City in advance and agreed to in writing appended to this Agreement.

3. **No Further Contribution by City.** Developer acknowledges that the City has made expenditures for the remediation of the Development site, and that the City is under no obligation to make any further expenditures in connection with the Development.

Part Two – Guaranty of Increment

4. **Guaranty of Value.** Developer guaranties to the City that the Development shall have a minimum total real estate tax assessed value of \$3,105,000.00 as of December 31, 2023 and each succeeding December 31 until the Expiration Date, defined in section 5.b.

5. **Payments if Value Guaranty Is Not Attained.** If the value guarantied in section 4 is not attained, the Developer shall make payments in lieu of taxes, as follows:

a. If the assessed value of the Development is less than \$3,105,000.00 on December 31, 2023 or any succeeding December 31, or if the Development is exempt from the payment of real property taxes for any tax year on or after December 31, 2023, then Developer shall make a payment in lieu of taxes to the City, for each year in which the value guaranty is not met or the Development is exempt from the payment of real property taxes, in addition to real estate taxes actually assessed by the City, equal to the difference between \$3,105,000.00 and the actual assessed value of the Development, multiplied by the then-applicable tax rate. The payment shall be due March 15 of each year for the preceding year's taxes, and statutory interest and penalties will apply to late payments.

b. The guaranty of value, and the obligation to make payments in lieu of taxes, shall expire on the later of the following occurrences: (i) The closing of TID 18, or (ii) the retirement of the debt instruments issued by the City to generate funds for expenditure in TID 18. This is referred to herein as the Expiration Date.

c. If Developer fails to make any payment in lieu of taxes when due, the Developer consents that any unpaid amount shall be a special charge assessed against the Development.

6. **Prohibition of Conveyance to Tax-Exempt Entity.** Prior to the Expiration Date, the Developer and Developer's successors in interest shall not convey the Development or any portion of the Development to any entity which is exempt from payment of property taxes. Any conveyance attempting to do so shall be void and of no effect.

7. **Prohibition of Obtaining Tax-Exempt Status.** Prior to the Expiration Date, the Developer and Developer's successors in interest shall not make application for, obtain, or accept recognition of tax-exempt status which would result in the Development being exempt from real-property taxation.

8. **Prohibition of Contesting Real Property Taxes.** Prior to the Expiration Date, the Developer and Developer's successors in interest waive their rights to, and shall not, contest, in any manner or in any forum, the City's assessed value of the Development, to the extent that the requested re-assessment would result in an assessed value of less than \$3,105,000.00.

9. **Security for Developer Payments to City.** All of the members of the Developer shall personally guaranty the payment of all Developer payment obligations required by this Agreement, and shall execute and deliver to the City fully-executed guaranties in the form of Exhibit A attached hereto. The guaranty shall be limited annually to the amount of the payment in-lieu-of-taxes due each year. The guaranties shall expire on the Expiration Date.

10. **Requirement to Maintain the Development.** At all times prior to the Expiration Date, the Developer and Developer's successors in interest shall maintain the Development, and all additions, improvements and fixtures to the Development, in good condition, in compliance with all applicable statutes, building codes, and the Waukesha Municipal Code, such that the fair market value of the Development does not decrease as a

result of the condition of the Development or a failure to maintain the Development.

11. Requirement of Casualty Insurance. At all times prior to the Expiration Date, the Developer and Developer's successors in interest shall maintain comprehensive property casualty insurance on the Development, including builder's risk insurance during construction, for not less than the actual replacement value of all improvements. Developer and Developer's successors shall provide the City with proof of such coverage upon request.

12. Requirement to Reconstruct after Casualty Loss. At all times prior to the Expiration Date, the Developer and Developer's successors in interest shall promptly repair, rebuild and reconstruct the Development after any casualty loss, to restore the Development to the condition it was in prior to the loss. If the loss is of a type covered by the insurance required in section 11, then Developer or Developer's successors shall make claim to casualty-insurance carriers for all casualty losses, promptly after loss, and shall apply all proceeds of the insurance to the repair and reconstruction of the Development. Casualty loss shall not be an excuse for making payments in lieu of taxes.

Part Four – General Provisions

13. Agreement Runs with the Land and Binds Successors. The City shall record this Agreement against the Development with the Register of Deeds for Waukesha County, at the Developer's expense. All of the terms and conditions of this Agreement shall run with the land and be binding upon Developer and all of Developer's successors in interest. Every reference to Developer herein shall be a reference to Developer and all of Developer's successors in interest, including tax-exempt entities.

14. Parties Are Independent Contractors. Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions. The City shall not participate in, or have any responsibilities connected with, the Development in any way other than the City's specific obligations in this Agreement.

15. Governmental Immunities and Notice Requirement Preserved. Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

16. Assignment Prohibited. This Agreement, and the Developer's responsibilities under this Agreement, may not be assigned by the Developer without the City's written consent.

17. Notices. All notices required by this Agreement shall be in writing and delivered by first-class postage by the US Postal Service, addressed as follows:

To City: Director of Community Development
City of Waukesha
201 Delafield St Ste 200
Waukesha WI 53188

To Developer: Mad Dog Properties, LLC
1177 Quail Ct Ste 100
Pewaukee WI 53072

18. City Access to Development. Developer shall give City representatives access to the Development during construction, upon reasonable notice, to inspect and verify compliance with this Agreement.

19. Proof of Good Standing and Authorization. Developer shall provide to City a certificate of good standing issued by the Wisconsin Department of Financial Institutions, and a resolution of all members of Developer authorizing the execution of this Agreement by the individuals signing, within 10 days of the execution of this Agreement.

20. Default. Neither Party shall be in default of this Agreement unless written notice of the default has been delivered and 30 days have passed without the default being cured. An election by either Party not to enforce any default of this Agreement shall not be deemed to be a waiver of the right to enforce subsequent defaults.

21. Costs of Enforcement. The Parties agree that in the event legal action is necessary to enforce any term or condition of this Agreement, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

22. No Discrimination. Developer shall not discriminate against any employee or contractor, or potential employee or contractor, in the construction of

the Development on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry.

23. Corporate Authorization. The individuals executing this Agreement on behalf of the Developer warrant and represent that they are duly authorized to bind the Developer to this Agreement. Developer warrants and represents that the execution of this Agreement is not prohibited by the Developer's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Developer shall provide proof upon request.

24. Assistance of Counsel, Voluntary Agreement. The Developer acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Agreement's terms, conditions and provisions, and their effects; and that it has executed this Agreement freely and not under conditions of duress.

25. Severability. If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed,

and the remainder of this Agreement will remain in effect and enforceable.

26. Governing Law and Jurisdiction. This Agreement will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Agreement, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

27. Integration. This Agreement constitutes the entire agreement of the Parties. All other agreements and understandings of the parties with respect to the subject matter expressed in this Agreement are unenforceable. However, nothing in this Agreement shall be construed to limit the Common Council in the exercise of its legislative powers.

28. Force Majeure. Neither Party shall be deemed to be in default of this Agreement if the failure to perform is the result of unforeseeable causes beyond the Party's control, such as civil disorder, war, acts of enemies, strikes, fires, floods, adverse weather conditions, legally-required environmental remedial actions, industry-wide shortages of materials, provided the Party has used reasonable diligence in attempting to anticipate and avoid such causes and resumes performance in good faith as soon as possible. Time for performance shall be extended by the period of delayed performance.

Executed the _____ day of _____, 2018.

City of Waukesha

Shawn N. Reilly, Mayor

Gina L. Kozlik, Clerk-Treasurer

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Gina L. Kozlik, known to me to be the persons who executed this Agreement on behalf of the City of Waukesha in the indicated capacities, personally came before me this _____ day of _____, 2018, signed their names in my presence, and acknowledged the same.

Notary Public, Waukesha County, Wisconsin
My commission (is permanent)(expires_____)

Mad Dog Properties, LLC

(sign above)
Print name: _____
Title: _____

(sign above)
Print name: _____
Title: _____

State of Wisconsin }
 } ss.
_____ County }

_____ and _____, known to me to be the persons who executed this Agreement on behalf of Mad Dog Properties, LLC, in the indicated capacities, personally came before me this _____ day of _____, 2018, signed their names in my presence, and acknowledged the same.

Notary Public, _____ County, Wisconsin
My commission (is permanent)(expires_____)

Incorporated attachments: Exhibit A – Form of Personal Guaranty

This document was drafted by Brian E. Running, City Attorney.

Exhibit A – Personal Guaranty

Guarantor: (print name) _____

Guarantor address: _____

Developer: Mad Dog Properties, LLC, 1177 Quail Court, Suite 100, Pewaukee, Wisconsin 53072.

Recitals

Developer has proposed a real estate development in the City of Waukesha, and has received the benefit of tax-incremental financing (TIF) expended by the City for environmental remediation of the site on which the development will be built. The City and Developer have agreed that the Developer will reimburse the City for the TIF expenditure, according to the terms and conditions of a "Supplemental Development Agreement" executed by the Developer and City. One of the terms of the Development Agreement is the requirement that all of the members of the Developer guaranty the payment of the Developer's monetary obligations to the City contained in the Development Agreement. This Guaranty is given by the Guarantor to satisfy that requirement, upon the following terms:

1. **Acknowledgement of Value Received.** Guarantor certifies and acknowledges that (a) he or she is a shareholder, member or partner in the Developer; (b) he or she has received value from the extension by the City of TIF financing for remediation of the Developer's site; and (c) that the received value is adequate and sufficient consideration to support this Guaranty as a contractual obligation.
2. **Guaranty of Payment.** Guarantor personally, jointly and severally with the Developer and Developer's other guarantors, guarantees payment all of the Developer's payment obligations to the City contained in the Development Agreement, specifically including, but not limited to payments-in-lieu-of-taxes; including all future advances, extensions and renewals; and including the costs of collection, reasonable attorney fees and court costs.
3. **Annual Limit of Guaranty Amount.** Guarantor shall not be liable in any single calendar year for amounts in excess of the amount of the payment in lieu of taxes calculated pursuant to section 5 of the Supplemental Development Agreement.
4. **Limit of Guaranty Duration.** This guaranty shall remain in full force and effect until the Expiration Date described in section 5.b of the Supplemental Development Agreement, unless the City terminates this Guaranty earlier by a written notice delivered to Guarantor.
5. **Waiver of Notice, Presentment and Demand.** Guarantor waives (a) notice of acceptance of this guaranty and of extensions of credit by City to the Developer, (b) presentment and demand for payment, (c) protest and notice of dishonor or default, and (d) all other notices to which Guarantor might otherwise be entitled, and (e) any demand for payment under this Guaranty.
6. **Not a Guaranty of Collection.** This is a guaranty of payment and not of collection, the Guarantor's obligation is primary. Guarantor waives any right to require that any action be brought against the Developer or any other guarantor, or to require that resort be had to any security or collateral.
7. **No Waiver of City's Rights.** No forbearance or delay on the part of City in exercising any rights shall be deemed a waiver of rights, unless the City specifically waives any such rights in writing delivered to the Guarantor.
8. **Applicable Law and Venue.** This Guaranty shall be construed and enforced according to the laws of Wisconsin, and any action to enforce it shall be filed in the Wisconsin Circuit Court for Waukesha County. Guarantor waives all objections to venue or personal jurisdiction.

Dated the _____ day of _____, 2018.

Guarantor signature

State of Wisconsin }
Waukesha County } ss.

_____ personally came before me the _____ day of _____, 2018, signed
the foregoing Guaranty in my presence, and acknowledged the same.

Notary Public, Waukesha County, Wisconsin
My commission (expires _____)(is permanent)