

Resolution

File Number: R-2013-0027

Final Action: 2/19/2013

Sponsor(s): Safety & Development Committee

Resolution approving a January 2013 Amendment to Summit Place Business Park amended and Restated Development Agreement.

WHEREAS, the Community Development Authority ("Authority") of the City of West Allis, under Resolution No. 464, dated April 13, 2004, approved a development agreement with Whitnall-Summit Company, LLC; and,

WHEREAS, the Common Council of the City of West Allis approved in October of 2004 the Development Agreement under R-2004-0308; and,

WHEREAS, Whitnall-Summit Company, LLC, the developer, converted the former Allis Chalmers building into a 650,000 sq. ft. office development with 180 indoor parking stalls, and 300 parking stalls added to the parking structure; and,

WHEREAS, the Authority, under Resolution No. 542, dated June 14, 2005, and the Common Council, under Resolution No. R-2006-0324, approved a \$2.5 million loan to Whitnall-Summit Company, LLC; and,

WHEREAS, under this amendment, the City will agree to provide a \$2-million forgivable loan to Whitnall-Summit Company, LLC or its assigns in 2013 for the construction of additional parking to meet increasing parking demands, promote additional property value growth, and assist with the attraction of future tenants; and,

WHEREAS, under this amendment, the City agrees to refinance the existing notes due and payable totaling \$4.5 million for a new term of December 1, 2012 through February 17, 2017. During the term, the note will have no principal payments and interest payments will accrue at 4.5% interest. At maturity, Whitnall Summit Company, LLC will have a balloon payment of all outstanding accrued interest and principal payments; and,

WHEREAS, under this amendment, the City will recommend and endorse a loan in the amount of \$600,000 from First Ring Industrial Redevelopment Enterprise, Inc. (FIRE) to Whitnall Summit Company, LLC, with a term of December 1, 2012 and maturity date of February 17, 2017. Interest and principal payments will accrue at 4.5% and at maturity require a balloon payment of the outstanding balance; and,

WHEREAS, the Director of the Department of Development has reviewed the terms and conditions

of the amendment and recommends approval.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis, that the January 2013 Amendment to Summit Place Business Park Amended and Restated Development Agreement is hereby approved.

BE IT FURTHER RESOLVED by the Common Council that loans paid from Whitnall Summit Company, LLC to the City of West Allis, shall be placed in a Special Project Balance Sheet Account, accessible for future City use only with a $\frac{3}{4}$ supermajority vote by the Common Council.

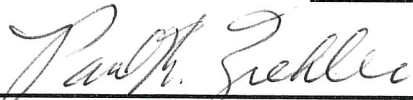
BE IT FURTHER RESOLVED, that the City Attorney be and is hereby authorized to make such substantive changes, modifications, additions and deletions to and from the various provisions of the Amendment, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

BE IT FURTHER RESOLVED, that the Department of Development, by its Director, or its designee, be and is hereby authorized and directed to execute and deliver the aforesaid Amendment on behalf of the City of West Allis.

cc: Department of Development
Chris Phinney, Grant Accounting Specialist

DEV-702 AS AMENDED-2-11-13

ADOPTED AS AMENDED 02/19/2013



Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED AS AMENDED 2/21/13



Dan Devine, Mayor

Barb Burkee

From: Kristi Johnson
Sent: Wednesday, February 13, 2013 11:17 AM
To: Barb Burkee
Subject: amendments

Recommended amendment for Summit Place Development Agreement resolution:

That loans paid from Whitnall Summit Company, LLC to the City of West Allis, shall be placed in a Special Project Balance Sheet Account, accessible for future City use only with a $\frac{3}{4}$ supermajority vote by the Common Council.

Recommended amendment for the TIF 3 Amendment resolution:

That any positive revenue from Tax Incremental District Number Three (Quad/Graphics) that will be allocated to the City of West Allis as one of the overlying taxing jurisdictions, shall be placed in a Special Project Balance Sheet Account, accessible for future City use only with a $\frac{3}{4}$ supermajority vote by the Common Council.

Kristi Johnson

Community Development Supervisor

City of West Allis

Department of Development

phone: 414-302-8463

fax: 414-302-8401

**AMENDMENT # 3 TO THE SUMMIT PLACE BUSINESS PARK AMENDED AND
RESTATED DEVELOPMENT AGREEMENT**

THIS AMENDMENT TO THE SUMMIT PLACE BUSINESS PARK AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this Amendment) is made and entered into as of the 1st day of May, 2013, by and between **WHITNALL-SUMMIT COMPANY, LLC**, a Delaware limited liability company, referred to as "Developer" in the original Resolution, hereinafter referred to as "WSC", the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, a Wisconsin Municipal Corporation ("CDA"), **WHITNALL SUMMIT DEVELOPMENT CORPORATION**, a Wisconsin corporation, referred to as "Corporation" in the original Resolution, hereinafter referred to as "WSDC", and **FIRST-RING INDUSTRIAL REDEVELOPMENT ENTERPRISE, INC.**, a Wisconsin corporation ("FIRE").

RECITALS:

WHEREAS, WSC and the CDA entered into a Development Agreement dated April 21, 2004; and

WHEREAS, WSC, WSDC, and the CDA entered into an amended development agreement dated, December 14, 2004; and

WHEREAS, WSDC, intends to construct a parking structure located at 6650 West Washington Street (Tax Key #439-0001-041); or alternate Summit Place Business Park parking locations if 6650 West Washington Street is determined not to be viable; and

WHEREAS, CDA has agreed to loan a total of Two million Dollars (\$2,000,000.00) on a deferred payment thirty (30) year loan to WSDC, (the "Loan") for use in construction of the parking structure; and

WHEREAS, the CDA agrees that the Loan shall be converted to a grant at the end of the thirty (30) year term; and

WHEREAS, WSDC, shall lease the parking structure to WSC on a triple-net Lease; and

WHEREAS, the parking structure will enable WSC to remain competitive and, thus increase the viability of the Tax Incremental Finance District to the benefit of the CDA; and

WHEREAS, FIRE desires to loan to WSDC the sum of \$600,000 to enable WSDC to make tenant improvements that will complement the parking structure; and

WHEREAS, WSC, WSDC, the CDA, and FIRE desire to set forth in writing the terms and conditions which they have agreed to.

NOW, THEREFORE, based on the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. CDA'S OBLIGATIONS. The CDA shall make a Deferred Payment loan in the amount of Two million Dollars (\$2,000,000.00) to WSDC, for use by WSDC, in construction of a parking structure as set forth above. The term shall be thirty (30) years and shall accrue interest for the term of loan at zero percent (0%) per annum. The loan shall be forgiven at the end of the thirty (30) year term. If, WSDC, sells the property to a third party prior to the end of the thirty (30) year term, WSDC, reserves the right to assign the Loan to a new owner under the same terms and conditions, provided, WSDC, receives written approval from the CDA, which the CDA shall not unreasonably withhold.

2. FIRE LOAN. FIRE shall loan the sum of Six hundred thousand Dollars (\$600,000.00) to WSDC for tenant improvements or any other operational requirements. The quarterly loan payment will be interest only at the rate of four and five-tenths percent (4.5%) and shall accrue from the loan closing date, through February 17, 2017. The principal of the loan and all unpaid accrued interest shall be due and payable on February 17, 2017.

The debt coverage ratio of WSC shall be determined each quarter. In the event the debt coverage ratio of WSC exceeds One and twenty six-hundredths (1.26), then WSDC shall make a payment to FIRE from available cash flow after payment to CDA as noted below in Section 4, of 25% for each dollar which payment shall reduce the accrued interest, if any.

In the event there is available cash flow interest payments shall be made to FIRE's accrued interest first and any remaining cash flow would be paid to the CDA's accrued interest.

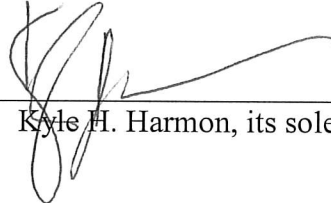
3. ASSIGNMENT AND ASSUMPTION AGREEMENT. The attached Assignment and Assumption Agreement as it relates to the existing loan of \$2,000,000 from CDA to WSDC is approved and shall be executed by the respective parties at the time this third amended development agreement, the attached Continuing Guarantee, and other loan documents.

4. EXISTING LOANS FROM CITY TO WSC AND WSDC. The CDA has previously loaned the sum of Four million five hundred thousand Dollars (\$4,500,000.00) to WSC. The quarterly loan payment will be interest only at the rate of four and five-tenths percent (4.5%) and shall accrue from December 1, 2012, through February 17, 2017 and is payable if sufficient cash flow is available as noted below. The principal of the loan and all accrued interest shall be due and payable on February 17, 2017.

The debt coverage ratio of WSC shall be determined each quarter. In the event the debt coverage ratio of WSC exceeds One and twenty six-hundredths (1.26), then WSC shall make a payment to the CDA from available cash flow of 25% for each dollar, which payment shall reduce the accrued interest, if any.

IN WITNESS WHEREOF, the parties have executed this Agreement Amendment the date first above written.

WHITNALL-SUMMIT COMPANY, LLC,
By: KHH, LLC, a Delaware limited liability
company, its Manager

By: 


Kyle H. Harmon, its sole Member

COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS

By: 


John Stibal, Executive Director

WHITNALL SUMMIT DEVELOPMENT
CORPORATION

By: 


Richard G. Carlson, President

FIRST-RING INDUSTRIAL REDEVELOPMENT
ENTERPRISE, INC.

By: 

John F. Stibal, President

Approved as to form this 14 day
of May, 2013.



City Attorney

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is made and entered into as of May 1st, 2013 between Whitnall Summit Development Corporation, a Wisconsin Corporation ("WSDC"), and Whitnall-Summit Company, LLC, a Delaware limited liability company ("WSC") and the Community Development Authority of the City of West Allis ("the CDA").

Assignment. The undersigned, WSDC, does hereby assign to the CDA, a Promissory Note entered into by and between WSC as "Borrower" for the benefit of New Markets Investment VI, LLC a Delaware limited liability company, per the Summit Place Business Park Amended and Restated Development Agreement dated December 14, 2004, in the original principal amount of Two Million Dollars (\$2,000,000.00), which was assigned to West Allis Investment Fund, LLC on the 30th day of December, 2011 and further assigned to WSDC, on the 31st day of December, 2011. By assignment of this note the CDA hereby releases WSDC of any and all liabilities on the above referenced note.

Assumption. Effective as of the date hereof, WSC assumes and agrees to pay, discharge or perform, as appropriate, WSDC's obligations under the Summit Place Business Park Amended and Restated Development Agreement dated December 14, 2004.

WHITNALL SUMMIT DEVELOPMENT
CORPORATION, a Wisconsin corporation

By: Richard G. Carlson
Richard G. Carlson, President

WHITNALL-SUMMIT COMPANY, LLC,
a Delaware limited liability company.

By: KHH, LLC

By: Kyle H. Harmon
Kyle H. Harmon, its sole member

Approved as to form this 14 day
of May, 2013.
Scott Stibel
City Attorney

COMMUNITY DEVELOPMENT
AUTHORITY OF THE CITY OF WEST
ALLIS

By: John F. Stibal
John F. Stibal, Executive Director

PARTIAL CANCELLATION OF DEBT

This Partial Cancellation of Debt is entered into as of May 1st, 2013 by and between Whitnall-Summit Company, LLC, a Delaware limited liability company, hereinafter referred to as "WSC", and the Community Development Authority of the City of West Allis, a Wisconsin Municipal Corporation, hereinafter referred to as the "CDA".

WHEREAS, pursuant to the Summit Place Business Park Amended and Restated Development Agreement made and entered into as of the 14th day of December 2004, the CDA provided to Whitnall-Summit Development Corporation, hereinafter referred to as "Corporation", Tax Incremental District Funds in the amount of Two Million Dollars (\$2,000,000.00); and

WHEREAS, effective January 1, 2013, the Corporation's obligations under the remaining Two Million Dollar (\$2,000,000.00) Promissory Note were assigned to WSC, and WSC assumed and agreed to pay, discharge, or perform, as appropriate, Whitnall-Summit Development Corporation's obligations under the Summit Place Business Park Amended and Restated Development Agreement dated December 14, 2004; and

WHEREAS, pursuant to the October 2005 Amendment to Summit Place Business Park Amended and Restated Development Agreement made and entered into as of the 11th day of October, 2005, the CDA provided to Whitnall-Summit Development Corporation, hereinafter referred to as "Corporation", Tax Incremental District Funds in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00); and

WHEREAS, The CDA agrees to forgive the sum of One Million Four Hundred Ninety Thousand Two Hundred Twenty Dollars (\$1,490,220.00) of such debt.

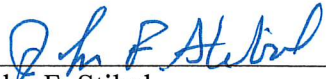
NOW, THEREFORE, acknowledging the receipt of sufficient consideration:

1. The CDA does hereby forgives the sum of One Million Four Hundred Ninety Thousand Two Hundred Twenty Dollars (\$1,490,220.00) of the above referenced December 14, 2004 Two Million Dollar (\$2,000,000.00) debt from WSC to the CDA leaving an unpaid balance of Five Hundred Nine Thousand Seven Hundred Eighty Dollars (\$509,780.00).
2. This reaffirms that WSC still owes the sum of Five Hundred Nine Thousand Seven Hundred Eighty Dollars (\$509,780.00) plus the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for a total amount of Three Million Nine Thousand Seven Hundred Eighty Dollars (\$3,009,780.00).
3. In all other respects, except as specifically modified hereby, the Promissory Notes shall remain in full force and effect

4. All money still owed goes under new note attached hereto.

Dated: 5-16-13

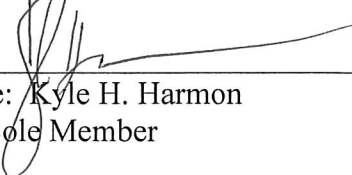
Community Development Authority
of the City of West Allis

By: 
Name: John F. Stibal
Its: Executive Director

Dated: May 1, 2013

Whitnall-Summit Company, LLC,
a Delaware limited liability company

By: KHH, LLC

By: 
Name: Kyle H. Harmon
Its: Sole Member

Approved as to form this 14 day
of May, 2013.


City Attorney

CONTINUING GUARANTY (LIMITED)

Dated May 1, 2013

GUARANTY. For value received, and to induce the First-Ring Industrial Redevelopment Enterprise, Inc. a Wisconsin Nonstock Corporation, hereinafter referred to as, ("FIRE") to grant credit to WHITNALL SUMMIT DEVELOPMENT CORPORATION ("WSDC"), subject to the limitations set forth below, the undersigned, Richard G. Carlson ("Guarantor") guarantees payment of the Obligations defined below when due or, to the extent not prohibited by law, at the time WSDC becomes the subject of bankruptcy or other insolvency proceedings.

"Obligations" means the Amendment #3 Summit Place Business Park Amended and Restated Development Agreement dated as of the 1st day of May, 2013, by and between FIRE and the WSDC (the "Development Agreement") and all other debts, obligations, and liabilities of every kind and description, whether of the same or a different nature, arising out of the credit contemporaneously granted or credit granted in the future by FIRE to WSDC in accordance with the terms and conditions of the Development Agreement as contained therein.

Obligations include interest and charges and the amount of any payments made to FIRE or another by or on behalf of WSDC which are recovered from FIRE by a trustee, receiver, creditor or other party pursuant to applicable federal or state law, and to the extent not prohibited by law, all costs, expenses and attorneys' fees at any time paid or incurred before and after judgment in endeavoring to collect all or part of any of the above, or to realize upon this Guaranty, or any collateral securing any of the above ("costs of collection"). No claim, including a claim for contribution or subrogation, which the undersigned may have against another guarantor of any of the Obligations or against WSDC shall be enforced nor any payment accepted until the Obligations are paid in full and no payments to or collections by FIRE are subject to any right of recovery excepting therefrom any amounts in excess of FIRE's full compensatory damages. To the extent not prohibited by law, this Guaranty is valid and enforceable against the undersigned even though any Obligation is invalid or unenforceable against WSDC.

NOTICE. FIRE shall give notice of any default under the Obligations, proceedings to collect from WSDC, another guarantor, or anyone else, and all diligence of collection and presentment, demand, notice and protest.

REPRESENTATIONS. The undersigned acknowledges and agrees that FIRE (a) has not made any representations or warranties with respect to (b) does not assume any responsibility to the undersigned for, and (c) has no duty to provide information to the undersigned regarding, the enforceability of any of the Obligations or the financial condition of any WSC or guarantor. **The undersigned has independently determined the credit worthiness of WSDC and the enforceability of the Obligations and until the Obligations are paid in full will independently and without reliance on FIRE continue to make such determinations.**

ENTIRE AGREEMENT. This Guaranty is intended by the undersigned and FIRE as a final expression of this Guaranty and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Guaranty. This Guaranty may not be supplemented or amended except in writing.

PERSONS BOUND. This Guaranty benefits FIRE, its successors and assigns, and binds the undersigned, their respective heirs, personal representatives, successors and assigns. Guarantors understand that the loan to WSDC would not occur without their guaranty.


LIMITATIONS. The amount of liability under this Guaranty is limited to Six Hundred Thousand and no/100 Dollars (\$600,000.00), plus costs of collection.

TERMINATIONS. This Guaranty shall terminate upon the payment in full of the Obligations set forth in the Development Agreement and the satisfaction of the other terms of the Development Agreement.

NOTICE TO GUARANTOR

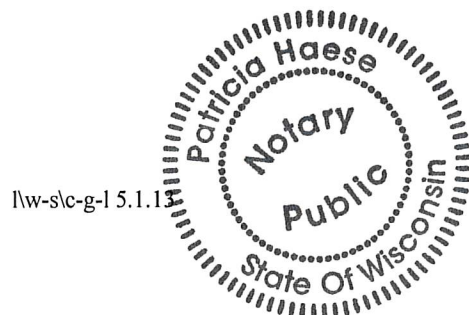
You are being asked to guarantee a limited amount of the present and future Obligations of the WSDC. If the WSDC does not pay, you will have to. You may also have to pay collection costs. The FIRE can collect the Obligations from you without first trying to collect from the WSDC or another guarantor.

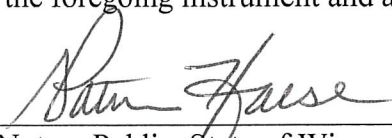
For Wisconsin Married Residents Only: Each guarantor who signs above represents that this obligation is incurred in the interest of his or her marriage or family.


Richard G. Carlson

STATE OF WISCONSIN)
)
MILWAUKEE COUNTY)

Personally came before me, the above-named Richard G. Carlson, this 7th day of May, 2013, to me known to be the persons who executed the foregoing instrument and acknowledged the same.




Notary Public, State of Wisconsin
My Commission Expires May 11, 2014

"Exhibit A to Loan Agreement"

\$600,000.00

West Allis, Wisconsin
May 1, 2013

NOTE

FOR VALUE RECEIVED, The undersigned, Whitnall Summit Development Corporation, a Wisconsin corporation, hereinafter referred to as "WSDC", promises to pay to the order of the First-Ring Industrial Redevelopment Enterprise, Inc. a Wisconsin Nonstock Corporation, hereinafter referred to as "FIRE", the sum of Six Hundred Thousand and no/100 Dollars (\$600,000.00), together with interest at the rate of four and one half percent (4.50%) per annum. The quarterly loan payment will be interest only at the rate of four and five-tenths percent (4.5%) and shall accrue from the loan closing date, through February 17, 2017 and is payable if sufficient cash flow is available. Available cash flow is determined by the debt coverage ratio of WSC each quarter. In the event the debt coverage ratio of WSC exceeds One and twenty six-hundredths (1.26), then WSC shall make a payment to the CDA from available cash flow of 25% for each dollar, which payment shall reduce the accrued interest, if any. The principal of the loan and all unpaid accrued interest shall be due and payable on February 17, 2017.

The WSDC agrees to pay all costs of collection, including reasonable attorneys fees and all fees and expenses incurred in endeavoring to protect, enforce and realize upon any collateral security for the payment of the Note. WSDC, for itself, its successors and assigns, hereby expressly waives presentment for payment, notice of dishonor, presentment, notice of protest, protest and all diligence of collection.

All payments shall be made in lawful currency of the United States of America, to the City Clerk/Treasurer of the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214, or such other place of payment as the holder of this Note may designate in writing.

As liquidated damages for the additional expenses incurred by the holder of this Note, because of the failure of the WSDC to make prompt payment, the holder may collect a late charge not to exceed one percent (1%) per month on each dollar of each payment on this Note which is more than ten (10) days in arrears; provided, that no such charge shall exceed the maximum amount which may be charged according to law.

If any installment of principal or interest is not paid when it becomes due, or if default occurs in the performance or compliance with the covenants and conditions of any instrument securing the indebtedness evidenced by this Note, or in the Loan Agreement pursuant to which

this Note is given, the holder may, at its option, to be exercised at any time thereafter, declare the entire unpaid balance of principal and accrued interest immediately due and payable, without notice or demand, both notice and demand being hereby expressly waived. The holder's failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Thereafter in lieu of late charges and any other interest provided for in this Note, all unpaid principal and interest shall bear interest at the rate of eighteen percent (18.0%) per annum until paid.

This Note is secured on behalf of the WSDC by a Personal Guaranty from Richard G. Carlson.

This Note may be prepaid, in full or in part, without penalty.

This Note is executed in and is governed by the laws of the State of Wisconsin. Any legal action commenced by either party regarding the terms of this Note shall be brought and maintained in the Circuit Court for Milwaukee County, State of Wisconsin. Invalidity of any provision shall not affect the validity of any other provision. Without affecting the liability of the WSDC or any guarantor or enforcer, the holder may, without notice, renew or extend the time for payment, accept partial payments, release or impair any collateral security for the payment of this Note or agree to sue any party liable on it. Waiver of any default shall not constitute a waiver of any other or subsequent default.

WHITNALL SUMMIT DEVELOPMENT
CORPORATION,

By: Richard G. Carlson
Richard G. Carlson, President

Approved as to form this 14 day
of May, 2013.

Scott Post
Scott Post, City Attorney

"Exhibit A to Loan Agreement"

\$3,009,780.00

West Allis, Wisconsin
May 1, 2013

NOTE

FOR VALUE RECEIVED, The undersigned, Whitnall-Summit Company, LLC, a Delaware limited liability company, hereinafter referred to as "WSC", promises to pay to the order of the Community Development Authority of the City of West Allis, a Wisconsin Municipal Corporation, hereinafter referred to as the "CDA" the sum of Three Million Nine Thousand Seven Hundred Eighty Dollars (\$3,009,780.00), together with interest at the rate of four and one half percent (4.50%) per annum. The quarterly loan payment will be interest only at the rate of four and five-tenths percent (4.5%) and shall accrue from the loan closing date, through February 17, 2017 and is payable if sufficient cash flow is available. Available cash flow is determined by the debt coverage ratio of WSC each quarter. In the event the debt coverage ratio of WSC exceeds One and twenty six-hundredths (1.26), then WSC shall make a payment to the CDA from available cash flow of 25% for each dollar, which payment shall reduce the accrued interest, if any. The principal of the loan and all unpaid accrued interest shall be due and payable on February 17, 2017.

The WSC agrees to pay all costs of collection, including reasonable attorneys fees and all fees and expenses incurred in endeavoring to protect, enforce and realize upon any collateral security for the payment of the Note. WSC, for itself, its successors and assigns, hereby expressly waives presentment for payment, notice of dishonor, presentment, notice of protest, protest and all diligence of collection.

All payments shall be made in lawful currency of the United States of America, to the City Clerk/Treasurer of the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214, or such other place of payment as the holder of this Note may designate in writing.

As liquidated damages for the additional expenses incurred by the holder of this Note, because of the failure of the WSC to make prompt payment, the holder may collect a late charge not to exceed one percent (1%) per month on each dollar of each payment on this Note which is more than ten (10) days in arrears; provided, that no such charge shall exceed the maximum amount which may be charged according to law.

If any installment of principal or interest is not paid when it becomes due, or if default occurs in the performance or compliance with the covenants and conditions of any instrument securing the indebtedness evidenced by this Note, or in the Loan Agreement pursuant to which

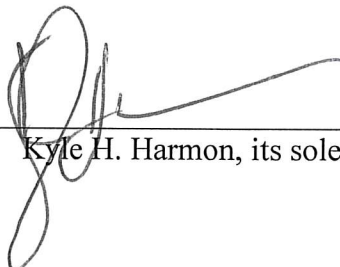
this Note is given, the holder may, at its option, to be exercised at any time thereafter, declare the entire unpaid balance of principal and accrued interest immediately due and payable, without notice or demand, both notice and demand being hereby expressly waived. The holder's failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Thereafter in lieu of late charges and any other interest provided for in this Note, all unpaid principal and interest shall bear interest at the rate of eighteen percent (18.0%) per annum until paid.

This Note is secured on behalf of the WSC by a Personal Guaranty from Richard G. Carlson.

This Note may be prepaid, in full or in part, without penalty.

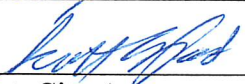
This Note is executed in and is governed by the laws of the State of Wisconsin. Any legal action commenced by either party regarding the terms of this Note shall be brought and maintained in the Circuit Court for Milwaukee County, State of Wisconsin. Invalidity of any provision shall not affect the validity of any other provision. Without affecting the liability of the WSC or any guarantor or enforcer, the holder may, without notice, renew or extend the time for payment, accept partial payments, release or impair any collateral security for the payment of this Note or agree to sue any party liable on it. Waiver of any default shall not constitute a waiver of any other or subsequent default.

WHITNALL-SUMMIT COMPANY, LLC,
By: KHH, LLC, a Delaware limited liability
company, its Manager

By: 

Kyle H. Harmon, its sole Member

Approved as to form this 14 day
of May, 2013.



Scott Post, City Attorney

CONTINUING GUARANTY (LIMITED)

Dated May 1st, 2013

GUARANTY. For value received, and to induce the Community Development Authority of the City of West Allis, a Wisconsin Municipal Corporation, hereinafter referred to as the "CDA" to grant credit to WHITNALL-SUMMIT COMPANY, LLC ("WSC"), subject to the limitations set forth below, the undersigned, Richard G. Carlson ("Guarantor") guarantees payment of the Obligations defined below when due or, to the extent not prohibited by law, at the time WSC becomes the subject of bankruptcy or other insolvency proceedings. "Obligations" means the Amendment #3 Summit Place Business Park Amended and Restated Development Agreement dated as of the 1st day of May, 2013, by and between the CDA, FIRE and the WSC (the "Development Agreement") and all other debts, obligations, and liabilities of every kind and description, whether of the same or a different nature, arising out of the credit contemporaneously granted or credit granted in the future by CDA to WSC in accordance with the terms and conditions of the Development Agreement as contained therein.

Obligations include interest and charges and the amount of any payments made to CDA or another by or on behalf of WSC which are recovered from CDA by a trustee, receiver, creditor or other party pursuant to applicable federal or state law, and to the extent not prohibited by law, all costs, expenses and attorneys' fees at any time paid or incurred before and after judgment in endeavoring to collect all or part of any of the above, or to realize upon this Guaranty, or any collateral securing any of the above ("costs of collection"). No claim, including a claim for contribution or subrogation, which the undersigned may have against another guarantor of any of the Obligations or against WSC shall be enforced nor any payment accepted until the Obligations are paid in full and no payments to or collections by CDA are subject to any right of recovery excepting therefrom any amounts in excess of CDA's full compensatory damages. To the extent not prohibited by law, this Guaranty is valid and enforceable against the undersigned even though any Obligation is invalid or unenforceable against WSC.

NOTICE. CDA shall give notice of any default under the Obligations, proceedings to collect from WSC, another guarantor, or anyone else, and all diligence of collection and presentment, demand, notice and protest.

REPRESENTATIONS. The undersigned acknowledges and agrees that CDA (a) has not made any representations or warranties with respect to (b) does not assume any responsibility to the undersigned for, and (c) has no duty to provide information to the undersigned regarding, the enforceability of any of the Obligations or the financial condition of any WSC or guarantor. **The undersigned has independently determined the credit worthiness of WSC and the enforceability of the Obligations and until the Obligations are paid in full will independently and without reliance on CDA continue to make such determinations.**

ENTIRE AGREEMENT. This Guaranty is intended by the undersigned and CDA as a final expression of this Guaranty and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Guaranty. This Guaranty may not be supplemented or amended except in writing.

PERSONS BOUND. This Guaranty benefits CDA, its successors and assigns, and binds the undersigned, their respective heirs, personal representatives, successors and assigns. Guarantors understand that the loan to WSC would not occur without their guaranty.


LIMITATIONS. The amount of liability under this Guaranty is limited to a total amount of Three Million Nine Thousand Seven Hundred Eighty Dollars (\$3,009,780.00), plus costs of collection.

TERMINATIONS. This Guaranty shall terminate upon the payment in full of the Obligations set forth in the Development Agreement and the satisfaction of the other terms of the Development Agreement.

NOTICE TO GUARANTOR

You are being asked to guarantee a limited amount of the present and future Obligations of the WSC. If the WSC does not pay, you will have to. You may also have to pay collection costs. The CDA can collect the Obligations from you without first trying to collect from the WSC or another guarantor.

For Wisconsin Married Residents Only: Each guarantor who signs above represents that this obligation is incurred in the interest of his or her marriage or family.



Richard G. Carlson

STATE OF WISCONSIN)
)
MILWAUKEE COUNTY)

Personally came before me, the above-named Richard G. Carlson, this 7th day of May, 2013, to me known to be the ~~person~~ who executed the foregoing instrument and acknowledged the same.



Notary Public, State of Wisconsin

My Commission Expires May 11, 2014

