

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of March 4, 2020 by and between BAD CHARLIE LLC, a Wisconsin limited liability company ("Developer"), and the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, a Wisconsin body politic ("CDA").

RECITALS

CDA and Developer acknowledge the following:

A. Developer intends to acquire approximately 0.701 acres of real property in the City of West Allis, Wisconsin ("City"), as depicted and described on Exhibit A attached hereto (the "Property").

B. Subject to obtaining the benefits set forth herein, Developer plans on developing the Property into a restaurant and entertainment venue. A preliminary site plan showing projected future development of the Property is attached hereto as Exhibit B.

C. The CDA desires to encourage economic development, eliminate blight, expand the City's tax base and create new jobs within the City. The CDA finds that the development of the Property and the fulfillment of the terms and conditions of this Agreement will further such goals, are in the vital and best interests of the City and its residents, and will serve a public purpose in accordance with state and local law.

D. The development of the Property would not occur without the benefits to be provided to Developer as set forth in this Agreement.

E. The CDA, pursuant to action dated January 14, 2020, has approved this Agreement and authorized its execution by the proper CDA officials on the CDA's behalf.

F. The Developer has approved this Agreement and authorized its execution by the appropriate representatives on its behalf.

AGREEMENTS

In consideration of the RECITALS and the terms and conditions set forth herein, the parties agree and covenant as follows:

ARTICLE I DEVELOPER OBLIGATIONS

A. The Developer shall acquire the Property from the CDA on a date mutually agreeable to the parties ("Closing"); and

B. At Closing, Developer shall:

1. Remit Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) to the CDA subject to the following prorations, based upon date of closing values: real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners' association assessments, and fuel. Real estate taxes shall be prorated at closing based on the net general real estate taxes for the preceding year, or the current year if available (Net general real estate taxes are defined as general property taxes after state tax credits and lottery credits are deducted); and

2. Accept delivery of a warranty deed to convey the Property to the Developer; and

3. Execute a forgivable loan in an amount equal to \$50,000 for acquisition and development costs related to Developer's purchase of the Property ("Project Loan"); and

4. Execute a façade grant in an amount equal to \$55,000 for costs related to Developer's improvement of the Property's curb appeal ("Façade Grant"); and

5. Execute a code compliance forgivable loan in an amount equal to \$78,000 for costs related to Developer's correction of code violations at the Property ("Code Compliance Loan").

C. On or before December 1, 2020, the Developer shall obtain from the City of West Allis an occupancy permit to operate a restaurant at the Property; and

ARTICLE II CDA OBLIGATIONS

A. The CDA shall convey the Property to the Developer on a date mutually agreeable to the parties ("Closing"); and

B. At Closing, the CDA shall:

1. Convey the Property to Developer via warranty deed; and

2. Provide funding for the Project in the form of a forgivable loan in an amount equal to \$50,000 for acquisition and development costs related to Developer's purchase of the Property ("Project Loan"). The Project Loan shall be structured and documented in a manner mutually agreed upon by CDA and Developer; and

3. Provide funding for the Project in the form of a façade grant in an amount equal to \$55,000 for costs related to Developer's improvement of the Property's curb appeal ("Façade Grant"). The Façade Grant shall be structured and documented in a manner mutually agreed upon by CDA and Developer; and

4. Provide funding for the Project in the form of a code compliance forgivable loan in an amount equal to \$78,000 for costs related to Developer's correction of code violations at the Property ("Code Compliance Loan"). The Code Compliance Loan shall be structured and documented in a manner mutually agreed upon by CDA and Developer.

**ARTICLE III
TRANSFER AND USE RESTRICTION; RIGHT OF FIRST REFUSAL**

A. Developer may not convey any legal or equitable title of the Property to any entity or lease the Property to any entity without the CDA's consent, unless the grantee or lessee is wholly owned by all the same individuals as Developer.

B. Developer shall cause the Property to be primarily used as a restaurant. Developer may not allow the Property to be used for any automotive services. Any other use of the Property must be incidental and subordinate to the primary business of a restaurant.

C. Developer hereby grants to CDA an option to purchase the Property at a price of \$625,000, as may be increased or decreased by normal closing adjustments, plus the amount necessary to satisfy any Small Business Administration debt. This provision is exercisable at the CDA's sole discretion if Developer fails to comply with this Article. At closing, any amount paid under this provision shall first pay any secured creditors before payment to the Developer. The CDA's exercise of the rights under this provision shall not impair the rights of any existing lienholders. This right of first refusal shall be effective from the date of this agreement for a period of 10 years. The closing of the purchase and payment of purchase price shall be completed within 60 days from the receipt by Developer of CDA's notice of its intent to exercise the option. If no such notice of the exercise of the option is received by Developer for a period of 10 years after the date of this Agreement, the option shall be null and void and of no further effect.

**ARTICLE IV
PAYMENT IN LIEU OF TAXES**

In the event that any portion of the Property becomes exempt from ad valorem taxes for a period of twenty (20) years after the date of Closing (the "PILOT Term"), then the Developer or any successor owner of such exempt portion of the Property shall make (or cause to be made) during the PILOT Term annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes (based on the full tax rate) would have been for such portion of the Property (as determined by the City assessor) had it not been exempt. Such payment in lieu of taxes shall be due and payable at the same time and in the same manner as the ad valorem taxes would have been due and payable for such year. If the Developer or any successor owner fails to make a payment in lieu of taxes when due, the CDA may, in addition to all other remedies available to it, levy a special tax against the exempt portion of the Property in the amount of the unpaid payments. Any and all notice and hearing requirements which may be required under the law for such special tax are hereby waived by Developer. Notwithstanding the levying of such special tax, the payment obligation under this Article shall also be the personal obligation of the person or entity that is the owner of the Property at the time that any portion of the Property becomes exempt from ad valorem taxes. The covenant contained in this Article shall be deemed to be a covenant running with the land and shall be binding upon all owners of any portion of the Property for the duration of the PILOT Term. The CDA is hereby expressly declared to be a beneficiary of such covenant and entitled to enforce same against all successor owners of the Property.

**ARTICLE V
NO PARTNERSHIP OR VENTURE**

Developer and its tenants, contractors, or subcontractors shall be solely responsible for the completion of all of Developer's obligations set forth in this Agreement. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the (i) CDA and (ii) Developer, or any contractor or subcontractor employed by Developer.

**ARTICLE VI
CONFLICT OF INTEREST**

No member, officer, or employee of the CDA, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

**ARTICLE VII
WRITTEN NOTICES**

All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to an officer of the CDA (as to the CDA) or to an officer of Developer (as to Developer), if hand delivered; (ii) two business days following deposit in the United States mail, postage prepaid, or (iii) upon delivery if delivered by a nationally recognized overnight commercial carrier that will certify as to the date and time of such delivery; and each such communication or notice shall be addressed as follows, unless and until any of such parties notifies the other in accordance with this Article of a change of address:

If to the CDA: Community Development Authority of the City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: Executive Director

If to the Developer: Bad Charlie LLC
c/o Capri Restaurant Group
8340 W. Beloit Rd.
Attn: Christopher or Abby Paul

**ARTICLE VIII
DEFAULT**

A. The occurrence of any one or more of the following events shall constitute a default ("Default") hereunder:

1. Developer shall fail to pay any amounts when due under this Agreement or any guaranty by Developer and further fails to pay such amounts on or before five days following written notice of such failure; or

2. Any material representation or warranty made by Developer pursuant to this Agreement shall prove to have been false in any material respect as of the time when made or given; or

3. Developer shall materially breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement (other than relating to the payment of money), and such failure shall continue for thirty (30) days following notice thereof from the CDA (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as Developer has commenced the cure of the default within the thirty-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred eighty days following the notice thereof from the CDA or such longer period of time as is reasonably agreed to by the CDA); or

5. CDA shall materially breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement (other than relating to the payment of money, which shall be cured by the CDA on or before five days following written notice of such failure), and such failure shall continue for thirty days following notice thereof from Developer (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as the CDA has commenced the cure of the default within the thirty-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred eighty days following the notice thereof from Developer); or

6. Developer:

(a) becomes insolvent or generally does not pay, or is unable to pay, or admit in writing its inability to pay, its debts as they mature; or

(b) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or

(c) becomes the subject of an "order for relief" within the meaning of the United States Bankruptcy Code, or files a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or

(d) has a petition or application filed against it in bankruptcy or any similar proceeding, or has such a proceeding commenced against it and such petition, application or proceeding shall remain undismissed for a period of ninety days or Developer shall file an answer to such a petition or application, admitting the material allegations thereof; or

(e) applies to a court for the appointment of a receiver or custodian for any of its assets or properties, with or without consent, and such receiver shall not be discharged within ninety days after his appointment; or

(f) adopts a plan of complete liquidation of its/his assets; or

(g) shall cease to exist.

B. Upon the occurrence of any Default, without further notice, demand or action of any kind by the nondefaulting party, the nondefaulting party may, at its option, pursue any or all

rights and remedies available at law and/or in equity. The CDA's rights shall include, but not be limited to, specific performance, the termination of this Agreement, and/or the calling of any or all principal, interest, and penalties due on the Project Loan or Code Compliance Loan.

C. No remedy shall be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, and/or now or hereafter existing at law or in equity. No failure or delay on the part of any party in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

D. In the event of a default by either party, all reasonable fees, costs and expenses incurred by the nondefaulting party, including reasonable attorneys' fees, in connection with the enforcement of this Agreement shall be paid by the defaulting party, including without limitation the enforcement of the nondefaulting party's rights in any bankruptcy, reorganization or insolvency proceeding.

ARTICLE IX MISCELLANEOUS

A. Developer shall have in effect at all times all permits, approvals and licenses as may be required by any governmental authority or non-governmental entity in connection with Developer's development, construction, management and operation of the Project.

B. Developer hereby indemnifies, defends, covenants not to sue and holds the CDA harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the CDA by reason of the following: (i) the failure of Developer or its contractors, subcontractors, agents, employees, or invitees to comply with any environmental law, rule, regulation or ordinance, or any order of any regulatory or administrative authority with respect thereto; (ii) any release by Developer or its contractors, subcontractors, agents, employees, or invitees of petroleum products or hazardous materials or hazardous substances on, upon or into the Property; (iii) any and all damage to natural resources or real property or harm or injury to persons resulting or alleged to have resulted from any failure by the Developer and/or its contractors, subcontractors and/or agents to comply with any law, rule, regulation or ordinance or any release of petroleum products or hazardous materials or hazardous substances as described in clauses (i) and (ii) above; (iv) any violation by Developer or at the Project of any environmental law, rule, regulation or ordinance; (v) claims arising in connection with the Project under the Americans With Disabilities Act, and any other laws, rules, regulations or ordinances; (vi) the failure by Developer to comply with any term or condition of this Agreement; (vii) injury to or death of any person at the Project or injury to any property caused by or at the Project; and (viii) the failure of Developer to maintain, repair or replace, as needed, any portion of the Project. The foregoing indemnity shall not apply to any claims or damages arising under clauses (i) through (viii) of the previous sentence to the extent such claims or damages are attributable to the negligence or willful misconduct of the CDA.

The terms "hazardous substances" means any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous

wastes," "hazardous materials," "toxic substances" under any applicable federal or state or local laws or regulations.

C. Time is of the essence of each and every obligation or agreement contained in this Agreement.

D. If Developer is delayed or prevented from timely commencing or completing construction of the Project, by reason of fire, earthquake, war, flood, material shortages, riot, strikes, labor disputes, governmental restrictions, judicial order, public emergency, or other causes beyond the reasonable control of the party obligated to perform ("Force Majeure Event"), performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

E. A memorandum of this Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin, prior to the recording of any mortgages on the Property, it being understood by the parties that this Agreement will run with the land and will be binding upon the Property and any owner and/or lessee and/or mortgagee of all or any portions of the Property and their successors and assigns.

F. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

G. This Agreement may not be assigned by the Developer without the CDA's prior written consent, which may be granted or withheld in the CDA's reasonable discretion.

H. Developer shall not be released from any of its obligations hereunder by any sale, foreclosure or other conveyance of all or any portion of the Property, either before or after completion of the Project, without the written consent of the CDA.

I. This Agreement contains the entire agreement between the CDA and Developer with respect to the subject matter of this Agreement and may be amended or modified only by subsequent written agreement duly signed by both parties hereto.

[Signatures continue on following page]

EXHIBIT A

Legal Description of Property

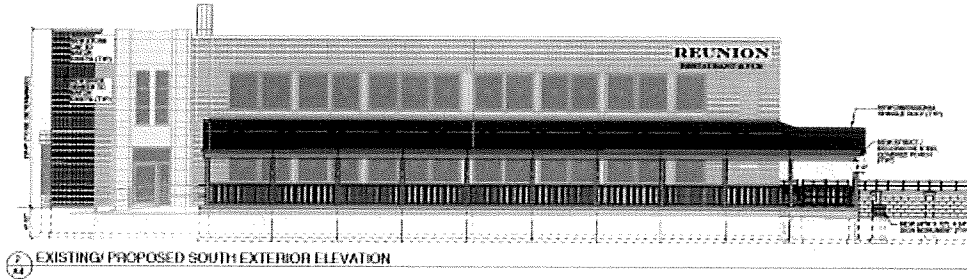
Parcel 1: Parcel 2 of Certified Survey Map No. 7256, recorded on July 1, 2003, in Reel 5615, Images 1303 to 1308, as Document No. 8568339, as corrected by affidavit of correction recorded February 12, 2004, in Reel 5772, Image 1417, as Document No. 8730478, further corrected by affidavit of correction recorded January 26, 2007, as Document No. 9376341; Being a division of a part of Parcel 2 of Certified Survey Map No. 6388, Being a part of the Northeast 1/4 and the Southeast 1/4 of the Southwest 1/4 and that part of the Northwest 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 34, Township 7 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin.

Parcel 2: Non-exclusive easement for the purposes of temporary vehicular parking and for ingress and egress for pedestrian and vehicular traffic as set forth in Easement Agreement recorded march 31, 2004, in Reel 5806, Image 223, as Document No. 8754345.

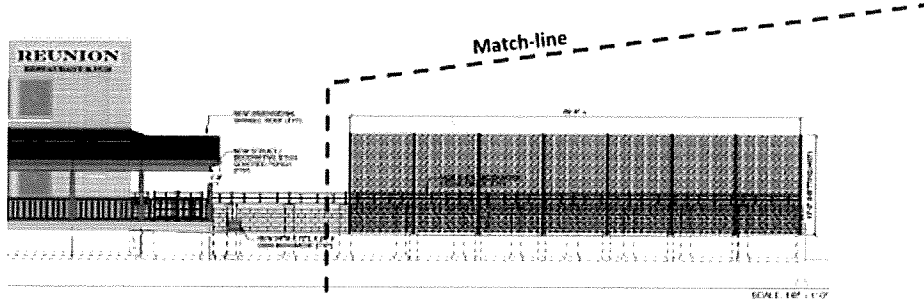
Address: 6610 West Greenfield Avenue, West Allis, WI 53214
Tax Key: 439-0001-032

EXHIBIT B

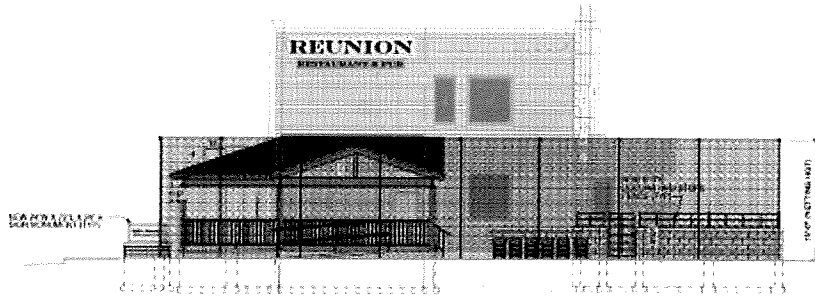
Preliminary Development Plans



7
A1 EXISTING/ PROPOSED SOUTH EXTERIOR ELEVATION

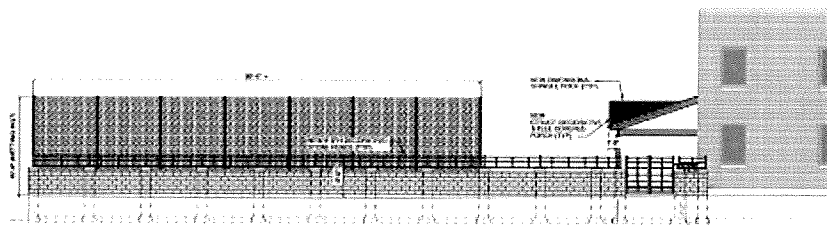


SCALE: 1/8" = 1'-0"



9
A1 EXISTING/ PROPOSED EAST EXTERIOR ELEVATION

SCALE: 1/8" = 1'-0"



1
A1 EXISTING/ PROPOSED NORTH EXTERIOR ELEVATION

