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PROPERTY TAX EQUIVALENT AGREEMENT BETWEEN
THE CITY OF MANITOWOC, WISCONSIN AND CUSTER
VILLAGE, LLC

Document Number

Document Title



VOL 2022 PG 536

STATE OF WI - MTWC CO
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Recording Area

Name and Return Address

MANITOWOC CITY PLAN COMMISSION
900 QUAY STREET
MANITOWOC, WI 54220

37 chg.

827-404-816 827-404-829

Parcel Identification Number (PIN)

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clauses, legal description, etc. may be placed on this first page of the document or may be placed on additional pages of the document.
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PROPERTY TAX EQUIVALENT AGREEMENT

BETWEEN

THE CITY OF MANITOWOC, WISCONSIN

AND

**CUSTER VILLAGE, LLC,
a Wisconsin Limited Liability Company**



VOL 2022 PG 537



TAX AGREEMENT

This Agreement (hereinafter referred to as the "AGREEMENT") by and between the City of Manitowoc, Wisconsin, a municipal corporation (hereinafter referred to as the "CITY"), 900 Quay Street, Manitowoc, WI 54220-4543, and Custer Village, LLC, a Wisconsin Limited Liability Company (hereinafter referred to as "CUSTER"), 115 E. Waldo Boulevard - Suite 300, Manitowoc, WI 54220.

WITNESSETH:

WHEREAS, the Common Council of the CITY approved a conditional use permit (Document No. 79-2004 / PC7-2004) under Section 15.23(3)3. of the CITY municipal code on February 16, 2004 for the siting of a group day care center with a maximum capacity of 50 children; and

WHEREAS, pursuant to the conditional use permit, the group day care center shall be located at 5151 Expo Drive in the City of Manitowoc, upon property that is further described as:

Tract 1.2 and Tract 2.2 of a Certified Survey Map recorded on September 23, 2003 in the Manitowoc County Register of Deeds at Volume 23, Page 207 of CSM as Document No. 951711.

Tax Identification No. 827-404-816 and 827-404-829

(hereinafter referred to as the "PROPERTY"); said Certified Survey Map is attached as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the approved conditional use permit includes various operating conditions and standards required to maintain compliance with the terms and conditions of the conditional



use permit including the execution of a "Property Tax Equivalent Agreement" which shall cover the PROPERTY and all improvements thereon in the event the PROPERTY would be utilized for a tax exempt land use or transferred to a tax exempt entity; said agreement shall be recorded against the PROPERTY at the expense of the owner of the PROPERTY; and

WHEREAS, the PROPERTY shall be developed in strict compliance with a site plan approved by the CITY on July 8, 2004 as SP19-04 and all associated compliance conditions identified on the site plan, and pursuant to a "Site Plan Developer Performance Agreement" between the CITY and CUSTER as referenced in a "Memorandum of Agreement" recorded in the Manitowoc County Register of Deeds at Volume 2001, Page 521, as Document No. 971024; and

WHEREAS, an entity identified as "Custer Village Day Care Center, L.L.C." as lessor, has executed a "Commercial Lease" (hereinafter referred to as "LEASE") with Shelley A. Snider and J. Steve Snider d/b/a an entity identified as "AB-Z Child Learning Center, L.L.C." as lessee, dated June 2, 2004 for the operation of the aforementioned group day care center at the PROPERTY; and

WHEREAS, this AGREEMENT is being entered into to memorialize the CITY and CUSTER's understanding regarding the tax commitment; and

WHEREAS, it is understood that CUSTER and any transferees, successors or assignees in interest shall be subject to and shall comply with the terms of this AGREEMENT.

NOW, THEREFORE, the parties agree as follows:



ARTICLE I
PAYMENT IN LIEU OF TAXES

Section 1. Transfer of PROPERTY Interest. CUSTER hereby covenants and agrees that excepting the LEASE, and as a condition of CUSTER entering into any agreement to sell, lease, sub-lease or in any manner transfer all or any portion of the PROPERTY to a third party entity that would result in all or any portion of the land use or underlying PROPERTY becoming tax exempt or exempt from local taxation (hereinafter referred to as "TAX EXEMPT ENTITY") under Wis. Stats. §70.112, CUSTER shall prior to, and as a contingency of the sale, lease, sublease or transfer, provide notice to the CITY as detailed in ARTICLE I, Section 2., and shall require such TAX EXEMPT ENTITY to enter into a payment in lieu of taxes agreement with the CITY, whereby such TAX EXEMPT ENTITY shall contractually agree with the CITY to make an annual payment in lieu of property taxes to the CITY equivalent to the gross tax rate that would be imposed by the CITY if the use of the PROPERTY was not tax exempt. In connection therewith, the CITY covenants and agrees to enter into the payment in lieu of taxes agreement with a TAX EXEMPT ENTITY, and to fairly and accurately assess the value of the TAX EXEMPT ENTITY's interest in the PROPERTY.

Upon the sale, lease, sub-lease or transfer of any portion of the PROPERTY to a TAX EXEMPT ENTITY, and upon the execution of the payment in lieu of taxes agreement, the CITY shall prepare and submit to the TAX EXEMPT ENTITY an invoice indicating the amount due, pursuant to the terms and conditions of the payment in lieu of taxes agreement. Such amount due shall be based upon the market value of all real and personal property and improvements described under any deed, lease or other agreement between CUSTER and any TAX EXEMPT



ENTITY. The value of the interest transferred shall be determined by the CITY's Assessor (or in the absence of the Assessor, any party selected by the CITY which, in the sole opinion of the CITY, possesses the qualifications to make said determination of value) as if such land, improvements and personal property were not tax exempt or exempt from local taxation under Wis. Stats. §70.112, or if agreed upon by the CITY and CUSTER, shall be determined by an independent appraisal, the cost of which shall be borne by CUSTER. The most current actual or estimated gross tax rate for the CITY shall then be applied to such valuation to arrive at a "payment in lieu of taxes" amount, which shall then be paid to the CITY. The TAX EXEMPT ENTITY shall pay any invoice within thirty (30) calendar days of the receipt thereof.

Section 2. Notification of Transfer. Excepting the LEASE, CUSTER shall provide the CITY's Clerk and Planner with written notification of any sale, lease, sub-lease or transfer of all or any portion of the PROPERTY to a TAX EXEMPT ENTITY not less than thirty (30) calendar days prior to the effective date of the sale, lease, sub-lease or transfer. The thirty (30) day period shall commence the date that the CITY is in receipt of said notice.

Section 3. Failure to Notify. If CUSTER fails to provide notice to the CITY as required under ARTICLE I, Section 2. and transfers all or any portion of the PROPERTY to a TAX EXEMPT ENTITY, then CUSTER agrees that it shall be the party responsible to make payments to the CITY in the amount that would be required had a payment in lieu of taxes agreement been executed between the CITY and the TAX EXEMPT ENTITY as required in this AGREEMENT. The payment payable by CUSTER shall be a pro-rata portion of the amount due under a payment in lieu of taxes agreement, and shall commence from the date CUSTER transfers the PROPERTY through and including the date a payment in lieu of taxes agreement is



executed by and between the CITY and the TAX EXEMPT ENTITY. Any payments made by CUSTER shall be on terms and conditions determined by the CITY.

Section 4. Failure to Make Payments. If CUSTER or a TAX EXEMPT ENTITY breaches this AGREEMENT by failing to issue any payment to the CITY as required under this AGREEMENT, the CITY shall have the right to institute any other actions or proceedings as it may have available at law or equity it deems desirable for effectuating the purposes of this AGREEMENT.

Section 5. Sale of PROPERTY. If CUSTER sells all, or any portion of the PROPERTY, CUSTER shall require the grantee, as a condition pre-requisite to the completion of the transfer, to assume CUSTER's responsibilities under this AGREEMENT, and to execute any documents as may be required by the CITY to complete the assignment.

Section 6. Termination. This AGREEMENT shall terminate and become null and void, only upon the mutual consent of the CITY and CUSTER.

ARTICLE II
OTHER PROVISIONS

Section 1. Approvals in Writing. Whenever under this AGREEMENT approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized officer of the CITY, and delivered to the party to whom it is directed at the address specified in ARTICLE II, Section 3. Wherever any approval is required by the terms of this AGREEMENT, and request or application for such approval is duly made, such approval shall not be unreasonably withheld.



Section 2. Inspection of Records. The CITY shall have the right to inspect and copy any and all records, contracts, financial statements, ledgers or written documents which relate to and are generated by the responsibilities and obligations of CUSTER under the terms of this AGREEMENT, and which are related to the PROPERTY. This right of inspection shall apply to not only those records and documents that are within the physical control and custody of CUSTER but also any records, statements and documents that may be within the custody and control of third parties, or generated by third parties in the performance of the obligations and responsibilities hereunder.

Section 3. Notices and Demands. A notice, demand or other communication under this AGREEMENT by any party to any other party shall be sufficiently given or delivered if it is dispatched by facsimile transmission, or by first class mail, or by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and:

- (a) In the case of the CUSTER, addressed to or delivered personally to Anton A. Doneff SR, 115 E. Waldo Boulevard - Suite 300, Manitowoc, WI 54220; and
- (b) In the case of the CITY, addressed to or delivered personally to the CITY Clerk's Office, City Hall, 900 Quay Street, Manitowoc, WI 54220-4543.

The above addresses may be changed at any time by the parties by notice given in the manner provided above.

The parties further agree that electronically reproduced signatures such as by facsimile transmission are valid for execution or amendment of this AGREEMENT, and that electronic transmission/facsimile is an authorized form of notice as that term is used in this AGREEMENT.

Section 4. No Liability of the CITY. The CITY shall have no obligation or liability to CUSTER or any other party retained by CUSTER in the performance of CUSTER's obligations



and responsibility under the terms and conditions of this AGREEMENT. CUSTER specifically agrees that no representations, statements, assurances, or guarantees will be made by CUSTER to any third party, or by any third party, which is contrary to this provision.

Section 5. Severability. If any provisions of this AGREEMENT is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this AGREEMENT shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws.

Section 6. Amendments. This AGREEMENT is the entire agreement between the parties, and can only be modified or changed in writing executed by all parties.

Section 7. Successors and Assigns. The terms of this AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, as well as their respective transferees, successors and assigns. Any transfer of any party's interest in the PROPERTY under this AGREEMENT, or the transfer of any portion or interest in the PROPERTY, shall not release the transferor from its obligations hereunder.

Section 8. Indemnification. CUSTER hereby agrees to defend and indemnify the CITY, its officers, agents and employees, and to hold each of them harmless from any claims of any kind, and demands, causes of action, or damages of any kind, including reasonable attorney's fees, arising out of CUSTER's ownership and use of the PROPERTY.

Section 9. Time of Essence. Time is of the essence of this AGREEMENT and of every term, condition, or covenant to be performed by the parties.

Section 10. Assignment. CUSTER shall not assign this AGREEMENT, or any part of it, without the prior written consent of the CITY.



Section 11. Applicable Law. This AGREEMENT shall be deemed to have been made in Manitowoc County, Wisconsin, and shall be governed by, construed under, and enforced in accordance with, the law of the State of Wisconsin, except as otherwise provided herein. All actions or proceedings relating directly or indirectly, to this AGREEMENT, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this AGREEMENT hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.

Section 12. Headings. The section titles have been inserted in this AGREEMENT primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.

Section 13. Pronouns. Pronouns in this AGREEMENT(including, but not limited to, those referring to CITY and CUSTER), importing any specific gender shall be interpreted to refer to corporations, partnerships, men and women, as the identity of the parties hereto, or the parties herein referred to, may require. Pronouns, verbs, and/or other words in this AGREEMENT importing the singular number shall be interpreted as plural, and plural words as singular, as the identity of the parties hereto, or the parties or objects herein referred to, may require.

Section 14. Integration and Conflicts. If any provision of this AGREEMENT conflicts with any agreement related to the PROPERTY, the provisions of this AGREEMENT shall control unless the CITY determines otherwise.

Section 15. Recordation. This AGREEMENT, and any subsequent amendments thereto shall be, upon being duly executed, recorded by the CITY at CUSTER's sole expense against the PROPERTY, at the Register of Deeds for Manitowoc County, Wisconsin, and shall be deemed

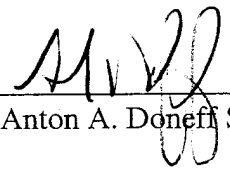


to be and interpreted as a covenant running with the PROPERTY. The CITY shall at CITY's sole expense, upon termination of the AGREEMENT under ARTICLE I, Section 6., file and record an instrument(s) at the Register of Deeds for Manitowoc CUSTER terminating the AGREEMENT.

Section 16. Relationship of Parties. Nothing in this AGREEMENT nor any act of the CITY or CUSTER shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto.

Section 17. Date. This AGREEMENT shall be dated, and effective and binding as of the date of the last execution.

CUSTER VILLAGE, LLC

By: 
Anton A. Doneff SR, Member

SIGNED UNDER PROTEST
9/23/04
Date

By: _____

Date



STATE OF WISCONSIN)

)ss.

MANITOWOC COUNTY

Personally came before me this 23RD day of SEPTEMBER, 2004, the above signed ANTON A. DONEFF

_____, to me known who executed the foregoing instrument and to me known to be such member of CUSTER Village LLC, a Wisconsin Limited Liability Company, and acknowledged that they executed the foregoing instrument as such member of said limited liability company, by its authority.

Rosie Stout
Notary Public Rosie Stout
Manitowoc County, Wisconsin
My commission (expires)(is):
4-15-07

CITY OF MANITOWOC

By: [Signature]
Nevin M. Crawford, Mayor

9/28/04
Date

By: [Signature]
Jennifer Hudon, City Clerk

9/28/04
Date



STATE OF WISCONSIN)

)ss.

MANITOWOC COUNTY

Personally came before me this 28th day of September, 2004, the above signed Kevin M. Crawford and Jennifer Hudon, to me known who executed the foregoing instrument and to me known to be such Mayor and City Clerk of the City of Manitowoc, WI, a Wisconsin Municipal Corporation, and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

Notary Public Debra E. Peterson
Manitowoc County, Wisconsin

My commission (expires)(is):

June 29, 2008

This instrument was drafted by:
David Less, City Planner
Filename: Y:\DAVE\WPFILES\TAXAGMT-CUSTER-REV1.WPD
RunDate: 9/15/04

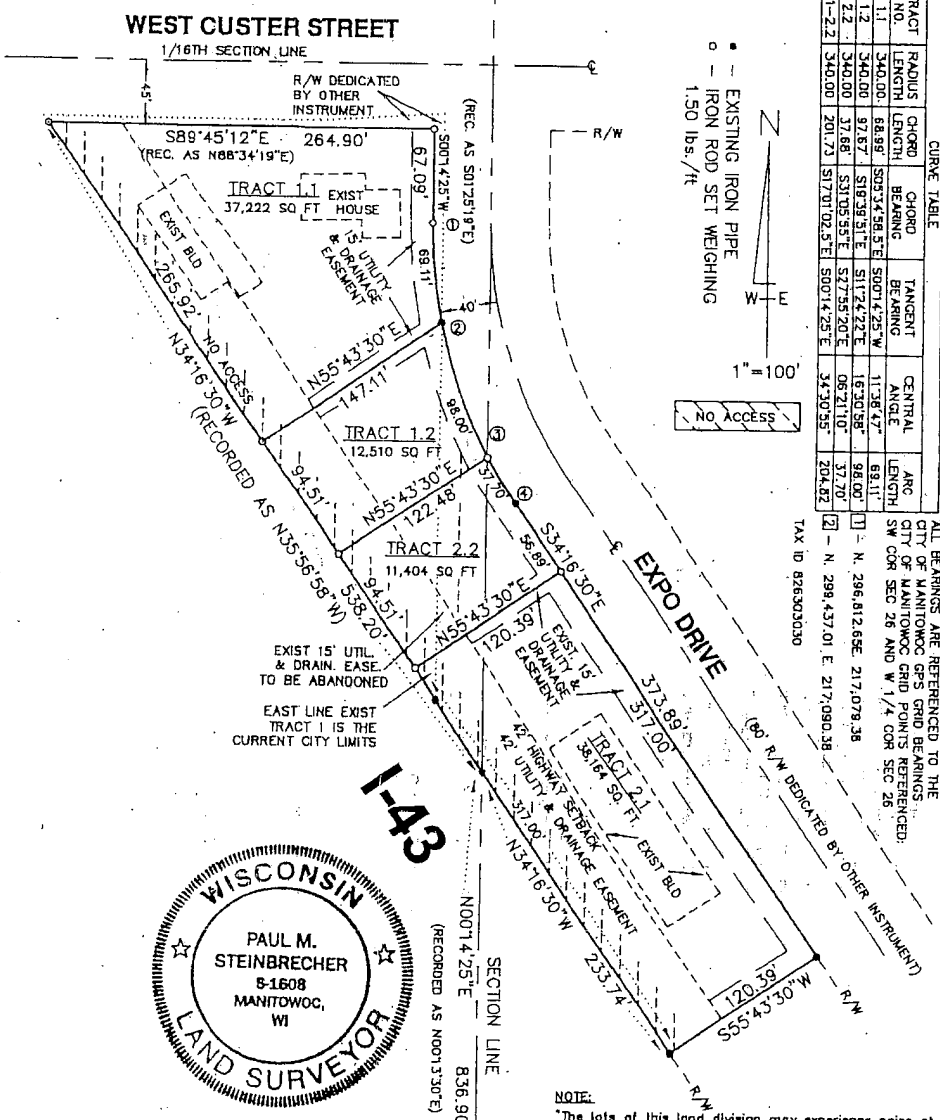
STATE OF WISCONSIN
MANITOWOC COUNTY
PRESTON JONES
REGISTER OF DEEDS
RECEIVED FOR RECORD
23 GSM 207
23 SEP 2003 1:31:16 PM



0249705

DOT FILE NO. 36-043-1025-03

W 1/4 COR
SEC. 26
(IRON SPIKE)



CURVE TABLE

CURVE NO.	RADIUS	CHORD LENGTH	BEARING	TANGENT BEARING	CENTRAL ANGLE	ARC LENGTH
1-1	340.00	68.99	S03°34'58.5"E	S00°14'25"W	11.38°47'	69.11'
1-2	340.00	97.87	S19°38'51"E	S11°24'22"E	18.30°58'	98.00'
2-1	340.00	37.69	S27°55'20"E	S27°55'20"E	08.21°10'	37.70'
2-2	340.00	201.73	S17°01'02.5"E	S00°14'25"E	54.30°35'	204.82'

CERTIFIED SURVEY IN THE SW 1/4 OF THE SW 1/4 OF SECTION 26 AND IN THE SE 1/4 OF THE SE 1/4 OF SECTION 27, T.19N., R.23E., CITY OF MANITOWOC AND TOWN OF MANITOWOC RAPIDS, MANITOWOC COUNTY, WISCONSIN BEING A RESURVEY OF TRACT 1 OF A CERTIFIED SURVEY RECORDED IN VOLUME 10, PAGE 233 AND A RESURVEY OF TRACT 2 OF A CERTIFIED SURVEY RECORDED IN VOLUME 22, PAGE 65 OF CERTIFIED SURVEYS

951711



Dated 1/28/07

Paul M. Steinbrecher
Paul M. Steinbrecher, Reg. Land Surveyor, S-1608

SW COR (MONUMENT)
SEC. 26

NOTE:
"All lots and blocks are hereby restricted so that no owner, possessor, user, licensee or other person may have any direct vehicular ingress from or egress to any highway lying within the right-of-way of Interstate 43; it is expressly intended that this restriction constitute a restriction for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department or its assigns. Any access shall be allowed only by special exception. Any access allowed by special exception shall be confirmed and granted only through the driveway permitting process and all permits are revocable."

"No improvements or structures are allowed between the right-of-way line and the highway setback line. Improvements and structures include, but are not limited to, signs, parking areas, driveways, wells, septic systems, drainage facilities, buildings and retaining walls. It is expressly intended that this restriction is for the benefit of the public as provided in section 236.293, Wisconsin Statutes, and shall be enforceable by the Wisconsin Department of Transportation or its assigns. Contact the Wisconsin Department of Transportation for more information. The phone number may be obtained by contacting the County Highway Department."

123 95207
WINTER, fax, STANLEY
Law Firm
13 ek
SHEET 1 OF 2

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