

## **Development Agreement for the Laura and Peter Mossakowski Family Dog Park Between the Village of Bellevue and Laura and Peter Mossakowski Family Dog Park, LTD**

This development agreement (“Agreement”) is entered into as \_\_\_\_\_, 2016, between the Village of Bellevue, WI, a Wisconsin municipal corporation (“Village”), and the Laura and Peter Mossakowski Family Dog Park, LTD. (“Dog Park LTD”) to occur on the property at 2282 Bellevue Street.

### **Recitals**

Whereas, the Village of Bellevue Village Board approved a Master Park Plan for the development of the Laura and Peter Mossakowski Family Dog Park on December 9<sup>th</sup>, 2015 a copy of which is attached as Exhibit A (“Master Park Plan”); and

Whereas, the Master Park Plan provides the agreed upon vision of the entire park site as well and the portion of the park to be dedicated to use as a dog park (as delineated in Exhibit A); and

Whereas, the Village of Bellevue and Dog Park LTD desire to work cooperatively to endure the proper development agreement.

Now, therefore, in consideration of the Recitals and the mutual covenants and agreements continued herein, the parties agree as follows:

### **Laura and Peter Mossakowski Family Dog Park Development**

1. **MASTER PARK PLAN**. The Master Park Plan includes areas that will be developed by Dog Park LTD for dog park purposes, areas that will be developed by the Village for general park usage and areas that will be jointly used for Dog Park and general park use purposes. Any significant deviation from the adopted Master Park Plan by Dog Park LTD shall be presented to the Village prior to any construction, erection or development for approval.
  - a. **Amendments Added After Commencement of Construction**. Any amendments that are required by the Village after the approval to begin building shall be at the expense of the Village and must not delay the development of the park. The Dog Park LTD may, at its option, contribute funds for such changes but is at no obligation to do so and can continue to move forward on the project in a timely manner.
2. **ENGINEERING, CONSTRUCTION & PROJECT BIDDING**. Any and all projects associated with the development of the dog park shall be subject to State Statutory public bidding requirements. The Village of Bellevue shall be the contracting entity for such publicly bid projects. Any such projects subject to these requirements being implemented by Dog Park LTD shall require the Village’s approval of bid documents prior to advertisement and approval of any bid awards by the Village Board. Dog Park LTD shall be responsible for contracting with a professional engineering firm to complete such documents at the expense of Dog Park LTD.

3. CONSTRUCTION ESCROW. For any projects subject to public bidding, Dog Park LTD shall provide the Village the full amount of funds necessary to properly execute such projects prior to awarding bid. Such funds shall be held by the Village in a segregated account and used to pay for project costs after bid award to the approved contractor. The Village shall provide Dog Park LTD copies of all payments requests and documentation as necessary on use of Dog Park LTD funds. The Village shall consult with Dog Park LTD on any requested change orders during the course of the project. The Village will be responsible for all contract administration, payments and inspection after the contract is awarded.
  - a. Funds in the Escrow. Funds in the escrow are to only be used for projects approved by Dog Park LTD. Any remaining funds shall be returned to the Dog Park LTD immediately following completion of the designated project.

### **Laura and Peter Mossakowski Family Dog Park Agreement**

1. PREMISES. The property is described on Attached Exhibit A, consisting of approximately 6.5 acres of Village of Bellevue park land. Together with any and all current and future structures, building and improvements thereon will be referred to as “Premises”
2. TERM. The initial term of this agreement shall be for 5 years, commencing immediately upon signature of both groups and end 5 years after completion of construction for phase 1. At the end of the term the parties can elect for renewal of the agreement. A 60-day written notice of termination, by either party, will be required.
3. USE AND OWNERSHIP.
  - a. The Premises shall be used for the purpose of the construction, development and operation of a dog park, consisting of without limitation any or all of the facilities and structures identified in the park’s adopted Master Plan. All structures and fixtures built by Dog Park LTD shall at once become part of the realty and belong to the Village. Dog Park LTD must provide to the Village, at a minimum, one set of keys for every lock installed.
  - b. The Village will own this land and any structures subsequently built by Dog Park LTD in perpetuity.
  - c. Dog Park LTD agrees to work together to fund the construction of facilities as identified in the park’s Master Plan (Master Plan). Dog Park LTD must begin development of the site and provide usable dog recreational areas within 5 years on the date of this Agreement. Failure to begin development of the dog park will result in the default of this Agreement.
  - d. The Village will not assess Dog Park LTD for utility or street assessments adjacent Bellevue Street.
  - e. All structures and signage built by Dog Park LTD will be subject to the Village’s building permit and review processes. In addition, any bathroom facilities must be operational or a suitable portable restroom must be on location before the dog park is open for public use.

- f. Dog Park LTD may be required to obtain a Special Events permit if it seeks to use the site for anything other than the standard operation for the site, i.e. fundraising events, athletic competitions. Dog Park agrees to provide the Village with a special event permit at least 60 days prior to any event.
- g. The possession and sale of alcohol and tobacco products shall be strictly prohibited on the site unless otherwise approved by appropriate Village authority.
- h. The Village and Dog Park LTD shall mutually agree and approve rules to be established by users of the Premises and shall be responsible for the proper and adequate posting of such rules.
  - i. Initial rules, fees, and hours of operation are to be permanently posted at the entrance of the dog park facility by the Dog Park LTD.

4. MAINTENANCE AND UTILITIES OF DOG PARK.

- a. All structures built by Dog Park LTD are subject to the building permit and review processes of the Village.
- b. Dog Park LTD shall present to the Village Board its plan for the funding of on-going maintenance and utilities as detailed under this agreement prior to public bidding of any construction projects. Any portion of the funding plan which includes the charging of fees for dog park usage shall be included within the Village Fee Schedule and subject to approval by the Village Board.
  - i. The Village shall bid out maintenance services as done with other public parks within in the village and Dog Park LTD has the option to contribute additional funds and seek services to reduce maintenance costs.
    - 1. Option to go with the Village maintenance options will be at the discretion of Dog Park LTD.
    - 2. Annual notice of maintenance fee bid to be presented to Dog Park LTD by Village.
  - ii. Funds set aside for maintenance for the park will be kept in a separate account and will be maintained by the Village.
    - 1. Any maintenance costs are to be invoiced and itemized to Dog Park LTD.
  - iii. Maintenance costs will be covered by Dog Park LTD at the following schedule:
    - 1. Current-Year 1 of Operation – 100% covered by Dog Park LTD
    - 2. Year 2 – 75% covered by Dog Park LTD; 25% covered by Village
    - 3. Year 3 – 50% covered by Dog Park LTD; 50% covered by Village
    - 4. Year 4 – 25% covered by Dog Park LTD; 75% covered by Village
    - 5. Year 5 – 100% covered by Village
  - iv. Annual Dog Park fee option may be added to the Dog License registration by the Village as well as other municipalities that wish to participate with 100% of funds collected to be deposited into an account, owned and maintained by the Village, to cover maintenance costs specific to this dog park.
  - v. Dog Park fee collection box located at the entrance of the dog park with 100% of funds collected to be deposited into the Village account, to cover maintenance

costs. The Village will assume responsibility for collection of funds through the duration of the agreement.

- vi. Shortfalls from the collection of the fees will be supplemented by Dog Park LTD at the above schedule.
  - vii. Funds in excess of the total yearly maintenance costs will be returned to Dog Park LLC for allocation of capital improvements approved by the Village.
  - viii. At minimum an annual expense report is to be provided by Village and approved by Dog Park LTD.
- c. If the Village uses the Premises for community activities, the Village shall be responsible for program set-up, general maintenance and any necessary repairs required or caused by such usage.
  - d. Dog Park LTD shall be responsible for compliance with all Village and State laws and regulations concerning development and activities upon the Premises.
  - e. The Village may, at its option participate in development or maintenance efforts outside of what is outlined in Exhibit B if approved. However, this agreement does not obligate funding, manpower, equipment, nor any other contribution to the development of the Premises including, but not limited to, snow and ice removal, garbage and fecal removal, tree care, mowing and cleaning and restocking of restroom facilities.
5. CONDITION OF PREMISES.
- a. Dog Park LTD accepts the premises in the condition as at the commencement of this agreement and will keep and maintain it and all improvements in a neat and orderly fashion in compliance with all applicable Village ordinances and State Statutes. The Dog Park LTD shall maintain and keep the premises in good repair.
  - b. The Dog Park, LTD shall not voluntarily create, cause or allow to be created any debt, lien, charge or other encumbrance to be apportioned against the premises hereunder.
  - c. The Village will provide notice of violations and Dog Park LTD has 90 days to begin to resolve the issue.
6. EASEMENTS. The Village shall not grant additional easements, covenants or restrictions concerning the Premises without the prior written consent of Dog Park LTD which shall not be unreasonably withheld.
7. ADMINISTRATION. For the purposes of this agreement and in accordance with Municipal Code Chapter 19 Parks and Recreation, the Village Board, or such other committee/commission as may be subsequently designated by the Village Board as the committee/commission of jurisdiction for all issues between the Village and the Dog Park LTD. The terms of this agreement shall be administered, on behalf of the Village by the Director of Parks, Recreation and Forestry or their designee.
8. AMBIGUITY. It is understood by and between the parties that Wisconsin Law provides that any ambiguity in an agreement is to be construed against the drafter of the agreement. The undersigned parties do hereby agree that this particular provision in Wisconsin Law shall not apply to the Agreement. Instead, there shall be no presumption involved should an arbitrator

find that an ambiguity exists in this Agreement. Any ambiguity shall be interpreted without regard to the identity of the drafter of this Agreement. (Doctrine of contra proferentem)

9. ARBITRATION. In the event that a dispute arises concerning the construction or operation of this Agreement, any party to this Agreement may immediately petition to Branch I of the Brown County Circuit Court for the appointment of an Arbitrator to resolve said dispute. The Judge then presiding in Branch I of Brown County Circuit Court shall appoint a member of the Brown County Bar Association to act as Arbitrator. Both sides shall be prepared, within thirty (30) days of the appointment of the arbitrator, to present their case to the Arbitrator for resolution. The Arbitrator shall only be entitled to serve if he shall agree, in writing, to render a decision within fifteen (15) days of the Arbitration hearing. Furthermore, said Arbitrator must schedule an Arbitration hearing within forty-five (45) days from his or her appointment as an Arbitrator.

The parties agree that within thirty (30) days from the date the Arbitrator's decision is mailed to the parties, the non-prevailing party will pay to the prevailing party any amounts provided for by the Arbitrator in his or her decision. Any post-arbitration sums so ordered to be paid by a non-prevailing party to a prevailing party shall likewise be paid within thirty (30) days of the Arbitrator's decision. In the event said amount is not paid within thirty (30) days of said decision, then the decision of the Arbitrator can be immediately entered as a judgment against the non-prevailing party in Brown County Circuit Court. In so signing this Page 7 of 10 Agreement, the parties consent to the immediate entry of such a judgment and waive any rights they may have to contest the decision of the Arbitrator.

10. ASSIGNMENTS & SUBLET. Dog Park LTD shall not assign this agreement by operation of Law or sublet any portion of the Premises without the Village's prior written consent which may be withheld in the Village's absolute discretion.
11. RELATIONSHIP. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or a partnership or a joint venture between the parties hereto.
12. MISCELLANEOUS.
- a. This agreement may be modified or amended only upon the mutual written and executed agreement of the Village and Dog Park LTD.
  - b. This agreement shall not be varied or waived by any oral representations or promises of either party or their agents.
  - c. This agreement may be terminated upon a 60-day written notice of termination of the agreement by either party.
  - d. A short form memorandum of the Agreement shall be recorded with the Brown County Register of Deeds by the village.
  - e. All notices hereunder shall be in writing and either personally served or sent by certified mail, return receipt requested, and addressed as follows, or to such other address as either party may in writing designate to the other party from time-to-time:

To Village:  
Village of Bellevue  
Parks, Recreation and Forestry Department  
2828 Allouez Avenue Bellevue, WI 54311

To Dog Park LTD:  
Laura and Peter Mossakowski Family Dog Park, LTD  
2555 Continental Court, Suite 4  
Bellevue, WI 54311

IN WITNESS WHEREOF, the parties have executed this agreement, pursuant to authority duly granted, as of the date first above written.

**VILLAGE OF BELLEVUE, WISCONSIN**

By: \_\_\_\_\_  
Steve Soukup, President

By: \_\_\_\_\_  
Karen Simons, Clerk/Treasurer

DATE: \_\_\_\_\_

**Laura and Peter Mossakowski Family Dog Park,  
LTD**

By: \_\_\_\_\_  
Laura Mossakowski, President

By: \_\_\_\_\_  
Paul Theys, Treasurer

Exhibit A – Master Park Plan and Construction Area Map for Phase I  
Exhibit B – Expenses for Phase I