

DONATION AGREEMENT
BETWEEN
MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE
AND
THE UWM REAL ESTATE FOUNDATION, INC.

This Donation Agreement (the "Agreement") is made and entered into effective this 18th day of August, 2015 (the "Effective Date"), by and between the MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE (the "County"), and THE UWM REAL ESTATE FOUNDATION, INC. (the "Donor"). Referenced together, the County and the Donor are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, the County is the owner of Lincoln Park, located at 1301 West Hampton Avenue, Glendale, Wisconsin 53209 (the "Park"); and

WHEREAS, the Donor has offered to improve the Park by making turf improvements to Aaron Field; and

WHEREAS, the County is pleased to accept Donor's request in this endeavor; and

NOW, THEREFORE, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

1. Improvements. The Park includes a baseball field, commonly known as Aaron Field, including the fencing, infields, outfields, foul territories, and players' and spectators' areas, as specified on Exhibit A (the "Premises"). The Donor may construct, install and equip the infield and bullpen areas with synthetic turf (the "Turf Improvement") as set forth in this Agreement. Once constructed, the County shall be solely responsible for the management of the Turf Improvements.

2. Term. This Agreement shall commence on the Effective Date and expire upon the earlier of the County's acceptance of the Donor's improvements or June 22, 2016 (the "Term").

3. Construction.

a) Prerequisites. The Donor's plans to renovate, improve and alter the Premises are contingent upon the Donor obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the construction and renovation to the Premises. All costs associated with the construction and renovation of the Premises, including disconnection and/or hookup of utilities in conjunction with such construction or renovation, shall be the responsibility of the Donor. The Donor may determine whether or not to proceed with the Turf Improvement.

b) County Approval. Prior to the start of any construction or renovation of the Premises, including any subsequent alterations or renovations, the Donor shall submit detailed construction plans and specifications to the County and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of the Donor's proposed contractor(s), for review and approval. Submittals shall include, but not limited to, shop drawings containing product information and materials and products shall be approved by County. The Donor shall reimburse County for the cost of a Milwaukee County Project Manager (including salary and benefits) during the construction phases of the project, including any subsequent construction, alterations or improvements; provided, however, that such cost shall not exceed Five Thousand Dollars (\$5000). Conditions for approval shall include, but not be limited to provision that the Donor shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities. County shall cooperate with Donor to mark any private utilities located on the Premises prior to construction.

c) Construction Standards. All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. The Donor shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Premises undertaken by or on behalf of the Donor. Any structures, alterations, additions or improvements installed on the Premises by the Donor in connection with the Turf Improvements (including generic signage permanently affixed to the Premises) shall become the property of County upon the expiration or termination of this Agreement, but be subject to the use agreement with UWM. In no event shall the Donor make any material alterations or additions to the Premises without the prior written consent of County, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter. Routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed Five Thousand Dollars (\$5000) in cost per year.

d) Builder's Risk. The Donor or its general contractor shall provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate (provided that in the event of any loss, County agrees to make all insurance proceeds available to Donor to complete the Turf Improvements). Coverage is during construction period and is intended to terminate when the work has been completed and the Premises are ready for occupancy. Prior to construction, the Donor shall supply the Parks Director with written evidence of Builder's Risk insurance. The Donor shall not commence construction activities without written approval from the Parks Director and his/her designee. The Parks Director shall provide a written response to

the Donor within thirty (30) days of receiving written evidence of the Donor's Builder's Risk insurance documents.

e) Construction Escrow. The Donor agrees to provide evidence satisfactory to the County that the total amount of funds necessary to construct the proposed renovations to the Premises are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for the construction of the renovations. The Donor shall deliver to County evidence reasonably acceptable to the County that the total amount of such funds are immediately available and dedicated for the above purpose prior to any construction activities taking place on the Premises.

f) Licensed Tradespersons. The Donor agrees that all renovations and improvements shall be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. The Donor shall require its contractors and subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of the Donor by County. The Donor shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County.

g) Construction Documents. The Donor agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, the Donor shall provide to County a complete set of construction documents including the following, if available/applicable: (i) as-built drawings; (ii) a copy of all work orders and change orders; (iii) a copy of all lien-waivers; (iv) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (v) manufacturer's warranties or extended warranties; (vi) a copy of all construction permits and signed drawings; (vii) City of Glendale final occupancy permits, if applicable.

4. Condition of the Premises. The County makes no representation or warranty that, as of the Effective Date of this Agreement, all parts of the Premises: (a) meet and comply with all federal, state, and local laws, ordinances and regulations; and (b) are in workable and sanitary order and state of repair. The Donor acknowledge that it has been made aware by the County that the Premises are offered on an "as-is" basis and may or may not prove to be suitable for all purposes contemplated by the Donor, either now or in the future. The Donor further acknowledges that it has freely inspected the Premises and is aware of their general overall condition.

5. Compliance with Laws. The Donor shall, at the Donor's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over the Donor's use of the Premises pertaining to: (a) accessibility, ensuring that the Premises and environs are fully accessible pursuant to the American with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 and such accessibility is approved by the

Milwaukee County Office of Persons with Disabilities; and (b) the Donor's activities on the Premises. The Donor shall procure, maintain, and pay the fees for any appropriate federal, state, and local licenses and permits required for its activities.

6. Collection and Removal of Trash. The Donor shall be responsible for the collection and removal of all trash, litter and garbage associated with its activities.

7. Cleanliness of Surrounding Areas. The Donor shall be responsible for maintaining the areas surrounding the Premises during construction in a state of cleanliness to prevent injuries to the public. The Donor agrees not to store or accumulate unused or excess materials, supplies, or equipment which may create a hazard to the public or result in unsightly surroundings.

9. Permits. The County has no responsibility to secure for or on behalf of the Donor any permits or authorizations that are needed by the Donor for the Premises unless (and only to the extent that) the County is the agency that issues such permits.

10. Insurance. The County assumes no responsibility for any loss or damage to the Donor's personal property while in use or stored at or on the Premises. The Donor shall maintain comprehensive liability insurance as required below during the period in which Donor is constructing the Turf Improvements. The Donor shall provide the County with evidence of said coverages in the following minimum amounts.

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	
Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$1,000,000 Per Occurrence \$1,000,000 General Aggregate
Automobile Liability	
Bodily Injury & Property Damage All Autos-Owned, non-owned and/or hired Uninsured Motorists	\$1,000,000 Per Accident Per Wisconsin Requirements
Wisconsin Workers' Compensation or Proof of All States Coverage (with waiver of subrogation)	Statutory, if applicable
Employers' Liability	\$100,000/\$500,000/\$100,000, if applicable

Milwaukee County, as its interests may appear, shall be named as an additional insured for General Liability and Automobile Liability and be afforded a thirty (30) day written notice of

cancellation or non-renewal. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverage shall be submitted for review and approval by the County for the duration of this Agreement.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide.

Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to the County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.

11. Indemnification. To the fullest extent permitted by law, during the Term, the Donor shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Turf Improvements, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Donor or its agents. The Donor shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all taxable costs and taxable attorneys' fees and expenses arising from any such injury, damage or loss, claim, demand or action.

Environmental Indemnification. The Donor shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of: (a) any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by the Donor or its agents and/or (b) Hazardous Materials whose presence pre-exists the commencement of any the Donor improvements, located in the Premises, to the extent that they are discovered and disturbed as a result of the Donor's activities on, at, or near the Premises. The Donor hereby agrees to indemnify, defend and hold the County harmless from and against any and all liabilities, costs, expenses (including taxable costs and taxable attorneys' fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by its introduction of any such Hazardous Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described herein. "Hazardous Materials" as the term is used herein shall mean any substance: (a) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (b) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

12. Assignment and Subletting. The Donor may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Director or his designee.

13. Termination. County may terminate this Agreement: (a) if the Donor fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from County setting forth in reasonable detail the nature of such default; or (b) if the Donor ceases to do business as a going concern, cease to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Donor's assets or the Donor's interests in this Agreement.

14. Partnership. Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and the Donor or its successors or assigns. This Agreement does not create the relationship of principal and agent.

15. Due Diligence. This Agreement and the obligations of County and the Donor hereunder are contingent upon the Donor successfully meeting the Milwaukee County "Due Diligence" requirements (see attached, as Exhibit B).

16. Notices. All notices with respect to this Agreement shall be in writing, and e-mail shall constitute writing for the purposes of the foregoing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the Party addressed as follows:

To the Donor:
The UWM Real Estate Foundation, Inc.
Attn: Curt Stang
1440 E. North Ave.
Milwaukee, WI 53202

To County:
Milwaukee County Parks Department
John Dargle, Jr., Director
9480 Watertown Plank Rd.
Wauwatosa, WI 53226

Either Party may designate a new address for purposes of this Agreement by written notice to the other Party.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

The UWM Real Estate Foundation, Inc.

By: _____ Date: _____
David H. Gilbert, President

Milwaukee County Dept. of Parks, Recreation & Culture

By: _____ Date: _____
John Dargle, Jr., Director

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____
Community Business Development Partners

Approved for execution:

Reviewed by:

By: _____ Date: _____ By: _____ Date: _____
Corporation Counsel Risk Management

Approved by:

Approved by:

By: _____ Date: _____ By: _____ Date: _____
County Executive Chris Abele Comptroller Scott B. Manske

Approved as compliant under Sec. 59.42(2)(b)5, Stats.:

By: _____ Date: _____
Corporation Counsel

DRAFT

EXHIBIT A
THE PREMISES
(Attached)

Exhibit A

EXHIBIT B

MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE MANUAL
Financial & Management 7 MILWAUKEE COUNTY Accounting

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

Due Diligence 7.92

CHECKLIST. Prior to recommending any venture for consideration, responsible County agencies shall ensure that any of the following applicable factors have been identified:

- Letter of Full Disclosure and Cooperation
- Cash flow projections for the venture.
- Operating budget impact.
- Debt management responsibilities, schedules and procedures.
- Legal liability for all priorities.
- Financial reporting systems and controls.
- Right-to-audit provisions.
- Project feasibility studies and market analysis.
- Key factors for success/failure of the venture.
- Governance structure and procedures.
- Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
- Employee/labor relations impacts (including benefits).
- Environmental concerns.
- Tax consequences.
- Capital management (e. g. maintenance).
- Conflicts of interest/ethics.
- Performance measurements.
- Organization Chart and Mission Statement
- Name of Lending institution or Bank to determine single or combined reporting

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by Milwaukee County.

