

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

This Development Agreement (the "Agreement") is made and entered into effective this 23rd day of June, 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 "Developer"). Referenced together, the County and the Developer 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 Developer proposes to improve the Premises, Aaron Field by making turf improvements; and

WHEREAS, the County supports the Developer in this endeavor; and

WHEREAS, the County has historically entered into agreements with the Board of Regents of the University of Wisconsin System on Behalf of the University of Wisconsin – Milwaukee ("UWM") setting forth the rights and obligations of UWM and the County with respect to use of Aaron Field; and

WHEREAS, County acknowledges and agrees that Developer would not be entering into this Agreement and would not make the Turf Improvements (defined below) but for County's agreement to enter into a long term use agreement with UWM; and

WHEREAS, County agrees to negotiate the terms of such long term agreement with UWM in good faith.

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

1. **Improvements.** The Premises 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 Developer may construct, install and equip the infield and bullpen areas with synthetic turf (the "Turf Improvement") as set forth in this Agreement. The Parties agree that the Developer shall obtain any and all approvals necessary for its use as contemplated by this Agreement. Once constructed, the County shall be solely responsible for the management of the Turf Improvements.

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

3. Construction.

a) Prerequisites. The Developer's plans to renovate, improve and alter the Premises are contingent upon the Developer 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 Developer. The Developer 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 Developer 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 Developer'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 Developer 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 Developer 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 Developer 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 Developer 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 Developer. Any structures, alterations, additions or improvements installed on the Premises by the Developer 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 Developer 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

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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 Developer 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 Developer 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 Developer shall supply the Parks Director with written evidence of Builder's Risk insurance. The Developer 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 Developer within thirty (30) days of receiving written evidence of the Developer's Builder's Risk insurance documents.

e) Construction Escrow. The Developer 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 Developer 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 Developer 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 Developer shall require its contractors and subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of the Developer by County. The Developer 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 Developer agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, the Developer 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.

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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 Developer 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 Developer, either now or in the future. The Developer further acknowledges that it has freely inspected the Premises and is aware of their general overall condition.

5. Compliance with Laws. The Developer shall, at the Developer’s expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over the Developer’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 Developer’s activities on the Premises. The Developer 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 Developer shall be responsible for the collection and removal of all trash, litter and garbage associated with its activities.

7. Cleanliness of Surrounding Areas. The Developer shall be responsible for maintaining the areas surrounding the Premises during construction in a state of cleanliness to prevent injuries to the public. The Developer 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.

8. Signage and Naming Rights.

a) All proposed banners, signage and advertising on or within the Premises, temporary or portable structures, must be pre-approved in writing by the Parks Director or his designee, which approval shall not be unreasonably withheld, conditioned or delayed.

b) The Developer shall not sell, advertise, promise, allow, or issue naming rights to any portion of the Premises without the prior written authorization of Milwaukee County.

9. Marketing. The Developer shall acknowledge the County and include the County Parks Department logo in all promotional material generated and controlled by the Developer regarding the improvements, including any website or social media.

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

11. Insurance. The County assumes no responsibility for any loss or damage to the Developer’s personal property while in use or stored at or on the Premises. The Developer

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shall maintain comprehensive liability insurance as required below during the period in which Developer is constructing the Turf Improvements. The Developer 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 (<u>with waiver of subrogation</u>)	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.

12. Indemnification. To the fullest extent permitted by law, during the Term, the Developer shall indemnify the County for, and hold it harmless from all liability, claims and

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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 Developer or its agents. The Developer 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 Developer 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 Developer or its agents and/or (b) Hazardous Materials whose presence pre-exists the commencement of any the Developer improvements, located in the Premises, to the extent that they are discovered and disturbed as a result of the Developer's activities on, at, or near the Premises. The Developer 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.

13. Assignment and Subletting. The Developer 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. Notwithstanding the foregoing, the Developer may assign this Agreement and/or benefit hereto to the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin – Milwaukee or to The UWM Foundation, Inc. without consent.

14. Termination. County may terminate this Agreement: (a) if the Developer 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 Developer 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 Developer's assets or the Developer's interests in this Agreement.

15. 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

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and the Developer or its successors or assigns. This Agreement does not create the relationship of principal and agent.

16. Due Diligence. This Agreement and the obligations of County and the Developer hereunder are contingent upon the Developer successfully meeting the Milwaukee County “Due Diligence” requirements (see attached, as Exhibit B).

17. 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 Developer:
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

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

The UWM Real Estate Foundation, Inc.

DocuSigned by:
By: David Gilbert Date: 7/6/2015
David H. Gilbert, President

Milwaukee County Dept. of Parks, Recreation & Culture

DocuSigned by:
By: John Dangle, Jr. Date: 7/1/2015
John Dangle, Jr., Director

Approved with regards to County Ordinance Chapter 42:

DocuSigned by:
By: Rick Norris Date: 6/24/2015
Community Business Development Partners

Approved for execution:

Reviewed by:

DocuSigned by:
By: Mark A Grady Date: 6/30/2015
Corporation Counsel

DocuSigned by:
By: [Signature] Date: 6/26/2015
Risk Management

Approved by:

Approved by:

DocuSigned by:
By: [Signature] Date: 7/1/2015
County Executive Chris Abele

DocuSigned by:
By: [Signature] Date: 7/1/2015
Comptroller Scott B. Manske

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

By: _____ Date: _____
Corporation Counsel

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EXHIBIT A
THE PREMISES

(Attached)

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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 the County Executive and County Board.