

CITY OF MILWAUKEE

4 Form CA-43

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October 2, 2003

To the Honorable Common Council
of the City of Milwaukee
Room 205, City Hall
200 East Wells Street
Milwaukee, WI 53202

Re: CCFN 030791 (Resolution authorizing settlement and release of the YMCA of Metropolitan Milwaukee, Inc. in connection with claims related to the property located at 2620-22 N.15th Street in the City of Milwaukee)

Dear Council Members:

The above-referenced resolution authorizes the exchange of mutual releases between the City of Milwaukee and the YMCA of Metropolitan Milwaukee, Inc. (the "YMCA") in connection with claims related to the property located at 2620-2622 N. 15th Street in the City of Milwaukee.

Enclosed is the form of mutual release to be included in this file.

Very truly yours,


GRANT F. LANGLEY
City Attorney


ELLEN H. TANGEN
Assistant City Attorney

Enclosure

c: Steven Mahan (w/encl)
Scott Fiducci, Esq. (w/encl)
Robert Berlan, HUD (w/encl)

EHT:eht

1052-2002-3285:73249

MUTUAL RELEASE OF CLAIMS
CITY OF MILWAUKEE
YMCA OF METROPOLITAN MILWAUKEE, INC.

IN SETTLEMENT OF A DISPUTE between the City of Milwaukee (hereinafter the "City") and the YMCA of Metropolitan Milwaukee, Inc. (herein after the "YMCA") with respect to all outstanding claims relating Community Development Block Grant and HOME Investment Partnerships Act grant funding for rehabilitation of the property located at 2620-2622 N. 15th Street, Milwaukee, Wisconsin (hereinafter the "Property"), owned by Pearlie Barnes, the City and the YMCA hereby agree as follows:

1. YMCA Release. For and in the consideration of the agreements contained herein, the assistance rendered by the City of Milwaukee in facilitating negotiation of a settlement agreement between Pearlie Barnes and Leon McCoy with the YMCA with respect to the Property, and relief from the uncertainty and continued expense of potential litigation, in full compromise and settlement, the YMCA, as well as anyone else claiming by or through it, hereby forever releases, acquits and discharges the City, as well as its employees, agents, representatives, officers, directors, members, successors, assigns, attorneys, insurers, trustees and anyone else affiliated with or associated with each (individually, a "City Released Party" and collectively, the "City Released Parties"), of and from any and all liabilities, charges, claims, actions, lawsuits, demands, losses, rights, damages, and causes of action of whatever kind or nature, whether sounding in tort, trespass, contribution, contract, warranty, copyright or alleging violations of law or administrative rule, whether known or unknown, foreseen or unforeseen, which the YMCA may now have, have ever had, and/or may at any time hereafter have, against any City Released Party, relating to, arising out of, or in conjunction with, any transaction, matter, event, cause or thing whatsoever which has occurred prior to or on the date of this Agreement with respect to the Property and the City's transactions with the YMCA, the U.S. Department of Housing and Urban Development, Pearlie Barnes, and Leon McCoy with respect to the Property.

2. City Release. For and in the consideration of the agreements contained herein, the assistance rendered by the YMCA in facilitating negotiation of a settlement agreement between Pearlie Barnes and Leon McCoy with the YMCA with respect to the Property, and relief from the uncertainty and continued expense of potential litigation, in full compromise and settlement, the City as well as anyone else claiming by or through it, hereby forever releases, acquits and discharges the YMCA, as well as its employees, agents, representatives, officers, directors, members, successors, assigns, attorneys, insurers, trustees and anyone else affiliated with or associated with each (individually, a "YMCA Released Party" and collectively, the "YMCA Released Parties"), of and from any and all liabilities, charges, claims, actions, lawsuits, demands, losses, rights, damages, and causes of action of whatever kind or nature, whether sounding in tort, trespass, contribution, contract, warranty, copyright or alleging violations of law or administrative rule, whether known or unknown, foreseen or unforeseen, which the City may now have, have ever had, and/or may at any time hereafter have, against any YMCA Released Party, relating to, arising out of, or in conjunction with, any transaction, matter, event, cause or thing whatsoever which has occurred prior to or on the date of this Agreement with respect to claims by Pearlie Barnes and/or Leon McCoy with respect to the Property.

3. No Admission of Liability. Each party hereto hereby declares and represents that any alleged damages arising from any claim or cause of action against it now known or unknown are uncertain in nature, and in entering into this Agreement, it is understood that any transfer of possession of money or property by any entity in connection with the claims released hereunder is not to be construed as an admission of liability on the part of any party. In executing this Agreement, the parties hereto specifically deny liability to any other party for any claim or cause of action, all parties intending to avoid litigation and settle all disputes.

4. Interpretation of the Agreement. In the event of any ambiguity in this document, such ambiguity shall not be construed against either the YMCA or the City. Both parties acknowledge that this Agreement is the product of negotiations among the parties and the City and that, for the purpose of construction, this Agreement was jointly drafted by the parties, and no party shall be deemed the author of this Agreement. In executing this Agreement, each party represents that he/she has the authority to execute this Agreement, and that each party has read the same and fully understands it. The section headings contained in this Agreement are for convenience of reference only, and are not to be used to construe or limit the terms of this Agreement.

5. Counterpart Signing. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

6. Governing Law. This Agreement and the parties' rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Wisconsin.

7. Entire Agreement. This Agreement contains the entire agreement and understanding between the Releasors and the City with respect to the subject matter hereof, but does not extend to the YMCA's obligations under its agreements with the U.S. Department of Housing and Urban Development with respect to provision of a code-compliant housing unit in substitution for the Property, and supercedes any and all prior or contemporaneous discussions, negotiations, representations and/or agreements between the parties. This Agreement may not be, and shall not be deemed or construed to have been, modified, amended, terminated, cancelled or waived, in whole or in part, except by a written instrument signed by the parties.

8. Voluntary Agreement. IN ENTERING INTO THIS AGREEMENT, EACH RELEASOR EXPRESSLY STATES THAT HE OR SHE HAS READ AND FULLY UNDERSTANDS THE TERMS OF THIS AGREEMENT, THAT SUCH PARTY ENTERS INTO THIS AGREEMENT VOLUNTARILY AND OF HIS OR HER OWN FREE WILL, AND EACH SUCH PARTY UNDERSTANDS THAT THIS AGREEMENT CONSTITUTES A FULL, FINAL AND BINDING SETTLEMENT OF THE MATTERS COVERED BY THIS AGREEMENT. EACH PARTY FURTHER STATES THAT HIS OR HER WILLINGNESS TO ENTER INTO THIS AGREEMENT WAS NOT INDUCED BY, OR BASED UPON, ANY REPRESENTATION BY ANY OTHER PARTY HERETO, OR ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, WHICH IS NOT CONTAINED IN THIS AGREEMENT. EACH RELEASOR ALSO AGREES THAT HE OR SHE HAS BEEN ADVISED TO CONSULT, AND HAS IN FACT CONSULTED, WITH THEIR RESPECTIVE ATTORNEYS IN THE NEGOTIATION, CONSIDERATION AND

EXECUTION OF THIS AGREEMENT, AND THAT EACH HAS BEEN GIVEN A REASONABLE PERIOD OF TIME WITHIN WHICH TO CONSIDER THIS AGREEMENT.

PLEASE READ THIS AGREEMENT CAREFULLY AND COMPLETELY. THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

The foregoing release has been read and understood by the undersigned before signing thereof.

IN WITNESS WHEREOF I have hereunto set my hand and seal at Milwaukee, Wisconsin, this _____ day of _____, 2003.

YMCA OF METROPOLITAN MILWAUKEE, INC.

Title: _____

CITY OF MILWAUKEE

Title: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

The foregoing instrument was executed before me this _____ day of _____, 2003, by the above named _____, who duly acknowledged to me that he read the same, knew the contents and effect thereof, and affixed his signature thereto in my presence for the uses and purposes expressed in the foregoing.

Notary Public, State of Wisconsin
My Commission Expires _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

The foregoing instrument was executed before me this _____ day of _____, 2003, by the above named _____, who duly acknowledged to me that he read the same, knew the contents and effect thereof, and affixed his signature thereto in my presence for the uses and purposes expressed in the foregoing.

Notary Public, State of Wisconsin
My Commission Expires _____

1052-2002-3285:73058