

SETTLEMENT AGREEMENT, WAIVER AND RELEASE

THIS SETTLEMENT AGREEMENT, WAIVER AND RELEASE ("Agreement") is made by and between BAY DEVELOPMENT CO., LLC, ("Plaintiff") and the CITY OF MILWAUKEE ("City").

WHEREAS, the Plaintiff filed a lawsuit against the City entitled *Bay Development Co., LLC v. City of Milwaukee*, Milwaukee County Case No. 2016-CV-4612 ("Case"), for the partial refund of real property tax assessments previously paid, on the basis that its 2015 and 2016 property assessments were excessive("Assessments"); and

WHEREAS, the parties wish to resolve this matter without the expense and disruption of further litigation between them by amicably entering into this full and final settlement as to all claims Plaintiff may have against the City in connection with its Assessments;

NOW, THEREFORE, for good and valuable consideration, the parties stipulate and agree as follows:

1. Approval. This Agreement is subject to approval in its entirety by the Common Council of the City of Milwaukee. It shall be deemed null and void, and have no force, effect, or admissibility in the event it is not so approved in its entirety.

2. Definitions. In this Agreement:

(a) The "Property" means the land and improvements with the following parcel number and located at the addresses indicated within the City of Milwaukee, Wisconsin: tax key: 159-0061-110, 6003-6045 North Teutonia Avenue.

(b) "Case" means the action pending in the Milwaukee County Circuit Court titled *Bay Development Co., LLC v. City of Milwaukee*, Milwaukee County Case No. 2016-CV-4612.

(c) "Circuit Court" means the Circuit Court for Milwaukee County.

(d) A "tax year" means a year in which an assessment is made as of January 1, with taxes based on the assessment payable in the year following the tax year.

3. Refund of Taxes. In consideration of the stipulation to dismiss the Case provided in Section 7 and the release of all claims provided in Section 8, and upon the approval of Common Council, the City shall remit a refund, strictly for settlement purposes with no admission as to fair market value of the Properties for tax years 2015-2016, payable to the Trust Account of von Briesen & Roper, s.c. , or to another account designated by Plaintiff in writing, pursuant to Wis. Stat. § 74.37, in the amount of \$9,555.26 representing partial refunds of property taxes previously paid by Plaintiff based on the property tax assessments of the Property for the tax years 2015 and 2016. The parties agree that no portion of this amount constitutes interest.

4. Waiver of Costs. Each party waives all claims for costs.
5. Time of Payment. The City shall pay the refund provided in Section 3 of this Agreement in full no later than October 1, 2017.
6. Interest. No interest or statutory costs are to be paid to Plaintiff.
7. Stipulation for Dismissal. The parties shall take the following actions:
 - (a) With respect to the Case, the parties shall enter into a stipulation substantially identical to **Exhibit A** to this Agreement, signed by their respective attorneys, for the dismissal of the Case (including but not limited to, all claims asserted in the Complaint in the Case) on the merits, with prejudice and without costs to either party; and
 - (b) File the Stipulation with the Court.
8. Release. In exchange for the payment and dismissal contemplated by this Agreement, the Plaintiff hereby terminates, waives and discharges any further claims, demands, or actions which it might assert or bring in the future or have brought to date, whether mature or not, currently actionable or not, and any suits, appeals, objections, administrative actions and legal proceedings whatsoever against the City with respect to its Assessments for tax years 2015-2017, and hereby releases, discharges and acquits the City, its officers, board members, employees, agents and contractors, for any claims, causes of action, alleged injuries, or damages, of any kind, character or nature whatsoever, which have been, could have been, or might be asserted against the City or any officer, employee, agent or contractor acting on its behalf, arising out of the Assessments for tax years 2015-2017.
9. Responsibility for Fees and Expenses of Attorneys and Experts. Each party shall be solely responsible for the fees of its attorneys and experts.
10. No Representations. Each party acknowledges and agrees that no representation or promise not expressly contained in this Agreement has been made by the opposing party or any of its employees, attorneys, agents, or representatives. Each party acknowledges that it is not entering into this Agreement on the basis of any such representation or promise, express or implied.
11. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors, and assigns.
12. Governing Law. This Agreement shall be governed and interpreted by the laws of the State of Wisconsin.
13. Interpretation of Agreement. The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement:

(a) Neither party shall be deemed the drafter of this Agreement for purposes of its interpretation; and

(b) The parties shall attempt in good faith to resolve the dispute.

14. Representation By Counsel; Reliance. Each party acknowledges that it has been represented throughout all negotiations leading up to this Agreement by attorneys of its choice and that its attorneys have approved this Agreement. Each party represents that in entering into this Agreement, the party has relied on its own judgment and on the advice of its attorneys, and that no statements or representations made by the other party or any of its agents, except statements or representations expressly made in this Agreement, have influenced or induced the party to sign this Agreement.

15. No Assignment or Transfer. Plaintiffs represent and warrant that they have not assigned or transferred to anyone and will not assign or transfer to anyone any of the claims in the Case.

16. Entire Agreement. This Agreement, and the Notice of Waiver and Determination to the City of Milwaukee Board of Assessors regarding tax year 2017, attached as Exhibit B, states and constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior or contemporaneous agreements (written or oral), representations, negotiations, and discussions concerning its subject matter, including but not limited to, all agreements (written or oral), representations, negotiations, and discussions made in the course of negotiation of the Case.

17. Use of this Agreement. This Agreement shall not be filed with the Court in this Case or in any other case or proceeding, except for the sole purpose of enforcing this Agreement. This Agreement and any part of this Agreement shall not be admissible in any future judicial or administrative proceeding, except for the sole purpose of enforcing this Agreement.

18. No Admissions of Liability or Concerning Assessments or Fair Market Value. This Agreement is the settlement of disputed claims. By entering into this Agreement, the City does not admit any liability to Plaintiff for any of the claims asserted in the Case or Plaintiff's objections to the assessments, and the payments made under this Agreement shall not be construed as an admission of any such liability. Neither party makes an admission about the assessments or the fair market value of the Property as of January 1, 2015, January 1, 2016, or January 1, 2017.

19. Waiver. No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

20. Amendments or Modifications. This Agreement may not be amended, modified or altered in any manner whatsoever, except by a further written agreement duly authorized and signed by the parties.

21. Authorization to Sign Agreement. Each person signing this Agreement on behalf of either party represents and warrants that the person holds the position indicated

beneath the person's signature and that the person has the requisite corporate or other authority to sign this Agreement on behalf of the party. Each party represents that entry into this Agreement is not in contravention of any agreement or undertaking to which the party is bound.

22. Reading of Agreement. Each person signing this Agreement on behalf of either party acknowledges that the person has read this Agreement, that the person understands the terms and conditions of this Agreement, that the person (if other than an attorney for the party) has been advised by legal counsel concerning this Agreement, and that the person freely and voluntarily signs this Agreement.

23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

BAY DEVELOPMENT Co., LLC

Dated: _____, 2017.

Name:
Title:

VON BRIESEN & ROPER, S.C.

Dated: _____, 2017.

Alan Marcuvitz
Nicholas J. Boerke
Attorneys for Plaintiff

CITY OF MILWAUKEE

Dated: _____, 2017.

Grant F. Langley, City Attorney
Hannah R. Jahn, Assistant City Attorney
Attorneys for Defendant

EXHIBIT A

STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

BAY DEVELOPMENT CO., LLC,

Plaintiff,

v.

Case No. 16-CV-4612

CITY OF MILWAUKEE,

Defendant.

STIPULATION AND ORDER FOR DISMISSAL

IT IS STIPULATED by the parties, through their respective counsel, as follows:

1. This action involves the City of Milwaukee's (the "City") 2015 and 2016 assessments of 6003-6045 North Teutonia Avenue (tax key 159-0061-110).
2. This action shall be dismissed with prejudice and without costs and fees to any party.
3. The parties have entered into a separate Settlement Agreement resolving, among other things, the claims raised in this action. This Court shall retain jurisdiction and competency over the issues presented in the Settlement Agreement. Any party may reopen this matter by motion to this Court in the event of a violation or alleged violation of this Stipulation or of the Settlement Agreement.

IT IS FURTHER STIPULATED that an Order to this effect may be entered immediately, without further notice to either party.

Dated: _____, 2017.

BAY DEVELOPMENT CO., LLC

BY: von Briesen & Roper, s.c.
411 East Wisconsin Avenue
Suite 1000
Milwaukee, WI 53202

Alan Marcuvitz
State Bar No.: 1007942
Nicholas J. Boerke
State Bar No.: 1083217

Dated: _____, 2017.

CITY OF MILWAUKEE

BY: GRANT F. LANGLEY
City Attorney
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

Hannah R. Jahn
State Bar No.: 1088851

EXHIBIT B



Steve Miner
Assessment Commissioner

Peter Bronek
Chief Assessor

Assessor's Office

June 13, 2017

Nicholas Boerke
von Briesen & Roper s.c.
411 E. Wisconsin Ave.
Suite 1000
MILWAUKEE WI 53202

RE: 6003-6045 N TEUTONIA AV
Taxkey: 159-0061-110

Neighborhood: 6218

Dear Sir or Madam:

This is the waiver form for your 2017 objection to the assessment for the real estate listed above. To conclude the processing of this objection, please sign and date both waiver forms and return one to this office. Please retain one copy, since this is your notice of the 2017 assessment.

NOTICE OF WAIVER AND DETERMINATION TO THE CITY OF MILWAUKEE BOARD OF ASSESSORS

The undersigned accepts the following adjustment of the 2017 assessment on the property located at:
6003-6045 N TEUTONIA AV Taxkey: 159-0061-110

	FROM	TO	CHANGE
Land	\$456,100	\$456,100	\$0
Improvements	\$1,284,900	\$1,043,900	(\$241,000)
Total	\$1,741,000	\$1,500,000	(\$241,000)
Symbol			

As the owner of the above described property, I understand that Section 70.07(4), Wisconsin Statutes, grants me the right to receive written notice from the Board of Assessors of any corrections or changes in my assessment.


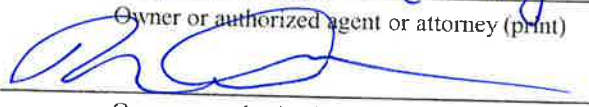
I agree with the assessment stated above. If that assessment is entered on the assessment roll, then I hereby waive my right to receive notice from the Board of Assessors.

Also, if that assessment is entered on the assessment roll, then I hereby waive my right under Section 70.47, Wisconsin Statutes, to a hearing before the Board of Review.

Thank you for your cooperation.

Sincerely,
Steven J. Balistreri
Steven.Balistreri@milwaukee.gov
(414) 286-3946
Property Appraiser

Please Sign and Print Below

Owner 
 Owner (print) Nicholas Boerke
 By Nicholas Boerke Agent/Rep
 Owner or authorized agent or attorney (print)
 By 
 Owner or authorized agent or attorney (sign)
 Dated this 13th Day of June, 2017