



Department of City Development

Housing Authority
Redevelopment Authority
City Plan Commission
Historic Preservation Commission
NIDC

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

December 4, 2009

Mr. Ronald D. Leonhardt
City Clerk
City Hall, Room 205
Milwaukee, WI 53202

Dear Mr. Leonhardt:

Enclosed is a copy of the fully executed Site Preparation Development Agreement, Contract No. 09-053(RA), between the City of Milwaukee, the Redevelopment Authority of the City of Milwaukee and Bishop's Creek Community Development Corporation.

Please insert this agreement into Common Council Resolution File No.081070, approved December 16, 2009.

Sincerely,

Scott Stange
RACM Compliance Officer

Enclosure

SITE PREPARATION DEVELOPMENT AGREEMENT

This Agreement is made this 19th day of November, 2009, by and among the City of Milwaukee ("City"), the Redevelopment Authority of the City of Milwaukee ("RACM") and Bishop's Creek Community Development Corporation, a Wisconsin non-stock corporation ("Developer").

Witnesseth:

Whereas, the Developer is the current or former owner of certain property located at 4763 North 32nd Street, Milwaukee, Wisconsin (the "Property" as more particularly described on *Exhibit A*); and

Whereas, the Property requires building demolition, environmental remediation and other site preparation to permit redevelopment of the Property; and

Whereas, the Developer, as of December 16, 2008 has incurred expenses the sum of not less than \$1,351,082 to prepare the Property for redevelopment (the "Initial Expenses"); and

Whereas, the Developer has completed building demolition, all environmental remediation (other than ongoing and future groundwater monitoring, if required) and other site preparation work on that certain portion of the Property described on Exhibit A-1 (the "Phase I Property") so that construction could commence on that certain affordable housing project more fully described on *Exhibit B* (the "Phase I Project"); and

Whereas the demolition of the buildings on Lot 3 (as hereinafter defined) has been completed to the extent required by the Project Manual for Project No. 060266 dated as of May 30, 2008, and materials are available at the site to grade the remainder of the Property to rough grade in anticipation of development of Lot 3; and

Whereas, the Property is located in Tax Incremental District No. 72 (the "TID") which is the source of the funds described below; and

Whereas, because of the public purpose served by the redevelopment of the Property, the City is willing to make a grant to the Developer in an amount not to exceed \$335,000 to be used by the Developer to prepare the Property for redevelopment; and

Whereas, RACM, via Resolution No. 10046 adopted November 20, 2008 has and authorized the proper officers of RACM to execute this Agreement on behalf of RACM; and

Whereas, the Common Council via Resolution No. 081070 adopted December 16, 2008 has and authorized the proper City officers to execute the Agreement on the City's behalf; and

Whereas, the Developer has approved this Agreement;

Now, therefore, the City, RACM and the Developer in consideration of the premises and the mutual promises and undertakings hereinafter contained, mutually agree and covenant as follows:

I.

CITY ACTIVITIES

The City shall make available to RACM an amount up to \$335,000 (the "City Grant") to allow RACM to reimburse Developer up to the same amount in respect of certain expenditures described below to prepare the Property for redevelopment.

II.

RACM ACTIVITIES

- A. Subject to the terms and conditions hereinafter set forth, RACM shall grant to Developer an amount up to \$335,000 but in no case exceeding the City Grant ("RACM Grant"). The RACM Grant is to be disbursed to the Developer subject to satisfaction of the conditions set forth in Section B and pursuant to the disbursement schedule set forth in Section C.
- B. No portion of the RACM Grant shall be disbursed to the Developer until all of the following have occurred or been satisfied:
1. The Developer has provided the Commissioner of the Department of City Development (the "Commissioner") with a detailed plan (the "Plans") of building demolition, environmental remediation, land clearing and other site preparation, all as more fully described in the attached *Exhibit C* (the "Site Preparation").
 2. The Developer has received all federal, state and local agency approvals, including but not limited to the Wisconsin Department of Natural Resources for the Site Preparation, and has complied with all applicable federal, state and local laws, which are necessary to undertake the Site Preparation.
 3. The Commissioner has received the final construction budget for the Site Preparation, including the source of funds and financing for same, in the form of *Exhibit D* (the "Budget").
 4. Intentionally omitted
 5. The Developer has provided the Commissioner with documentation reasonably satisfactory to the Commissioner, such as copies of invoices from contractors, suppliers and service providers, that the Developer has incurred the Initial Expenses and further incurred additional expenses in at least the amount of \$1,361,000 in excess of the Initial Expenses (the "Completion Expenses").

6. The Developer has provided the commissioner with documentation reasonably satisfactory to the Commissioner that certain of the Completion Expenses have been paid by the Developer and that the Developer has cash on hand, has obtained committed grants, including any remaining, undisbursed Advances of the RACM Grant, or has a commitment for financing in respect of the Project, all in an aggregate amount sufficient to pay the outstanding amount of unpaid Completion Expenses.
 7. The Developer has provided the Commissioner with documentation reasonably satisfactory to the Commissioner that the Site Preparation work has been completed in accordance with the Plans and the Completion Expenses therefor have been incurred in a manner consistent with the Budget.
- C. The RACM Grant will be disbursed in two advances (each, an "Advance") as follows:
1. 66% of the RACM Grant (\$223,333.00) will be disbursed not later than ten (10) business days following full execution of this Agreement and satisfaction of all of the requirements set forth in Sections II(B) and III hereof.
 2. The remainder of the RACM Grant, in an amount such that the total RACM Grant is equal to 24% of the Completion Expenses, up to the maximum amount of \$111,667 for the final Advance shall be disbursed not later than ten (10) business days after completion of construction and issuance of a Certificate of Occupancy in respect of the Phase I Project ("Substantial Completion"). The City and RACM acknowledge and agree that Developer has incurred Completion Expenses and expended funds in an amount sufficient such that the final Advance shall be in the amount of \$111,667.

III.

DEVELOPER ACTIVITIES

- A. The Developer shall:
1. Prepare, or have prepared, the Plans.
 2. Prepare, or have prepared, the Budget.
 3. Obtain and pay for all governmental permits and approvals necessary to undertake the Site Preparation.
 4. Perform the Site Preparation in accordance with the Plans.
 5. With respect to the property described in Exhibit F attached hereto (the "Subject Property"), and subject to the terms of this paragraph, execute and deliver to the

Commissioner for recording, or cause to be executed and delivered to the Commissioner for recording, an instrument in substantially the form attached as Exhibit F, providing that either (a) such property shall remain, until action to the contrary is approved by the City, subject to general property taxes regardless of whether the owner or the use of such property might otherwise qualify for an exemption or (b) such property is subject to an agreement reasonably satisfactory to the Commissioner and the Developer, for the payment of an annual amount to the City in lieu of taxes. Notwithstanding the foregoing, the City and RACM hereby agree, that the building on Lot 3 of CSM 8099 ("Lot 3") being redeveloped for use as a "dormitory" and all or such portion of the land comprising Lot 3 designated for use ancillary to the dormitory, as reasonably determined by Developer, shall be exempt from taxation if the owner or use of such property qualifies for exemption, and the parties shall enter into an agreement reasonably satisfactory to the Commissioner and the Developer for the payment of an annual amount to the City in lieu of taxes with respect to such property in an amount not to exceed \$3,700 in the first year of such agreement, which amount shall be adjusted annually by a percentage equal to the percentage increase or decrease in the CPI (as hereinafter defined) for such period. For purposes hereof and of such agreement, "CPI" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), All Items, U.S. City Average (Base year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics; provided, if the Bureau of Labor Statistics publishes a separate index for the Milwaukee metropolitan area, such index shall be used. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made in the revised index which would produce results equivalent, as nearly as possible to those which would be obtained hereunder if the CPI were not so revised. If the 1982-1984 average shall no longer be used as an index of 100, such change shall constitute a substantial revision. If the CPI becomes unavailable to the public because publication is discontinued, or otherwise, the City shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by a governmental agency, major bank, other financial institution, university or recognized financial publisher, which comparable index shall be reasonably acceptable to the City and the Developer.

IV.

INSPECTIONS

The City and RACM shall have access to Lot 3 at all reasonable times in order to make reasonable inspections, including but not limited to inspection by the City's Department of Public Works, Department of City Development, and Department of Neighborhood Services, of the Site Preparation during the period of construction thereof, provided that such inspections do not interfere with the progress of the work.

V.

RECORDS

- A. The Developer shall keep accurate, full and complete books and accounts with respect to the cost of performing the Site Preparation, consistent with the Approved Plans and budget therefor, and shall include a provision in all of its contracts requiring its contractors and their subcontractors to do the same, except for those contracts entered into prior to the date of this Agreement. All such books and accounts shall be maintained in accordance with generally accepted accounting principles consistently applied, and shall be kept for a period of six years. Upon demand, Developer shall provide RACM and the City with internally-prepared financial statements certified for accuracy, in respect of the Site Preparation and the Project Costs.
- B. The City Comptroller shall have the right, upon reasonable notice to the Developer, its contractor or subcontractors as the case may be, to examine the books and accounts of the Developer, its contractor or subcontractors during normal hours of business.
- C. The Developer shall, upon the written request of the Commissioner, keep RACM and the City apprised of the progress in completion of the Site Preparation.

VI.

EBE REQUIREMENTS

The parties acknowledge that the Developer has not reached its goal of 25% for participation by Emerging Business Enterprises (as that term is defined in Chapter 360 of Milwaukee Code of Ordinances, "EBE") in the conduct of work for Site Preparation. Notwithstanding the foregoing, in recognition of the Developer's efforts at providing employment opportunities to residents of the neighborhood in which the Property is located and other community outreach activities, the City further acknowledges that the Developer shall be deemed to have fulfilled all EBE requirements in respect of the Site Preparation work, such that no further EBE efforts, spending or compliance shall be required of the Developer.

VII.

COVENANTS

Until Substantial Completion, the Developer shall not do, or permit to occur, any of the following:

- A. Sell, lease, transfer or otherwise convey the Property, or any portion thereof or interest therein, except for the Phase I Property a portion of which has been leased to Bishop's Creek Family Housing, LLC and a portion of which has been conveyed to Bishop's Creek Family Housing, LLC;
- B. Merge or otherwise consolidate with or into any other corporation or business organization, or permit any material change in the management, control or ownership of the Developer;
- C. Any fact, event, transaction occurrence or development which would materially and adversely affect (i) the Developer's ability to complete its obligations hereunder, or (ii) the financial condition or business prospects of the Developer;
- D. Incur any debt, obligation or liability secured by a lien on Lot 3 other than in connection with site preparation, development or improvement of such property.
- E. Change, modify, amend, replace or otherwise alter in any material respect the nature of the plans for future development near the Property and within the TID from that which is described on the attached *Exhibit G*.

VIII.

DEFAULT

If the Developer fails to timely and fully fulfill and perform any of its obligations hereunder, the City and RACM shall have the right to terminate this Agreement; provided, however, neither the City nor RACM shall terminate this Agreement unless such party has provided Developer with written notice of Developer's default and such default remains uncured following the expiration of 30 days from the date of such notice of default; provided however that this Agreement shall not be terminated if Developer has commenced cure during such 30 day period and continues to pursue such cure with reasonable diligence. If the City and RACM terminate this Agreement pursuant to this provision, neither the City nor RACM shall have any further obligation to provide the Developer with any undisbursed Advance of the RACM Grant and the City and RACM shall not be under any further obligation to perform any other acts under this Agreement.

IX.

CONFLICT OF INTEREST

No member, officer or employee of the City or RACM, during his/her tenure and for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

X.

MISCELLANEOUS

- A. This Agreement, and certain documents relating thereto, are, or may be, subject to Wisconsin's Public Records Law (see Wis. Stat. Ch. 19, Subch. II and, in particular, Wis. Stat. Sec. 19.36(3) which includes records produced or collected under this Agreement). The Developer shall cooperate with the City and RACM in the event either receives a request under Wisconsin's Public Records Law for a copy of this Agreement, or for any record relating to, or produced or collected under, this Agreement, which record is subject to Wisconsin's Public Records Law.
- B. No delay, waiver, omission or forbearance on the part of any party to exercise any right, option, remedy, duty or power arising out of any breach or default by any other party of any of the terms, provisions or covenants contained herein, shall be deemed a waiver by that party of such right, option or remedy, as against any other party for any subsequent breach or default by that party.
- C. This Agreement is accepted in three (3) counterparts, each of which shall constitute one and the same instrument.
- D. If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

XI

WRITTEN NOTICES

Any notice required or permitted to be sent under this Agreement shall be in writing and given either by personal delivery, by certified mail, postage prepaid, or by facsimile or email to

the following individuals. Notices personally delivered shall be deemed delivered upon actual receipt or upon refusal to accept delivery. Notices sent by certified mail shall be deemed delivered two business days after mailing. Notices sent by facsimile or email shall be deemed delivered on the date of sending; provided, however, (a) any such notice is, and must be, sent between the hours of 9:00 A.M. and 4:00 P.M. on a business day that City Hall is open for business and (b) no error or similar message indicating inability to send is prompted by the sending of such notice by facsimile or email. Notice recipient and sending information may be changed from time to time by sending written notice of the same to all parties in accordance with this section.

If to the City or RACM

Executive Director of RACM and DCD Commissioner
809 North Broadway
Milwaukee, Wisconsin 53202
Phone: (414) 286-5800
Fax: (414) 286-5467
Email:

With a copy to: Kevin P. Sullivan
Assistant City Attorney
Room 800, City Hall
200 East Wells Street
Milwaukee, WI 53202
Phone: (414) 286-2625
Fax: (414) 286-3967
Email: ksulli@milwaukee.gov

If to the Developer:

Bishop's Creek Community
Development Corporation
c/o Quarles & Brady LLP
411 East Wisconsin Avenue, Suite 2040
Milwaukee, WI 53202
Attn: John W. Daniels, Jr., Esq.
Phone: (414)277-5103
Fax: (414) 978-8903
Email: john.daniels@quarles.com

XII.

ASSIGNMENT

No party to this Agreement may assign any of its interest or obligations hereunder without the written consent of the other party, except that RACM and the City may each assign

its respective rights hereunder to the other without the consent of the Developer and except that Developer may collaterally assign its interest hereunder to a lender which provides financing for Project Costs without the consent of the City or RACM.

[SIGNATURE PAGE TO FOLLOW]

In Witness Whereof, the parties have executed this Agreement on the day and year first above written.

CITY OF MILWAUKEE

Tom Barrett
Mayor

Ronald Leonhardt
City Clerk

COUNTERSIGNED:

DEPUTY

Michael J. Dam
Comptroller

REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE

[Signature]
Chair

Dad Wilson
Assistant Executive Director/Secretary

BISHOP'S CREEK COMMUNITY DEVELOPMENT CORPORATION

By: S. Daniels
Name: Sedrick Daniels
Title: President

Approved as to form and execution this 3rd day of December, 2009.

Ken P. Sullivan
Assistant City Attorney

1050-2008-2494:150721

EXHIBIT A
to
Development Agreement

Property

Lots 1, 2 and 3 of Certified Survey Map No. 8099, recorded on October 21, 2008, as Document No. 9662359, a division of part of Lot B of Block 21 of North Milwaukee Townsite Company's Addition No. 2, in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 1, Town 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

**Exhibit A-1
to
Development Agreement**

Phase I Property

Lots 1 and 2 of Certified Survey Map No. 8099, recorded on October 21, 2008, as Document No. 9662359, a division of part of Lot B of Block 21 of North Milwaukee Townsite Company's Addition No. 2, in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 1, Town 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

EXHIBIT B
to
Development Agreement

Phase I Project

The Phase I Project consists of the development by Bishop's Creek Family Housing, LLC of a 55 unit affordable housing complex on the Phase I Property.

EXHIBIT C
to
Development Agreement

Site Preparation

Site preparation work will include remediation, demolition, abatement and site preparation on the Property consistent with the plans, in a manner consistent and in compliance with all applicable federal, state and local government approvals, including but not limited to the Wisconsin Department of Natural Resources, and which, when complete, will result in the Phase I Property being suitable for construction of the 55 unit affordable housing project on the Phase I Property.

EXHIBIT D
to
Development Agreement

Budget

Bishop's Creek - Sources and Uses

Uses of Funds

Land Acquisition	\$ 500,000
Environmental	\$ 417,804
Demolition and Abatement	\$1,626,651
Boarding	\$ 45,000
Security	\$ 20,000
Legal	\$ <u>128,545</u>

TOTAL \$2,738,000

Sources of Funds

Department of Commerce Grant	\$ 750,000
Land Sales Proceeds	\$ 750,000
City of Milwaukee Tax Incremental District	\$ 335,000
Other Grants (list):	
Milwaukee County Grants	\$ 100,000
Bishop's Creek Capital Fund	\$ 750,000
Bishop's Creek Equity	\$ <u>53,000</u>

TOTAL \$2,738,000

EXHIBIT E
to
Development Agreement

Intentionally omitted

1. Neither Declarant nor any successor, assignee, transferee or other party with any interest in the Property shall apply to or accept from the City, or any other responsible taxing agency or authority, an exemption from real estate taxation pursuant to Wisconsin Statute Section 70.11 or any successor or replacement statute in respect of any of the property described on Exhibit A and incorporated herein by this reference (the "Property"), unless:

- (a) the City, by action of the Common Council, approves a tax exemption for some portion or all of the Property; or
- (b) that portion of the Property to be tax exempt is the subject of an agreement for payment in lieu of taxes (a "PILOT Agreement"), which PILOT Agreement is satisfactory to the Commissioner of the Department of City Development in form, content and amount.

2. Notwithstanding the foregoing, with respect to the property described on Exhibit B and incorporated herein by this reference (the "Lot 3 Property"), the rights granted in this Declaration are subject to and limited by the terms and conditions of that certain Site Preparation Development Agreement dated as of November __, 2009, by and among the City, the Redevelopment Authority of the City of Milwaukee ("RACM") and the Declarant (the "Agreement"). Notice is hereby given of the terms and conditions of the Agreement pertaining to the Lot 3 Property as if such terms and conditions were fully set forth herein. Other relevant and material terms, conditions and other provisions are set forth in the Agreement, express reference to which is hereby made for greater particularity as to the terms, conditions and provisions of the Agreement. This Declaration is not a complete summary of the Agreement, and the provisions of this Declaration shall not be used in interpreting the Agreement. In the event of a conflict between this Declaration and the unrecorded Agreement, the unrecorded Agreement shall control.

3. This Declaration shall be placed of record at the Milwaukee County Register of Deeds Office, such that the Declarations and covenants set forth herein shall permanently and perpetually bind the Property, running with the land with respect thereto.

4. Declarant acknowledges that the City relies upon the undertakings herein contained in approving Declarant for receipt of the grant described above.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth above.

**BISHOP'S CREEK COMMUNITY
DEVELOPMENT CORPORATION**

By: _____

Subscribed and sworn to before me
this _____ day of November, 2009.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires: _____

This Declaration drafted by
Kevin P. Sullivan, Assistant City Attorney

1050-2008-2494:150499

EXHIBIT A

(Description of Property)

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 Lot "B", Block 21, in North Milwaukee Townsite Company's Addition No. 2, in the Northeast $\frac{1}{4}$ of Section 1, Town 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin. Except that part conveyed in Deed recorded as Document 7990235.

And except Lots 1 and 2 of Certified Survey Map No. 8099, recorded on October 21, 2008, as Document No. 9662359, a division of part of Lot B of Block 21 of North Milwaukee Townsite Company's Addition No. 2, in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 1, Town 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

EXHIBIT B

(Description of Lot 3 Property)

Lot 3 of Certified Survey Map No. 8099, recorded on October 21, 2008, as Document No. 9662359, a division of part of Lot B of Block 21 of North Milwaukee Townsite Company's Addition No. 2, in the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 1, Town 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

EXHIBIT G
to
Development Agreement

