

AGREEMENT

By and Between

**The County of Kenosha, Wisconsin
a Wisconsin Municipal Corporation**

And

**The City of Kenosha, Wisconsin
a Wisconsin Municipal Corporation**

This Agreement ("Agreement") is made by and between the County of Kenosha, Wisconsin, a municipal corporation (the "County") and the City of Kenosha, Wisconsin, a municipal corporation (the "City") duly organized under the laws of the State of Wisconsin, and shall be effective upon approval and execution by the parties.

WITNESSETH

WHEREAS, the County is the owner of eighty-eight (88) single family lots and Outlot 4, located in the City of Kenosha, County of Kenosha, State of Wisconsin, which is described on Exhibit A and located in the K.A.T. Subdivision (hereinafter referred to as the "Property");

WHEREAS, the real estate taxes and special assessments on the Property were not paid and the County lawfully acquired the Property by tax deed pursuant to Chapter 75 of the Wisconsin Statutes;

WHEREAS, redevelopment of the Property would be beneficial to the City and County by increasing the City's and County's tax base and providing a stimulus to the Kenosha area;

WHEREAS, BEAR Development, LLC, or its assigns ("BEAR") has expressed a desire to purchase the Property, remediate, restore and develop the Property in a manner which will enhance the neighborhood and provide needed housing which will benefit both the City and County; and

WHEREAS, Bear, the City and the County have mutually drafted a Memorandum of Understanding ("MOU") regarding the development of the Property and certain City lots;

WHEREAS, this MOU, which sets forth a framework of understanding, demonstrates the intent of the parties and is hereto attached as Exhibit B.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by and among the undersigned, as follows:

1. Actions Required. The County intends to transfer by quit-claim deed the Property to the City. This transfer of Property is contingent on the following events occurring before the transfer of the Property:

- a. The City and BEAR by their own negotiated and agreed terms, shall enter into a Purchase and Sale Agreement for the sale of the Property and the City Lots from the City to BEAR. This



Purchase and Sale Agreement shall be approved by the Common Council no later than January 7, 2020 and a copy shall be provided to the County upon request. The Purchase and Sale Agreement shall include terms consistent with the MOU.

- b. BEAR shall diligently pursue and work with the City on obtaining a number of developer entitlements, such as subdividing the parcel known as Outlot 1; rezoning of Parcel No. 07-222-25-327-001; the City and BEAR shall enter into a Development Agreement and a Development/TIF Agreement regarding the development of the Property and the City Lots. This TIF Agreement shall be approved by the Common Council no later than January 7, 2020 and a copy shall be provided to the County upon request. The Development Agreement shall be approved by the Common Council no later than October 31, 2020. The Development and TIF Agreement shall include terms consistent with the MOU.
- c. BEAR and the County entering into an agreement that BEAR or its affiliate, BREG6, LLC, grant an immediate reduction of \$1,238,600 towards the obligation owed by Kenosha Human Development Services to BEAR, BREG6, LLC, for certain leasehold improvements and other payments pursuant to a lease agreement dated March 18, 2019 (the "KHDS Obligation") upon transfer of ownership of the Property from the County to the City.
- d. Confirmation by BEAR that the contingencies in the Purchase and Sale Agreement between the City and BEAR have been satisfied.

In the event the above-contingencies and agreements are not completed by the deadlines set forth above, or the terms of the Purchase and Sale Agreement or the Development and TIF Agreements do not include terms consistent with the MOU, the County shall not have any obligation to transfer the Property to the City and this agreement shall be considered null and void.

2. Conveyance to City. The County shall, within thirty (30) business days of the above-referenced contingencies being completed, convey the Property to the City as permitted by Wisconsin Statute § 75.69 (2). The terms of this conveyance are as follows:

- a. The County shall convey to City title to the Property, by delivery of a fully executed and acknowledged Quit Claim Deed, in customary form reasonably acceptable to City and the County. The City agrees to accept title and ownership of the Property, in its current condition at the time of sale "as is and with all faults."
- b. City shall hold harmless and indemnify the County from any and all liability for any reason, known or unknown, related to the condition or status of the property, whether such liability or condition is known or unknown at the time of transfer of title. The City acknowledges that the County is not liable for any taxes or special assessments on the Property.
- c. The City and County shall cooperate in the execution and delivery of such documents necessary to allow City to convey the Property to BEAR. The County shall not be responsible for paying either the City or Bear for any costs or fees associated with the subsequent transfer of the Property from the City to Bear.

- d. The parties further agree that upon delivery of the Quit Claim Deeds, that the County shall not be responsible for any maintenance obligations or liabilities relating to the Property, including but not limited to any drainage concerns or facilities.

3. Notice. All notices and other communications required or permitted hereunder shall be in writing and delivered either by hand or by certified mail, return receipt requested, addressed to City or County, as the case may be, at the address therefor set forth below, or at such other address as either party shall hereafter designate by like notice. Notice shall be effective as of the date of delivery, if by hand, or mailing if by certified mail.

If to City, then to:

City Clerk/Treasurer
Municipal Building, Room 105
625 52nd Street
Kenosha, WI 53140

With a copy to:

City Attorney
Municipal Building, Room 201
625 52nd Street
Kenosha, WI 53140

If to County, then to:

County Clerk
1010 56th Street
Kenosha, WI 53140

With a copy to:

Corporation Counsel
912 56th Street
Kenosha, WI 53140

4. Amendment. Neither this Agreement nor any term or condition hereof may be modified or amended, except in writing, executed and delivered by the party against whom enforcement of such modification or amendment is sought.

5. Wisconsin Law. Wisconsin law shall apply to this Agreement and all disputes shall be adjudicated in Kenosha County Circuit Court.

6. Force Majeure. Neither party shall be liable for any failure of performance hereunder (excluding the failure to make payments when due) due to causes beyond its reasonable control and despite its reasonable efforts, including, without limitation, acts of God; fire; flood; strikes; lockouts; civil disturbance;

order of any government, court or regulatory body claiming jurisdiction; act of public enemy; war; riot; sabotage; blockage; embargo or material shortage; tornado or other natural disaster. In the case of the occurrence of an event of force majeure, the dates and schedules specified hereunder shall be suspended until such event can be remedied.

7. Counterparts. This Agreement may be executed simultaneously in 2 or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9. Recording. The parties shall not record this Agreement.

10. Waiver. No extension of time, forbearance, neglect or waiver on the part of a party with respect to any one or more of the covenants, terms or conditions of this Agreement shall be construed as a waiver of any of the other covenants, terms or conditions of this Agreement, or as an estoppel against the party, nor shall any extension of time, forbearance or waiver on the part of a party in any one or more instance or particular be construed to be a waiver or estoppel in respect to any other instance or particular covered by this Agreement.

11. Representation of Authority. Each of the undersigned hereby represents and warrants that: (a) such party has all requisite power and authority to execute this Agreement; (b) the execution and delivery of this Agreement by the undersigned, and the performance of its terms thereby have been duly and validly authorized and approved by all requisite action required by law; and (c) this Agreement constitutes the valid and binding agreement of the undersigned, enforceable against each of them in accordance with the terms of the Agreement.

12. Construction. This Agreement has been negotiated between the parties, and each party has participated in the drafting of this Agreement; consequently, the doctrine of construing an agreement against a draftsman shall not apply to this Agreement, and neither party has any rights under such doctrine.

13. Effective Date. This Agreement shall be in effect upon approval and execution by the parties. The Effective Date shall be the date of last execution.

Signature pages follow

IN WITNESS WHEREOF, the parties hereto have hereunto executed this AGREEMENT on the dates below given.

THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation

BY: _____
JOHN ANTARAMIAN, Mayor

BY: _____
DEBRA SALAS, City Clerk/Treasurer

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

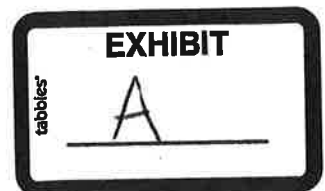
Personally came before me this ____ day of _____, 2019, JOHN ANTARAMIAN, Mayor, and DEBRA SALAS City Clerk/Treasurer for the CITY OF KENOSHA, WISCONSIN, a Wisconsin municipal corporation, to me known to be such persons who executed the foregoing instrument, and to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers as the agreement of said corporation, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

County Parcels

Tax Parcel Number:

07-222-25-360-001
07-222-25-360-019
07-222-25-360-018
07-222-25-360-017
07-222-25-360-016
07-222-25-360-015
07-222-25-360-014
07-222-25-360-013
07-222-25-360-012
07-222-25-360-011
07-222-25-360-041
07-222-25-360-042
07-222-25-360-063
07-222-25-360-062
07-222-25-360-061
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07-222-25-360-028
07-222-25-360-029
07-222-25-360-030
07-222-25-360-065
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07-222-25-360-032
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07-222-25-360-089
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07-222-25-360-102
07-222-25-360-103
07-222-25-360-104
07-222-25-360-105
07-222-25-360-106
07-222-25-360-107
07-222-25-360-108
07-222-25-360-109
07-222-25-360-114

**MEMORANDUM OF UNDERSTANDING BETWEEN KENOSHA COUNTY, CITY OF KENOSHA AND BEAR
DEVELOPMENT, LLC RELATING TO THE DEVELOPMENT OF THE K.A.T. SUBDIVISION AND CERTAIN
ADJACENT LANDS**

This Memorandum is hereby entered into by and between Kenosha County (the "County"), the City of Kenosha (the "City") and Bear Development, LLC, or its assigns ("Bear").

WHEREAS, the County is the owner of 88 single family lots (the "County Lots") and Outlot 4 of the K.A.T. Subdivision in the City of Kenosha and as more particularly itemized on the attached Exhibit A.

WHEREAS, the City is the owner of 4 single family lots (the "City Lots") and Outlot 1 and 2 of the K.A.T. Subdivision in the City of Kenosha as more particularly itemized on the attached Exhibit B.

WHEREAS, the County Lots, the City Lots, Outlots 1, 2 and 4 shall hereinafter collectively be referred to as the "Property."

WHEREAS, Kenosha Human Development Services ("KHDS") contracts with the County to provide a number of services and the County pays KHDS for these services.

WHEREAS, the contractual fees paid by the County to KHDS factor in operating and leasing expenses of KHDS.

WHEREAS, the parties acknowledge that KHDS is obligated to an affiliate of Bear; BREG6, LLC for certain leasehold improvements and other payments pursuant to a Lease Agreement dated March 18, 2019 (the "KHDS Obligation").

WHEREAS, the grant and reduction given by BEAR to KHDS as a result of the County transferring the County Lots and Outlot 4 to the City's, shall directly reduce the KHDS Obligation and thereby reduce the operating expenses subsequently charged to the County by KHDS pursuant to KHDS's contractual relationship to BREG6, LLC.

WHEREAS, this Memorandum confirms the discussions between the County, the City and Bear regarding the transfer and development of the Property and the consideration to be provided by the parties to this Memorandum.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the parties hereto agree as follows:

1. The City and the County shall execute an agreement pursuant to Section 75.69(2), Wis. Stats, whereby the County shall transfer by quit-claim deed the County Lots and Outlot 4 to the City (hereinafter "the County-City Agreement"), subject to the following terms:
 - A. Upon execution of the County-City Agreement and the delivery of the quit claim deed referenced in Section 1.B hereof, Bear shall grant and acknowledge in writing an immediate reduction of the KHDS obligation in the full amount of \$1,238,600.



- B. The delivery of the quit-claim deeds by the County to the City shall be contingent upon approval by the City Common Council of the Developer Entitlements (as hereinafter defined) and the execution of the Purchase and Sale Agreement between Bear and the City ("Purchase and Sale Agreement") as described in Section 2 hereof.
 - C. The delivery of the quit-claim deeds by the County to the City shall occur not less than 30 days following the satisfaction of the contingencies set forth in Section 1.B. hereof (the City Common Council's approval of the Developer Entitlements and the Purchase and Sale Agreement).
2. Upon approval by the County Board, Common Council and execution of the County-City Agreement referenced in Section 1 hereof, Bear (or an affiliate of Bear) and the City shall enter into a Purchase and Sale Agreement for the sale of the Property from the City to Bear, subject to the following terms:
 - A. The Purchase Price to be paid by Bear to the City in the amount of \$336,400. (Note: Purchase price is based upon \$255,000 purchase price for the City Lots plus outstanding special assessments associated with the County Lots @ 88 lots x \$925 per lot = \$81,400).
 - B. The Purchase Price shall be evidenced by a promissory note issued by Bear to the City (the "City Note"). The City Note will be subject to the following terms:
 - The Note shall not accrue interest.
 - Payments shall be made on the Note as set forth in Section 5 hereof.
 - The term of the Note shall be Five Years. Any remaining unpaid balance shall be paid in full by Bear at the end of the term.
 - C. The purchase of the property by Bear from the City (the "Closing") shall be contingent upon the approval by the Common Council of the Developer Entitlements (as hereinafter defined).
 - D. The Closing shall occur not less than 30 days following the delivery of the quit-claim deeds by the County to the City. The County shall not be responsible for paying either the City or Bear any costs associated with this Closing.
3. Upon execution of this Memorandum, Bear shall diligently pursue and work with City Staff, the City Plan Commission, appropriate City Committees and the Common Council to obtain the required approval of the following items (hereinafter and previously referred to as the "Developer Entitlements"):
 - A. The Purchase and Sale Agreement between the City and Bear referenced in Section 2 hereof.

- B. A Plat of Subdivision which subdivides Outlot 1 into 13 additional single-family residential lots.
- C. A petition to re-zone the land known as Parcel No. 07-222-25-327-001 (the "Multi-family Parcel") owned by Bear's affiliate.
- D. A Development Agreement for the Property, which includes provisions that (a) all infrastructure including stormwater detention/retention facilities required by the City and the City of Kenosha Water Utility be completed and accepted within five (5) years (b) prohibiting the development of any City or County lot pursuant to any rent to own program and (c) any other agreements related to the Development Agreement including, but not limited to, Stormwater Management Facilities Maintenance Agreement(s).
- E. A Development/TIF Agreement for the Property containing the following terms:
- A 100% developer funded TIF to partially fund the eligible project costs needed to develop the Property.
 - Bear shall timely pay any and all permit and impact fees to the City in accordance with applicable ordinances associated with the development of the Property.
 - The extension of TID #10 through 2035 with the final TIF payment to be made to Bear in 2036.
 - The City shall, as a development incentive, and to reimburse Bear for certain project costs, issue a revenue bond (the "Bond") to Bear, in a form acceptable to Bear and the City in an amount not to exceed \$5,350,000. Until the expiration of TID #10, the City shall make annual payments on the Bond, in an amount equal to (but not in excess of) the aggregate amount of tax increment generated on the Property, or any parcel located within TID #10 as identified on the attached Exhibit C (the "Bear Parcels"), or any parcel within said TID #10 hereinafter acquired by Bear or its affiliates during the life of said TID #10. The City agrees that it will not apply any tax increment revenue generated by any of the foregoing parcels for any purpose prior to the payment of the Bond.
 - Bear may assign the TIF payments to be made under the Development/TIF Agreement, or portions thereof; to the Property, one or more of its affiliated developments within TID #10, or any combination thereof, in Bear's discretion.
4. In the event that the Developer Entitlements have not been obtained by Bear on or before October 31, 2020; the reduction by Bear of the KHDS obligation is not granted in accordance with paragraph 1.A., or any party breaches its obligations under this Agreement, the County-City Agreement and the Purchase and Sale Agreement set forth in Sections 1 and 2 hereof

shall be null and void and no obligation or liability whatsoever is owed to or by any party hereto nor shall any party be entitled to make any claim for damages or expenses associated with this Memorandum. The parties hereto expressly agree and understand this Memorandum is no more than agreement to agree.

5. At the time of the Closing of the sale of any lot by Bear to a buyer (other than an affiliate of Bear), and until such time as the City Note has been paid in full, Bear shall pay to the City the sum of \$15,000 for each such Lot sold, and such sum(s) shall be applied to the balance of the City Note.
6. Bear acknowledges that any and all private drainage facilities for the Property, including the retention pond located on Outlot 4, will be maintained by Bear, until such time as they are conveyed to a private Homeowner's association. Homeowner's association and Bear will enter into an agreement under the Declaration of Restrictions, Covenants and Easements guaranteeing that property taxes will be paid on the outlots for this development by the Homeowner's association or its successor owner. The maintenance and management of such facilities will be governed by an appropriate Declaration of Restrictions, Covenants and Easements to be drafted by Bear, acceptable to the City, and recorded against the title to the Property; with a copy being provided to the City and County. The parties acknowledge that upon delivery of the quit claim deed described under Section 1 hereof for the County Lots, that the County shall not be responsible for any maintenance obligations or liabilities attributable to any such drainage facilities or with respect to the County Lots.
7. No forbearance or waiver of any term of this Memorandum shall be construed as a waiver of any other term of this Memorandum or any other instance or particular covered by this Memorandum.
8. This Memorandum was mutually drafted by the County, the City and Bear. Each of the undersigned hereby represent and warrant that they have the requisite power and authority to execute this Memorandum and that the execution and delivery of this Memorandum by the undersigned has been approved by all action required by law.
9. The parties agree that this Memorandum shall be governed by the laws of the State of Wisconsin.
10. This Memorandum may be executed in two (2) or more counterparts, all of which shall be considered one and the same Memorandum and it shall become effective when one or more counterparts have been signed by each of the parties.
11. Any notice required to be given to any party to this Memorandum shall be in writing and delivered either by hand or certified mail, return receipt requested, to the addresses indicated below, or such address as the parties indicate in writing. Notice shall be effective as of the date of delivery, if by hand, or mailing, if by certified mail.

If to the City: Office of the City Administrator
Municipal Building, Room 300,
625 - 52nd Street,
Kenosha, Wisconsin 53140

With a copy to: Office of the City Attorney
Municipal Building, Room 201,
625 - 52nd Street,
Kenosha, Wisconsin 53140.

If to Kenosha County: County Executive,
1010 56th Street,
Kenosha, Wisconsin 53140.

With a copy to: Corporation Counsel's Office
912 56th Street, LL13
Kenosha, WI 53140

If to Bear: Bear Development, LLC
Attn: Stephen R. Mills
4011 80th Street
Kenosha, WI 53142

Signature page follow

Signed this ____ day of _____, 2019.

Jim Kreuser, County Executive

Signed this ____ day of _____, 2019.

John M. Antaramian, Mayor

Signed this ____ day of _____, 2019.

Debra Salas, City-Clerk Treasurer

Signed this ____ day of _____, 2019.

Stephen R. Mills, CEO
Bear Development, LLC

Exhibit A

County Parcels

Tax Parcel Number:

07-222-25-360-001
07-222-25-360-019
07-222-25-360-018
07-222-25-360-017
07-222-25-360-016
07-222-25-360-015
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07-222-25-360-011
07-222-25-360-041
07-222-25-360-042
07-222-25-360-063
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07-222-25-360-037
07-222-25-360-036
07-222-25-360-035
07-222-25-360-034
07-222-25-360-033
07-222-25-360-032
07-222-25-360-031
07-222-25-360-089
07-222-25-360-088
07-222-25-360-087
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07-222-25-360-085
07-222-25-360-084
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07-222-25-360-081
07-222-25-360-080
07-222-25-360-076
07-222-25-360-077
07-222-25-360-078
07-222-25-360-079
07-222-25-360-091
07-222-25-360-092
07-222-25-360-093
07-222-25-360-094
07-222-25-360-095
07-222-25-360-096
07-222-25-360-097
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07-222-25-360-099
07-222-25-360-100
07-222-25-360-101
07-222-25-360-102
07-222-25-360-103
07-222-25-360-104
07-222-25-360-105
07-222-25-360-106
07-222-25-360-107
07-222-25-360-108
07-222-25-360-109
07-222-25-360-114

**Exhibit B
City Parcels**

Tax Parcel Number:

07-222-25-360-020

07-222-25-360-040

07-222-25-360-090

07-222-25-360-064

07-222-25-360-111

07-222-25-360-112

07-222-25-360-113

**Exhibit C
Bear Parcels**

Tax Parcel Number:

07-222-25-327-001

07-222-25-326-011

07-222-25-327-002