

Document Number

AGREEMENT FOR SALE

Name and Return Address:

City of Milwaukee  
Real Estate Section  
P.O. Box 324  
Milwaukee, WI 53201

Tax Key No.: \_\_\_\_-\_\_\_\_-\_\_\_\_-

Recording Area

AGREEMENT, By and between the **CITY OF MILWAUKEE**, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin (hereinafter called "City"), located at Milwaukee, Wisconsin, and **BUYER NAME**, a Wisconsin corporation/limited liability company/or other entity, (hereinafter called "Buyer") located at \_\_\_\_\_, Milwaukee, WI 532\_\_, WITNESSETH:

WHEREAS, In furtherance of the objectives of, and pursuant to Resolution No. \_\_\_\_\_ adopted by the Common Council of the City of Milwaukee on \_\_\_\_\_, the City has declared certain real property surplus to municipal needs and has offered to sell and the Buyer is willing to purchase said real property (hereinafter "Property"), more particularly described in **Schedule A** annexed hereto and made a part hereof, and to improve the Property for and in accordance with the uses specified in the provisions of this Agreement:

NOW, THEREFORE, In consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

**SEC. 1. PURCHASE PRICE**

Subject to all the terms, covenants and conditions of this Agreement, the City will sell the Property to the Buyer for, and the Buyer will purchase the Property from the City and pay therefor the amount of \_\_\_\_\_ **and No/100ths Dollars (\$\_\_\_\_.00)** ("Purchase Price"), to be paid by check at the time of closing subject to the usual and customary proration a 20% Development Fee paid to the Redevelopment Authority of the City of Milwaukee and the City's cost of title insurance. (Buyer shall receive a credit toward the Purchase Price for the \$\_\_\_\_ Option Fee previously paid.)

**SEC. 2. CONVEYANCE OF PROPERTY**

(a) Form of Deed. The City shall convey title to the Property by Quit Claim Deed ("Deed") in an "as is, where is" condition with all faults and defects, known or unknown, physical or otherwise, including but not limited to environmental defects, whether disclosed or not disclosed, known or not known, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims, including any action based on non-disclosure. The conveyance and title of the Property shall, in addition to the provisions of Section 15(c) of this Agreement and all other conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement, be subject to:

1. Applicable statutes, orders, rules and regulations of the Federal Government and State of Wisconsin, and laws and ordinances of the City of Milwaukee, including zoning, building and land subdivision laws and regulations; and
2. All easements of record; and
3. Matters that would be revealed by an ALTA survey of the Property; and
4. A deed restriction joining the platted lots to create a single parcel for building permit and assessment purposes (where applicable); and

- (b) Time and Place for Delivery of Deed. The City shall deliver the Deed and possession of the Property to the Buyer within thirty (30) days of execution by Buyer and submittal to the City of this Agreement, or on such other date as the parties hereto may mutually agree in writing. Conveyance shall be made at the office of the City and the Buyer shall accept the conveyance and pay the Purchase Price to the City at such time and place.
- (c) Proration of Taxes. There shall be no proration of taxes as the Property is tax exempt OR taxes shall be prorated to the date of Closing.
- (d) Recordation of Deed. The City shall promptly file the Deed for recording with the Milwaukee County Register of Deeds. The Buyer shall pay all costs for so recording the Deed.
- (e) Title Insurance. At least ten (10) days prior to the time fixed for closing, the City shall procure and deliver to the Buyer for examination a preliminary commitment for title insurance in the amount of the full Purchase Price, naming the Buyer as the insured. This commitment shall be written by a responsible title insurance company licensed by the State of Wisconsin and shall guarantee the City's title to be in the condition called for by this Agreement. The cost of title insurance shall be paid by the City except in the event that the title cost exceeds the Purchase Price, in which case the Buyer shall pay the cost of title insurance. Buyer shall be responsible for the cost of a gap endorsement although the City agrees to execute the gap endorsement at closing.
- (f) Special Assessments. City will be responsible for all special assessments levied as of the date the Common Council of the City of Milwaukee approved this sale. Buyer is responsible for all special assessments levied after that date. The City will provide details of any known or contemplated special assessments at closing. The estimated cost for all outstanding special assessments for which the City is responsible shall be deducted from the Purchase Price at closing and Buyer shall then pay the assessment at such time as the cost is certified to the tax roll.
- (g) Tax Delinquency. Prior to closing, the City shall investigate the real estate tax payment status for all property in the City that is owned by Buyer as an individual or by a partnership or corporation in which the Buyer has an ownership interest. If Buyer is found to have any delinquent real estate taxes, the City shall give Buyer notice to correct this condition by the expiration of the option period as extended or other such period as determined by the Executive Director-Secretary of the City. If the violation is not corrected within the specified period, this Agreement for Sale may be canceled at the option of the City and all option and renewal fees and the Performance Deposit retained by the City as liquidated damages.

**SEC. 3. PERFORMANCE DEPOSIT**

The Buyer has delivered with this Agreement a Performance Deposit in the amount of \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_.00) ("Deposit"). The Deposit shall serve as security for the performance of the obligations of the Buyer to construct as provided hereinafter. The Commissioner ("Commissioner") of the Department of City Development (hereinafter "DCD") shall be authorized to return the Deposit concurrently a Certificate of Completion pursuant to Section 7 or shall retain the Deposit as liquidated damages in accordance with the provisions of Sections 6, 7 and 15. No interest shall be paid on the deposit. All or part of the Deposit may be retained by the City if Buyer fails to complete the Improvements according to the time schedule provided in Section 6.

**SEC. 4. SITE PREPARATION AND CERTAIN OTHER ACTION BY CITY**

(a) Site Preparation by the City and Property Condition:

1. City has provided Buyer and Buyer acknowledges receipt of the following reports and letters relating to the environmental condition of the Property:
  - (i) Phase I Environmental Audit prepared by the Environmental Scientist of the City of Milwaukee dated \_\_\_\_\_;
  - (ii) Phase II Environmental Assessment dated \_\_\_\_\_, prepared by \_\_\_\_\_;
  - (iii) Wisconsin Department of Natural Resources ("WDNR") letter dated \_\_\_\_\_.
2. Agency shall not conduct any additional environmental investigation and shall convey the Property on an "as is, where is" basis. If Redeveloper desires its own Phase I Environmental Assessment or Phase II testing, such investigations and reports shall be at Redeveloper's sole cost.

or Without changing the "as is, where is, no warranty or representation" nature of this transaction, Agency discloses and

Redeveloper acknowledges that the Property contains soils and groundwater that are impacted with contaminants that are subject to regulation by federal, state and local regulations. Redeveloper agrees to accept the Property in its "as is, where is" condition including all environmental conditions, known or unknown, disclosed or not disclosed. At closing, Redeveloper agrees to execute a letter to WDNR agreeing to accept full assignment of the Responsible Party Letter and Agency shall transmit such assignment to WNDR. Redeveloper agrees to manage and/or remediate all environmentally impacted soils and groundwater on or under the Property according to WDNR rules and to indemnify and hold the Agency harmless for and against any liability whatsoever regarding the Property, its condition, its environmental impacts, and any required remediation or enforcement action relative to the same, and from any and all third party claims.

3. Agency shall not provide an ALTA survey of the Property.
4. City discloses that the Property may contain old building foundations, rubble and debris from prior buildings that may have been demolished. Buyer agrees to accept the Property "as is, where is" and is solely responsible for conducting its own geotechnical investigation to determine the bearing capacity of the soil and for all site excavation, debris removal, fill and development expenses.

(b) Right of Entry for Utility Service. The City reserves for itself, the City, and any public utility company as may be appropriate, the unqualified right to enter upon the Property at all reasonable times for the purpose of reconstructing, maintaining, repairing or servicing the public utilities located within the Property boundary lines and provided for in the easements described or referred to in Paragraph (a), Section 2 hereof. This right-of-entry shall not interfere with Buyer's use of the Property.

(c) Buyer Not to Construct Over Utility Easements. The Buyer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in Paragraph (a), Section 2 hereof, unless such construction is provided for in such easement or has been approved by the City. If approval for such construction is requested by the Buyer, the City shall use its best efforts to assure that such approval shall not be withheld unreasonably.

(d) Access to Property. Prior to the conveyance of the Property to the Buyer, the City shall permit representatives of the Buyer to have access to any part of the Property as to which the City holds title, at all reasonable times for the purpose of obtaining data and making various tests that necessary to carry out the Agreement upon receipt by the City of a written request for such entry and submittal of evidence of insurance according to the City's minimum guidelines. Such request and evidence of insurance must be satisfactory to the City in form and substance prior to the City granting such access. After the conveyance of the Property to the Buyer, the Buyer shall permit the representatives of the City, or the City upon five (5) days prior written notice access to the property at all reasonable times which any of them deems necessary for the purposes of the Agreement, including, but not limited to, inspection of all work being performed in connection with the construction as hereinafter defined. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Section.

## **SEC. 5. DEVELOPMENT OF THE PROPERTY**

- (a) The Buyer shall develop the Property as follows:

Construction of \_\_\_\_\_ building containing approximately \_\_\_\_\_ square feet of gross building area for use as \_\_\_\_\_, and associated landscaping and parking.

(b) The Buyer shall submit to DCD a final construction budget based on firm bids, evidence of financing and/or equity that matches development costs and final construction plans (site, building and landscape plans). All of the foregoing must be satisfactory to DCD in form and substance prior to closing. All contingencies in the preliminary financing commitment, including any presale requirements, must be satisfied prior to closing.

(c) The Buyer covenants and agrees that no additional buildings, structures, or other similar improvements shall be constructed on the Property without the prior written approval of the City, including without limitation because of enumeration, any addition to or expansion of any principal building currently located on or presently proposed for construction on the Property or any accessory building to such principal building.

(d) Buyer agrees to comply with the Emerging Business Enterprise (EBE) policy of the City. The City's goal for EBE participation is at least 18% of the total project budget. Buyer shall execute an EBE agreement with the City of Milwaukee Equal Opportunity Enterprise Program (EOEP). Buyer shall also obtain a copy of the "EBE Certification Directory" from the Joint Certification Program. After completion of the project, Buyer shall report on its use of EBEs in terms of the total number of EBE contractors used and the dollar

volume of such contracts. Such information shall be provided in writing prior to or with Buyer's request for a Certificate of Completion.

## **SEC. 6. TIME FOR COMMENCEMENT AND COMPLETION OF CONSTRUCTION**

The construction referred to Section 5 shall commence within one (1) month following the date of closing, and shall be completed within twelve (12) months following commencement.

## **SEC. 7. CERTIFICATE OF COMPLETION**

Promptly after completion of the construction, including landscaping, in accordance with this Agreement, Buyer shall request that the Commissioner of DCD issue a Certificate of Completion (hereafter referred to as "Certificate") and return the Deposit. This Certificate shall be a conclusive determination of satisfaction and termination of the covenants in the Agreement and the Deed with respect to the obligations of the Buyer and its successors and assigns to construct and the dates for the beginning and completion thereof. Representatives of the City shall inspect the Property within thirty (30) days following receipt of Buyer's request to determine if the work has been completed according to City-approved plans and this Agreement. If the property is determined to be in conformance, the Commissioner shall execute the Certificate within thirty (30) days of the inspection and shall present the Certificate to Buyer. If the Commissioner refuses to authorize this Certificate, the City shall within thirty (30) days of the Property inspection provide Buyer with a written statement indicating in adequate detail how the Buyer has failed to complete the development of the Property in conformity with approved plans or this Agreement, or is otherwise in default, and what measures or acts are necessary, in the opinion of the Commissioner, for the Buyer to take or perform in order to obtain the Certificate. Concurrent with Commissioner's consideration of the request for the Certificate, the City shall consider return of the Deposit. All or part of the Deposit may be retained by the City if the project is not completed according to the schedule specified in Section 6. A check for the amount of Deposit authorized for return by the City shall be provided within ten (10) days of issuance of the Certificate by the City.

## **SEC. 8. RESTRICTIONS ON USE**

The Buyer agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, to:

- (a) Not discriminate upon the basis of race, color, creed, sex, or national origin in the sale, lease or rental, or in the use or occupancy of the Property or any improvements located or to be erected thereon, or any part thereof.
- (b) Comply with all requirements of the Americans with Disabilities Act of 1990, U.S.C. #12101, et. seq.

## **SEC. 9. COVENANTS BINDING UPON SUCCESSORS IN INTEREST: PERIOD OF DURATION**

It is intended and agreed that the covenants provided in Sections 6, 8, 10 and 15 shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the City, its successors and assigns, the City, and any successor in interest to the Property, or any part thereof, and the United States (in the case of the covenant provided in subsection (b) of Section 8), against the Buyer, its successors and assigns, and every successor in interest to the Property or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the covenant provided in subsection (a) of Section 8 shall remain in effect without limitation as to time.

## **SEC. 10. TRANSFER OF PROPERTY**

The Buyer has not made or created, and will not, prior to the completion of the redevelopment as certified by DCD, not make or suffer to be made any other sale, assignment, conveyance, lease or transfer in any other form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or contract or agree to do any of the same, without the prior written approval of the Commissioner, provided that Buyer may assign or transfer to an entity which has the substantially similar ownership as Buyer. **For condominium projects:** Further provided, that the foregoing shall not apply to the agreement to sell, sale, or conveyance of any condominium unit for which an occupancy permit has been issued by the City.

## **SEC. 11. LIMITATION UPON ENCUMBRANCE OF PROPERTY**

Prior to issuance of the Certificate, neither the Buyer nor any successor in interest to the Property shall engage in any financing or any other transaction creating any mortgage or other encumbrances or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property except for the purposes only of obtaining (a) funds only to the extent necessary for the construction provided in Section 5 and (b) such additional funds, if any, in an amount not to exceed the Purchase Price paid by the Buyer to the City. Until issuance of the Certificate, the Buyer (or successor in interest) shall notify the City in advance of any financing secured by mortgage or other similar lien instrument it proposes to enter into with respect to the Property and of

any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of the Buyer or otherwise.

## **SEC. 12. MORTGAGEES NOT OBLIGATED TO CONSTRUCT**

Notwithstanding any of the provisions of this Agreement, including but not limited to those which are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Property or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall not be obligated by the provisions of this Agreement to complete the construction or to guarantee such construction; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder.

## **SEC. 13. ENFORCED DELAY IN PERFORMANCE**

Neither the City nor the Buyer, nor any successor in interest, shall be considered in breach or default of its obligations with respect to the preparation of the Property for development or commencement and completion of construction, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence. The time for the performance of the obligations shall be extended for the period of the enforced delay, as determined by the City, if the party seeking the extension shall request it in writing of the other party within ten (10) days after the beginning of the enforced delay.

## **SEC 14. NO DAMAGES FOR DELAY**

The Buyer shall not be entitled to recover any damages from the City arising from or attributable to any delays in construction upon or development of the Property, unless the City caused the delay in question.

## **SEC. 15. REMEDIES**

(a) In General. Except as otherwise provided in this Agreement, in the event of any default or breach of the Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party or successor shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach within sixty (60) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

(b) Prior to Conveyance. In the event that prior to the conveyance of the Property the Buyer assigns or attempts to assign this Agreement or any rights hereunder, except as permitted by Section 10, or fails to pay the Purchase Price and take title to the Property upon tender of conveyance by the City, then this Agreement and any rights of the Buyer in this Agreement may at the option of the City be terminated by the City and the Deposit retained by the City as liquidated damages. In the event that the City does not tender conveyance or possession of the Property as provided in this Agreement or the Buyer furnishes evidence satisfactorily to the City prior to the time specified for conveyance in Section 2, that it has been unable after diligent effort to obtain financing for the construction upon satisfactory terms, then this Agreement shall, at the option of the Buyer, be terminated by the Buyer and the Deposit returned without interest to the Buyer.

(c) Revesting Title in City Subsequent to Conveyance to Buyer. In the event that subsequent to conveyance of the Property or any part thereof to the Buyer, and prior to issuance of the Certificate:

1. the Buyer or successor in interest shall default on or violate its obligations with respect to the construction (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment or suspension shall not be cured, ended or remedied within ninety (90) days after written demand by the City so to do; or
2. the Buyer or successor in interest shall fail to pay real estate taxes or special assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within ninety (90) days after written demand by the City so to do; or
3. there is any transfer of the Property or any part thereof in violation of this Agreement, and such violation shall not be cured

within sixty (60) days after written demand by the City;

then the City shall have the right to reenter and take possession of the Property and to terminate and revest in the City the estate conveyed by the Deed to the Buyer. The intent of this provision, together with other provisions of this Agreement, is that the conveyance of the Property to the Buyer shall be made upon a condition subsequent to the conveyance that in the event of any default, failure, violation, or other action or inaction by the Buyer specified in subdivisions 1, 2, and 3 of this Section 15, failure on the part of the Buyer to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subdivisions, the City at its option may declare a termination in favor of the City of the title and all rights and interests of the Buyer, and any assigns or successors in interest to and in the Property, shall revert to the City:

Provided, That such condition subsequent and any revesting of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (a) the lien of any mortgage authorized by this Agreement, and (b) any right or interest provided in the Agreement for the protection of the holder of such mortgage. In addition to the right of reentry and revesting of title provided for in the preceding sentence, upon the occurrence of a default, failure or violation by the Buyer as specified in said sentence, the City shall also have the right to retain the deposit as liquidated damages.

(d) Other Rights and Remedies of City; No Waiver by Delay. The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section 15, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title and interest of the Buyer, and (subject to such mortgage liens and leasehold interests as provided in this Section 15 hereof), its successors in interest and assigns, in the Property, and the revesting of title thereto in the City;

Provided, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 15 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Buyer under this Section be considered or treated as a waiver of the rights of the City with respect to any specific default by the Buyer under this Section except to the extent specifically waived in writing.

## **SEC. 16. RESALE OF REACQUIRED PROPERTY: DISPOSITION OF PROCEEDS**

Upon the revesting in the City of title to the Property or any part thereof as provided in subdivision (d) of Section 15, the City shall use its best efforts to resell the Property or part thereof (subject to such mortgage liens and leasehold interests as in Section 15 set forth and provided) as soon and in such manner as the City shall find feasible and consistent with the objectives of applicable law, to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the construction as shall be satisfactory to the City. Upon such resale of the Property the proceeds thereof shall be applied:

(a) First, to reimburse the City, on its own behalf or on behalf of the City, for all costs and expenses incurred by the City, including, but not limited to, third-party salaries of personnel in connection with the recapture, management and resale of the Property or part thereof (but less any income derived by the City from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the City, an amount, if paid, equal to such taxes, assessments or charges (as determined by the City assessing official) as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Buyer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the construction or any part thereof on the Property or part thereof; and any amounts otherwise owing the City by the Buyer and its successors or transferee; and

(b) Second, to reimburse the Buyer, its successor or transferee, up to the amount equal to (1) the sum of the purchase price paid by it for the Property (or allocable to the part thereof) and the cash, labor and material actually invested by it in performing any construction on or rehabilitation of the Property or part thereof, less any gains or income withdrawn or made by it from the Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by the City as its property.

## **SEC. 17. CONFLICT OF INTEREST:**

## **CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE**

No member, official or employe or the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employe participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employe of the City shall be personally liable to the Buyer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Buyer or successor or on any obligations under the terms of this Agreement.

### **SEC. 18. PROVISIONS NOT MERGED WITH DEED**

No provision of this Agreement is intended to or shall be merged by reason of any deed transferring title to the Property from the City to the Buyer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

### **SEC. 19. SPECIAL PROVISIONS**

(a) The Buyer will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Buyer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City or the Wisconsin Department of Commerce setting forth the provisions of this nondiscrimination clause.

(b) The Buyer will include the provisions of Paragraph (a) in every construction contract for this property, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provisions will be binding upon each such contractor or subcontractor, as the case may be.

### **SEC. 20. APPROVALS**

In any instance in which City's approval or consent and/or the approval or consent of the Commissioner is required under this Agreement, such approval or consent shall not be unreasonably withheld or delayed.

**SEC. 21. COUNTERPARTS**

The Agreement is executed in three (3) counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, The Buyer, \_\_\_\_\_ has hereunto set its hand this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_ (Buyer)

By \_\_\_\_\_

Title: \_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, \_\_\_\_\_, to me known to me known to be the persons who as Buyer executed the foregoing Contract for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

SEAL

\_\_\_\_\_

Notary Public,

\_\_\_\_\_ County

My commission \_\_\_\_\_

Approved by the Common Council of the City of Milwaukee on \_\_\_\_\_, by adoption of Resolution No. \_\_\_\_\_.

IN WITNESS WHEREOF, \_\_\_\_\_, Special Deputy Commissioner of the Department of City Development, on behalf of the City of Milwaukee has caused this Agreement to be duly executed in its name and on its behalf this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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**CITY OF MILWAUKEE, (CITY)**

\_\_\_\_\_  
Special Deputy Commissioner  
Department of City Development

State of Wisconsin            )  
  ) ss.  
County of Milwaukee         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, \_\_\_\_\_, to me known to be the Special Deputy Commissioner of the Department of City Development and being authorized so to do, executed the foregoing Option for the purposes therein contained for and on behalf of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

SEAL

\_\_\_\_\_  
Notary Public  
Milwaukee County  
My commission \_\_\_\_\_

This document was drafted by the Department of City Development, City of Milwaukee.

**SCHEDULE A**  
Description of Property

All that certain parcel or parcels of land located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

Insert Legal Description

Lot \_\_\_, Block \_\_\_, in \_\_\_\_\_ Subdivision in the \_\_\_\_\_ ¼ of Section \_\_\_, Town \_  
North, Range \_\_ East, in the City of Milwaukee, County of Milwaukee, State of  
Wisconsin.

Address: \_\_\_\_\_

Tax Key Number: \_\_\_\_-\_\_\_\_-\_\_\_\_-

**CITY OF MILWAUKEE  
OPTION TO PURCHASE**

Address: \_\_\_\_\_

For and in consideration of the sum of \_\_\_\_\_ **and No/100ths Dollars (\$\_\_\_\_\_.00)** (Option Fee) tendered herewith, the **City of Milwaukee** (hereinafter "City") does hereby grant unto \_\_\_\_\_ (hereinafter referred to as the "Buyer") an exclusive Option to Purchase the property at \_\_\_\_\_ more particularly described in Exhibit A attached hereto (hereinafter "Property"), on the following terms and conditions:

1. **Purchase Price.** The purchase price shall be \_\_\_\_\_ **and No/100ths Dollars (\$\_\_\_\_\_.00)** payable by certified or cashier's check at time of closing, subject to the customary deductions and prorations. The City may request that Buyer divide the amount due at closing into separate checks for the City's development fee due the Redevelopment Authority, fees, sale expenses and/or the net sale proceeds. Unless specified in the Request for Proposal, no brokerage fee shall be paid by City.
2. **Option Term & Renewals.** The Option shall be for six (6) months ("Base Term"), commencing on the date of acceptance by Commissioner of the Department of City Development ("Commissioner") or designee. The Option period may be renewed at the option of the Commissioner, or designee, for up to two (2) additional three (3) month periods ("Extended Period") upon submission by Buyer of a satisfactory written progress report on efforts to obtain final building plans and financing and submission of a \$500.00 Renewal Fee for each request. If Buyer fails to close on or before the expiration of the Base Term or Extended Period, whichever is later, City may declare this Option null and void and retain the Option Fee and Renewal Fee as liquidated damages.
3. **Agreement for Sale/Exercise of Option.** Buyer shall exercise this Option by delivery of three copies of a signed Agreement for Sale that has been negotiated between the City and Buyer. Buyer acknowledges receipt of a sample copy of this document. This Agreement shall require:
  - a. **Closing.** A closing for the Property shall occur within thirty (30) days of execution of the Agreement by Buyer, but not later than the Expiration Date of the Base Term or the Extended Period provided closing contingencies identified below have been satisfied by Buyer. .
  - b. **Conveyance.** The City shall convey title by Quit Claim Deed ("Deed") subject to the terms and conditions of the Agreement for Sale and satisfaction of all closing contingencies. Conveyance shall be on an "as is, where-is" condition with all faults and defects, known or unknown, physical or otherwise, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims – including any action based on non-disclosure. Buyer shall rely on Buyer's own due diligence and independent investigation and inspection, and they shall not rely upon any oral or written statement or representation of City or any employee or agent or contractor of City. At closing, and upon delivery of the Deed to Buyer, whatever occupancy rights City has in and to the Property will become Buyer's. The cost to record the Deed shall be paid by Buyer. The Deed shall be required by City pursuant to Milwaukee Code of Ordinances § 304-49-13-b.
  - c. **Title Insurance.** City shall provide a preliminary title commitment when the Purchase Price is in excess of \$5,000 of as specified in the Request for Proposal. City shall provide the cost of the title insurance for a commitment in the amount of the Purchase Price. Buyer shall be responsible for the cost of any title and gap endorsements and the cost of any title updates incurred after the initial invoice. Seller shall pay its cost of title insurance at Closing from the net Purchase Price if sufficient to cover such cost payment or by separate check. Provision of title insurance shall not change the "as is/where is" nature of this transaction.
  - d. **Construction Schedule.** Construction shall commence within thirty (30) days following closing and be complete within twelve (12) months (or other time period dictated by the development) following commencement;
  - e. **Plan Approval and Financing Approval Contingencies.** Buyer shall submit to the City final

construction plans, including detailed landscape plans, a final construction budget based on bids and evidence of firm financing and/or equity that equals the costs of construction. All of the foregoing must be satisfactory to the City in form and substance prior to closing.

- f. **EBE Policy & Agreement.** Buyer shall execute a Best Efforts Emerging Business Enterprise (EBE) Agreement with the City of Milwaukee Emerging Business Enterprise Prop gram prior to Closing. The City's goal for EBE participation is at least 21% of the total project budget. Redeveloper is responsible for obtaining a copy of the "EBE Certification Directory.
- g. **Reversion of Title.** Title shall revert to the City in the event of default by the Buyer and Buyer is unable to cure default as is provided for in the Agreement for Sale.
- h. **Performance Deposit.** Buyer shall submit at Closing a Performance Deposit in the amount of \_\_\_\_\_ **and No/100ths Dollars (\$\_\_\_\_\_ .00)** (10% of Purchase Price with a \$1,000 minimum and a \$10,000 maximum) ("Deposit"). The Deposit shall not be applied against the purchase price, but will be held by the City to guarantee completion of the improvements. The Deposit shall be returned to the Buyer without interest upon successful completion of the improvements in accordance with terms of the Agreement of Sale and the conditions expressed herein, as certified by the City. All or part of the Deposit may be retained if Buyer fails to complete the project as agreed in the Agreement for Sale.

After execution, the Agreement for Sale will be recorded with the Register of Deeds and the property title encumbered until successful completion of the project(s) as certified by the City.

- 4. **Fee Return and Credit.** The Option Fee and Renewal Fees, if any, are non-refundable except in the event the City is unable to deliver marketable title. The Option Fee shall be credited toward the Purchase Price if the Buyer closes the sale prior to expiration of the first option period. Renewal Fees, if any, shall not be credited toward the Purchase Price.
- 5. **Assignment.** This Option shall not be assigned by Buyer without the written consent of the City. Any assignment of this option by the Buyer, except that assignments to any entity owned or controlled by any of the parties of Buyer shall not require any consent. Any assignment of this option, except for permitted assignments, by the Buyer, shall result in termination of this Option by the City and retention of the Option and Renewal Fees as liquidated damages.
- 6. **Option Purpose/Proposed Development.** This Option is granted for the sole purpose of Buyer  
Pick One constructing a building containing approximately \_\_\_\_\_ square feet of gross building area  
or renovating the existing building  
for \_\_\_\_\_ use \_\_\_\_\_ as  
\_\_\_\_\_  
and associated parking and landscaping in accordance with plans approved by the City.
- 7. **Tax Proration and Special Assessments.** General real estate taxes for the current tax year, if any, will be pro-rated at the time of closing. Any special assessments of record shall be paid by the Buyer. The City shall provide details of any known or contemplated special assessments at closing or within ten (10) days of a written request by Buyer.
- 8. **Site Conditions.** Except as provided herein:
  - a. City discloses that the Property may contain old building foundations, demolition debris and other materials not suitable for construction. Without changing the "AS-IS/WHERE IS" nature of this transaction, Buyer is aware that the Property is or may be affected by adverse geotechnical conditions due to the presence of these materials or due to the bearing capacity of the soil. City has conducted no geotechnical investigation of the Property and assumes no liability for any subsurface conditions. Buyer shall include in the construction budget an allowance for extraordinary site excavation, disposal of materials unsuitable for construction and/or additional fill to allow construction. City shall not provide a survey of the Property. Buyer is encouraged to undertake a site survey, geotechnical investigation and other due diligence reviews that it deems necessary. Upon written request of Buyer, City shall provide Buyer a right of entry to conduct such investigations of the Property upon certain conditions, including submission of a certificate of insurance in amounts specified by City

naming the City as an additional insured. Buyer acknowledges that City disclosure requirements under Ch. 709, Wis. Stats. do not apply.

- b. Buyer shall be responsible for all site development costs, including, but not limited to, extension of water and sewer laterals to the property line and the provision or replacement of sidewalks and curb cuts.
- c. City shall not provide a survey of the Property.

9. **Sale Policies.** Pursuant to City policy, the City shall not sell Property to any Buyer whom:

- a. is tax delinquent on any real or personal property located in the City of Milwaukee that is owned by Buyer as an individual or by a partnership or corporation in which the Buyer has an ownership interest; or,
- b. has been convicted of failure to comply with an order of the Commissioner of Neighborhood Services of the City of Milwaukee within the 12 months preceding submission of this Option to the City or within the 12 months preceding closing of the sale.
- c. has been convicted of a felony for a crime that affects neighborhood stability;
- d. has been subject to an In Rem foreclosure or In Personam judgment by the City within the five-year period preceding the date of this Option.

Prior to closing, the City will investigate tax, building inspection and court records. If Buyer is found in violation, City will give notice to correct the violations prior to the time established for closing. If the violations are not corrected within the specified period, this Option to Purchase and/or Agreement for Sale may be canceled at the option of the City and all fees retained by the City as liquidated damages.

10. **Environmental Conditions.**

- a. The City has provided, and the Buyer acknowledges receipt of a Phase I environmental assessment dated \_\_\_\_\_ that was prepared by \_\_\_\_\_. This report is provided for informational purposes only and the City does not warrant its content or conclusions. If Buyer desires to obtain its own Phase I assessment, the cost for such report shall be at Buyer's sole expense.
  - b. The City shall not conduct any additional environmental investigations or remediation (unless specified in a Request for Proposal). City shall convey the Property in an "as is, where is" condition with all faults and defects, known or unknown, physical or otherwise, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims – including any action based on non-disclosure. Buyer shall rely on Buyer's own due diligence and independent investigation and inspection, and they shall not rely upon any oral or written statement or representation of City or any employee or agent or contractor of City.
- or
- b. City and Buyer agree to conduct a Phase II environmental investigation if specified in the Request for Proposal. Phase II testing may only be conducted by a contractor under a master contract with the City. City and Buyer shall cooperate on the scope of work for such investigation and such scope shall be based on Buyer's proposed foundation excavation and site grading plan. The cost of the Phase II investigation shall be shared equally between City and Buyer.
  - c. Should Buyer desire Phase II testing or remediation not recommended by a City report, all such investigation, testing and reports shall be at Buyer's sole expense and responsibility.
  - d. Subject to availability of funds, the City shall conduct remediation of impacted soils and groundwater in the most cost effective manner. Such approach may involve keeping impacted soil on site for natural attenuation and encapsulation by Buyer's proposed improvement and listing the Property of a Geographical Informational System Registry on the Wisconsin Department of Natural Resources. Buyer shall be solely responsible for the preparation and approval of any required Remedial Action Plan. If Buyer elects a remediation strategy with higher costs, Buyer shall be responsible for the additional costs.
  - e. If Buyer's cost for Phase II testing or any required remediation renders a project economically infeasible, this Option may be canceled at the option of either party and all fees returned.

12. Buyer agrees to comply with all requirements of the Americans with Disabilities Act of 1990, U.S.C. #12101, et. seq.

13. It is understood that time is of the essence as to the provisions of this Option.

14. Special Conditions: \_\_\_\_\_.

The Option is executed in three (3) counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, The Buyer, \_\_\_\_\_, has signed and sealed this Option this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**(Buyer Name:\_\_\_\_\_)**

By \_\_\_\_\_

By \_\_\_\_\_

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, \_\_\_\_\_, to me known to be the person(s) who executed the above and foregoing Option.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County,  
My \_\_\_\_\_ Commission

\_\_\_\_\_



EXHIBIT A  
LEGAL DESCRIPTION

All that certain parcel or parcels of land located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

(Insert Legal)

Address: \_\_\_\_\_  
Tax Key Number: \_\_\_\_ - \_\_\_\_\_ - \_\_\_\_