

SAMPLE – 04/2015  
Terms tailored by City for each transaction  
**PURCHASE AND SALE AGREEMENT**  
City Commercial Land

Document Number

Name and Return Address:  
City of Milwaukee  
Real Estate Section (Miller)  
809 North Broadway, 2<sup>nd</sup> Floor  
Milwaukee, WI 53202-3617

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

Recording Area

AGREEMENT, made as of this \_\_\_ day of \_\_\_\_\_, 2015, By and between **CITY OF MILWAUKEE** ("City"), a municipal corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Milwaukee, Wisconsin, and \_\_\_\_\_, a \_\_\_\_\_ (legal entity as specified in Proposal Summary), ("Buyer") located at \_\_\_\_\_, Milwaukee, WI, WITNESSETH:

WHEREAS, Pursuant to Resolution No. \_\_\_\_\_ adopted by the Common Council of the City of Milwaukee on \_\_\_\_\_, City has offered to sell and Buyer is willing to purchase said real property at \_\_\_\_\_ ("Property") and more particularly described in **Exhibit A** attached 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. PROJECT DESCRIPTION**

City and Buyer agree to develop the Property as follows, which is collectively defined as the "Project":

Construct a \_\_\_-story, (residential/commercial/industrial/mixed use) building containing approximately \_\_\_\_\_ square feet according to the New Construction Standards attached as **Exhibit B** for use as \_\_\_\_\_, obtain a City Certificate of Occupancy for each use and construct associated parking and landscaping according to plans approved by City's Department of City Development ("DCD") pursuant to Section 2.

**SEC. 2. BUYER ACTIONS**

- (a) In connection with the Project, Buyer shall:
  - 1. Submit final construction plans including building plans and elevations and a site plan detailing fencing, paving and landscaping (collectively "Final Plans") to the DCD for approval prior to closing for the Property as defined in Section 4 (a) ("Closing"). Final Plans must conform to DCD approved preliminary plans submitted by Buyer on \_\_\_\_\_ in response to the Property Listing and as revised according to DCD Plan Review comments and according to the criteria attached as Exhibit B. Final Plans and Scope of Work shall be submitted to City DCD's Real Estate Office prior to applying to City for building permits. Changes made to Final Plans may require Common Council confirmation if the Commissioner of DCD determines that the changes differ significantly from approved preliminary plans.
  - 2. Submit a final construction budget and evidence of firm financing for the Project in a form satisfactory to the Agency prior to Closing ("Financing Approval").

3. Obtain a Certified Survey Map (CSM) to join underlying platted lots (or joining the Property with Buyer's adjoining property at \_\_\_\_\_) at Buyer's expense if required by City's Development Center as a condition of the building permit. The CSM must be approved by City's Common Council prior to Closing pursuant to Section 4(a) and shall be recorded by City following Closing.
4. Be responsible for all site development expenses, including, but not limited to, extension of water and sewer laterals to the Property and the provision or replacement of sidewalks and curb cuts.
5. Commence construction of the Project within thirty (30) days following Closing for the Property and complete construction, including landscaping, within twelve (12) months following Closing, subject to force majeure delays, and other delays not within the control of the Redeveloper. Buyer shall apply for a Certificate of Occupancy at Closing for each unit of the Property and complete necessary work to receive the Certificate of Occupancy within the time period above.

(b) 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 DCD, 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.

(c) Buyer agrees to Comply with City's Small Business Enterprise (SBE) policy. Buyer agrees to make best faith efforts for SBE participation that is at 25% of Project construction costs and 18% of Project professional services. Buyer shall contact City's Office of Small Business Development ("OSBD") prior to Closing and obtain a list of City certified SBEs. Buyer shall execute an SBE agreement with City prior to Closing if required by OSBD based on the amount of the Project Budget and scope of renovations. After completion of the Project, Buyer shall report on its use of SBE's to DCD's Real Estate Office in terms of the total number of SBE 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 pursuant to Section 7 of this Agreement.

### **SEC. 3. PURCHASE PRICE, EARNEST MONEY & BROKER COMMISSION**

(a) Purchase Price. The "Purchase Price" for the Property shall be \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_.00). Buyer shall pay the Purchase Price to City at Closing in the form of a check subject to the usual and customary prorations. If applicable: Buyer shall reimburse City at Closing for Buyer's share of environmental costs pursuant to Section 6(b). Buyer may be asked to allocate portions of the Purchase Price to City expenses, fees and reimbursements.

(b) Earnest Money. Buyer shall tender to City earnest money ("Earnest Money") in the amount of \$\_\_\_\_\_ (\$1,000 or 5% of Purchase Price, whichever is greater) in good funds on or before a date that is not later than fifteen (15) days following the date of approval of this Agreement by City's Common Council. The Earnest Money is non-refundable except for default by City. Earnest Money shall be held by City in a City account. If this transaction fails to close as required hereunder, other than as a result of a default by City in which event the Earnest Money shall be returned to Buyer immediately, City shall keep the Earnest Money. If this transaction closes within the "Base Period" (as defined below) and as required hereunder, the Earnest Money shall be credited toward the Purchase Price at Closing. No credit of Earnest Money shall be granted if the Agreement is extended pursuant to Section 4(b). If the Earnest Money is not timely paid, City may declare this Agreement terminated.

(c) Broker Commission. If the Property listing specified that City would pay a broker commission, City agrees to pay at Closing a brokerage commission in the amount of \$\_\_\_\_\_ (7% of the Purchase Price) to the Wisconsin-licensed commercial real estate broker ("Broker") identified in Proposal Summary & Public Disclosure Statement was submitted to City by Buyer and this is identified below. City shall not pay any broker commission if City determines that Buyer and Broker are same or related in any manner. City has not retained any broker concerning the Property or this transaction and no brokerage arrangement or contract exists between City and the Broker. Buyer has retained Broker as the sole-broker concerning this transaction. At Closing, Buyer will sign an affidavit regarding brokers consistent with this

paragraph.

Broker Name & Firm: \_\_\_\_\_ (“Broker”).

#### SEC. 4. CONVEYANCE OF PROPERTY

(a) Closing. Closing on this transaction and conveyance of the Property from City to Buyer shall be at City’s Real Estate Office at a date and time mutually agreed to by the parties, which date shall be on or before \_\_\_\_\_ (“Base Period”), provided:

- 1) such date is not more than twelve months following the date of approval of this Agreement by City’s Common Council;
- 2) Buyer has satisfied City Closing Contingencies in Section 4(c); and
- 3) is not in violation of City Policies pursuant to Section 4(K).

(b) Extension. If Buyer is unable to close on or before expiration of the Base Period, Buyer may submit a written request for one (1) three (3)-month extension of this Agreement (“Extended Period”) from the DCD Commissioner, a \$500 renewal fee and a progress report of Buyer’s efforts to obtain final construction plans and firm financing. The DCD Commissioner shall grant the Extended Period if DCD is satisfied that Buyer is making progress to obtain Final Plans and financing. The renewal fee shall not be credited toward the Purchase Price.

(c) City Closing Contingencies. Notwithstanding anything to the contrary contained herein, City’s duty to Close and convey the Property on or before the expiration of the Base Period or Extended Period is contingent upon:

1. Financing and/or Equity. Buyer submitting to DCD evidence of financing without contingencies and/or equity in an amount equal to the Final Budget and satisfactory to DCD;
2. Final Plan Approval. DCD Design Review Team approving Buyer’s Final Plans.
3. SBE. Buyer meeting with City’s OSBD to discuss SBE participation in the Project and executing a SBE Agreement if required by the OSBD.

(d) Buyer Contingencies. This Offer is contingent upon the following items (collectively “Buyer Contingencies”):

- Financing Contingency of Buyer being able to obtain:
  - first mortgage loan commitment
  - construction loan commitmentwithin \_\_\_ days of the Effective Date (“Financing Deadline”) for a combined amount not less than \$ \_\_\_\_\_ for a term of not less than \_\_\_ years with an initial interest rate not to exceed \_\_\_\_\_ % per annum with monthly payment not to exceed \$ \_\_\_\_\_ for principal and interest.
- Other Contingency: \_\_\_\_\_

Buyer agrees to pay all customary financing costs (including closing costs), to apply for financing promptly and to provide evidence of application promptly upon City’s request. If, despite Buyer good faith efforts, Buyer is not able to obtain financing on the above terms (or other terms reasonably acceptable to Buyer), Buyer shall promptly, and on or before the expiration of the Base Period or Renewal Period, whichever is applicable, deliver written notice to City of same including copies of lender(s) rejection letters or other evidence of unavailability. If Buyer’s notice is timely given, this Offer shall be null and void, but City shall retain the Earnest Money and any Extension Fee.

(e) Form of Deed. City shall, at Closing and upon submission of the Purchase Price, convey the Property to Buyer by Quit Claim Deed and Restrictive Covenants (“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 or geotechnical 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 shall, in addition to the provisions of Section 15 of this Agreement and all other conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement, be subject to:

1. Performance and use obligations in this Agreement;
2. 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;
3. All easements of record;
4. A restriction that the Property must be taxable for property-tax purposes. The restriction shall require that no owner or occupant of the Property shall apply for, or seek, or accept, property-tax exemption (whether under Wis. Stat. § 70.11 or otherwise) for the Property, or any part thereof. This restriction shall be a permanent covenant that runs with the land, and may only be released by resolution passed by City's Common Council.
5. Matters that would be revealed by an ALTA survey including, but not limited to, encroachments from the Property to a public right of way or adjacent property or encroachments on the Property from adjacent properties.
6. If applicable: Any recorded or unrecorded rights or interests of any person, entity or utility in any vacated alley, street, or public right-of-way at the Property including rights and interest of persons under Wis. Stat. § 66.1005(2).
7. If applicable: A restriction joining the individual lots of the Property (if Property is composed of multiple lots) so as to create a single parcel for assessment purposes and that cannot be divided without the prior approval of the Common Council. Buyer may be required to obtain a Certified Survey Map to join lots as a condition of a building permit.
8. If applicable: Possible registry of the Property on a Geographic Information System ("GIS") Registry of the Wisconsin Department of Natural Resources ("WDNR") pursuant to Section 6(b).
9. Other deed restriction: \_\_\_\_\_

(f) Proration of Taxes. Taxes shall be pro-rated to the date of Closing if the property is not tax exempt for the current year.

(g) Recordation of Deed. City shall promptly file the Deed for recording with the Milwaukee County Register of Deeds or as permitted by the Municipal Code of Ordinances. Buyer shall pay all costs for so recording the Deed. No real estate transfer fee is due and no real estate transfer return is required pursuant to Wis. Stat. Section 77.25(s) and Section 77.23 (2), respectively, unless City is a lender in the transaction.

(h) DNS Registrations. Buyer shall register the Property with the City Department of Neighborhood Services ("DNS") Property Recording Program after completion of construction. Applications and fees are the sole responsibility of Buyer.

(i) Title Insurance. City shall procure and deliver to Buyer for examination a preliminary commitment for title insurance prepared by Capital Title and Closing Services, LLC under contract with City in the amount of the Purchase Price, naming Buyer as the insured. This commitment shall guarantee City's title to be in the condition called for by this Agreement. City shall pay the base cost of title insurance. The cost of title updates, gap endorsements and special assessment letters shall be paid by Buyer. No title insurance shall be provided if the Purchase Price is less than \$5,000.

(j) Special Assessments. City will be responsible for all special assessments levied as of the date this Agreement was accepted by City's Common Council. Buyer is responsible for all special assessments levied after that date. City shall provide details of any known or contemplated special assessments at Closing. If outstanding special assessments for which City is responsible exist at Closing, City shall grant a credit in the amount of such assessments against the Purchase Price. Buyer shall pay the assessment when billed. If the estimated assessment is greater than the Purchase Price, DCD shall notify the Department of Public Work to bill DCD City for the special assessment. If the special assessment for which City is responsible is billed to Buyer or inadvertently certified to the tax roll, Buyer shall provide the bill to DCD and DCD shall arrange for payment.

(k) City Policies. Buyer certifies that it as individual or member of a corporation or partnership is not now and will not be at Closing in violation of the following City Policies:

1. Delinquent real estate or personal property taxes due City.
2. Building or health code violations that are not being actively abated.

3. Convicted of violating an order of the Department of Neighborhood Services or Health Department within 12 months preceding Closing.
4. Outstanding judgment to City.
5. In Rem foreclosure by City within five years preceding Closing.

If Buyer is found to violate any of these City Policies, City shall give Buyer notice to correct this condition by the expiration of the Base Period or Extended Period or other such period as determined by the Commissioner of DCD. If the violation is not corrected within the specified period, this Purchase and Sale Agreement may be canceled at the option of City and the Earnest Money and renewal fees, if any, shall be retained by City as liquidated damages.

(l) Agreement to be Recorded Against Title. At Closing, and before recording the Deed, City shall record this Agreement against the Property in the Register of Deeds Office at Buyer's expense, and the Property's title will be encumbered by it until issuance of the Certificate defined below

**SEC. 5. PERFORMANCE DEPOSIT**

Buyer shall submit at Closing a Performance Deposit in the amount of \_\_\_\_\_ and No/100ths (10% of Purchase Price or \$1,000, whichever is greater) (\$\_\_\_\_\_.00) Dollars ("Deposit"). The Deposit shall serve as security for the performance of the obligations of Buyer to construct as provided hereinafter. DCD shall authorized return of the Deposit concurrently with its formal approval of the Certificate of Completion pursuant to Section 7 or shall retain the Deposit as liquidated damages in accordance with the provisions of Sections 7 and 15. No interest shall be paid on the deposit. All or part of the Deposit may be retained by City if Buyer fails to complete the Project according to the time schedule provided in Section 2.

**SEC. 6. PROPERTY CONDITION, SITE PREPARATION AND CERTAIN OTHER ACTION BY CITY**

(a) Property Condition. City discloses that the Property may contain old building foundations, rubble and debris from prior buildings that may have been demolished. City shall not conduct any geotechnical investigation at the Property. Buyer agrees to accept the Property "as is, where is" and is solely responsible for conducting its own geotechnical investigation to determine the soil bearing capacity and for all site excavation, debris removal, fill and development expenses.

(b) Environmental Work To Be Performed By City. City shall, without expense to Buyer except as noted, prepare the Property for redevelopment by Buyer in the following manner:

1. Reports. City has provided to Buyer and Buyer acknowledges receipt of the following environmental reports and letters:
  - a. Historical Land Use Investigation ("HLUI") prepared by staff of City's DCD dated \_\_\_\_\_. Provision of this report is for informational purposes and does not affect or impact the "as is, no representation or warranty" nature of this transaction. City does not warrant the contents, conclusion or accuracy of the reports.
  - b. If Buyer or Buyer's lender requires a Phase I Environmental Site Assessment ("Phase I ESA"), such investigation shall be conducted by an environmental consultant under a City master contract if City will be asked to rely on the report. Buyer shall be responsible for the cost of the Phase I ESA.
  - b. If testing has been conducted prior to Agreement: A Limited Phase II investigation report prepared by \_\_\_\_\_ ("\_\_\_\_\_") dated \_\_\_\_\_. Buyer shall reimburse City for one half of the Phase II report at Closing.
2. Phase II (If no environmental concerns). City shall not conduct any additional environmental investigations including, but not limited to, an investigation as to the presence of asbestos containing materials for improved properties or environmental remediation (unless specified in the property listing, a Request for Proposal or as negotiated with DCD). 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 Buyer shall not rely upon any oral or written statement or representation of City or any employee or agent or contractor of City.

- or 2. Phase II (If potential concerns revealed by Phase I): City and Buyer agree to conduct a Phase II environmental investigation as recommended by the Phase I, specified in the Request for Proposal or as recommended by the Commissioner of DCD. Phase II testing may only be conducted by a contractor under a master contract with 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, provided City share does not exceed the Purchase Price, in which case Buyer may be solely responsible for Phase II costs. The cost of a Remedial Action Plan ("RAP") based on Buyer's proposed Project shall be Buyer's sole responsibility.
3. Remediation by City. Subject to availability of funds, City may conduct remediation of impacted soils and groundwater and/or an approved RAP in the most cost effective manner and subject to a limit on total City expenditures. Such remediation may involve on-site natural attenuation of impacted soils and/or encapsulation of impacted soils by Buyer's Project that may require listing the Property on WDNR's GIS Registry. Buyer agrees to list the Property on the WDNR GIS Registry if required by WDNR as a condition of case closure. If City is to conduct remediation prior to Closing, but Buyer elects a remediation strategy with higher costs, Buyer shall be responsible for the additional costs.
- or 3. Remediation by Buyer. Buyer may elect to purchase the Property prior to required remediation in its "as is" environmental condition and perform the remediation and/or implementation of an approved RAP and City may grant a credit toward the Purchase Price in consideration of Buyer conducting the remediation. City and Buyer shall negotiate the amount of the credit, which amount cannot exceed the Purchase Price less sale expenses, outstanding special assessments and other City costs. At Closing, Buyer agrees to accept assignment from City of a WDNR Responsible Party letter
4. Buyer Reports. Should Buyer desire its own Phase I, Phase II testing or remediation not recommended by a City Phase I or Phase II report, all such investigation, testing and reports shall be at Buyer's sole expense and responsibility. Buyer must use an environmental consultant under a master contract with City for a Phase I or Phase II report if City is to rely on such information including reliance for requests for reductions in the Purchase Price. Phase II testing by Buyer can occur only after City approval of a scope of work, granting of a right of entry to Buyer and to Buyer's environmental consultant and provision of certificate of insurance including environmental insurance to City if Buyer uses a consultant that is not under a master contract with City. If Buyer requests any credit to the Purchase Price for environmental conditions determined by Buyer's consultant, Buyer shall provide City with all environmental data and reports generated by Buyer's consultant for review by City staff and City consultant.
5. Termination for Feasibility. If the cost for Phase II testing or any required remediation renders a project economically infeasible, this Agreement may be canceled at the option of either party and the Earnest Money and Renewal Fee shall be returned by City.
6. City Expenditure Limit. City's combined cost for Phase II testing and remediation, if any, cannot exceed the Purchase Price (less sale expenses, outstanding special assessments and other City costs) without City specifically identifying a funding source for environmental activities.

(c) Right of Entry for Utility Service. City reserves for itself, 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.

(d) Buyer Not to Construct Over Utility Easements. 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 City. If

approval for such construction is requested by Buyer, City shall use its best efforts to assure that such approval shall not be withheld unreasonably.

(e) Access to Property. Prior to the conveyance of the Property to Buyer and Buyer, City shall permit representatives of Buyer to have access to any part of the Property as to which 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 City of a written request for such entry and submittal of evidence of insurance according to City's minimum guidelines. Such request and evidence of insurance must be satisfactory to City in form and substance prior to City granting such access. After the conveyance of the Property to Buyer, Buyer shall permit the representatives of City, or 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. 7. CERTIFICATE OF COMPLETION**

Promptly after completion of Project construction, including landscaping, in accordance with this Agreement, Buyer shall request in writing that the Commissioner of DCD issue a Certificate of Completion ("Certificate") and return the Deposit. The 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 Buyer and its successors and assigns to construct and the dates for the beginning and completion thereof.

Buyer's request shall include a written project summary on final project costs, dates for commencement and completion, occupancy summary and SBE participation. Buyer shall provide City Representatives with Property access to inspect the Property within thirty (30) days following receipt of Buyer's written request and project summary to determine if the Project 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, City shall within thirty (30) days of the Property inspection provide Buyer with a written statement indicating in adequate detail how 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 Buyer to take or perform in order to obtain the Certificate. Concurrent with DCD's consideration of the request for the Certificate, City shall consider return of the Deposit. All or part of the Deposit may be retained by City if the project is not completed according to the schedule specified in Section 2. A check for the amount of Deposit authorized for return by City shall be provided within ten (10) days of issuance of the Certificate by City.

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

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 sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories 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 8 and 19 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, City, its successors and assigns, City, and any successor in interest to the Property, or any part thereof, against 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**

Buyer has not made or created, and will not, prior to issuance of the Certificate by DCD, 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.

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

Prior to issuance of the Certificate, neither 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 Buyer to City. Until issuance of the Certificate, Buyer (or successor in interest) shall notify 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 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 City nor 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 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**

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



## SEC. 15. REMEDIES

(a) General. In the event of breach of this Agreement, the parties have their respective rights hereunder, and those available at law and in equity. City expressly retains all rights under Wis. Stat. Section 893.80

(b) Prior to Conveyance. If, prior to City's conveyance of the Property, Buyer assigns or attempts to assign this Agreement or any rights hereunder or fails to pay the Purchase Price and take title to the Property upon City's offer of conveyance, City may, at its option, terminate this Agreement and retain any fees submitted by Buyer as liquidated damages.

(c) Notice of Breach and Right to Cure. Except as otherwise provided herein, in the event of default or breach ("Default") by either party hereto, the defaulting party shall, upon written notice from the other, cure or remedy such Default within 30 days after receipt of notice and demand to cure providing, however, that if the Default is one that cannot reasonably be cured with said 30 days, the defaulting party must diligently and faithfully pursue cure, and if the Default is not then remedied or cured with a reasonable time, or if the defaulting party fails to faithfully and diligently pursue cure, then (in any of the events described above) the aggrieved party may institute such proceedings and/or take such action to secure any rights as the aggrieved party may have available to it hereunder or at law or in equity, including, but not limited to, an action to compel specific performance and/or seeking damages.

(d) Waiver. No delay, waiver, omission or forbearance on the part of any party to exercise any right or power arising out of any other party's Default shall be deemed a waiver by that party of such right or power against the other party for any subsequent Default.

(e) City's Retained Reversionary Interest.

1. City's Right to Reverter and Deposit. Notwithstanding anything to the contrary contained herein, or in the Deed, if subsequent to conveyance of the Property to Buyer and prior to issuance of the Certificate:
  - i. Buyer or any successor defaults on or violates its obligations with respect to the Project, including the nature of, and the dates for beginning and completion there, or abandons or substantially suspends construction, and any such default, violation, abandonment or suspension shall not be cured, ended to remedied with 90 days after City written demand so to do; or
  - ii. Buyer or any successor fails to pay real estate taxes, special assessment or special charges 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, lien, or attachment to be made, or any materialman, mechanic, or construction lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessment shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to City made for such payment, removal or discharge, within 90 days after City written demand so to do; or
  - iii. there is any transfer of the Property or any part thereof in violation of this Agreement, and such violation shall not be cured within 90 days after City written demand;

then City shall have the right to reenter and take possession of the Property and to record against the Property in the Milwaukee County Register of Deeds Office a "Notice of Reverter." Buyer agrees that the recording of such Notice of Reverter shall have the effect of delivering and recording a deed from Buyer to City, and shall automatically terminate all of Buyer's rights, title and interest in and to the Property (and any interest of any successor that has taken title from or through Buyer, except Permitted Successors) and revert in City, subject to rights of Permitted Successors, the full estate conveyed by the Deed. The intent of this provision, together with other provisions of this Agreement, is that the conveyance of the Property to Buyer pursuant and subject to this Agreement shall be made upon a condition subsequent to the conveyance that in the event of any default, failure, violation, breach or other action or inaction by Buyer specified in subsections (a), (b) or (c) above, and the failure on the part of Buyer to remedy, end, abrogate or otherwise cure such default, failure, violation, breach or other action or inaction, within the period and in the manner stated in such subdivisions, City at its option may effect a termination of the estate conveyed to Buyer in favor of City in which case all rights and interests of Buyer (and of any successor or assign to Buyer or the Property, except Permitted Successors), shall

revert to, and thereafter be solely and fully vested in, City. And such reversion of title in City shall be subject to, limited by, and shall not defeat, render invalid or limit (a) the lien of any mortgage authorized by this Agreement, (b) any right or interest provided in the Agreement for the protection of the holder of such mortgage and (c) any right of any Permitted Successor, including any lessee or buyer authorized by this Agreement.

2. If City exercises its reversionary right as set forth above, City may also retain the Deposit.
3. City's reversionary right is a material provision of this Agreement, without which, City would not have entered into this transaction.

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

Upon the reversion in City of title to the Property or any part thereof as provided in Section 15, City shall use best efforts to resell the Property or part thereof (subject to rights of Permitted Successors) as soon and in such manner as City shall find feasible and consistent with the objectives of applicable law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by City) who will either (a) assume the obligation of making or completing the Project as shall be satisfactory to City or (b) agree to undertake such other project at the Property as shall meet City's approval (or, alternatively, the Project with such modifications to which City may agree.

Upon City resale of the Property (or part thereof) the proceeds thereof shall be applied:

(a) First, to reimburse City, on its own behalf or on behalf of City, for all costs and expenses incurred by City, including, but not limited to, salaries of personnel in connection with the reversion in title, management and resale of the Property or part thereof (but less any income derived by 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 City, an amount, if paid, equal to such taxes, assessments or charges (as determined by City assessing official) that 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 reversion of title thereto in City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Buyer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Project (or such modified or alternate project as City may establish or to maintain the Property), and any amounts otherwise owing City by Buyer and its successors or transferee; and

(b) Second, to reimburse Buyer, its successor or transferee, up to the amount equal to the sum of the net 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 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 City as its property.

#### **SEC. 17. CONFLICT OF INTEREST: CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE**

No City member, official or employee shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person 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 City member, official or employee shall be personally liable to Buyer or any successor in the event of any City default or breach or for any amount which may become due to Buyer or successor or on any obligations under the terms of this Agreement.

#### **SEC. 18. INDEMNIFICATION**

Buyer agrees to defend, indemnify and hold harmless City and City and their respective officers, agents and employees, from and against all claims, demands, damages, liability, suits, judgments and decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever that may come or be asserted against City or City on account of: (a) Buyer's (or anyone acting for or at the direction of, or anyone claiming by, through, or under Buyer) preacquisition entry onto or investigations at the Property; and (b) if Buyer closes on this transaction and becomes owner of the Property, the condition of the Property, including environmental and geotechnical. The provisions in this Section shall survive completion of the Project, recording of the Certification and any termination of this Agreement.

#### **SEC. 19. 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 City to 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. 20 GOVERNING LAW**

This Agreement shall be construed according to Wisconsin Law.

#### **SEC. 21 PUBLIC RECORDS**

This Agreement and certain documents relating hereto are, or may be, subject to Wisconsin's Open Records Law (Wis. Stat. Chapter 19, Subchapter II and Wis. State. Section 19.36(3) that includes records produced or collected hereunder. Buyer agrees to cooperate with City if City receives a request under Wisconsin's Open Records Law for any such record.

#### **SEC. 22 SUCCESSORS AND ASSIGNS.**

This Agreement is binding upon the parties hereto and their successors and assigns, including successors in interest to the Property. Notwithstanding the foregoing, until issuance of the Certificate, Buyer may not assign this Agreement or its rights hereunder without City's prior written consent.

#### **SEC. 23. APPROVALS**

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

#### **SEC. 24. NOTICES**

Notices required to be sent under this Agreement shall be in writing and given either by personal delivery, by certified mail postage prepaid, or by facsimile 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 shall be deemed delivered on the date of sending – providing, however, **(i)** any such notice is (and must be) sent between the hours of 9:00 A.M. and 4:00 P.M. on business days that City's City Hall is open for business; and **(ii)** no error or similar message indicating inability to send is prompted by the sending of such notice by facsimile. 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 paragraph.

**If to City:**

City Real Estate Officer, Department of City Development  
809 North Broadway, Milwaukee, Wisconsin 53202-3617  
Phone: 414-286-5730  
Facsimile: 414-286-0395

**If to Buyer:**

Buyer Name \_\_\_\_\_

Attn: \_\_\_\_\_

Buyer Address \_\_\_\_\_

Phone: \_\_\_\_\_/\_\_\_\_\_-\_\_\_\_\_

Facsimile: \_\_\_\_\_/\_\_\_\_\_-\_\_\_\_\_

**SEC. 25. SPECIAL PROVISIONS**

(a) Buyer will not discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories. Buyer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories. 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. Buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by City or the Wisconsin Department of Commerce setting forth the provisions of this nondiscrimination clause.

(b) 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.

(c) Buyer may be required to meet housing or employment goals of the U.S. Department of Housing and Urban Development ("HUD") for low-to-moderate income households. If City expenditures using HUD funds for the Property exceed \$25,000 and the Purchase Price is not market value as determined by City ("HUD Threshold"), the Project must include housing for HUD defined low-to-moderate income households or create employment, other than construction of the Project, for individuals from HUD defined low-to-moderate income households. At Closing, City shall inform Buyer if the Property exceeds the HUD Threshold and shall provide the number of HUD required housing units and/or jobs that must be created by the Project. Buyer shall be required to complete HUD housing or employment reports for City Community Development Block Grant Office. If Buyer fails to provide the required amount of housing or employment within two years following the date of Closing, Buyer shall reimburse City \$35,000 for each job or housing unit that was not created.

**SEC. 26. COUNTERPARTS**

The Agreement is executed in two (2) counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Buyer, \_\_\_\_\_ has hereunto set its hand effective as of the date first written above. this \_\_\_\_ day of \_\_\_\_\_, 2015.

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

By

\_\_\_\_\_

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

By \_\_\_\_\_

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

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

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015,  
\_\_\_\_\_, to me known to me known to be the person(s) who as  
Buyer executed the foregoing Agreement 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 \_\_\_\_\_, 2015, by adoption of Resolution No. \_\_\_\_\_.

IN WITNESS WHEREOF, Elaine M. Miller, 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 effective as of the date first written above.

f

**CITY OF MILWAUKEE (CITY)**

By \_\_\_\_\_  
Elaine M. Miller  
Title: Special Deputy Commissioner  
Department of City Development  
signed pursuant to Council File No. 041216

State of Wisconsin            )  
  ) ss.  
County of Milwaukee         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, Elaine M. Miller, to me known to be the Special Deputy Commissioner of the Department of City Development and being authorized so to do, executed the foregoing Agreement 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 City of Milwaukee, Department of City Development (Miller).

**EXHIBIT 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:

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in the City of Milwaukee, Milwaukee County, Wisconsin.

Address:

Tax Key Number:

**Exhibit B**  
**New Commercial Construction Requirements**

**SITE LAYOUT AND BUILDING PLACEMENT**

1. **Street Edge Condition** – A mixed-use commercial and residential building should be placed at the property line on the principal street. The building shall be built close to or at the edge of the sidewalk and should extend along the entire street frontage as far as is practicable.
2. **Side Street Setbacks** - The building should generally be situated at the property line of the secondary street or not be more than 5 feet from that property line.
3. **First Floor Uses** – The ground-level building interiors along street frontage should be active uses as opposed to mechanical, utilitarian and parking uses.
4. **Parking Location** - The parking should be predominantly behind the building. A small portion might be permitted on the side of a building. Parking shall be located off the rear alley unless a unique site layout can achieve better site utilization and building design. Parking is not allowed at street intersections.
5. **Parking Access** – Access to the parking should be from the least prominent, least pedestrian street.
6. **Structured Parking Access** – If a building has interior, structured parking, interior loading docks, or similar situations, the access point and/or vehicular door should not be placed on the primary street façade, but should be from the rear side or alley side of the building. If no rear or alley options exist and access must be from the less pedestrian street, doors should be recessed from the façade by at least two feet. Provisions should be made for pedestrian safety where the drive crosses the public sidewalk and the curb cut width should be minimal.
7. **Storm Water Management Techniques** – Pervious paving materials, landscaping integral with the design, green roofs and underground water retention should be used in the urban setting. Storm water management ponds should not be used.

**MASSING AND FORM**

8. **Building Height** – A building on an arterial street should preferably be two to three stories in height to ensure sufficient bulk. If context allows, additional floors may be appropriate.
9. **Modulation Along Street / Varied Elements** – Urban building should have a vertical proportion rather than a long horizontal appearance. The facade design and fenestral patterns shall reflect and be compatible with existing buildings along the street. Longer and larger mixed-use buildings should be divided into smaller increments through use of window grouping, vertical pilasters or other architectural elements. An over emphasis of this articulation, either in trying to make a larger building look like a series of significantly different small buildings or by extreme variation in surface plane should be avoided.
10. **First Floor Height** – The first floor height to the finished ceiling should be at least 14 feet to ensure appropriate scale of the building base in relation to the upper floors.
11. **Roof Type/Shapes** – The roof configuration should typically be flat, however well designed gables and other shape that are typical of a local context could be appropriate. Special corner elements, entrance area massing and similar conditions may have roof that vary from the predominant roof form, however care should be given not to over-emphasize these elements and shapes in an inappropriate manner for the context.



12. **Massing at Corner** – The building massing for corner lots should address the intersection of the most principal commercial street. The façade should include an element of interest and significance.

## **FACADES**

13. **Street Facing Facades** - The facade shall be oriented to main arterial street with the primary entrances and storefronts facing that street. Finished elevations should wrap around corners where visible from principle streets.
14. **Wall Depth / Material Detailing** – The façade should provide a perception of “depth.” Avoid walls that have different materials and elements in the same plane to prevent a flat and life-less appearance. Where the differing materials of a façade meet, provide a significant change in surface plane, likely 4-8 inches in difference. Differing materials should typically terminate at inside corners.
15. **Delineation Between First / Base Floor and Upper Floors** – Clear define the area where the first floor commercial base meets the second floor with a strong cornice, sign band or other significant element.
16. **Roof Cornice Line** – The building must have a defined and significant top edge. A perimeter parapet helps define the building stylistically and is typically found with traditional commercial buildings.

## **FIRST FLOOR / STREET LEVEL FACADES**

17. **First Floor Building Façade Materials** – High quality, durable finish materials must be used on the first floor street façade. Acceptable materials include face brick and stone. Utility, decorative scored or split-faced block are not appropriate. Split-face block might be considered at the base up to a height that is no more than 2 ½ feet above the sidewalk. Simulated stucco is not durable enough for use on the first floor.
18. **Entrances** – Buildings entrances must be placed on the primary street frontage. For corner lots, corner entrances are the preferred location. Entrances should be recessed within the façade and be sized accordingly for the use and use double doors, sidelights and other appropriate detailing.
19. **Storefront Windows** - Storefront windows must always meet minimum zoning code requirements for size, but must also be well designed to reflect the typical traditional street patterns. Storefront windows should have a slight in-set so as not to appear flat. Glass should be clear, non-tinted glazing.
20. **Storefront Window Proportions** - Windows should be large, glazed panels with smaller transom units above if possible. A lower bulkhead not exceeding 2 feet above sidewalk grade is most appropriate. Window should fill the majority of the height of the first floor to at least 12 feet above sidewalk grade. A series of narrow, vertical windows are not appropriate. Long groupings of storefront windows should have intermediate piers that help incorporate the commercial base with the massing above to ensure that the building does not appear “top-heavy or unsupported.”
21. **Extensions Into the Public Right of Way** - Hoods, fixed awning and other projecting elements towards the top of the base floor elevation are encouraged to help engage the street and further define the building in a three dimensional manner.
22. **Fabric Awnings** – If awnings are used, they must be fabric. Vinyl or back lit awnings are not permitted.
23. **Wall Signage** – Signage must be place in the sign-band above the first floor windows or on blank wall areas specifically intended for signage. Signage can be internally illuminated individual letter signs or external illuminated traditional board signs. Internally illuminated box signs are prohibited.

## UPPER FLOOR FACADES

24. **Upper Floor Building Façade Materials** – Finished quality materials must be used on street-facing façades. Brick veneer is typically the most appropriate choice for a traditional neighborhood arterial street. Block, vinyl siding or other low-quality materials are not permitted.
25. **Upper Floor Windows** – Windows on upper floors should be proportioned and placed in relation to grouping of storefront or other windows and elements in the base floor. Windows must have a vertical emphasis and should generally be double-hung, tall and narrow in proportion, and spaced appropriately. Fenestration patterns that are designed as individual windows should ensure there is some depth to the window from the surface of the wall. An inset of at least 4 inches, but preferably 8 inches, is appropriate to achieve an appearance of depth to the façade. This inset is required when windows are used in a stucco-finished exterior wall.
26. **Upper Floor Balconies** – The design and positioning of any street-facing balconies should be integral with the overall design of the building, relating to overall massing, window placement and proportion. Balconies that have some inset aspect or are nested in corners typically work well. Balconies that have the appearance of being tacked on a building wall are discouraged.

## SITE DETAILS

27. **Pedestrian Paving / Sidewalks** – The ground space between the building frontage and the public sidewalk must be paved. In unique case where a building façades do not have windows, landscaping in integral planters might be acceptable.
28. **Service and Loading Docks** – Utilitarian functions such as service and loading docks, trash enclosures, utility vaults, communication equipment, and other similar functions and equipment should be located at the rear or alley side of a development. Where function such as trash enclosures, loading docks, utility equipment and similar objects might be visible from a side street or neighboring property, they should be screened with a masonry wall made of similar material as that of the building.
29. **Parking Lot Landscaping** – Parking lots, where fronting on streets, must have Type “B” landscaping as required by the zoning code and consists of trees, shrubs and decorative metal fencing. Masonry walls are strongly encouraged. See the Zoning Code for details. Interior of larger parking lots should have trees in appropriately spaced medians.
30. **Free Standing Signage** – Free Standing signs will be permitted on a limited basis and only where unique sites have access from streets opposite of the main façade. Small directional pedestrian and parking lot signage should be integrated in the landscaping.
31. **Fences and Buffer at Neighbors** – Adjacent properties should be screened from the parking lot of the development per requirements of the Zoning Code.