

19

CITY OF MILWAUKEE

03 OCT -2 AM 9:22

RONALD D. LEONHARDT
CITY CLERK

**KILBOURN
TOWER**

923 EAST
KILBOURN
AVENUE

October 1, 2003

Ronald D. Leonhardt
City Clerk
City of Milwaukee
200 East Wells Street
Room 205
Milwaukee, WI 53202

Re: Notice of Breach Pursuant to Agreement for Sale Between the City of Milwaukee and Kilbourn Tower LLC, Dated: March 23, 2003

Dear Mr. Leonhardt:

As Kilbourn Towers LLC made clear when it recently met with representatives of the City of Milwaukee's Department of City Development ("DCD"), we support the development of a luxury high-rise condominium on a site currently owned by the University Club. However, the development as currently proposed cannot be permitted by the City without breaching the City's obligations to Kilbourn Towers LLC. The statements by City staff favoring the location currently proposed are also breaches.

Kilbourn Towers LLC hereby gives Notice of breach by the City of the Agreement for Sale entered into between the City and Kilbourn Towers LLC dated March 23, 2003 (the "Agreement") with regard to real estate located at 923 East Kilbourn Street, Milwaukee as more fully described in the Agreement (the "Property"). Pursuant to Section 14(a) of the Agreement, the City has sixty (60) days after receipt of this Notice to proceed immediately to cure or remedy the breach.

Kilbourn Towers LLC has become aware that staff at DCD and/or other City officers, employees or agents ("City Staff") have stated that they intend to recommend that the City take such steps as are necessary to permit the development of certain real estate located adjacent to the Property to the immediate south as described in the current proposal for a Planned Development ("PD") presented to the City by University Towers LLC. Not only would it be a breach of the Agreement if the City were to permit the PD as currently proposed by University Towers LLC, the statements that must have been made by City staff encouraging this PD, as it is currently proposed, are also breaches because they are hindering performance by Kilbourn

 **Fiduciary**
Real Estate Development, Inc.

Ronald D. Leonhardt
City Clerk
October 1, 2003
Page 2

Towers LLC of its obligations under the Agreement and depriving Kilbourn Towers LLC of the fruits of the Agreement.

The City is not immune from the consequences of its breaches. When a contract is violated by a municipality, the other party may recover from the municipality as though the contract had been with an individual, firm, or private corporation. *Energy Complexes, Inc. v. Eau Claire County*, 152 Wis.2d 453, 465-466 (1989).

Every contract includes an implied promise that each party will do nothing to hinder or obstruct performance by the other. *Ekstrom v. State*, 45 Wis.2d 218, 222 (1969); *See also* WIS JI Civil 3060. There is also an implied undertaking that each party will not do "anything which will have the effect of destroying or injuring the right of the other party to recover the fruits of the Contract". *Ekstrom*, 45 Wis.2d at 222.

Under the Agreement, Section 5(a), Kilbourn Towers LLC is required to redevelop the Property by constructing a residential high rise condominium facility as described in Exhibit D to the Agreement. Exhibit D obliges Kilbourn Towers LLC to construct "an architectural landmark". Exhibit D obliges Kilbourn Towers LLC to develop a 33 story building with approximately 74 condominium residential units to be priced "between \$595,000 and \$2.85 million with the price of 19 units exceeding \$1 million dollars." Exhibit D says that "it is expected that the development will add \$52,235,000 to the City's tax base."

The statements by City staff favoring the PD currently proposed by University Towers LLC, with the placement of the University Towers high rise building immediately adjacent to the Kilbourn Towers high rise building to the south are hindering and obstructing the ability of Kilbourn Tower LLC to perform its obligations as set forth in Exhibit D. These statements are also depriving Kilbourn Towers LLC of the fruits of the Agreement.

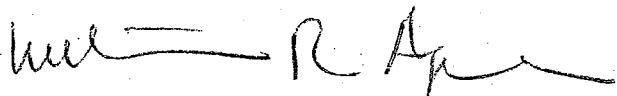
There is a reasonable alternative location for the high rise building on the University Towers site. The University Towers high rise building may be located to the west and slightly to the south of its currently proposed location as shown in the attached diagram. Such a relocation would permit Kilbourn Towers LLC to meet its development obligations under the Development Agreement and to enjoy the fruits of the Agreement and further would allow the development of a luxury high-rise condominium on the site currently owned by University Club.

Kilbourn Towers LLC demands that the City promptly provide Kilbourn Towers LLC with written assurances that it will not permit University Towers LLC to locate its high rise building as currently proposed in the PD filed with the City by University Towers LLC, but will require University Towers LLC to relocate its building to the west approximately as shown in the attached diagram.

Ronald D. Leonhardt
City Clerk
October 1, 2003
Page 3

The City's written assurances are necessary as soon as possible to mitigate harm already caused by the City's breaches and to prevent fatal damage to the Kilbourn Tower project.

KILBOURN TOWER LLC

 , PRESIDENT

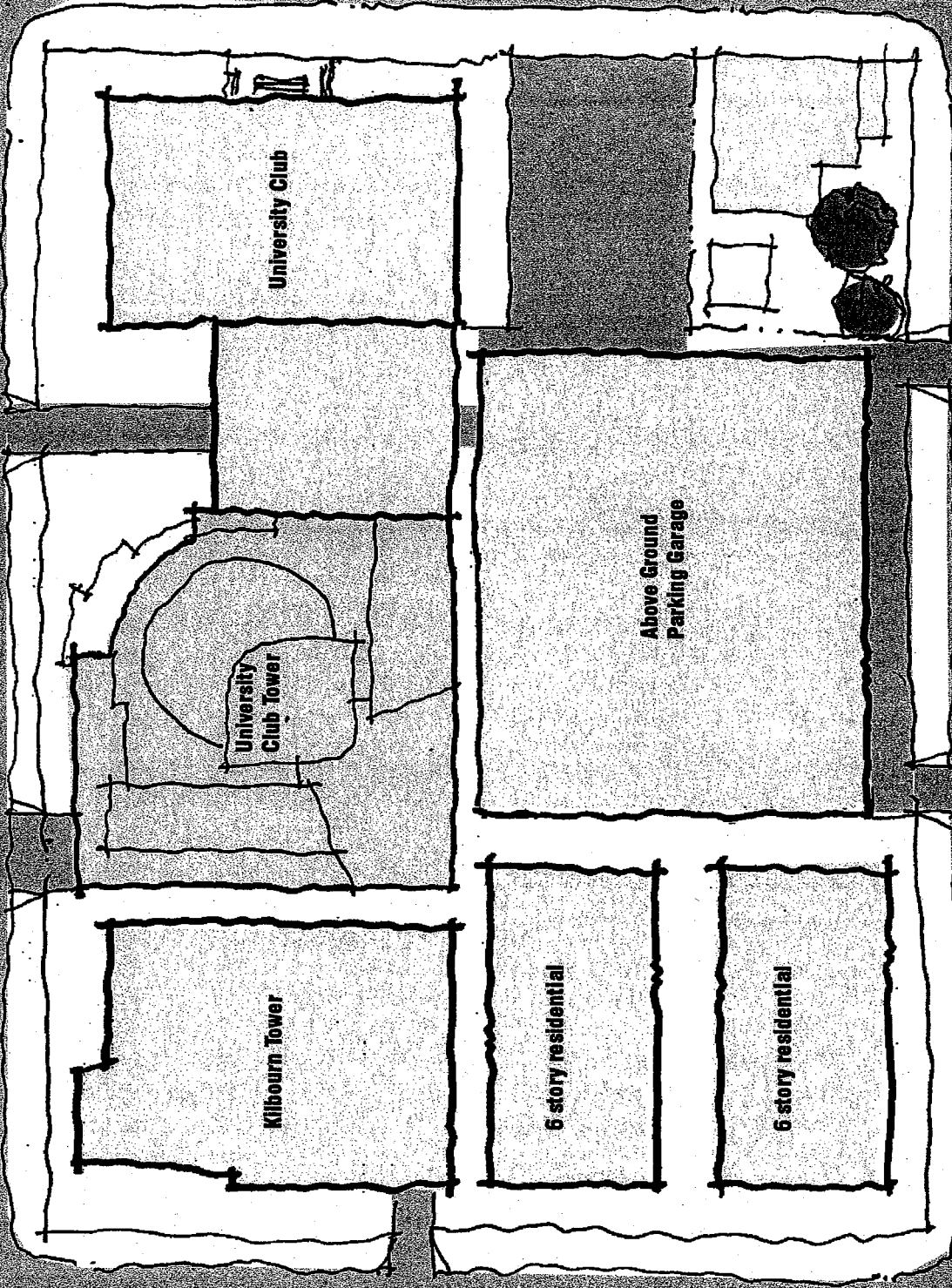
By: Fiduciary Real Estate Development, Inc., its managing member

cc: Hon. John O. Norquist
Mayor, City of Milwaukee

T:\client\034395\0024\A0658368.1



P R O S P E C T



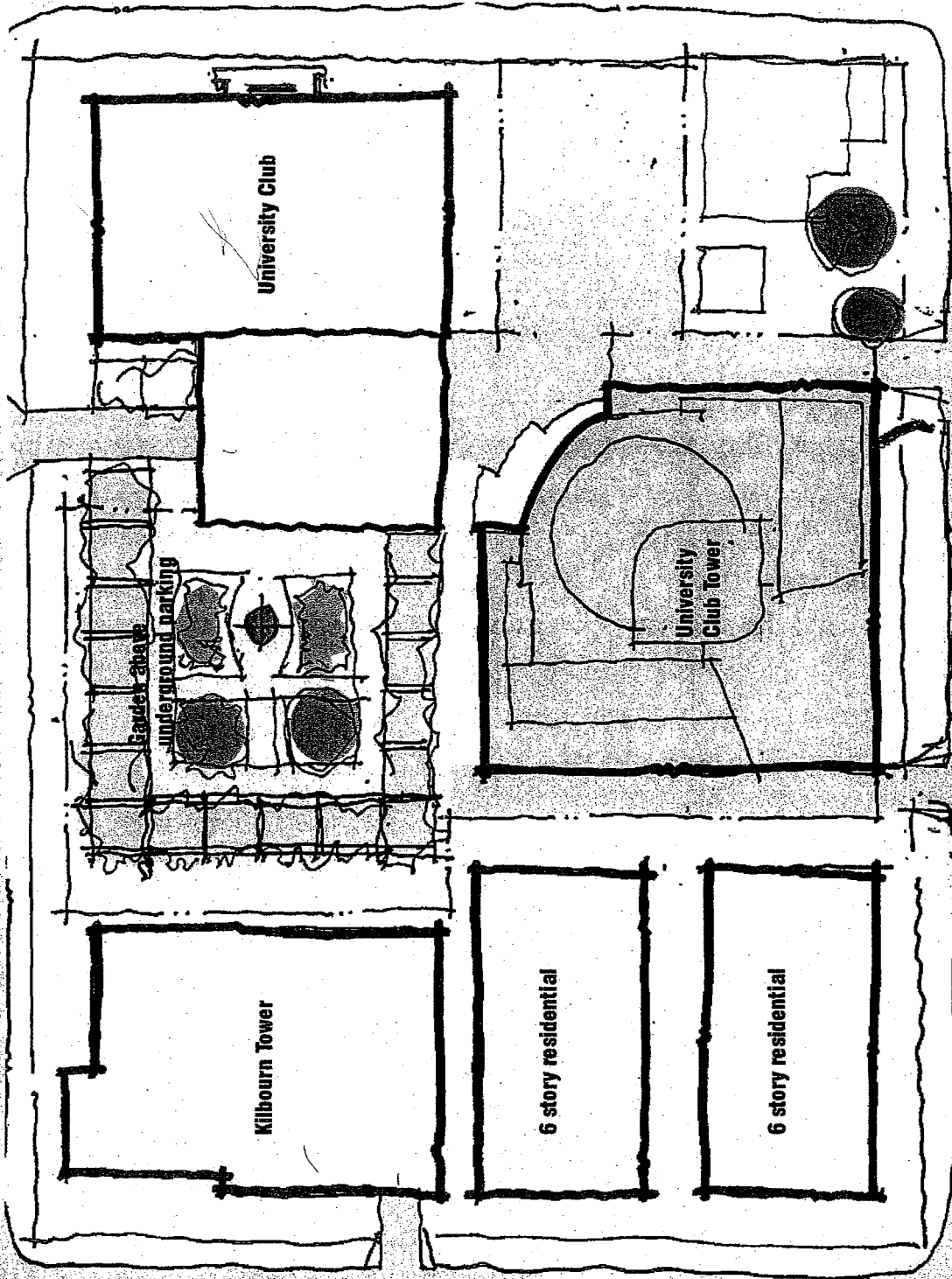
K I L B O U R N

09.23.2003

**PROPOSED SITE PLAN
UNIVERSITY CLUB TOWER**



P R O S P E C T



K I L B O U R N

09.23.2008

ALTERNATIVE SITE PLAN
UNIVERSITY CLUB TOWER

