

CITY OF MILWAUKEE

Form CA-43

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March 18, 2004

The Honorable Common Council
of the City of Milwaukee
Room 205 – City Hall

Re: Proposed Option to Purchase Contract With New Land Enterprises, LLP for Properties at
1100 North Cass Street and 1101 North Marshall Street
Common Council File No. 031456

Dear Council Members:

This office has been requested by Patricia S. Algiers, Commissioner, Department of City Development, to review the above-referenced file as a result of a question raised at the Zoning, Neighborhoods and Development Committee meeting of March 16, 2004. We understand that the question raised was the legality and enforceability of contracts contemplated to be entered into with New Land Enterprises, LLP ("New Land") by the City. Evidently the concern by the committee related to the pendency of a federal criminal matter involving a principal of New Land, Boris Gokhman.

We note that the "Land Disposition Report" to the Common Council attached to the Common Council file indicates that the contemplated transaction with the City involves a two-step process: (1) entering into an Option to Purchase contract, and (2) exercise of the Option by entering into an Agreement for Sale contract. We understand that New Land has had a somewhat similar transaction on sale of a City parking lot at 1812 East Lafayette Place and we therefore base our opinion on the contract provisions found in that transaction, anticipating that they serve as the model for this contemplated transaction.

At the outset we observe that New Land is a limited liability partnership formed under the Uniformed Partnership Act, Chapter 178, Wis. Stats. The Wisconsin Department of Financial Institutions shows that New Land has been registered as in existence since January 20, 2000. The period of existence designated for New Land is perpetual. We also note that under 178.12, Wis. Stats., all partners in a limited liability partnership are jointly and severally liable for everything that is chargeable to the partnership and for all debts and obligations of the partnership.

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We now look to the contemplated Option to Purchase contract. The form of this document calls for an option fee and performance deposit with the City, and would be for an initial term of six months but which could be extended for two additional three month periods upon submission of written progress reports and renewal fees. In the case of New Land, the Option fee reported on the Land Disposition Report is going to be \$18,500.00 and the Performance Deposit will be another \$18,500.00. The Option and Renewal fees are non-refundable, however, the Option fee would be credited against the purchase price. The purchase price for New Land is set at \$575,000.00. The Option document contemplates that the purchaser will execute the option by delivery of a signed Agreement for Sale to the City and then close within 30 days.

The Agreement for Sale provides for a number of conditions; namely, that construction must commence within 30 days and be completed within a specified time period (in the instant case, the Term Sheet calls for a 30-month period for completion), that the City must approve final construction and landscape plans, and evidence of firm financing. In addition, the proposed development is set out in some detail. Various other conditions are covenants contained within the Agreement for Sale and provide the City with approval rights and control on the project development. Since evidence of financing is a condition in order to close on the conveyance of the property, the City would have the assurance that a private lender or other financing source has assessed the project and capability of the developer and shown the willingness to be involved with the project.


However, should the project not be completed or if there are other defaults by the developer that are not cured, the Agreement for Sale provides that the City may have the title revert to it and then be in a position to resell the property.

From the foregoing review of the contemplated transaction and the documents that will be used to implement it, we are of the opinion that such documents would provide adequate assurance to the City that the project moves forward, or if all else fails, the property is returned to the City. Based on a review of similar documents, we believe the proposed sale contract will be legal and enforceable.

Very truly yours,



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Assistant City Attorney

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c: Patricia Algiers, Commissioner

1050-2004-848