

Hamburger Lofts LLC  
RESTATED AND AMENDED PURCHASE, SALE,  
AND DEVELOPMENT AGREEMENT  
City Commercial Land

Document Number

Name and Return Address:  
Redevelopment Authority  
Real Estate Section (Yves LaPierre)  
809 North Broadway  
Milwaukee, WI 53202-3617

Tax Key Nos.: See Exhibit A

Recording Area

This Restated and Amended Agreement for Purchase, Sale, and Development (“Restated Agreement”), with the effective date of \_\_\_\_\_, 2018 (“Effective Date”), by and between the **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 **HAMBURGER LOFTS LLC** (“Buyer”), located at 1010 North Cass Street, Milwaukee, Wisconsin 53202.

WITNESSETH:

WHEREAS, On April 26, 2018, the parties entered into Hamburger Lofts LLC Purchase, Sale, and Development Agreement (“Agreement”) in furtherance of the objectives of, and pursuant to Resolution No. 170426 adopted by the Common Council of the City of Milwaukee on July 31, 2017, whereby City was willing to sell and Buyer was willing to purchase a portion of the real property located at 353 East Bay Street which is a part of Tax Key 466-1001-112, and to improve the Property for and in accordance with the uses specified in the provisions of that Agreement; and

WHEREAS, The City and Buyer have been unable to close per the Agreement because of timing delays and significant changes to the terms that had been negotiated and agreed to as of the adoption of File No. 170426; and

WHEREAS, The City Attorney’s Office, with input from Department of City Development (“DCD”) and Department of Public Works (“DPW”) staff, has negotiated revised terms with the Buyer relating to (a) a new construction timeframe; (b) reconfiguration of the site plan including changing the portion of the real property located at 353 East Bay Street and more particularly described in Exhibit A annexed hereto and made a part hereof (“Property”), which the City is willing to sell and the Buyer is willing to purchase; building a new alley leg from East Archer Avenue to connect with the existing alley to the north; and vacating the west end of East Archer Avenue to the point of the new alley leg to accommodate a plaza; (c) City’s entry into a long term lease with the Buyer for the use of the City’s portion of the vacated west end of East Archer Avenue City will own upon said vacation; and (d) City’s entry into a sewer, water, and public access easements with the Buyer resulting from the vacation of East Archer Avenue; and

WHEREAS, In furtherance of the objectives of, and pursuant to Resolution No. \_\_\_\_\_ adopted by the Common Council of the City of Milwaukee on September 25, 2018, whereby the City is willing to sell and the Buyer is willing to purchase the Property and to improve the Property for an in accordance with the uses specified in the provisions of this Restated 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 that Buyer will redevelop the Property and Buyer’s parcels (collectively, “Buyer’s Parcel”) which are adjacent to the Property and more particularly described in Exhibit A and made a part hereof, as follows and that

these activities constitute the "Project":

Demolish the existing building on the Buyer's Parcel and construct an approximately Twenty Million Dollar (\$20,000,000.00) development consisting of a six-story mixed-use commercial building with 15,000 square feet of ground level commercial space, 183 parking spaces on the ground and second levels, up to 140 one and two bedroom market rate residential units on the upper four levels, and associated landscaping, including a green roof for storm water management and for tenants' use. Said construction to occur on Buyer's Parcel and the Property. Buyer will also construct a plaza, including landscaping, on the west end of the vacated East Archer Avenue, construct a new alley leg from East Archer Avenue to connect with the existing alley and pave the newly dedicated portions at the existing alley. All construction must substantially conform to the Final Plans (**Exhibit B**).

## **SEC. 2. BUYER ACTIONS**

(a) In connection with the Project, the 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 Department of City Development ("DCD") Real Estate Section for approval ("Final Plan Approval") prior to Closing, as defined in Section 4(a). Final Plans must conform to DCD approved preliminary plans submitted by Buyer with the Land Disposition Report that was adopted by Common Council Resolution No. \_\_\_\_\_ on September 25, 2018 and that were approved by DCD and shall incorporate any changes recommended as part of DCD's approval. Final Plans shall be submitted to the City through the City Development Center as part of Buyer's application 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 financing for the Project in a form satisfactory to the City prior to Closing pursuant to Section 4 ("Financing Approval").
3. Cooperate with the City regarding Buyer's request to vacate the western portion of the east-west alley as approved in Resolution No. 170166 adopted by the Common Council of the City of Milwaukee on July 31, 2017.
4. Cooperate with the City regarding Buyer's request to vacate the portion of the east-west alley as approved in Resolution No. 180442 adopted by the Common Council of the City of Milwaukee on September 25, 2018.
5. Cooperate with the City regarding Buyer's request to vacate the portion of East Archer Avenue as approved in Resolution No. 180063 adopted by the Common Council of the City of Milwaukee on September 25, 2018.
6. Obtain a Certified Survey Map ("CSM") to join Buyer's Parcel and the Property underlying platted lots and to dedicate to the City approximately 2085 square feet for public alley purposes at Buyer's expense. The CSM must be approved by the City Common Council prior to Closing and shall be recorded by the City as a part of Closing.
7. 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.
8. Commence construction of the Project within ninety (90) days following Closing and complete construction, including landscaping, within twenty-four (24) months following Closing (the "Construction Period"), subject to force majeure delays, and other delays not within the control of the Buyer.
9. Apply for a certificate of occupancy by the expiration of the Construction Period, subject to Section 13 of this Restated Agreement.
10. Enter into a lease and maintenance agreement with the City related to the Buyer's use and maintenance of the Project's plaza (i.e., the southerly ten feet (10') of the vacated East Archer Avenue), and East Archer Avenue as well

as snow removal of the leased land, East Archer Avenue, and the entire alley from East Archer Avenue to East Bay Street (Exhibit D).

11. Enter into easement agreements with the City for existing sewer and water utilities related to vacation of East Archer Avenue.

(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 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.

(c) Buyer enters into and executes a Human Resources Agreement (Exhibit C) for the Project with the City prior to Closing.

### **SEC. 3. PURCHASE PRICE**

The Purchase Price for the Property is **One Hundred Sixty One Thousand Five Hundred and No/100ths Dollars (\$161,500.00) (“Purchase Price”)**. Buyer shall pay same to the City at Closing in the form of a check subject to the usual and customary credits and prorations. The renewal fee, per Section 4(b), shall not be credited toward the Purchase Price.

The City may request that Buyer divide the amount due at Closing into separate checks for the City's development fee, sale expenses and the net sale proceeds.

### **SEC. 4. CONVEYANCE OF PROPERTY**

(a) Closing. Closing on this transaction and conveyance of title to and possession of the Property from the City to Buyer (“Closing”) shall be at the City Real Estate Office at a date and time mutually agreed to by the parties, which shall be on or before December 31, 2018 (“Base Period”) provided Buyer has satisfied City Closing Contingencies pursuant to Section 4(c) and is not in violation of the City policies in Section 4(c) and Section 4(j). The Closing shall be conducted by Knight-Barry Title, Inc. (“Title Company”), the title company selected by Buyer pursuant to Section 4(i), below.

(b) Extension. If Buyer is unable to close on or before expiration of the Base Period, Buyer may submit a written request for up to two (2) three (3)-month extensions of this Restated Agreement (“Extended Period”) from the DCD Commissioner for the Closing. Buyer shall submit a \$1,000.00 renewal fee and a progress report of Buyer’s efforts to obtain Final Plans and firm financing with each Extension request. The DCD Commissioner shall grant the Extended Period if the City is reasonably satisfied that Buyer is making progress to obtain Final Plans and financing. If the Extended Period is granted, the Closing and all other dates in this Restated Agreement shall be adjusted accordingly. 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, whichever is applicable, is contingent upon:

1. Financing and/or Equity. Buyer submitting to the City evidence of financing without contingencies and/or equity in an amount equal to the final budget and satisfactory to the City;
2. Final Plan Approval. DCD Design Review Team approving Buyer’s Final Plans.
3. Human Resources. Buyer submitting to City a Human Resources Agreement (Exhibit C) executed by Buyer and approved by City’s Office of Small Business Development.
4. Certified Survey Map. Buyer obtaining a Certified Survey Map (“CSM”) to join underlying platted lots at its expense. The CSM must be approved by the City Common Council prior to Closing and shall be recorded by the Title Company at Closing.
5. Lease. Buyer entering into a lease and maintenance agreement with the City related to the Buyer’s use and maintenance of the Project’s plaza, vacated East Archer Avenue, the portion of East Archer Avenue remaining a street, and the alley from East Archer Avenue to East Bay Street (Exhibit D).

6. Easements. Buyer entering into any necessary sewer, water, and public access easements resulting from vacation of East Archer Avenue.

(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 commitment

within forty-five (45) days of the Effective Date ("Financing Deadline") for a combined amount not less than \$23,500,000.00 for a term of not less than five (5) years upon terms acceptable solely to Buyer.

Other Contingency:

If any contingency or condition set forth in this Restated Agreement is not waived or satisfied by Buyer prior to Closing, then Buyer, at its sole option, may declare this Restated Agreement to be null and void.

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 and other terms acceptable to Buyer, in Buyer's sole and absolute discretion, 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 unacceptability by Buyer. If Buyer's notice is timely given, this Offer shall be null and void, but City shall retain the Deposit, as defined in Section 5, and any renewal fee.

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

1. All conditions, covenants, and restrictions set forth or referred to elsewhere in this Restated 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 entirely taxable for City property tax purposes. The restriction shall require that no owner or occupant of the Property shall apply for, seek or accept a City 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 the 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. 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. Possible registration of the Property on Geographical Information Systems ("GIS") soil and groundwater registries operated by the Wisconsin Department of Natural Resources ("WDNR") and/or acceptance of a deed notification about the presence of environmental contamination in the soil or groundwater pursuant to this Restated Agreement or as may be required by the WDNR. If such registrations and/or deed notices are not in place prior to Closing, Buyer agrees to register the Property as required by WDNR and/or to execute the deed notifications.

(f) Proration of Taxes. There shall be no proration of taxes as the Property is tax exempt at the time of Closing.

(g) Recordation of Deed. The Title Company shall promptly after Closing, file the Deed for recording with the Milwaukee County Register of Deeds. Buyer shall pay all costs for recording the Deed. No real estate transfer fee is due pursuant to Wis. Stat. Section 77.25(2). Buyer shall cooperate with City in City's preparation of the Real Estate Transfer Return.

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

(i) Title Insurance. Prior to Closing, Buyer shall procure a preliminary commitment for title insurance prepared in the amount of the full Purchase Price, naming the Buyer as the insured. This commitment shall guarantee the City's title to be in the condition called for by this Restated Agreement. The 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.

(j) Special Assessments. The City will be responsible for all special assessments levied as of the Effective Date. Buyer is responsible for all special assessments levied after the Effective Date. The City will provide details of any known or contemplated special assessments at Closing. If outstanding special assessments for which the City is responsible exist at Closing, the City shall notify the City's Department of Public Works to bill the City at such times as bills are issued for the special assessments. If the special assessment is inadvertently certified to the tax roll, Buyer shall provide the bill to the City for payment and the City shall pay the special assessment.

(k) City Policies. Buyer certifies that it is a limited liability company and that is not now and will not be at Closing in violation of any of the following City Policies:

- i. Delinquent real estate or personal property taxes due to the City.
- ii. Building or health code violations that are not being actively abated.
- iii. Convicted of violating an order of the Department of Neighborhood Services or Health Department within 12 months preceding Closing.
- iv. Outstanding judgment to the City.
- v. In rem foreclosure by the City within five years preceding Closing.

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

(l) Restated Agreement to be Recorded Against Title. At Closing, and prior to recording the Deed, the Title Company shall record this Restated Agreement against the Property in the Register of Deeds Office for Milwaukee County, Wisconsin, at Buyer's expense, and the Property's title will be encumbered by it until issuance of the Certificate, as defined in Section 7. This Restated Agreement shall be terminated and of no further force or effect upon the recording of the Certificate by either Buyer or Seller.

## **SEC. 5. PERFORMANCE DEPOSIT**

The Buyer has delivered to the City and the City acknowledges receipt of a Performance Deposit in the amount of **Ten Thousand and No/100ths (\$10,000)** Dollars ("Deposit"). The Deposit shall serve as security for the performance of the obligations of the Buyer to construct as provided under this Restated Agreement. The City shall authorize 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 4, 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 Project according to the time schedule provided in Section 2(a)(8), above.

## **SEC. 6. SITE PREPARATION AND CERTAIN OTHER ACTION BY THE CITY**

(a) Property Condition. City shall, without expense to Buyer, prepare the Property for the Buyer in the following manner:

1. The Property will be conveyed to Buyer in “as is, where is” condition, with all faults and defects including title, geotechnical and environmental, known or unknown, detected or undetected, physical or otherwise, and without warranty or representation, whatsoever, express or implied except as expressly set forth in this Restated Agreement. Buyer acknowledges that Seller has no disclosure requirements, as Wis. Stat. Ch. 709 does not apply to this transaction.
2. Buyer shall 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.
3. 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 soil bearing capacity and for all site excavation, debris removal, fill and development expenses.

(b) Environmental Condition.

1. City Report. City has provided to Buyer and Buyer acknowledges receipt of Phase I Environmental Site Assessment of 353 and 385 East Bay Street and 2121 South Allis Street, Milwaukee, Wisconsin prepared by DCD and dated May 10, 2004. Provision of this report does not affect or impact the “as is, where is” nature of this transaction and the Buyer acknowledges this report is provided for information purposes only and the City does not warrant the contents, conclusion or accuracy of the report.

No additional environmental investigation shall be conducted by DCD or the City. Buyer agrees to be responsible for all environmental matters including but not limited to, environmental remediation, application for exemption to build on a historic fill site, preparation and implementation of a soil management plan, groundwater monitoring, registration on a Geographic Information System and installation and maintenance of an engineered cap and/or other actions necessary comply with regulatory closure or as required by federal, state or local regulations.

2. Buyer Reports. Should Buyer desire its own Phase I, Phase II testing or remediation not recommended by the City Phase I 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 the 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.
3. Remediation. If the Phase I or Phase II reveals impacted soils subject to regulation by federal, state or local regulatory agencies and Buyer becomes fee simple owner of the Property, then, and only then, Buyer agrees to: (i) remediate such impacted soils on the Property, if any, and to obtain regulatory closure; and (ii) register the Property if the approved remediation plan requires registration on the Wisconsin Department of Natural Resources' GIS Registry. Remediation performed pursuant to this Section 6(b)3 shall be at Buyer's sole expense unless City is able to obtain any federal or state grants for required remediation, which the City agrees to use reasonable efforts to obtain.
4. Termination for Feasibility. If the cost for Phase II testing or any required remediation renders the Project economically infeasible, this Restated Agreement may be canceled at the option of either Party.

(c) Right of Entry for Utility Service. The City reserves for itself 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. This right-of-entry shall not interfere with Buyer's use of the Property.

(d) 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, 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.

(e) Access to Property. Prior to Closing, the City shall permit representatives of the Buyer to have access to any part of the Property to which the City holds title, at all reasonable times for the purpose of obtaining data and making various tests and inspections, at Buyer's sole cost, that are necessary to carry out its rights and obligations under this Restated Agreement upon receipt by the City of a written request for such entry describing the scope of work for the proposed activities and submittal of evidence of insurance according to the City's minimum guidelines. Such request and evidence of insurance must be reasonably satisfactory to the City in form and substance prior to the City granting such access. If granted, a written right of access shall be provided by the City to Buyer, its contractor or agents. After Closing, the Buyer shall permit the representatives of 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 this Restated Agreement, including, but not limited to, inspection of all work being performed in connection with the Project as required herein. 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 substantial completion of the Project, including landscaping, in accordance with this Restated Agreement, and receiving its certificate of occupancy, Buyer shall request that the Commissioner of DCD issue a Certificate of Completion ("Certificate") and return the Deposit to Buyer. This Certificate shall be a conclusive determination of satisfaction and termination of the covenants in this Restated Agreement with respect to the obligations of the Buyer and its successors and assigns to construct and the dates for the beginning and completion thereof. Buyer's request shall include a written report project summary on final project costs, dates of commencement and completion, occupancy summary and Small Business Enterprise (SBE) participation. Case Closure, as defined in Ch. NR 726, Wis. Admin. Code, shall not be a required condition prior to issuing the Certificate.

Representatives of the City shall inspect the Project within thirty (30) days following receipt of Buyer's request to determine if the work has been substantially completed according to the Final Plans and this Restated Agreement. If the Project is determined to be substantially completed, the Commissioner shall execute the Certificate within thirty (30) days of the inspection and shall present the Certificate to Buyer for recording with the Register of Deeds at Buyer's expense. If the Commissioner of DCD shall refuse or fail to authorize this Certificate, the City shall within thirty (30) days of the Project inspection provide Buyer with a written statement indicating in adequate detail how the Buyer has failed to substantially complete the Project in substantial conformity with the Final Plans or this Restated Agreement, or is otherwise in default, and what measures or acts are necessary, in the reasonable opinion of the City, for the Buyer to take or perform in order to obtain the Certificate. Concurrent with the City's consideration of the request for the Certificate, the City shall consider return of the Deposit to Buyer. All or part of the Deposit may be retained by the City if the Project is not substantially completed according to the schedule specified in Section 2. A check for the amount of Deposit authorized for return to Buyer by the City shall be provided within ten (10) days of authorization by the City.

## **SEC. 8 REQUIREMENTS 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 sex, race, religion, color, national origin or ancestry, age, disability, lawful source of

income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse or sexual assault, past or present membership in the military service, HIV status, domestic partnership, genetic identity, homelessness, 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 the regulations issued by the Secretary of Housing and Urban Development set forth in 37 F.R.22732-01 and all applicable rules and orders issued thereunder, for so long as the same may remain in effect, which prohibit the use of lead based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead based paint hazards.
- (c) Comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et. seq., as it may be amended from time to time.

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

It is intended and agreed that the covenants provided in Sections 8, 18, and 25 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, and the United States (in the case of the covenant provided in Section 8(a) and (b)), 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 Section 8 shall remain in effect without limitation as to time.

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

The Buyer has not made or created, and (except as permitted by Section 11) will not, prior to the issuance of the Certificate, make or suffer to be made any sale, assignment, conveyance, lease (except for leases of premises within the Project upon completion) or transfer in any other form of or with respect to this Restated 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 DCD Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed, 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 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 of the Project provided in Section 1, plus (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 security 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. The holder of any security instrument authorized by this Restated 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 or a purchaser at sheriff's sale, 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 be known as a "Permitted Successor."

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

Notwithstanding any of the provisions of this Restated 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 Restated Agreement and Permitted Successors shall not be obligated by the provisions of this Restated 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. FORCE MAJEURE**

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 the Project or commencement and completion of the Project or with respect to its performance under this Restated Agreement, in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to: acts of God, floods, severe weather, explosion, fires, industrial wide labor troubles or strikes not directed specifically at a Buyer or the City, as the context requires, insurrection, riots, acts of the public enemy, or federal, state or local law, order, rule or regulation. The time for the performance of the obligations shall be extended for the period of the delay if the party seeking the extension shall request it in writing of the other party within ten (10) days after the beginning of the event creating the delay.

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

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

(b) Prior to Conveyance. If, prior to the City's conveyance of the Property, Buyer assigns or attempts to assign this Restated Agreement or any rights hereunder except as otherwise provided in this Restated Agreement, or fails to pay the Purchase Price and take title to the Property upon the City's offer of conveyance, the City may, at its option, terminate this Restated 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 of a nature or to an extent 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) The City's Retained Reversionary Interest.

1. The City's Right to Reverter and Deposit. Notwithstanding anything to the contrary contained herein, or in the Deed, if subsequent to Closing and prior to issuance of the Certificate:
  - i. Buyer or any successor defaults on or violates its material obligations with respect to the Project, including the nature of, and the dates for beginning and completion thereof, but subject to events of force majeure, or abandons or substantially suspends construction, and any such default, violation, abandonment or suspension shall not be cured, ended or remedied within 90 days after the City's written demand so to do, subject to events of force majeure; 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 Restated

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 reasonably satisfactory to the City made for such payment, removal or discharge, within ninety (90) days after the City's written demand so to do subject to events of force majeure; or

- iii. There is any transfer of the Property or any part thereof in violation of this Restated Agreement, and such violation shall not be cured within 90 days after the City's written demand;

then, to the extent allowed by law, the 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 the City, and shall automatically terminate all of the 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 the 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 Restated Agreement, is that the conveyance of the Property to Buyer pursuant and subject to this Restated 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 (i), (ii) or (iii) 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, the City at its option may effect a termination of the estate conveyed to Buyer in favor of the 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, the City. And such reversioning of title in the City shall be subject to, limited by, and shall not defeat, render invalid or limit (a) the lien of any mortgage authorized by this Restated Agreement, (b) any right or interest provided in the Restated 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 Restated Agreement.

2. If the City exercises its reversionary right as set forth above, the City may also retain the Deposit.

3. The City's reversionary right is a material provision of this Restated Agreement, without which, the City would not have entered into this transaction.

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

Upon the reversioning in the City of title to the Property or any part thereof as provided in Section 15, the 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 the 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 the City) who will either (a) assume the obligation of making or completing the Project as shall be satisfactory to the City or (b) agree to undertake such other project at the Property as shall meet the City's approval or, alternatively, the Project with such modifications to which City may agree.

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

(a) First, to reimburse the City, for all costs and expenses incurred by the 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 the City from the Property or part thereof in connection with such management); all unpaid 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) 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 reversioning 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 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 the City may establish or to maintain the Property), and any amounts otherwise owing the City by the 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 and rehabilitation of the Property or part thereof, less any gains or income withdrawn or made by it from the Restated 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 City member, official or employee shall have any personal interest, direct or indirect, in this Restated Agreement, nor shall any such person participate in any decision relating to this Restated 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 the Buyer or any successor in the event of any the City default or breach or for any amount which may become due to the Buyer or successor or on any obligations under the terms of this Restated Agreement.

**SEC. 18. INDEMNIFICATION**

Buyer agrees to defend, indemnify and hold harmless the City and their respective officers 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 be asserted against the 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 directly resulting solely from Buyer's action (or anyone acting for or at the direction of, or anyone claiming by, through, or under Buyer) on the Property. The provisions in this Section shall survive completion of the Project, recording of the Certification and any termination of this Restated Agreement.

**SEC. 19. PROVISIONS NOT MERGED WITH DEED**

No provision of this Restated 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 Restated Agreement.

**SEC. 20. GOVERNING LAW**

This Restated Agreement shall be governed by and construed according to the laws of the State of Wisconsin.

**SEC. 21. PUBLIC RECORDS**

This Restated Agreement and certain documents relating hereto are, or may be, subject to Wisconsin's Open Records Law (Wis. Stat. Chapter 19, Subchapter II) including, but not limited to Section 19.36(3), Wis. Stats., that includes records produced or collected hereunder. Buyer agrees to cooperate with the City if the City receives a request under Wisconsin's Open Records Law for any such record.

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

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

**SEC. 23. APPROVALS**

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

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

Notices required to be sent under this Restated 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 the 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 the City:**

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

**If to Buyer:**

Hamburger Lofts LLC  
% New Land Enterprises, LLP  
Attn: Tim Gokhman  
1840 North Farwell Avenue  
Milwaukee, WI 53203  
Phone: 414-349-2248

#### **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. The Buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City or the State of Wisconsin 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. 27. COUNTERPARTS**

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

*[Signature page follows.]*

IN WITNESS WHEREOF, The Buyer, Hamburger Lofts LLC, has hereunto set its hand as of the date first written above.

**HAMBURGER LOFTS LLC (BUYER)**

By: \_\_\_\_\_

Tim Gokhman, Title \_\_\_\_\_



Approved by the Common Council of the City of Milwaukee on September 25, 2018, by adoption of Resolution No. \_\_\_\_\_.

IN WITNESS WHEREOF, Amy E. Turim, Special Deputy Commissioner of the Department of City Development, on behalf of the City of Milwaukee has caused this Restated Agreement to be duly executed in its name and on its behalf effective as of the date first written above.

SEAL

**CITY OF MILWAUKEE**

By \_\_\_\_\_  
Amy E. Turim, Special Deputy Commissioner  
Department of City Development

State of Wisconsin            )  
                                          ) ss.  
COUNTY OF MILWAUKEE    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
\_\_\_\_\_ and , Amy E. Turim, to me known to be the Special Deputy Commissioner of the  
Department of City Development and being authorized so to do, executed the foregoing Restated 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 Real Estate Section, Department of City Development and the City Attorney’s Office.

**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:

Lots 21 and 22, excepting the South 108.20 feet thereof, in Block 1, in Assessment Subdivision No. 35, being a Subdivision of a part of Lot 13, and of Lots 12, 16 and 17, in the Subdivision of the West 1/2 of the Southwest 1/4 of Section 4, Township 6 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Address:                      353 East Bay Street, Milwaukee, WI 53207

Tax Key Number:         Part of 466-1001-112

**EXHIBIT B**  
Design Criteria

Final Plans on file with Department of City Development.

**EXHIBIT C**  
Human Resources Agreement

**EXHIBIT D**

Lease