

## **AGREEMENT FOR PURCHASE AND SALE OF CUDAHY PARCEL**

THIS AGREEMENT, dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2004, is made and entered into by and between the City of Milwaukee (“City”) and Kendall Breunig (“KB”).

1. **Agreement to Buy and Sell.** KB agrees to buy from the City, and the City agrees to sell to KB, on the terms and conditions contained herein, the property at 4701-5001 South Pennsylvania Avenue, Cudahy, Wisconsin, Tax Key Number 629-9995 (the “Property”). The Property is more particularly described in **Exhibit A** attached hereto.
2. **Purchase Price.** The purchase price is \$1,150,000 and will be paid in good funds at Closing (defined below) via wire transfer pursuant to wire directions to be furnished by City to KB.
3. **Earnest Money.** Earnest money of \$25,000 in the form of a cashier’s check shall be paid by KB to City within one-day of full execution of this Agreement by all parties, failing which this Agreement shall be null and void. Earnest money shall be held by City in an account of City.
4. **Closing.** The closing on this transaction (“Closing”) shall take place in the Offices of the City Attorney, City Hall, 200 East Wells Street, Milwaukee, at a mutually acceptable time and date that will be within 110 days of the date of this Agreement.
5. **Quit-Claim Deed of Property; AS-IS Sale.** City shall, upon confirmation that the Purchase Price (less a deduction for the Earnest Money paid) has been successfully wired into City’s designated account per the wire instructions that City shall provide KB, convey the Property by quit-claim deed, in form and substance of that attached hereto as **EXHIBIT B** (the “Deed”), in “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. KB shall rely on its own due diligence and independent investigation and inspection, and shall not rely upon any oral or written statement or representation of City or any employee or agent or contractor of City.
6. **KB Aware of Prior Landfill.** Without changing the “AS-IS/no warranty or representation” nature of this transaction, KB is aware that the Property is or may be affected by adverse geotechnical and environmental issues, the Property having been a former landfill. KB is encouraged to undertake whatever investigation and due diligence review that KB deems necessary pursuant to KB’s contingency rights set forth below.
7. **Title Insurance.** Also without changing the “AS-IS/no warranty or representation” nature of this transaction, City shall, within 5 days of the date of this Agreement, obtain a title insurance commitment for the Property from Chicago Title Insurance Company and provide a copy of the same to KB. The commitment shall name KB as the proposed

insured. At Closing, City shall issue a check to Chicago Title to pay for title insurance in the amount of the Purchase Price.

8. **No Tax Proration.** The Property is property-tax exempt so there will be no proration of taxes at Closing.
9. **No Transfer Fee or Return.** There shall be no real-estate-transfer fee due as the Deed represents a conveyance from the City as a subdivision of the State under Wis. Stat. § 77.25(2). And, there shall be no real-estate-transfer return pursuant to the exemption from returns under Wis. Stat. § 77.255 (no return required for conveyances exempt under § 77.25 (2). City is not a lender in this transaction).
10. **Recording Deed.** The Deed shall, promptly after Closing, be recorded by City at KB's expense. At Closing, KB shall provide City with a check, made payable to the Milwaukee County Register of Deeds, in the amount needed to record the Deed.
11. **Milw. Code of Ordinances §308-22-2-g.** This Agreement shall be deemed the "waiver" required by Milwaukee Code of Ordinances §308-22-2-g. KB shall hold the City (and its agents, employees, and contractors, and also the Redevelopment Authority of the City of Milwaukee) harmless from and against any loss, expense, damage, or claim, associated directly or indirectly, with any detected or undetected, known or unknown, environmental hazard that may be present in or on the Property.
12. **Buyer Contingencies.** KB's obligation to Close on this transaction is contingent upon the following conditions.
  - A. **Title Review.** KB's review and approval of status of title as shown by the title commitment to be provided by City to KB and as shown by the survey to be obtained by KB at its expense.
  - B. **Survey Review.** KB's review and approval of an ALTA survey of the Property, prepared by a Wisconsin Registered Land Surveyor, and to be obtained at KB's expense.
  - C. **Records Review.** KB's (and KB's attorney's and KB's environmental engineer's) review and approval of records of the Property maintained by the Wisconsin Department of Natural Resources.
  - D. **Geotechnical Inspection.** KB's review and approval of test results from a certified soils tester or other qualified expert, to be obtained at KB's expense, indicating that the soils and geotechnical conditions at the Property are free from conditions that would make development on the Property by KB impossible or significantly more costly than otherwise anticipated by KB.
  - E. **Environmental Inspection.** KB's review and approval of an environmental report from a certified environmental engineer, to be obtained at KB's expense,

indicating that the environmental hazards at the Property are reasonably acceptable, and that KB is able to add buildings and improvements on top of the landfill cap without significantly more cost than otherwise anticipated by KB.

13. **KB Approvals.** Concerning KB's contingency rights, approvals by KB shall not be unreasonably withheld, KB having a duty of good faith. In the event KB does wish to terminate this Agreement by virtue of its contingency rights, KB may, however, properly take into consideration reasonable expectations of having to incur expense of a nature and in an amount that would be expected to make ownership, development, or future sale or leasing, of the Property imprudent, financially infeasible or unduly difficult.
14. **Waiver of Contingencies Unless KB Sends Timely Notice of Termination.** KB's contingency rights shall conclusively be deemed waived unless KB notifies City, in writing, within 90 days of the date of this Agreement (the "Contingency Period") (**time is of the essence**), that all of the contingencies have not been satisfied (such notice is hereby called the "Termination Notice"). Any Termination Notice sent by KB shall: be timely sent; be sent per the "Notice" paragraph in this Agreement; and provide detailed explanation as to why a particular contingency has not been satisfied. In the event of a proper Termination Notice, this Agreement shall be deemed terminated, null and void, and City shall promptly return KB's earnest money (without interest).
15. **KB's Pre-Closing Access Rights.** City shall allow KB and its agents and representatives pre-Closing access to the Property in conjunction with KB's contingency rights above. Such access shall be on the following terms and conditions:
  - A. Access is for the sole purpose of pursuing KB's contingency/inspection rights set forth above.
  - B. Prior to any entry by KB or anyone claiming by, through, or under KB, or on behalf or at the direction of KB, KB shall contact Elaine "Bunkie" Miller of the City's DCD at 414-286-5732 and inform her of the time and date of the desired entry, purpose of entry, and the estimated length of occupancy. Ms. Miller shall have discretion as to whether to allow such entry without City accompaniment or whether the City will require on-site accompaniment by a City employee, agent, or representative.
  - C. KB, and any surveyor performing survey work, and any person performing any testing or sampling at the Property, must – prior to entry - provide the City with an insurance certificate with minimum limits as set forth on **Exhibit C** attached hereto. The City of Milwaukee must be named as an additional insured.
  - D. Entry is at KB's own risk.
  - E. KB shall be required to obtain an executed sign-off in the form of **Exhibit D** attached hereto by anyone entering by, through, or under KB, with, or on behalf

or at the direction of KB, that entry is at such person's own risk and that the City will be held harmless regarding any loss, claim, injury, liability, or expense that may befall such person, or that may be asserted against City, directly or indirectly, as a result of entry onto the Property.

- F. KB must first submit and obtain Ms. Miller's approval of a written plan for any testing, sampling, or investigation to be conducted at the Property by, or on behalf or at the direction of, KB.
  - G. KB must, at its expense, restore the Property to the condition that existed prior to entry or occupancy by KB or anyone claiming by, through, or under KB (or by anyone entering on behalf of, or at the direction of, KB).
  - H. KB shall defend, indemnify and hold City harmless from any and all loss, cost, damage, claims, or expense, including, without limitation, reasonable attorney fees, that may result, directly or indirectly, from KB's (or anyone claiming by, through, or under KB, or by anyone entering on behalf or at the direction of KB) entry onto, occupancy of, or conduct or activities at, the Property.
  - I. This right of entry shall expire upon the sooner of the termination of this Agreement or at the end of the Contingency Period.
16. **Copies to City.** KB shall provide to City, promptly upon receipt, copies of any survey, report, findings, or results that KB obtains as a result of its contingency/inspection rights – including a copy of any geotechnical report or environmental report or findings or data that KB obtains.
17. **Successors and Assigns.** This Agreement binds and inures to the benefit of the parties hereto and their successors and assigns. Notwithstanding the foregoing, however, KB may only assign its rights under this Agreement if: KB also remains liable for all KB's obligations and liabilities hereunder; the assignment is pursuant to a written assignment agreement a complete copy of which is provided to City; the assignee and its relationship to KB must be identified in writing to City; and the assignee agrees in the written assignment agreement (to which City shall be deemed a third-party beneficiary) that the assignee is responsible and liable for KB's duties and obligations hereunder – it being understood that the term "KB" hereunder shall then also include the assignee.
18. **Facsimile and Counterparts.** This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same document. And, facsimile signatures shall be accepted as originals.
19. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and all prior statements, written or oral, are terminated and of no effect. This Agreement may only be amended by a written agreement signed by all the parties hereto.

20. **Severable.** The terms and provisions of this Agreement are deemed separable and severable such that the invalidity or unenforceability of any term or provision shall not affect or impair the validity or enforceability of the remaining terms and provisions.

21. **Authority to Sign.**

A. KB represents that its signatory has full authority to sign this Agreement.

B. City's Common Council has approved entry into and execution of this Agreement on behalf of the City by Common Council Resolution File Number \_\_\_\_\_.

22. **Survival.** The terms, provisions, and agreements herein shall survive Closing and delivery and recording of the Deed. And, notwithstanding termination of the Agreement, KB's express agreements in paragraph 15 D., G., and H. and in paragraph 16 shall survive termination of the Agreement.

23. **Notices.** All notices permitted or required hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier or otherwise personally delivered, (ii) if sent by facsimile, then the notice must be sent during business hours (i.e. 8:30 A.M to 4:30 P.M., Monday through Friday) on days that City's City Hall is open for business, and the notice shall be deemed given when sent as per the following and so long as the notice is successfully sent (i.e. the sender does not receive any error or "busy" or "inability to send" notification), and (iii) within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows:

A. If to City:

Elaine Miller  
Dept. of City Development  
809 North Broadway, 2d Floor  
Milwaukee, WI 53202

Fax: 414-286-0395  
Phone: 414-286-5732

With a further copy to:

Gregg Hagopian  
City Attorney's Office  
800 City Hall  
200 East Wells Street  
Milwaukee, WI 53202

Fax: 414-286-8550  
Phone: 414-286-2620

B. If to KB:

Kendall Breunig  
Sunset Investors  
10535 W. College Ave.  
Franklin, WI 53132-1273

Fax: 414-529-7454  
Phone: 414-529-8352

With a further copy to:

Dave Keating  
Walsh & Keating  
1505 Wauwatosa Ave.  
Wauwatosa, WI 53213-2622

Fax: 414-257-9959  
Phone: 414-257-9929

24. **Headings.** The headings used herein are for convenience only.
25. **Remedies.** Except as otherwise provided herein, in the event of breach of this Agreement, the nonbreaching party shall have all rights and remedies available at law and in equity against the breaching party. In the event of breach by KB, City may elect to retain the Earnest Money as liquidated damages or as partial offset against damages otherwise occasioned by the breach – which, in the latter case, City may bring suit for remaining damages.

**CITY:** City of Milwaukee

By: \_\_\_\_\_  
Tom Barrett, Mayor

Attest: \_\_\_\_\_  
Ronald D. Leonhardt, City Clerk

COMPTROLLER COUNTERSIGNATURE  
(Milwaukee City Charter § 3-18-2)

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Comptroller's Office

CITY ATTORNEY'S OFFICE  
(Milwaukee Code of Ordinances § 304-21)

Approved by: \_\_\_\_\_  
Gregg C. Hagopian  
Assistant City Attorney

**KB:** Kendall Breunig

By: \_\_\_\_\_  
Kendall G. Breunig

82602

**EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY**



**EXHIBIT B – QUIT-CLAIM DEED**

**QUIT CLAIM DEED**

Document No. \_\_\_\_\_

**THIS QUIT-CLAIM DEED** is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by the CITY OF MILWAUKEE, a Wisconsin municipal corporation, hereinafter called "CITY," as the Grantor, to \_\_\_\_\_, hereinafter called "KB," as the Grantee.

**WITNESSETH:**

1. **Conveyance of Property.** CITY hereby conveys and quit-claims to KB, on an "AS-IS, WHERE-IS" basis, with all faults and defects, known or unknown, physical or otherwise, and without representation or warranty, express or implied, all of CITY's right, title, and interest, whatsoever, in and to the real estate, in the City of Cudahy, County of Milwaukee, State of Wisconsin, described on **EXHIBIT A** attached hereto (the "Property"), together with appurtenances and privileges, if any, thereunto belonging.

2. **No Transfer Fee; No Transfer Return.** There is no real-estate-transfer fee due with respect to this Deed as it represents a conveyance from the CITY as a subdivision of the State under Wis. Stat. § 77.25(2). And, there is no real-estate-transfer return required with respect to this Deed pursuant to the exemption from returns under Wis. Stat. § 77.255 (no return required for conveyances exempt under § 77.25 (2) where the CITY is not a lender in the transaction, and the CITY is not a lender in this transaction).

**IN WITNESS WHEREOF**, the CITY, as Grantor, has caused this Deed to be executed by its duly authorized officers as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**CITY:** City of Milwaukee

By: \_\_\_\_\_  
Tom Barrett, Mayor

Attest: \_\_\_\_\_  
Ronald D. Leonhardt, City Clerk

Recording Area

RETURN TO:

Dave Keating  
Walsh & Keating  
1505 Wauwatosa Ave.  
Wauwatosa, WI 53213-2622

Tax Key No.:  
629-9995





**EXHIBIT C**  
**Insurance Requirements - Right of Entry**

Insurance certificates must be sent for inspection and approval prior to entry to: Elaine "Bunkie" Miller by facsimile to 286-0395. AND THE CITY MUST BE NAMED AS AN ADDITIONAL INSURED.

<u>TYPE OF INSURANCE</u>	<u>LIMITS</u>
<u>Workers' Compensation</u>	Statutory limits
<u>Employers Liability</u>	
Bodily Injury by Accident	Each Accident \$100,000
Bodily Injury by Disease	Each Employee \$100,000
	Policy Limit \$500,000
 <u>Public Liability</u>	
A Comprehensive General or Commercial General Insuring Agreement that provides:	
<u>*Occurrence Coverage*</u>	
Premises/Operations Protection	
Products Completed Operations Protection	
Independent Contractors (owners, contractors protective coverage)	
Contractual Liability for Risks Assumed to this agreement	
 <b>NOTE:</b> If claims made coverage is provided, the policy must be amended so all protected occurrences are covered regardless of when the claim is made.	
 Bodily Injury/Property Damage	 Each occurrence \$1,000,000
	General occurrence \$1,000,000
	Products/completed operation aggregate \$2,000,000
 <u>Automobile</u>	
Business Auto Policy that provides:	
Liability coverage for all owned, non-owned and hired vehicles	
Sudden and Accidental Pollution Coverage	
Provide MCS-90 Endorsement when applicable in accordance with the Motor Carrier Act of 1980	
Bodily Injury/Property Damage	Each accident \$1,000,000

**EXHIBIT D**  
**SIGN-OFF REQUIRED TO ENTER**

\_\_\_\_\_ (herein called "Entrant"), with an address at \_\_\_\_\_, and a phone number of \_\_\_\_\_, wishes to enter 4701-5001 South Pennsylvania Avenue, Cudahy (the "Property") at the direction or on behalf of Kendall Breunig ("KB") to assist KB with respect to its contingency and inspection rights under that certain "Agreement for Purchase and Sale of Cudahy Parcel" by and between the City of Milwaukee ("City") and KB (the "Agreement").

Particularly, Entrant wishes to enter onto the Property to: \_\_\_\_\_.

Entrant understands and agrees that:

1. Entry and access to the Property is for the sole purpose of pursuing KB's contingency/inspection rights.
2. The City may require that a City employee, agent, or representative accompany Entrant on the Property.
3. Any surveyor performing survey work, and any person performing any testing or sampling at the Property, must – prior to entry - provide the City with an insurance certificate with minimum limits as set forth on **Exhibit C** to the Agreement. The City of Milwaukee must be named as an additional insured.
4. Entry is at Entrant's own risk.
5. Entrant may not enter onto the Property unless this "sign-off" is executed by Entrant.
6. Entrant agrees to hold City harmless regarding any loss, claim, injury, liability or expense that may befall such person, or that may be asserted against City, directly or indirectly, as a result of entry onto the Property.
7. KB must first submit and obtain the City's approval of a written plan for any testing, sampling, or investigation to be conducted at the Property by, or on behalf of, or at the direction of, KB.
8. KB must, at its expense, restore the Property to the condition that existed prior to entry or occupancy by KB or anyone claiming by, through, or under KB (or by anyone entering on behalf of, or at the direction of, KB).
9. KB must provide to City copies of any survey, report, findings, or results that KB obtains as a result of KB's contingency/inspection rights – including a copy of any geotechnical report or environmental report or findings or data that KB obtains.

Dated: \_\_\_\_\_

Entrant: \_\_\_\_\_

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

Name Printed: \_\_\_\_\_

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