

PILOT AGREEMENT

Document Number

Document Title

**PAYMENT IN LIEU  
OF TAXES AGREEMENT**

**(Veterans Gardens Project)**

Recording Area

Name and Return Address

Mary L. Schanning  
Assistant City Attorney  
Office of the City Attorney  
200 East Wells Street, Suite 800  
Milwaukee, WI 53202

Parcel Identification Number (PIN)  
213-0132-000-8, 214-0902-100-7,  
214-0901-000-5 & 223-0601-000-3

This PILOT AGREEMENT for payments in lieu of taxes (“PILOT Payments”) is made by and between Veterans Gardens LLC, a Wisconsin limited liability company (“DEVELOPER”) and the City of Milwaukee, a Wisconsin municipal corporation (“CITY”), as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

**RECITALS**

**WHEREAS**, DEVELOPER is the owner of the real property legally described on **Exhibit A** (the “PROPERTY”); and

**WHEREAS**, DEVELOPER recognizes that, notwithstanding the fact that portions of the PROPERTY may in the future qualify for tax exempt status, valuable government services and

benefits will be provided to it and the PROPERTY, which services and benefits directly or indirectly relate to the public health, safety, and welfare, and which include, but are not limited to: fire and police protection; paved streets and streetlights; snow removal; benefits associated with living in an organized community; and

**WHEREAS**, The PROPERTY is subject to that Agreement of Sale recorded in the Milwaukee County Register of Deeds Office as Document No. 10418355 on December 10, 2014 (the “DEVELOPMENT AGREEMENT”) and the Agreement to Amend the Agreement of Sale, Declare Restrictive Covenants and Release Deed Restriction recorded in the Milwaukee County Register of Deeds Office as Document No. \_\_\_\_\_ on \_\_\_\_\_, 2015 (the “DECLARATION”); and

**WHEREAS**, In Common Council Resolution File No. \_\_\_\_\_, adopted \_\_\_\_\_, 2015, the Common Council approved the DECLARATION releasing a Tax Exemption Prohibit Restrictive Covenant from the Property in exchange for the entering of this PILOT Agreement; and

**WHEREAS**, In the event that the Property, or any portion thereof, becomes tax exempt, DEVELOPER agrees for itself and its successors and assigns to make PILOT Payments to CITY in recognition of the services and benefits referred to herein and the purchase price agreed to in the DEVELOPMENT AGREEMENT; and

**WHEREAS**, it is the intent of this PILOT AGREEMENT to have DEVELOPER and all future owners and tenants of the PROPERTY, any parcel or building which is within the PROPERTY or any portion thereof, make payments in lieu of taxes; and

**NOW, THEREFORE**, For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**1. INCORPORATION OF RECITALS.**

The parties hereby acknowledge that the above Recital clauses are part of this PILOT AGREEMENT.

**2. CITY SERVICES.**

**A. Services Typically Covered by Property Tax.**

CITY agrees to continue to furnish governmental services and benefits to the PROPERTY of the same type, and to the extent, as are furnished from time to time, without cost or charge (except by means of property tax and authorized fees and charges), to other similarly situated commercial buildings and projects in CITY. Nothing in this PILOT AGREEMENT shall be construed to give DEVELOPER or its successors and assigns a contractual right to specific governmental services, or to impose upon CITY any additional duties, it being the parties' intent that CITY provide public services to the PROPERTY subject to the same terms and conditions as apply to properties owned by citizens or the public generally. Such services and benefits include, but are not limited by specific enumeration herein, those typically covered by the property tax such as fire and police protection, and on public streets, snow removal, and street lighting. CITY shall not have breached its obligations hereunder if it is prevented from providing benefits and/or services to the PROPERTY because of typical *force majeure* reasons (e.g. war, flood, fire, labor dispute, supply shortage, act of God, natural disaster, etc.), because of budgetary constraints, or because any person or entity shall assert a right which prevents delivery of such benefits and/or services.

**B. BID Assessments, Special Assessments, Special Charges and Fees.**

Notwithstanding paragraph 2.A., or any future property tax exempt status of the PROPERTY, DEVELOPER understands that the PROPERTY will be subject to applicable

business and/or neighborhood improvement district assessments, special assessments, special charges, and special taxes as defined in §74.01, Wis. Stats. (and as also referred to in Ch. 66, Wis. Stats.) and fees charged by CITY in the same manner that such special assessments, special charges, special taxes, and fees are charged for similar services and/or undertakings to commercial buildings within CITY. This provision shall not affect CITY's powers, consistent with the law, to determine the services and benefits (other than those typically covered by the property tax) that shall be provided to the PROPERTY and/or similarly situated property pursuant to this paragraph 2.B. Nothing contained herein shall preclude DEVELOPER or its successors and assigns from appealing, as provided by law, the imposition of such special assessments, special charges, special taxes, or fees by CITY.

### **3. PILOT PAYMENTS.**

#### **A. Calculations.**

In recognition of those services and benefits covered by paragraph 2.A. of this PILOT AGREEMENT, beginning in the year the PROPERTY or any portion thereof becomes exempt, and so long as the PROPERTY or any portion thereof continues to be exempt, in whole or in part, under § 70.11, Wis. Stats., DEVELOPER or its successors and assigns shall pay CITY an annual PILOT Payment for the PROPERTY or the portion thereof which is exempt for each calendar year. The method to be used in determining the PILOT shall be the Value<sup>1</sup> of the PROPERTY for that tax year determined by CITY's Assessor times the Total Property Tax Rate<sup>2</sup> for the tax year.

#### **B. Payment Due Date.**

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<sup>1</sup> "Value" herein means CITY Assessor's determination of the fair market value of the PROPERTY on January 1 of each tax year.

<sup>2</sup> "Total Property Tax Rate" means the tax rate for all taxes levied by CITY and Milwaukee Public Schools reflected on City of Milwaukee tax bills from time to time (in 2014, the applicable Total Property Tax rate was \$23.33 per \$1,000 of assessed value.)

PILOT Payments for the year in which the PROPERTY or a portion thereof becomes exempt and subsequent years shall be due and payable (i) in full on or before January 31 of the year following the calendar year for which the PILOT Payment was calculated, or (ii) if DEVELOPER or its successor or assign elects to pay in installments, according to the following schedule: one-tenth of the PILOT Payment by the last day of each month for the first 10 months in the year following the calendar year for which the particular PILOT Payment was calculated. DEVELOPER or its successor or assign shall be deemed to have elected to pay the PILOT Payment in installments by making the first full installment payment on or before January 31 in the respective year in which the PILOT Payment is due.

**C. Use.**

CITY may use and expend PILOT Payments hereunder in such manner and for such purposes as CITY desires.

**D. Mandatory Payment for Services to Offset PILOT Payment.**

Notwithstanding anything herein to the contrary, if the State of Wisconsin enacts a mandatory payment for municipal services to be paid by owners of property exempt from general property tax or similarly situated owners of exempt property, PILOT Payments shall be reduced dollar for dollar by any such mandatory payment paid by DEVELOPER or its successors or assigns to CITY.

**4. EXEMPT STATUS.**

CITY Assessor's Office may review the PROPERTY's exempt status under §70.11, Wis. Stats. from time to time with the respective January 1 dates being the reference dates for those exemption reviews. If CITY, as a result of those reviews or otherwise, determines that all or any portion of the PROPERTY no longer qualifies (or does not qualify) for exemption from property

tax, (i) CITY will provide notice of such determination to DEVELOPER or its successor or assign, (ii) this PILOT AGREEMENT shall be suspended with respect to any years and, if applicable, with respect to any portions of the PROPERTY for which exemption no longer applies, (iii) if PILOT Payments have been erroneously made for such tax years, CITY shall promptly refund such PILOT Payments, or, at the option of CITY, offset such PILOT Payments against any property taxes due, or to become due, from DEVELOPER or its successors or assigns, in which case CITY will treat such offset as having been made under protest, and (iv) the PROPERTY, or any portion thereof which does not qualify for exemption, shall be placed on the property tax rolls for all years for which whole or partial exemption has been determined not to apply. If DEVELOPER or its successors or assigns disagree with CITY's determination that the PROPERTY or any part thereof no longer qualifies for tax exemption, DEVELOPER or its successors or assigns may challenge such determination by following the procedure set forth in §74.35, Wis. Stats. or as otherwise provided by law.

Notwithstanding anything to the contrary contained herein, DEVELOPER acknowledges that it is or may be bound by the reporting requirement, in §70.11, Wis. Stats., preamble, and that under §70.109, Wis. Stats.: exemptions are strictly construed; it is presumed that property is taxable; and the burden is on the person claiming exemption.

DEVELOPER, on its behalf and that of its successors and assigns, also acknowledges that if it leases, or otherwise allows another person to use and/or occupy, all or a portion of the PROPERTY, such use may affect the PROPERTY's exempt status. See, e.g. the preamble of §70.11, Wis. Stats., §70.1105, and Deutsches Land v. City of Glendale, (WI S.Ct. April 16, 1999). For example, if DEVELOPER is exempt but only uses and occupies 90% of the PROPERTY for exempt purposes and leases the other 10% of the PROPERTY to a for-profit,

nonexempt entity, and if the assessor applies a square footage, taxed in part analysis, the PROPERTY is to be taxed on a 10% basis and exempt on a 90% basis and the PILOT Payment would have to be paid on the 90% portion.

**5. TERM.**

This PILOT AGREEMENT shall be effective at such time that the Property, or any portion of the Property, becomes exempt from payment of real property taxes. This PILOT AGREEMENT shall be permanent and shall run with the land.

**6. APPEAL OF ASSESSED VALUE.**

DEVELOPER and its successors and assigns shall have the same rights to contest the assessed valuation of the PROPERTY as a taxpaying owner under Wisconsin law. CITY acknowledges DEVELOPER's right to contest the assessed valuation of the PROPERTY under the procedures provided in §§70.07 and 70.47, Wis. Stats., and CITY expressly agrees not to dispute DEVELOPER's right to contest the assessed valuation of the PROPERTY under said statutes.

**7. DOCUMENTS, INSPECTION, COOPERATION.**

DEVELOPER and its successors and assigns shall cooperate with CITY (including, but not limited to, the City Assessor's Office, the City Attorney's Office, and the City Comptroller's Office) with respect to this PILOT AGREEMENT by allowing inspections of the PROPERTY upon reasonable written request of CITY and by allowing inspection of any leases applicable to the PROPERTY and such other documents that CITY may, from time to time, request concerning exemption and assessment determinations. Notwithstanding the foregoing, CITY expressly reserves all its rights in law and equity to inspect and to obtain disclosure, documents, inspection, and information.

**8. AMENDMENT.**

This PILOT AGREEMENT may be modified and amended from time to time as CITY and DEVELOPER shall mutually agree in writing.

**9. SEVERABILITY; GOVERNING LAW.**

If any provision hereof is duly held by a court of competent jurisdiction to be invalid with respect to any circumstance or otherwise, the remainder of this PILOT AGREEMENT and/or the application of the PILOT AGREEMENT to any other circumstance, shall not be affected thereby. The parties intend that the laws of the State of Wisconsin and ordinances and regulations of the City of Milwaukee shall be the governing law with respect to this PILOT AGREEMENT.

**10. BINDING EFFECT/NOTICE.**

This PILOT AGREEMENT shall be binding upon and inure to the benefit of that parties hereto and their successors and assigns. Successors and assigns referred to in this PILOT AGREEMENT include any owner or tenant of any portion of the PROPERTY or improvements thereon. DEVELOPER and its successors and assigns shall include a reference to this PILOT AGREEMENT in each future conveyance of all or any portion of the PROPERTY in order to give express notice of this PILOT AGREEMENT. Neither DEVELOPER nor its successors or assigns shall have any liability for obligations accruing under this PILOT AGREEMENT with respect to any portions of the PROPERTY for any period of time other than during their ownership and/or occupancy. DEVELOPER AND ITS SUCCESSORS AND ASSIGNS MAY WISH TO GIVE NOTICE OF THE TERMS OF THIS PILOT AGREEMENT TO FUTURE TENANTS UNDER LEASES FOR PORTIONS OF THE PROPERTY AND ALLOCATE

RESPONSIBILITY FOR PAYMENTS UNDER THIS PILOT AGREEMENT IN ANY  
LEASES FOR PORTIONS OF THE PROPERTY.

**11. AUTHORITY.**

DEVELOPER represents and warrants to CITY that its agents executing this PILOT AGREEMENT have been duly authorized to so execute and to cause DEVELOPER to enter this PILOT AGREEMENT, and that DEVELOPER has obtained all requisite consents and approvals concerning the same.

**12. RECORDING**

CITY shall cause this PILOT AGREEMENT to be recorded with the Milwaukee County Register of Deeds and deliver a copy of the recorded PILOT AGREEMENT to DEVELOPER.

**IN WITNESS WHEREOF**, the parties hereto have caused this PILOT AGREEMENT to be executed by duly authorized representatives as of the date and year first written above.

**CITY OF MILWAUKEE**

\_\_\_\_\_  
Tom Barrett, Mayor

\_\_\_\_\_  
Jim Owczarski , City Clerk

COUNTERSIGNED:

\_\_\_\_\_  
Martin Matson, Comptroller

**Milwaukee City Attorney  
Approval and Authentication**

Mary L. Schanning, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the Milwaukee representatives above, and also authenticates the signatures of each of the above Milwaukee representatives/signatories per Wis. Stat. §

706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

By: \_\_\_\_\_  
MARY L. SCHANNING  
Assistant City Attorney  
State Bar No. 1029016

Date: \_\_\_\_\_

**VETERANS GARDENS, LLC**

By: \_\_\_\_\_  
Robert A. Cocroft  
President / CEO

STATE OF WISCONSIN            )  
  )ss.  
COUNTY OF MILWAUKEE        )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, a notary public, personally appeared Robert A. Cocroft, the President / CEO, of the Recipient, Veterans Gardens, LLC, named in the foregoing instrument and acknowledged said instrument on behalf of the Recipient.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

Prepared by:  
Mary L. Schanning, Assistant City Attorney  
Milwaukee, Wisconsin

**EXHIBIT A**

Legal Description of the Property