

75.106 IN REM ASSIGNMENT CONTRACT

<u>Developer-Buyer:</u>	National Business Enterprises, Inc. (Ann Holt, President)
<u>Developer-Buyer Contact Information:</u>	Address: 2880 North 30 th Street, Milwaukee, WI 53210-2050 Phone: (414) 871-8000 Facsimile: (414) 871-0100 E-mail Address: jholt@montehall.net
<u>Delinq. Owner of Record:</u>	Stanley Fronczak
<u>Address of Delinq. Owner:</u>	6201 North 39 th Street Milwaukee, WI 53209-3511
<u>Parcel:</u>	3021 West Locust Street, PARCEL 526 in 2001 No. 2 FILE ¹
<u>Tax Key No.:</u>	309-0689-000-X
<u>Total Tax Delinquencies*:</u>	1988-1995, 1997, and 2001
<u>Eligible Tax Delinquencies*:</u>	1988-1995, and 1997 (BUT SEE BELOW)
<u>2001 Assessed Value:</u>	\$900
<p>* Note that, per City records, 1998, 1999, and 2000 taxes have been paid. Due to Wis. Stat. §75.20 statute of limitations, 1988 and 1989 were written off as unenforceable. Hence, City is only foreclosing against 1990-1995 and 1997. Currently, no outstanding special assessments. Site clearance cost of \$1,500. January, 2002 payoff figure is \$60,790.66 for 1990-1995 and 1997; and January, 2002 payoff for year 2001 taxes is \$26.60.</p>	
<u>Delinq. Owner of Record:</u>	Oliver Patterson, Wallene Frazier, J.W. Smith
<u>Address of Delinq. Owner:</u>	4746 North 20 th Street Milwaukee, WI 53209-0000
<u>Parcel:</u>	2879 North 30 th Street, PARCEL 525 in 2001 No. 2 FILE
<u>Tax Key No.:</u>	309-0679-000-5
<u>Total Tax Delinquencies*:</u>	1982, and 1984-2001
<u>Eligible Tax Delinquencies*:</u>	1982, and 1984-1999 (BUT SEE BELOW)
<u>2001 Assessed Value:</u>	\$6,300

¹ Milw. Co. Circ. Ct. Case No. 01-CV-006959, filed July 27, 2001. October 10, 2001 was expiration of redemption period. November 12, 2001 was expiration of answer period.

*** Note, that, due to Wis. Stat. §75.20 statute of limitations, 1982 and 1984-89 were written off as unenforceable. Hence, City is only foreclosing against 1990-1999. Site clearance costs of \$4,900 are outstanding as are year 2000 and year 2001 taxes (January, 2002 payoff for year 2000 taxes is \$429.85, and for year 2001 taxes is \$251.17) and a special assessment (January, 2002 payoff for special assessment is \$192.53) is also outstanding. January, 2002 payoff for 1990-1999 taxes is \$64,573.45.**

This 75.106 In Rem Assignment Contract (“Contract”) by and among the above-named developer-buyer, National Business Enterprises, Inc. (“NBE ”), 30th Street Industrial Corridor Corporation (“ICC”), and City of Milwaukee (“City”), dated as of January 22, 2002;

WITNESSETH

Whereas, NBE wants City to foreclose against the above-referenced Parcels (i.e. 3021 West Locust Street and 2879 North 30th Street) (the “Parcels”) under Wis. Stat. § 75.521 so NBE and City can act under Wis. Stat. § 75.106; and

Whereas, ICC is a party to a grant agreement, dated as of June 6, 2001 (“Grant Agreement”) with Milwaukee County (“County”) pursuant to which County agreed to grant ICC \$84,500 to assist in the redevelopment of the Parcels (the “County Grant”) (the County Grant requires a DNR Deed Restriction, a City Deed Restriction, and transfer of ownership of the Parcels to NBE); and

Whereas, in reliance upon NBE’s and ICC’s undertakings hereunder, City, desiring to foster economic development and brownfield remediation and redevelopment, to return tax-delinquent properties to the tax roll, and to promote public health, safety, and welfare, is willing to foreclose and act under § 75.106;

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

1. Parcel; Delinquencies.

Per City records, the “delinq. owners of record” above (“Delinq. Owners”) are currently the respective owners of record of the parcels above called the “Parcels” and above identified by address and key number (the “Parcels”) (75.106(2)(c)). Also per City records, the Parcels are tax delinquent in that outstanding real property taxes exist against the Parcels for the respective tax years identified above and identified on the pay-out statements attached hereto as **Exhibit A**. Buyer understands that, due to the one-year waiting period under Wis. Stat. § 75.521(3)(a)2, there is a difference between the delinquencies referred to above as the Eligible Tax Delinquencies and the Total Delinquencies; and that, due to the statute of limitations period in Wis. Stat. §75.20, only certain of the Eligible Delinquencies may be foreclosed upon under § 75.521. Buyer also understands that, subsequent to City foreclosure against the Parcels, City will still have a

lien in the Parcels for all unpaid taxes for all tax years post-dating the years represented by the Eligible Delinquencies; and, City's lien will remain until those taxes are paid. § 75.106(3). See, ¶ 14 below concerning payment required for taxes (and special assessments) for years 2000 and 2001, and beyond.

2. Brownfield; Records; Environmental Assessment.

Copies of the records described on **Exhibit B** ("Records") have been made available to each of ICC, NBE, City, and the WI Dept. of Natural Resources ("DNR"). ICC, NBE, and City believe the Records: **(a)** show that the Parcels are "brownfields" as defined in 75.106(1)(a) and 560.13(1)(a) and as required by 75.106(2)(d); and **(b)** show that an environmental assessment of the Parcels has already been conducted (75.106(2)(e)).

3. NBE Good Standing and Other Representations.

NBE represents and warrants to City **(a)** that NBE is a corporation duly organized and existing under Ch. 180 of the Wisconsin Statutes; **(b)** that NBE is in good standing; **(c)** that NBE's current officers and directors are as set forth below; **(d)** that, after acquiring in rem foreclosure judgment pursuant to the assignment herein and title to the Parcels, NBE shall not be entitled to, nor claim right to, property tax exemption²; **(e)** that neither NBE nor any of its officers or directors: **(i)** own real or personal property in the City that is currently tax-delinquent or the subject of any outstanding City-issued health or building code order to repair, fix or abate; **(ii)** owned any real property interest in any property in the City that, at any time from 1995 to the present, the City foreclosed against under Wis. Stat. § 75.521; and **(iii)** currently has outstanding against it, him, or her any unpaid City judgment or municipal fine or forfeiture; and **(f)** that there are no mortgages against 2880 N. 30th Street.

NBE Officers

Ann Holt, President
James Holt, Vice-President and Treasurer
Clarisse A. Holt-Kerr, Secretary

NBE Directors

Ann Holt
James Holt
Clarisse A. Holt-Kerr

NBE further represents and warrants to City that all real estate in the City of Milwaukee in which NBE, or any of its officers or directors, currently has an ownership interest is set forth below:

- NBE and David Reynolds own 2501 West Hadley Street.
- NBE owns 2880 North 30th Street.
- Clarisse A. Holt-Kerr and Christopher Kerr own 9043 North 86th Street.

² For informational purposes only, reference is made to City Ord. § 304-28.5-6 (i.e. when City uses funds from "environmental testing and remediation subfund" to test or remediate, City may not sell that property to non-governmental entity that is property-tax exempt unless there is a Council-approved PILOT agreement). City will not own or sell the Parcels under the terms of this Contract. Rather, it is merely assigning its right to in rem foreclosure judgment on the Parcels.

If any of NBE's above representations or warranties is discovered by City to be untrue, and if no final foreclosure judgment has yet been granted on the Parcels in or as a result of City's foreclosure action, City may, in addition to any other right or remedy it may have, and in its discretion, dismiss its foreclosure action against the Parcels and terminate this Contract, in which case, City shall have no further duty or liability hereunder.

4. NBE Wants a 75.106 Deal So NBE Can Own Parcels.

NBE wants to own the Parcels. ICC suggested to NBE a transaction with the City. NBE wants City to foreclose against the Parcels under 75.521 so City can then assign its in rem foreclosure judgment to NBE under 75.106.

5. NBE and ICC Plans for Parcel; County Grant; Requisite Approvals.

If NBE does get title to the Parcels by virtue of obtaining assignment of in rem foreclosure judgment, NBE and ICC agree to use the County Grant to improve the Parcels, by capping them per DNR requirement, and by constructing on the Parcels, **by November 1, 2002** (with a certificate of occupancy issued by the City by November 1, 2002) a fenced-in, paved, and lighted parking lot that serves NBE's building and business operations at 2880 North 30th Street (the "NBE Building").

ICC agrees to provide project oversight, and general supervision. NBE agrees to cooperate with ICC and to allow ICC and its contractors and subcontractors undisturbed access to the Parcels so that the improvement and capping work contemplated herein and by the DNR may be performed.

ICC shall submit copies of all plans and specifications ("Plans and Spec's") for the capping and improvement work to each of City, County, and the DNR; and, the Plans and Spec's shall be subject to the reasonable approval of the Commissioner of the City's Department of City Development ("Commissioner") or his/her designee.

NBE and ICC understand that this Contract shall not, in any way: (a) relieve ICC or NBE of any duty to obtain all permits, licenses and approvals as required by law, or the DNR, to improve, cap, fence, occupy, operate, and /or use the Parcels or any improvement thereon for parking (or other) purposes (together, the foregoing are called "Requisite Approvals", and they include, but are not limited to, any necessary zoning approval); and (b) be deemed as City implicitly or explicitly granting, approving or preapproving, any Requisite Approvals.

6. City In Rem Action; 2001 No. 2 File; Milw. County Circuit Ct. No. 01-CV-006959; Judge Thomas Cooper, Branch 45; Parcels 525 and 526.

A. City Already Commenced Action.

City has not yet taken any in rem foreclosure judgment against the Parcels with respect to any of the Total Delinquencies (Wis. Stat. § 75.106(2)); and, but for this Contract, City had no plan to bring any foreclosure action against the Parcels. In reliance on ICC's and NBE's undertakings in this Contract, however, and subject to the terms hereof, City commenced and will pursue in rem foreclosure action against the Parcels in Milwaukee County Circuit Court (case no. 01-CV-006959, filed July 27, 2001) under Wis. Stat. § 75.521 for the **Eligible** Delinquencies that are still actionable after applying Wis. Stat. §75.20's statute of limitations.

2879 N. 30th Street is parcel 525 in that action, and 3021 W. Locust Street is parcel 526 in that action.

Per § 75.106(2)(g), the City will file this Contract (together with the City Treasurer Affidavit required under § 75.106(2)(g)) with the Court that presides over the City's foreclosure action. And, City will make available to NBE and ICC copies of the list under § 75.521(3) that City used to commence City's in rem foreclosure action, and the treasurer's affidavit required under § 75.521(3)(c).

B. NBE to Pay Certain Foreclosure Costs.

Within 5 business days of full execution of this Contract, NBE shall pay to City \$1,500 to offset or pay for the following costs associated with City's in rem foreclosure action (the "Foreclosure Expenses"):

- (1) Guardian ad litem fee (see § 75.521(12)(b));
- (2) Publication costs (see § 75.521(6));
- (3) Mailing costs (see § 75.521(3)(c));
- (4) Court filing fees, including \$3 fee under § 75.521(4);
- (5) Document production and copying; and
- (6) Recording cost (see § 75.521(14)).

NBE understands that its payment to City of the Foreclosure Expenses is on a non-refundable basis. So, for sake of example, if any of the Delinq. Owners were to redeem (see ¶ 8.C.1. below) or to successfully challenge City's foreclosure action (see ¶ 8.C.2. below), NBE understands that this Contract would terminate and that City would have no liability, including but not limited to, liability for any return of the money NBE paid hereunder for Foreclosure Expenses.

C. City Authorized to Bring In Rem Action.

Per Wis. Stat. § 75.06, for purposes of Wis. Stat. Ch. 75, the word “county” includes a city authorized to proceed under Wis. Stat. § 74.87. City is so authorized because: (i) per Wis. Stat. § 74.87(1), “City” means “a city authorized by its charter to sell land for nonpayment of taxes”; and (ii) per Charter Ord. Ch. 19, City is authorized to sell land for non-payment of taxes. In addition, per Wis. Stat. § 75.521(2)(a), per Charter Ord., File No. 48-868, City has made election to proceed under, or make use of, Wis. Stat. § 75.521.

D. 75.106(2)(a) Not Applicable.

Since City itself is authorized to bring, and will bring, the foreclosure action, and since the Parcels are located wholly within City’s borders, 75.106(2)(a) does not apply to this transaction.

E. Assignment of In Rem Judgment.

Assuming the Court would otherwise grant judgment to the City in, or as a result of, City’s in rem foreclosure action against the Parcels (i.e. that the City will be entitled to a final judgment in City’s 75.521 foreclosure action against the Parcels), subject to the terms hereof, and per 75.106, City hereby presently assigns to NBE, City’s future right to take judgment to the Parcels. NBE hereby accepts that assignment.

F. Ownership; City Ord. § 304-49 Not Applicable.

NBE understands that City does not own the Parcels. In light of the assignment made herein, City, even after, or as a result of, its foreclosure action, will not own or acquire (i) the Parcels, or (ii) title thereto, or (iii) final in rem judgment on the Parcels. See, Wis. Stat. § 75.106(3) and (4) (assignee who is granted in rem judgment on parcel shall take fee simple title to, and is the owner of, the parcel). Since City does not now own, and will not own, the Parcels, City is not conveying the Parcels. Instead, City hereby merely conveys and presently assigns its future right to take in rem foreclosure judgment to the Parcels. Consequently, City Ord. § 304-49 (“Disposal of City Real Estate Property”) does not and will not apply, and, in the event any Delinq. Owners, or any person who had an interest in any of the Parcels that was foreclosed, attempts to proceed under City Ord. § 304-49-6-c with respect to the Parcels and City’s foreclosure, City shall reject Delinq. Owner’s or such person’s (i) § 304-49-6-c-1 written request, and (ii) attempt to have City vacate the in rem foreclosure judgment.

G. Wis. Stat. § 75.36(2m) (Surplus Sale Proceeds) Not Applicable.

Per the Records, it does not appear that any of the Parcels were used, at any time during the past 5 years, as any Delinq. Owner’s homestead. In light of that, and

the fact that City will not acquire title to the Parcels as a result of City's foreclosure action, City believes § 75.36(2m) does not apply.

7. Title Report.

City obtained the title insurance commitments referred to on **Exhibit B** regarding the Parcels (the "Title Report"). NBE reviewed (i) the status of title reflected therein, and (ii) Wis. Stat. § 75.521 and § 75.106. NBE, at its expense and in its sole discretion, may obtain title insurance if it so desires.

8. NBE and ICC Acknowledge Risk.

NBE and ICC freely enter this Contract despite knowing there are attendant risks, including, but not limited to the following risks. And, NBE and ICC hereby expressly accept the following risks:

A. AS-IS Risk.

If the Court does award 75.521 foreclosure judgment to NBE, NBE will accept that judgment, the Parcels (including any improvement, fixture, and/or building that might be on the Parcels), and title to the Parcels, all in their respective **AS-IS, WHERE-IS** states, with all faults and defects (including, but not limited to, physical defects, environmental defects, and title defects) (including, but not limited to, presence of asbestos, lead-based paint, chromium and volatile organic compounds, and underground storage tanks), whether those faults and defects are known or unknown, discovered or to be discovered, and whether revealed by the Records or not. Moreover, NBE expressly assumes all risk (including risk of loss or damage) concerning any change in the physical condition of the Parcels (or of any improvement, fixture and/or building that might be on the Parcels) that might take place between the date of this Contract and the date of the foreclosure judgment on the Parcels.

B. "Parcel is Contaminated" Risk.

NBE, ICC, and City believe the Parcels are brownfields. § 75.106(2)(d). And, NBE and ICC acknowledge that the Records show, or could be read to show, that the Parcels might be, or are "contaminated by the discharge of a hazardous substance" (Wis. Stat. § 75.106(2)(f)) per the environmental assessment referred to in the Records. NBE nonetheless accepts the Parcel **AS-IS** subject to ICC's duty to spend the County Grant to improve the Parcels as contemplated by para. 5 above.

C. In Rem Action Risks.

(1) **Redemption Risk.** NBE and ICC understand that, per Wis. Stat. §

75.521(5), persons having any right, title or interest in, or lien upon, the Parcels may redeem same. In the event of timely and proper redemption, City shall notify NBE and ICC and this Contract shall terminate with NBE, ICC, and City having no liability and no further duty or responsibility hereunder. Redemption period in 2001 No. 2 file expired on October 10, 2001.

- (2) **Challenge or Answer Risk.** NBE and ICC understand that, per Wis. Stat. § 75.521(7), every person having any right, title, or interest in, or lien upon, the Parcels may serve an answer objecting to City's in rem foreclosure. In the event of an answer or other legal challenge to City's in rem foreclosure action (including, but not limited to, any challenge based on inadequate notice (see ¶ 8.D. below), or federal interest (see ¶ 8.E. below), or any challenge or answer brought under 75.521(7), (10) or (12) or under any other grounds), City shall provide a copy of the answer or responsive pleading to NBE and ICC, and, City shall have the option, in its sole discretion, to either terminate this Contract or to defend. If City elects to terminate, City shall promptly provide written notice of such to NBE and ICC in which case, City shall also dismiss its foreclosure action against the Parcels, this Contract shall terminate, and City, NBE, and ICC shall have no liability and no further duty or responsibility hereunder. If City elects to defend, City shall at its expense, and using its discretion, defend to the extent deemed by City to be practical and prudent. In any event, nothing shall obligate City to undertake or pursue appeal work. If City is able to successfully defend so as to protect its right to obtain in rem foreclosure judgment, City shall and hereby does assign such judgment to NBE. If, however, (i) City is unable to successfully defend, or (ii) if the Court, under § 75.521(13)(a) or otherwise, determines in favor of a party who has filed an answer or challenge to City's action, and the Court grants final judgment either divesting any of the Parcels of the liens City seeks to foreclose, or preventing City's foreclosure of those liens, then this Contract shall terminate and City, NBE, and ICC shall have no liability and no further duty or responsibility hereunder. Answer period in 2001 No. 2 file expired on November 12, 2001.

- (3) **75.521(14a) Damage Action Risk.** NBE and ICC understand that, even if City is able to successfully bring the in rem foreclosure action contemplated hereunder such that NBE obtains final in rem foreclosure judgment on the Parcels, per § 75.521(14a), any person who was the owner of any right, title or interest in the Parcels which was lost by virtue of that judgment of foreclosure may, within certain prescribed times from the date of entry of the final foreclosure judgment, in certain cases, bring an action against the City to recover the fair market value of that person's interest. See ¶ 12 below.

D. Notices Risk.

NBE and ICC acknowledge that, for purposes of ascertaining interested parties to whom to mail copies of City's in rem foreclosure petition as required by Wis. Stat. § 75.521(3)(c), City relied on data available to the City Treasurer (including the Title Reports) ("Treasurer Data"). NBE expressly accepts any risk associated with (i) failure of the Treasurer Data to properly list interested parties, and (ii) any challenge or answer to City's in rem foreclosure action based on inadequate notice of commencement of the action. (But see ¶ 6.A. above, NBE and ICC will have available to it City's list and treasurer's affidavit under § 75.521(3) and thus know to whom and where City mailed notices with respect to commencement of City's in rem action).

E. Federal Interests Risk.

The Title Reports show there are federal interests in the Parcels, IRS liens. If City so requests, NBE, at its expense, shall furnish to City copies of any document that may be referenced in the Title Reports as evidencing or giving rise to such interest (including, but not limited to, copies of any IRS Notice of Lien that may have been filed against any of the Parcels per 26 USC § 6323(f) and Wis. Stat. § 779.97).

City shall rely solely upon and follow the provisions of Wis. Stat. § 75.521 to foreclose any interest in the USA (or any interest of any of U.S.A.'s departments or agencies, including the IRS) in the Parcels. NBE and ICC assume all risk of the USA (or of any of its departments or agencies, including the IRS) (i) challenging City's foreclosure action or NBE's judgment of foreclosure, (ii) asserting that U.S.A.'s judgment lien, or other interest in the Parcels, is not foreclosed by § 75.521 or by any final judgment that may be granted to NBE in City's § 75.521 action, and (iii) redeeming under state or federal law. City expressly notifies NBE, and NBE is expressly aware of and takes subject to: federal law, including, but not limited to, all United States Code sections and Internal Revenue Code sections, including, but not limited to, 26 USC § 6323, § 6324, § 6325, § 6327; 26 USC § 7425; and 28 USC § 2410.

City understands that NBE and/or ICC may, if either so elects, provide a copy of this Contract to the U.S.A. and make request of the U.S.A. to extinguish, release, or discharge, any interest of USA in the Parcels. See, e.g., 28 USC § 2410, 26 USC § 6325, 26 USC § 7425, and IRS Publication 487. If NBE or ICC does make any such request, they shall promptly provide City with copies evidencing or relating to: (i) such request, and (ii) the U.S.A.'s response.

F. Bankruptcy Risk. NBE and ICC understand that if Delinq. Owners or a property-interest owner in any of the Parcels has filed or files for bankruptcy or creditor protection under federal or state law, such may impede or prevent City's ability to act hereunder. NBE and ICC accept that risk and, in addition, expressly acknowledge and accept, and take subject to, the following risks.

- (1) **Automatic Stay Risk.** NBE and ICC understand that City’s ability to act hereunder may be adversely affected by the filing of bankruptcy by any Delinq. Owner and “automatic stay” provisions under bankruptcy law which prevent or restrict enforcement and collection matters. City’s duties hereunder are contingent upon Delinq. Owners not filing bankruptcy and City not being subject to or limited by any automatic stay. City states, however, that, based on its check of bankruptcy records, Delinq. Owners do not have any current bankruptcy action or petition pending. NBE and ICC, however, are encouraged to make their own check of bankruptcy records. In the event that City, prior to the Milwaukee County Circuit Court granting an in rem foreclosure judgment on the Parcels, becomes aware of the filing of a bankruptcy action or petition by Delinq. Owners and of City’s foreclosure action being subject to an “automatic stay”, City agrees to use good faith efforts to have the automatic stay lifted so that City can proceed with its foreclosure action and this Contract; providing, however, (i) that City, in no event, shall be obligated to undertake any appeal work; (ii) that City in its discretion believes it has a legal and factual basis so as to properly be able to seek such relief; and (iii) that NBE and ICC understand that, if City believes it does not have the legal and factual basis, or if City seeks to have the stay lifted and is unsuccessful, then City may terminate this Contract, in which case City, NBE, and ICC shall have no liability and no further duty or responsibility hereunder.
- (2) **Fraudulent Conveyance Risk.** NBE and ICC further understand that, subsequent to the Court granting final in rem foreclosure judgment to NBE by virtue of the assignment to NBE herein, Delinq. Owners may attempt to challenge City’s foreclosure action or NBE’s acquiring judgment (and title to the Parcels) under “fraudulent conveyance” principles of bankruptcy law. Generally speaking, “fraudulent conveyance” attacks must be made within one year from the “conveyance” (i) under attack (i.e. in this case, the final in rem judgment), and (ii) alleged to have been made for inadequate consideration. In the event of a fraudulent conveyance challenge by a Delinq. Owner subsequent to NBE’s acquiring judgment, and NBE’s providing to City written notice of that challenge and NBE’s desire to dispute that challenge, City agrees to cooperate with respect to NBE’s dispute efforts, to the extent City is able, by providing factual information and testimony; providing, however, that City shall not be required to incur any cost or expense with respect to any cooperation duty it may have hereunder, and, City shall in no event have any duty of defense.

G. **“Building Code and Health Code Violations” Risk.** NBE and ICC accept the risk of, and NBE agrees: (a) to accept judgment of foreclosure on the Parcels subject to any then-outstanding building or health code violations (“Code

Violations”); and **(b)** to correct any Code Violations within the time specified by any order issued with respect thereto by the City (or any of its departments) or by any Court with competent jurisdiction.

9. No Entry onto Parcel; No Further Testing/Inspection.

NBE does not and will not require any entry onto the Parcels, or on-site review, inspections, or testing (including, but not limited to, environmental testing) as any contingency to this Contract, or to consummate the deal evidenced hereby.

NBE and ICC understand that neither NBE nor ICC has any right of entry onto the Parcels or right to possession of the Parcels until the date that final in rem foreclosure judgment on the Parcels is granted to NBE. And, City will not conduct any testing or analysis at the Parcels.

10. No Rep’s or Warranties.

NBE and ICC acknowledge that City makes no representations or warranties to NBE or ICC concerning the Parcels, their title, their condition, or their fitness for development, occupancy, or use by NBE or any other, and in any event, **(a)** any such statement or position (oral or written) whatsoever made or taken by City, and **(b)** any statement or position (oral or written) made or taken by City – unless appearing in writing in this Contract, is hereby repealed, merged, and terminated, and is of no force, consequence or effect whatsoever. In no event shall City or any of its agents, officers, employees, departments, or instrumentalities be held responsible or liable for any such repealed, merged, or terminated statement or position.

11. DNR Contract, and DNR Deed Restriction.

The Parcels may be contaminated by the discharge of a hazardous substance as determined by environmental assessment (and the Records referred to in **Exhibit B**), but NBE elects to accept the foreclosure judgment assigned to it hereunder anyway. 75.106(2)(f). Accordingly, NBE agrees: **(a)** to enter into an agreement with the DNR (the “DNR Contract”), before final judgment is issued to it, as required by 75.106(2)(f); and **(b)** to provide to City, before final judgment is issued to NBE, a fully-executed copy of the DNR Contract, signed by each of DNR and NBE.

The DNR has agreed to conditional closure subject to a deed restriction (the “DNR Deed Restriction”) being placed on the Parcels as per Gina Keenan’s letter to Joseph Taylor (referred to in **Exhibit B**). NBE agrees to that condition and to subjecting the Parcels to a DNR Deed Restriction. NBE shall, on or before the date final judgment is issued to it, provide to City a fully-executed original of a DNR Deed Restriction, acceptable to DNR, that City shall record against title to the Parcels at the time that foreclosure judgment to NBE is recorded against title.

NBE agrees that City is a third-party beneficiary to the DNR Contract and DNR Deed Restriction, but, that City has no duties or responsibilities under those documents.

If NBE fails to timely provide City with the copy of the fully-executed DNR Contract and with the original of the DNR Deed Restriction, City may, in its discretion, terminate this Contract and dismiss the Parcels from its foreclosure action, in which case, City shall provide written notice of such to NBE and ICC with a one-business day opportunity to cure; and, if there is no cure, this Contract shall terminate, City may dismiss the Parcels from the foreclosure action, and City shall have no further duty or liability hereunder.

12. Release, Indemnity and Hold Harmless.³

NBE and ICC hereby, now and forever, release and discharge City (and any of its agents, officers, employees, departments, or instrumentalities) (together each of the foregoing and City are, for purposes of this paragraph no. 12, individually and collectively called “City”) of and from any and all claims, demands, actions, and causes of action for damages of any kind or nature whatsoever, and all liability whatsoever, including attorney fees and costs, if any, in any way arising or growing out of, or relating, directly or indirectly to, any of the following (herein called “Indemnified Matters”): (a) any environmental or other condition at or affecting the Parcels, whether known or unknown, detected or undetected; (b) any of the risks or matters referred to in ¶ 8 above; and/or (c) any environmental remediation or clean-up action that may be required, necessary, ordered, or taken with respect to the Parcels or as a result of the Parcels and their past, present, or future condition, including, but not limited to, any clean-up or other costs or remediation incurred as a result of: (i) enforcement proceedings brought by the U.S. EPA, the DNR, or any other public authority with competent jurisdiction; (ii) any litigation or administrative action (or settlement of same) brought by any person before any court, agency, or tribunal with competent jurisdiction; or (iii) the DNR Deed Restriction or DNR Contract, and NBE’s (or any subsequent owner’s) duties thereunder or with respect thereto. With the exception of any litigation expense pertaining to an election by City under ¶ 8.C.(2) to defend a challenge or answer to City’s foreclosure action, NBE agrees to fully indemnify City and hold City harmless from and against any and all claims, demands, actions, costs, fees, fines, penalties, liability, expense, damage, or other monetary liability of whatever nature or kind that now or hereafter may be asserted against City or that City may incur with respect to any of the Indemnified Matters.

Without in any way reducing or restricting the benefits and protections otherwise available to City under the above language, NBE expressly agrees, per Wis. Stat. § 75.106(4), that if NBE does get title to the Parcels by virtue of obtaining assignment of in rem foreclosure judgment, NBE shall fully indemnify City and hold City harmless

³ For informational purposes only, reference is made to City Ord. § 308-22 (environmental audit required prior to disposition or acquisition of property) and especially §308-22-2-g (anyone intending to acquire property from City shall, prior to closing, sign a waiver holding City harmless from undetected or unknown environmental hazard). See, also, ¶ 19 below.

against any loss, expense, liability or damage that City may incur as a result of an action under Wis. Stat. § 75.521(14a).

13. Collateral Assignment of Grant Agreement.

ICC and NBE hereby collaterally assign to City, ICC's and NBE's respective right, title and interest in and to the Grant Agreement and in and to the County Grant. The purpose of the foregoing assignment shall be to ensure that ICC and NBE: (a) improve and develop the Parcels, on a timely basis, as per paragraph 5 above; (b) comply with the terms and requirements of the Grant Agreement and the County Grant; and (c) cap the Parcels as per the DNR Contract and DNR Deed Restriction.

ICC and NBE agree to execute and/or provide such further documents as City may reasonably request to evidence, acknowledge, and/or perfect City's security interest and rights in and to the Grant Agreement and County Grant.

City's security interest shall terminate when NBE and ICC cap and improve the Parcels for the contemplated parking lot, and as required by para. 5, and City issues an occupancy permit or certificate therefore.

NBE and ICC agree to cooperate with City by providing such invoices and documentation as City may, from time-to-time, request concerning improvement status, together with reports as to the status of improvement work required hereunder.

If City provides NBE, ICC, and Milwaukee County with written notice of City assertion of breach by NBE or ICC with respect to any of their improvement duties hereunder, and if such breach, per written notice from City to NBE, ICC and County, has not been cured within 10 days, then City shall be entitled to any remaining balance of the Grant Funds and to entry on the Parcels so that City may spend those remaining funds toward the improvement work in City's discretion and at City's direction.

NBE and ICC agree that City is a third-party beneficiary to (but that City has no duty under) the Grant Agreement.

14. Payment of 2000 and 2001 Taxes and Special Assessments, Site Clearance Costs, and Other Compensation.

At least 5 business days prior to the date set for the court to grant NBE judgment of in rem foreclosure against the Parcels, NBE shall pay to City, in good funds, the amount due to satisfy in full any balance then due and owing for any tax, interest, penalty, special assessment, or special charge not foreclosed (or to be foreclosed) by virtue of City's foreclosure action (including, but not limited to, any balance of 2000 and 2001 taxes, interest and penalties) (§ 75.106(3)). Assistant City Attorney Gregg Hagopian shall then hold those funds in trust (but not in any trust account) until the court grants foreclosure judgment to NBE, whereupon, Hagopian shall transfer the funds to the City treasurer for payment of the taxes at issue. If NBE fails to timely pay said funds,

City may, in its discretion, terminate this Contract, in which case, City shall provide written notice of such to NBE and ICC with a one-business day opportunity to cure; and, if there is no cure, this contract shall terminate, City may dismiss the Parcels from its foreclosure action, and City shall have no further duty or liability hereunder. If, on the other hand, NBE does timely pay as required under this ¶ 14 – but, for some reason, the Court does not grant final in rem foreclosure judgment to NBE on the Parcels, City shall return the funds paid under this ¶ 14 to NBE.

In addition, on the first day of the first month following the date that the Court grants in rem foreclosure judgment to NBE, and on the first day of each month thereafter for the following 11 months, NBE shall faithfully pay to City \$533.34 so that, after those payments have been made, NBE shall have paid the City twelve payments totaling \$6,400.08 (i.e. $533.34 \times 12 = 6,400.08$) for the costs City incurred toward clearing and grading the Parcels, plus 8 cents (i.e. \$4,900 for 2879 N. 30th and \$1,500 for 3021 W. Locust, plus 8 cents). In the event of nonpayment of same (or any portion thereof), City reserves all rights to levy special assessments for such and to place its clearance and grading costs (or so much of same that has not been paid) on the tax rolls against the Parcels.

15. Grant Funds.

ICC commits to spending the County Grant funds toward improvement work contemplated by, and required, hereunder – including, but not limited to capping work (paved, lighted, fenced parking lot).

16. No Brokers.

Neither NBE nor ICC nor City has contracted with or engaged the services of any third person or real estate broker to secure this Contract or the deal contemplated hereby.

17. Successors and Assigns.

This Contract (and all its terms and provisions) shall be binding upon each of City's, NBE's, and ICC's respective heirs, executors, administrators, successors and assigns. Neither NBE nor ICC may assign this Contract (or any interest or right therein) to any person or entity unless NBE and ICC have first obtained City's express written consent.

18. NBE and ICC Review and Free Entry Into Contract.

Prior to signing this Contract, NBE and ICC have reviewed whatever federal, state, and local law deemed important or relevant to review, all the Records, and this Contract, and had the opportunity to have legal counsel and consultants of NBE's and ICC's choice (including environmental consultants) review the same (as well as any other law or document or fact deemed pertinent or prudent to review or consider). NBE and ICC freely enter this Contract.

19. Common Council Approval and Treasurer Affidavit.

NBE and ICC understand that, per 75.106(2)(g), City Common Council approval of this Contract and the assignment herein, and an affidavit by the City Treasurer attesting to that approval, are required and must be filed with the court that presides over the City's 75.521 in rem foreclosure action. If the Common Council does approve this Contract and assignment, City will, in its § 75.521 foreclosure action against the Parcels, cause to be filed with the Court, the City Treasurer Affidavit required by Wis. Stat. § 75.106(2)(g).

In that the City is merely assigning its right to in rem judgment and City will not be purchasing the Parcels, selling the Parcels, or otherwise acquiring the Parcels, City Ord. § 308-22-2-c is not applicable and there is no need for approval of this Contract by a ¾ vote of all Common Council members.

20. Notices.

All notices permitted or required hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier, (ii) upon delivery if successfully sent by facsimile or e-mail during business hours (8:30 a.m. – 4:30 p.m.) on business days (M-F, legal holidays excluded), or (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:

If to NBE: Ann Holt
National Business Enterprises, Inc.
2880 North 30th Street
Milwaukee, WI 53210-2050
Phone: (414) 871-8000
Facsimile: (414) 871-0100
E-mail: jholt@montehall.net

If to City: Commissioner of Department of City Development
809 North Broadway, Second Floor
Milwaukee, WI 53202
Phone: (414) 286-5800
Facsimile: (414) 286-5467
E-mail: jpenma@mkedcd.org

With copy to: Greg Shelko
809 North Broadway, Second Floor
Milwaukee, WI 53202
Phone: (414) 286-5820
Facsimile: (414) 286-5467
E-mail: gshelko@mkedcd.org

With copy to: Gregg C. Hagopian, Assistant City Attorney
800 City Hall

200 East Wells Street
Milwaukee, WI 53202
Phone: (414) 286-2620
Facsimile: (414) 286-8550
E-mail: ghagop@ci.mil.wi.us

If to ICC: 30th Street Industrial Corridor Corp.
c/o Tim Casey
Centerpoint Properties
2300 N. Mayfair Road, Suite 945
Milwaukee, WI 53226
Phone: (414) 456-0900
Facsimile: (414) 456-0705
E-mail: tcasey@centerpoint-prop.com

21. Covenants Not to Sell or Lease; City Deed Restriction; Combining Key Numbers.

NBE covenants that until the City issues an occupancy certificate for parking lots on the Parcels, NBE shall not sell, lease, hypothecate or convey any interest in the Parcels to any person or entity without City DCD Commissioner's prior written approval, which shall not be unreasonably withheld. And, NBE agrees to execute further documentation as City may reasonably request to evidence such covenant and the one that follows.

Furthermore, NBE agrees that NBE shall, upon in rem foreclosure judgment on the Parcels being granted to NBE, immediately sign and record against each of the Parcels and 2880 North 30th Street (herein called the NBE Building), and subject those lands to, the restrictive covenant attached hereto as **Exhibit C** (the "City Deed Restriction"), running with those lands, pursuant to which, *inter alia*: (a) neither of the Parcels may, unless City's Common Council expressly approves otherwise, be conveyed to any other person or entity unless they are also conveyed together with the NBE Building, and (b) the NBE Building may not, unless City's Common Council expressly approves otherwise, be conveyed to any other person or entity unless it is also conveyed together with the Parcels. The parties' intent is that the NBE Building and the Parcels go together as one.

Subsequent to in rem foreclosure judgment on the Parcels being granted to NBE, and so long as there are no tax delinquencies then owing against any of the Parcels, City shall combine the tax key numbers for 3021 West Locust Street and 2879 North 30th Street into one new tax key number effective as of the January 1 that succeeds the change of ownership of the Parcels from the respective Delinq. Owners to NBE.

22. Survival of NBE's and ICC's Covenants.

NBE's and ICC's respective acknowledgements, covenants, duties, representations, and warranties herein, including, but not limited to, acknowledgement of risks, and duty to

release, indemnify and hold City harmless, expressly survive, and shall not be merged or terminated by, any in rem foreclosure judgment on the Parcels being granted to NBE.

23. Recording.

City may, in its discretion, and at City's expense, record this Contract, or evidence of its existence, against the Parcels in the Milwaukee County Register of Deeds Office.

24. Counterparts and Facsimile Signatures.

The parties agree that this Contract may be executed in one or more counterparts which, when taken together, shall be viewed as one and the same document, and that facsimile signatures shall be accepted as originals.

IN WITNESS WHEREOF, the parties have entered this Contract as of the date first written above.

NBE: NATIONAL BUSINESS ENTERPRISES, INC.

CITY: CITY OF MILWAUKEE

By: _____
Ann Holt, President

By: _____
John O. Norquist, Mayor

Attest: _____
James Holt, Vice-President and Treasurer

Attest: _____
Ronald D. Leonhardt, City Clerk

Countersigned by: _____
W. Martin Morics, Comptroller

ICC: 30TH STREET INDUSTRIAL CORRIDOR CORP.

By: _____
Joe Taylor, President

Attest: _____
Tim Casey, Vice President

CITY ATTORNEY'S OFFICE (ORD. § 304-21)

Approved by: _____
Gregg C. Hagopian, Assistant City Attorney

- Exhibit A: Treasurer Pay-Out Statements for Parcels
- Exhibit B: Records
- Exhibit C: City Restrictive Covenant

EXHIBIT B RECORDS

1. Executive Summary – Miller Engineers & Scientists (recommend another round of groundwater sampling, and if wells below P.A.L., that DNR give closure).
2. 12/1/99 DNR letter to ICC (Elliott) agreeing with Miller’s Executive Summary recommendation.
3. ICC’s “Revised Proposal for Site Redevelopment 30th and Locust Streets” dated 5/5/00.
4. 5/30/00 memo from Earl Hawkins (Dr. Milw. Co. D.O.A.) to Milw. Co. Supervisor Linda Ryan (Chair, Co. Econo. & Commun. Develop. Comm.) recommending that Milw. Co. 2000 budget include \$84,500 County grant to ICC.
5. Milw. Co. Resolution File No. 00-306 authorizing Milw. Co. Dr. of Econ. Develop. to enter grant agreement with ICC for \$84,500 for remediation and redevelopment.
6. 10/4/00 letter from Jim Holt (NBE) to Matt Haessly (NBE willing to contribute toward additional enviro. investigation and to pay for title search costs).
7. 5/4/00 letter from DCD (Julie Penman) to ICC (DCD willing to recommend 75.106 deal so long as City held harmless and NBE responsible for long-term maintenance of Parcels).
8. 8/25/00 Chicago Title Insurance Company Commitment No. 1104307 on 2879 North 30th Street (two mortgages, numerous DOR tax warrants, state judgments, Milw. Co., IRS, USA judgments).
9. 8/25/00 Chicago Title Insurance Company Commitment No. 1104308 on 3021 West Locust Street.
10. 4/17/01 letter from Landmark Engineering Sciences, LLC (Mark Augustine) to Gina Keenan of the DNR requesting “no further action” together with the “Remedial Investigation/Remedial Action Plan Report” dated 2/3/99 transmitted thereby.
11. Letter from Gina Keenan of DNR to Joseph Taylor of 30th Street Industrial Corridor authorizing conditional closure subject to a deed restriction, together with sample deed restriction.
12. Grant Agreement, dated June 6, 2001, between ICC and County regarding County Grant.

Doc no 47536