

75.106 IN REM
ASSIGNMENT CONTRACT

Document Number

Document Title

**75.106 IN REM
ASSIGNMENT CONTRACT**

Recording Area

Name and Return Address

Kail Decker Assistant City Attorney
City Attorney's Office
200 East Wells Street, Room 800
Milwaukee, WI 53202

400-0760-110-9

Parcel Identification Number (PIN)

Drafted By:

Kail Decker, Assistant City Attorney, City of Milwaukee

75.106 IN REM ASSIGNMENT CONTRACT

<u>Developer-Buyer:</u>	Washfountain, LLC
<u>Developer-Buyer</u>	
<u>Contact Information:</u>	c/o Peter Ogden
Address:	1655 North Water Street, Milwaukee, WI 53202
	Phone: (414) 270-4148
	Facsimile: (414) 755-0930
	E-mail Address: _____
<u>Delinq. Owner of Record:</u> Downey Inc.	
<u>Address of Delinq.</u>	
<u>Owner:</u>	P.O. Box 1155
	Milwaukee, WI 53202
<u>Parcel:</u>	2203 West Michigan Street
<u>Tax Key No.:</u>	400-0760-110-9
<u>Total Tax Delinquencies:</u>	2010-2015
<u>Eligible Tax</u>	
<u>Delinquencies:</u>	2010-2014
<u>2015Assessment:</u>	\$904,800

This 75.106 In Rem Assignment Contract (“**Contract**”) by and between the above-named developer-buyer, Washfountain, LLC (“**Buyer**”), and the City of Milwaukee (“**City**”), is dated as of September __, 2016.

RECITALS

A. Buyer wants City to foreclose against the above-referenced Parcel (i.e. 2203 West Michgan Street) (the “**Parcel**”) under Wis. Stat. 75.521 so Buyer and City can act under Wis. Stat. 75.106.

B. In reliance upon Buyer’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.

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<u>Delinq. Owner of Record:</u> Downey Inc.	
<u>Address of Delinq.</u>	
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<u>Eligible Tax</u>	
<u>Delinquencies:</u>	2010-2014
<u>2015 Assessment:</u>	\$904,800

This 75.106 In Rem Assignment Contract (“**Contract**”) by and between the above-named developer-buyer, Washfountain, LLC (“**Buyer**”), and the City of Milwaukee (“**City**”), is dated as of September 7, 2016.

RECITALS

A. Buyer wants City to foreclose against the above-referenced Parcel (i.e. 2203 West Michgan Street) (the “**Parcel**”) under Wis. Stat. 75.521 so Buyer and City can act under Wis. Stat. 75.106.

B. In reliance upon Buyer’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.

AGREED

1. **Recitals.** The recitals above are hereby accepted and agreed to. For good and valuable consideration, receipt and sufficiency of which are acknowledged, the parties hereto agree to the terms and condition herein.

2. **Parcel; Delinquencies.** Per City records, the “delinq. owner of record” above (“**Delinq. Owner**”) is currently the owner of record of the Parcel (75.106 (2)(c)). Also per City records, the Parcel is tax delinquent in that outstanding real property taxes exist against the Parcel for the 2010 through 2015 tax years and has Total Tax Delinquencies identified on the pay-out statement attached hereto as **Exhibit A** (the “**Total Delinquencies**”) (monthly interest and penalties will continue to accrue). Buyer understands that, due to the one-year waiting period under Wis. Stat. 75.521 (3)(a)2, **(a)** there is a difference between the delinquencies referred to above as the Eligible Tax Delinquencies (the “**Eligible Delinquencies**”) and the Total Delinquencies, **(b)** only the Eligible Delinquencies may currently be foreclosed against by the City in an in rem foreclosure action under 75.521, and **(c)** subsequent to City foreclosure against the Parcel based on City’s lien for the Eligible Delinquencies, City will still have a lien in the Parcel 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. Wis. Stat. 75.106 (3). See, ¶8.C. below concerning payment required for taxes, special assessments, and special charges not foreclosed against.

3. **Brownfield; Records; Environmental Assessment.** Buyer is aware of and has copies of the records described on **Exhibit B** (“**Records**”). Buyer will provide copies of same to the WI Dept. of Natural Resources (“**DNR**”) and to City upon request. Buyer and City believe the Records: **(a)** show that the Parcel is a “**brownfield**” as defined in 75.106 (1)(a) and as required by 75.106 (2)(d); and **(b)** show that the Parcel might be contaminated by the discharge of a hazardous substance (75.106 (2)(f)) as determined by the environmental assessments. City does not represent or warrant any information contained in any of the Records.

Buyer will have The Sigma Group (“**Sigma**”) prepare an environmental assessment of the Parcel (a/k/a a Phase II environmental audit) (the “**Phase II**”) in accordance with the Scope of Work that Buyer submitted to the City Department of City Development (“**DCD**”) and that DCD approved. The Phase II will be conducted under a Court-ordered Special Inspection Warrant.

Buyer agrees to promptly share the Sigma Phase II data with the City and the DNR so that Buyer may comply with Wis. Stat. 75.106 (2)(e). The Phase II results will become a Record under **Exhibit B**.

If Buyer elects to acquire title, and if the DNR requires additional testing or remediation for the Parcel, Buyer must provide the City with written explanation of the testing and/or remediation that DNR will require and Sigma’s cost estimate for same.

4. **Buyer Representations; Good Standing.** Buyer represents and warrants to City:

A. that Buyer is a Wisconsin limited liability company, in good standing;

B. that Buyer's current managing member is Peter Ogden;

C. that, after acquiring in rem foreclosure judgment pursuant to the assignment herein and title to the Parcel, Buyer shall not be entitled to, nor claim right to, property tax exemption;

D. that neither Buyer, nor any of Buyer's members or manager, **(i)** directly or indirectly owns 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)** directly or indirectly owned any real property interest in any property in the City that, at any time from 2011 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;

E. that Buyer's registered office and registered agent in Wisconsin are: Peter Ogden, 1665 North Water Street, Milwaukee, WI 53202;

F. that Buyer's principal office is located at 1665 North Water Street, Milwaukee, WI 53202;

G. Buyer further represents and warrants to City that all real estate in the City of Milwaukee in which Buyer, Buyer's members, or Buyer's manager, currently has a direct or indirect ownership interest in is set forth in **EXHIBIT C**.

If any of Buyer's above representations or warranties is discovered by City to be untrue, and if no final foreclosure judgment has yet been granted on the Parcel in or as a result of City's foreclosure action, City may, in its discretion, dismiss its foreclosure action against the Parcel (or, as the case may be, if City has not yet begun its foreclosure action, City shall have no duty to commence such) and terminate this Contract, in which case, City shall not have further duty or liability hereunder.

5. **Buyer Wants a 75.106 Deal So Buyer Can Own Parcel.** Buyer, wishing to become owner of the Parcel, wants City to bring an in rem foreclosure action against the Parcel under 75.521 so City can then assign its in rem foreclosure judgment to Buyer under 75.106.

6. **Buyer Plans for Parcel; the Project.** Buyer agrees that, if it does get title to the Parcel by virtue of obtaining assignment of in rem foreclosure judgment, Buyer will:

A. remediate the Parcel and its environmental condition to the extent necessary to comply with any DNR Contract referred to at, and as may be required under, ¶13 below.

B. Renovate the building into office, cold storage and light industrial uses along with improve the landscaping and install ornamental fencing along the Michigan Street frontage per plans approved by DCD (the "**Plans**") and obtain a certificate of occupancy from City.

Subsections A-B above are herein called the "**Project**" and Buyer must complete the Project within eighteen (18) months of the date of the in rem tax foreclosure judgment that Buyer gets for the Parcel failing which Buyer shall pay City **\$5,000** agreed-upon liquidated damages.

Buyer understands that this Contract shall not, in any way: **(a)** relieve Buyer of any duty to obtain all permits, licenses and approvals as required by law to construct, improve, occupy, operate, rent and/or use the Parcel or to remediate the Parcel (together, the foregoing are called “**Requisite Approvals**,” and they include, but are not limited to, any necessary zoning and signage approval); and **(b)** be deemed as City implicitly or explicitly granting, approving or preapproving, any Requisite Approvals.

7. City In Rem Action.

A. **City Has Commenced In Rem Action.** City has not yet taken any in rem foreclosure judgment against the Parcel with respect to any of the Total Delinquencies (Wis. Stat. 75.106 (2)). City has initiated an in rem foreclosure action against the Parcel (City 2016 No. 3 In Rem file, Milwaukee County Circuit Court, Case No. 16-CV-3646, Judge David Borowski, Parcel 296). In reliance on Buyer’s undertakings in this Contract, and subject to the terms hereof, City will continue to pursue in rem foreclosure action against the Parcel in Milwaukee County Circuit Court under Wis. Stat. 75.521 for the **Eligible Delinquencies**. 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 provide to Buyer, copies of the Petition under 75.521 (3) that City used to commence City’s in rem foreclosure action (together with copies of all attachments that relate to the Parcel), and the Treasurer’s Affidavit required under 75.521 (3)(c).

B. **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.

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

D. **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 Parcel (i.e. that the City will be entitled to a final judgment in City’s 75.521 foreclosure action against the Parcel), subject to the terms hereof, and per 75.106, City hereby presently assigns to Buyer City’s future right to take judgment to the Parcel. Buyer hereby accepts that assignment.

E. **Ownership; MCO 304-49 Not Applicable.** Buyer understands that City does not own the Parcel. 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 Parcel, or **(ii)** title thereto, or **(iii)** final in rem judgment on the Parcel. 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 Parcel, City is not conveying the Parcel. Instead, City hereby merely conveys and presently assigns its future right to take in rem foreclosure judgment to the Parcel.

Consequently, MCO 304-49 (“Disposal of City Real Estate Property”) does not and will not apply, and, in the event Delinq. Owner, or any person who had an interest in the Parcel that was foreclosed, attempts to proceed under MCO 304-50 with respect to the Parcel and City’s foreclosure of the Eligible Delinquencies, City shall reject Delinq. Owner’s or such person’s (i) 304-50 written request, and (ii) attempt to have City vacate the in rem foreclosure judgment City hereby assigns to Buyer.

F. **Wis. Stat. 75.36 (2m) (Surplus Sale Proceeds) Not Applicable.** Per City records, the Parcel was not used, at any time during the past 5 years, as Delinq. Owner’s homestead. In light of that, and the fact that City will not acquire title to the Parcel as a result of City’s foreclosure action, 75.36 (2m) does not apply.

8. **Buyer Payments to City.**

A. **Foreclosure Costs. Within 5 business days of full execution of this Contract,** Buyer shall pay to CITY OF MILWAUKEE **\$3,500** to offset or pay for City’s costs associated with its in rem foreclosure action (the “**Foreclosure Expenses**”).

Buyer expressly understands that its payment to City of the Foreclosure Expenses is on a non-refundable basis. So, for sake of example, if Delinq. Owner were to redeem (see ¶10.C.1. below) or to successfully challenge City’s foreclosure action (see ¶10.C.2. below), Buyer 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 Buyer paid hereunder for Foreclosure Expenses. See, also ¶13 below – DNR Contract.

B. **Performance Deposit; Escrow for Project Completion.** [INTENTIONALLY DELETED].

C. **Assignment Payment of \$16,000 and Payment of 2015 and Future Taxes and Special Assessments and Special Charges.** At least 5 business days prior to the date set for the court to grant Buyer judgment of in rem foreclosure against the Parcel, Buyer shall pay to City, in good funds:

(1) \$16,000 as a payment for the assignment to Buyer of City’s right to tax-foreclosure judgment (the “**Assignment Fee**”). Buyer shall pay the Assignment Fee by two checks, one to the CITY OF MILWAUKEE for \$11,200 and one to the REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE for \$4,800 (as a 30% fee to RACM); and

(2) 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 any balance of 2015 taxes, interest and penalties) (the “**Unforeclosed Taxes**”). Wis. Stat. 75.106(3).

Assistant City Attorney Kail Decker shall then hold those checks in trust (but not in any trust account) until the court grants foreclosure judgment to Buyer, whereupon, Decker shall transfer (i) the Unforeclosed Taxes check to the City Treasurer to satisfy payment of the Unforeclosed

Taxes; **(ii)** the \$3,500 Foreclosure Expenses check to the City Treasurer; **(iii)** the \$11,200 portion of the \$16,000 Assignment Fee to the City Treasurer; and **(iv)** the \$4,800 portion of the \$16,000 Assignment Fee to RACM.

If Buyer fails to timely deliver the checks, City may, in its discretion, terminate this Contract, in which case, City shall provide written notice of such to Buyer with a one-business day opportunity to cure; and, if there is no cure, this contract shall terminate, City may dismiss the Parcel from its foreclosure action, and neither City nor Buyer shall have further duty or liability hereunder. If, on the other hand, Buyer does timely deliver the checks as required hereby – but, for some reason (including but not limited to any in rem action risks described in Section 10(C) herein), the Court does not grant final in rem foreclosure judgment to Buyer on the Parcel, City shall return to Buyer the Unforeclosed Taxes check and the two checks making up the \$16,000 Assignment Fee, but the City shall process the Foreclosure Expenses check as described above.

The Assignment Fee represents the monetary payment for the assignment of foreclosure judgment contemplated hereby, and it recognizes that Buyer is, by this Contract, undertaking other duties that will benefit the City, the Parcel, and the neighborhood such as: returning the Parcel to taxing hands; and environmental remediation as the DNR may require.

D. Recording Cost. If the Court grants the in rem foreclosure judgment on the Parcel to Buyer, the Judgment and this Contract will be recorded in the Milwaukee County Register of Deeds Office at Buyer's expense. If Buyer timely completes the Project, City will record a satisfaction and release of this Contract, providing however that the covenant in 4.D. shall remain against the Parcel unless otherwise released by separate recording approved by the City's Common Council on a 3/4 vote.

9. **Grants.** [INTENTIONALLY DELETED].

10. **Buyer Acknowledges Risk.** Buyer freely enters this Contract despite knowing there are attendant risks, including, but not limited to the following risks. And, Buyer hereby expressly accepts the following risks.

A. AS-IS Risk. If, after commencing in rem foreclosure under 75.521, City is able to assign judgment to Buyer, Buyer will accept that judgment and title to the Parcel, and Buyer will accept, the Parcel (including any improvement, fixture, and/or building that might be on the Parcel), all in their respective **AS-IS, WHERE-IS** states, with all faults and defects (including, but not limited to, physical defects, environmental defects, geotechnical defects, and title defects) (including, but not limited to, presence of asbestos, lead-based paint, lead, petroleum products, 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, Buyer expressly assumes all risk (including risk of loss or damage) concerning any change in the physical condition of the Parcel (or of any improvement, fixture and/or building that might be on the Parcel) that might take place between the date of this Contract and the date of the foreclosure judgment on the Parcel. Concerning title status, Buyer shall rely on the provisions in Wis. Stat. 75.521 and 75.106, and on any title insurance it buys on its own.

B. **“Parcel is Contaminated” Risk.** Buyer and City **believe** the Parcel is a brownfield. Wis. Stat. 75.106 (2)(d). And, Buyer acknowledges that the Records show, or could be read to show, that the Parcel might be, or “is contaminated by the discharge of a hazardous substance” (Wis. Stat. 75.106 (2)(f)) per any environmental assessment referred to on **Exhibit B**. Buyer also understands there may be a buried underground tank at the Parcel. Buyer nonetheless accepts the Parcel **AS-IS**.

C. **In Rem Action Risks.**

- (1) **Redemption Risk.** Buyer understands that, per Wis. Stat. 75.521 (5), persons having any right, title or interest in, or lien upon, the Parcel may redeem same. In the event of timely and proper redemption, City shall notify Buyer and this Contract shall terminate with no party hereto having liability or further duty or responsibility hereunder.
- (2) **Challenge or Answer Risk.** Buyer understands that, per Wis. Stat. 75.521 (7), every person having any right, title, or interest in, or lien upon, the Parcel 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 ¶D. below), or federal interest (see ¶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 Buyer, 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 Buyer in which case, City shall dismiss its foreclosure action against the Parcel, this Contract shall terminate, and no party hereto shall have liability or 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 Buyer. 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 the Parcel of the liens City seeks to foreclose, or preventing City’s foreclosure of those liens, then this Contract shall terminate and no party hereto shall have liability or further duty or responsibility hereunder.
- (3) **75.521 (14a) Damage Action Risk.** Buyer understands that, even if City is able to successfully bring the in rem foreclosure action contemplated hereunder such that Buyer obtains final in rem foreclosure judgment on the Parcel, per 75.521 (14a), any person who was the owner of any right, title or interest in the Parcel 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 ¶F (2) below.

D. Notices Risk. Buyer acknowledges 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 upon the official records of the City Treasurer's Office. Without waiving any right Buyer may have against any title insurance company, Buyer expressly accepts any risk associated with (i) failure of the Treasurer's 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 ¶7.A. above, Buyer will receive or have available to it City's Petition 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. If the title commitment (see ¶11.B. below) shows that the U.S.A. or any federal department or agency (including, but not limited to, the IRS) has a judgment or lien interest in the Parcel, Buyer, at its expense, and upon City's request, shall obtain and furnish to City a copy of any document that may be referenced in the Title Report or title commitment as evidencing or giving rise to that interest (including, but not limited to, copies of any IRS Notice of Lien that may have been filed against the Parcel per 26 USC 6323 (f) and Wis. Stat. 779.97); and City shall provide to the U.S. Attorney's Office – Eastern District of Wisconsin and to the Milwaukee IRS Office actual written notice of this Contract and of City's 75.521 foreclosure action against the Parcel.

City shall rely solely upon and follow the provisions of Wis. Stat. 75.521 to foreclose any interest in the USA (or in any of USA's agencies or departments, including the IRS) in the Parcels. Buyer assumes all risk of the USA (or of any of its departments or agencies, including the IRS) (i) challenging City's foreclosure action or Buyer's judgment of foreclosure, (ii) asserting that USA's judgment lien or other interest in the Parcel is not foreclosed by 75.521 or by any final judgment that may be granted to Buyer in City's 75.521 action, and (iii) redeeming under state or federal law. City expressly notifies Buyer, and Buyer 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 Buyer may, if it so elects, provide a copy of this Contract to the USA and make request of it to extinguish, release, or discharge, any interest of the USA in the Parcel (including any right of redemption). See, e.g., 28 USC 2410, 26 USC 6325, 26 USC 7425, and IRS Publication 487. If Buyer does make any such request, it shall promptly provide City with copies of all documents evidencing or relating to such request and the USA's response.

F. Bankruptcy Risk. Buyer understands that if Delinq. Owner or a property-interest owner in the Parcel has filed or files for bankruptcy protection under federal or state law, such may impede or prevent City's ability to act hereunder. Buyer accepts that risk and, in addition, expressly acknowledges and accepts, and takes subject to, the following risks.

(1) **Automatic Stay Risk.** Buyer understands that City's ability to act hereunder may be adversely affected by the filing of bankruptcy by Delinq. Owner and "automatic stay" provisions under bankruptcy law that prevent or restrict enforcement and collection matters. City's duties hereunder are contingent upon Delinq. Owner 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. Owner does not have any current bankruptcy action or petition pending. Buyer, however, is encouraged to make its 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 Parcel, becomes aware of the filing of a bankruptcy action or petition by Delinq. Owner and of City's foreclosure action being subject to an "automatic stay," City agrees to use good faith efforts to, at City's expense, 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 Buyer understands 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 no party hereto shall have liability or further duty or responsibility hereunder.

(2) **Fraudulent Conveyance Risk.** Buyer further understands that, subsequent to the Court granting final in rem foreclosure judgment to Buyer by virtue of the assignment to Buyer herein, Delinq. Owner may attempt to challenge City's foreclosure action or Buyer's acquiring judgment (and title to the Parcel) 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 Delinq. Owner subsequent to Buyer's acquiring judgment, and Buyer's providing to City written notice of that challenge and Buyer's desire to dispute that challenge, City agrees to cooperate with respect to Buyer'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.** Buyer accepts the risk of, and agrees: **(a)** to accept judgment of foreclosure on the Parcel subject to any then-outstanding building or health code violations, including raze orders ("**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.

H. **Personal-Property Risk.** Buyer accepts all risk and liability associated with any personal property that may be located at the Parcel. Buyer acknowledges that City is not acquiring, foreclosing upon, or transferring in any way to anyone any personal property.

11. Contingencies

A. **Environmental Inspection.** See ¶3 above regarding the Special Inspection Warrant and Phase II. Buyer may, between the date hereof and the date that is 5 business days before the date the Court in the tax-foreclosure action is scheduled to issue in rem foreclosure judgment on the Parcel (that latter date being herein called the “**Enviro. Contingency Deadline**”) provide notice to City to terminate this Contract if the Phase II from Sigma, and any remediation that DNR may require, in Buyer’s opinion, demonstrates that it will be too costly for Buyer to remediate the Parcel or that it is otherwise unduly burdensome so that, as a result, the Project will not be economically or prudently feasible, in Buyer’s opinion.

B. **Title Report & Title Review.** Buyer understands that City is not providing, and will not provide, any title insurance to Buyer, and that if Buyer wants same, Buyer must obtain and pay for same on its own. This Contract is further contingent on Buyer obtaining, at Buyer’s sole expense, and approving, within 15 business days following full execution of this Agreement, a commitment from a title insurance company of Buyer’s choosing to issue an owner’s policy of title insurance (including copies of all matters listed as title exceptions thereon) in the amount of \$16,000, naming Buyer as the insured, showing title to the Parcel, and matters recorded against title. If Buyer is not reasonably satisfied with the status of title as shown by the title commitment, and taking into consideration the effect that Wis. Stat. 75.521 and an in rem judgment will have on title, Buyer may terminate this Contract by providing written notice thereof to City, within 15 business days of receipt of the title commitment and any updates thereto. Buyer must provide City with a copy of the commitment, any endorsement, and copies of all documents referred to in Schedule B-II.

If Buyer fails to timely deliver written notice to City of termination per the contingency deadlines set forth above, in accordance with the “notice” provisions of this Contract, then Buyer’s contingency rights under this paragraph shall be deemed conclusively waived.

If Buyer does properly and timely exercise its contingency rights to terminate the Contract, neither party shall have any further duty to the other, and City shall keep all Foreclosure Expenses paid by Buyer (but the City shall promptly return to Buyer the Assignment Fee and the Unforeclosed Taxes amounts paid by Buyer pursuant to Section 8(C) herein) – providing, however, that Buyer shall still be responsible for restoration duties associated with its entry and testing.

12. **No Rep’s or Warranties.** Buyer acknowledges that City makes no representations or warranties concerning the Parcel, its title, its condition, or its fitness for development, occupancy, or use by Buyer, or any other, and in any event, (a) any such statement or position (oral or written) whatsoever made or taken by City, (b) any statement or position (oral or written) made or taken by City – unless appearing in writing in this Contract, and (c) any statement or position reflected in or by, or omitted from, any of the Records, is hereby repealed, merged, and terminated, and is of no force, consequence or effect whatsoever. In no event shall City, or any of its respective agents, officers, employees, departments, or instrumentalities, be held responsible or liable for any such repealed, merged, or terminated statement or position.

13. **DNR Contract.** Since City and Buyer believe the Parcel is, or might be, contaminated by the discharge of a hazardous substance (75.106 (2)(f)), Buyer agrees that it shall, if required by the DNR, as a *prerequisite* to City taking *any* action or having *any* duty hereunder (including, but not limited to, any duty of City to commence or consummate any in rem foreclosure action against the Parcel), enter into an agreement with the DNR (the “**DNR Contract**”) to, at no expense to City, remediate the Parcel to the extent practicable to the extent required by 75.106 (2)(f) and by the DNR.

If the DNR does require a DNR Contract: **(a)** Buyer agrees to use diligence and good faith to promptly enter into such a DNR Contract with DNR and to promptly provide City with a copy of such fully-executed agreement; and **(b)** if Buyer does not enter into a DNR Contract and provide City with a copy thereof by the Enviro. Contingency Deadline, City may terminate this Contract without liability or Buyer recourse, and City shall retain any funds paid by Buyer to City for Foreclosure Expenses as liquidated damages; provided, however, City shall promptly return the Assignment Fee and the Unforeclosed Taxes amounts paid by Buyer pursuant to Section 8(C) herein.

If the DNR does not, under 75.106 (2)(f), require a DNR Contract because the DNR agrees that the Phase II shows that the Parcel is not contaminated by the discharge of a hazardous substance, then, Buyer shall provide City with a DNR-signed letter evidencing that no DNR Contract is required, and City shall not be obligated to commence or to continue with its in rem foreclosure action until Buyer provides such DNR letter to City.

14. **Release, Indemnity and Hold Harmless.** If Buyer does get title to the Parcel by virtue of obtaining the assignment of in rem foreclosure judgment, Buyer hereby, now and forever, and regardless of any statute of limitation defense that Buyer may otherwise be able to assert against City (which such defenses are hereby waived), releases and discharges City (and its agents, officers, employees, departments, or instrumentalities) (together each of the foregoing and City are, for purposes of this paragraph, 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 or defect at or affecting the Parcel (including any fixture or improvement thereat), whether known or unknown, detected or undetected, physical or legal, unless such environmental or other condition or defect **(i)** is caused by an act or omission of City, or **(ii)** otherwise arises at some uncertain time in the future and City then owns the Parcel, or between then and now, owned the Parcel, and Buyer did not cause, directly or indirectly, the environmental or other condition or defect; **(b)** any of the risks or matters referred to in ¶10 above, as the same reasonably relate to this Contract and the transaction contemplated hereunder; and/or **(c)** any environmental remediation or clean-up action that may be required, necessary, ordered, or taken with respect to the Parcel or as a result of the Parcel and its 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 Contract and any of Buyer’s duties or

DNR's requirements thereunder or with respect thereto; unless the need for any such environmental remediation or clean-up action is precipitated by an environmental or other condition or defect (**aa**) caused by an act or omission of City or (**bb**) otherwise arises at some uncertain time in the future and City then owns the Parcel or, between then and now, owned the Parcel, and Buyer did not cause directly or indirectly, the environmental or other condition or defect. With the exception of any litigation expense pertaining to an election by City under ¶10.C.(2) to defend a challenge or answer to City's foreclosure action, Buyer agrees, if Buyer does get title to the Parcel by virtue of obtaining assignment of in rem foreclosure judgment, 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, Buyer expressly agrees, per Wis. Stat. 75.106 (4), that if Buyer does get title to the Parcel by virtue of obtaining assignment of in rem foreclosure judgment, Buyer shall fully indemnify City and hold City harmless against any loss, expense, liability or damage that City may incur as a result of an action under Wis. Stat. 75.521 (14a).

15. **No Brokers.** Neither Buyer nor City has contracted with or engaged the services of any real estate broker to secure this Contract or the deal contemplated hereby.

16. **Successors and Assigns.** This Contract is binding upon each of City's and Buyer's respective successors and assigns. Buyer, however, may not assign this Contract (or any interest or right therein) to any person or entity without City's express prior written consent.

17. **Common Council Approval and Treasurer Affidavit.** Buyer understands 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. After this Contract has been duly approved by the Common Council and fully signed, and so long as Buyer is not in breach hereunder, City will, in its 75.521 foreclosure action against the Parcel, cause this Contract to be filed with the Court along with 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 Parcel, selling the Parcel, or otherwise acquiring the Parcel, MCO 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.

18. **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 or e-mail 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, when sent as per the following, 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:

<p>If to City</p> <p>Matt Haessly City of Milwaukee – D.C.D. 809 N. Broadway, 2nd Floor Milwaukee, WI 53202 Ph: 414-286-5736 Fax: 414-286-5467 Email: mhaess@milwaukee.gov</p> <p><u>With copy to:</u> Asst. City Attorney Kail Decker 841 N. Broadway 7th Floor Milwaukee, WI 53202 Ph: 414-286-6193 Fax: 414-286-3967 Email: kdecke@milwaukee.gov</p>	<p>If to Buyer</p> <p>Washfountain, LLC c/o Peter Ogden 1655 North Water Street Milwaukee, WI 53202 Ph: 414-270-4148 Fax: 414-755-0930 Email: peter@ogdenre.com</p> <p><u>With copy to:</u> John G. Gehringer O’Neil, Cannon, Hollman DeJong & Laing, S.C. 111 East Wisconsin Avenue Milwaukee, WI 53202 Ph: 414-276-5000 Fax: 414-_____ Email: John.Gehringer@wilaw.com</p>
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19. **Covenant Not to Sell or Lease.** [INTENTIONALLY DELETED].

20. **Survival of Buyer’s Covenants.** Buyer’s acknowledgements, covenants, duties, representations, and warranties herein, including, but not limited to, acknowledgement of risks, and duty to release, indemnify and hold City and RACM harmless, expressly survive, and shall not be merged or terminated by, any in rem foreclosure judgment on the Parcel being granted to Buyer.

21. **Counterparts Signatures.** The parties agree that this Contract may be signed in one or more counterparts which, when taken together, shall be viewed as one and the same document. PDF/email and facsimile signatures shall be accepted as originals. Original signatures shall be provided if needed for recording purposes.

22. **Force Majeure.** Neither party shall be deemed in default of this Contract to the extent that any delay or failure in the performance of its obligations results from causes beyond that party’s reasonable control and without that party’s fault or negligence. Those causes contemplate, but are not limited to, typical “force majeure” ones such as, strikes, war, adverse weather and other acts of God, labor or material unavailability or shortages, embargos, etc.

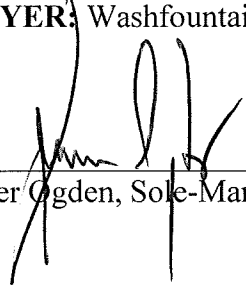
23. **Public Records.** This Contract and certain documents relating thereto are, or may be, subject to Wisconsin’s Open Records Law (see Wis. Stat. Ch. 19, Subch. II, and, esp. Wis. Stat. 19.36 (3) which includes records produced or collected under this Contract). Buyer shall keep accurate, full and complete records, books and accounts with respect to: this Contract; Buyer’s duties hereunder; and the Parcel. Each of Buyer’s such records, books and accounts (herein

called "Buyer's Books") shall be retained for seven years from the date of their original creation. Buyer's expense and account data shall be maintained in accordance with generally accepted accounting principles consistently applied. Buyer agrees to cooperate with City in the event City receives a request under Wisconsin's Open Records Law for this Contract or for any record relating to, or produced or collected under, this Contract.

24. **Comptroller Audit.** [INTENTIONALLY DELETED].

25. **Wisconsin Law.** This Contract shall be governed by Wisconsin law. In that both parties had opportunity to review and negotiate this Contract, it shall be construed per its terms, and not against the drafter.

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

<p>BUYER: Washfountain, LLC</p>  <p>By _____ Peter Ogden, Sole-Manager and Member</p>	<p>CITY: City of Milwaukee</p> <p>By _____ Mayor Tom Barrett</p> <p>CITY CLERK</p> <p>_____ James R. Owczarski, City Clerk</p> <p>COUNTERSIGNED</p> <p>_____ Martin Matson, City Comptroller</p>
	<p>City Common Council Resolution File No. _____</p> <p>CITY ATTORNEY APPROVAL (MCO 304-21)</p> <p>_____ Kail Decker, Asst. City Attorney</p>

1050-2016-570/231078

- Exhibit A: Total Delinquencies, Treasurer Pay-Out Statement for Parcel
- Exhibit B: Records
- Exhibit C: Buyer's property interest in the City of Milwaukee

**EXHIBIT A. TOTAL DELINQUENCIES, TREASURER PAY-OUT STATEMENT
FOR PARCEL**

TAX KEY	400-0760-110-9	CLASSMER		PLAT	PAGE	400-08		
LOC	2203 W MICHIGAN ST							
OWN	DOWNEY INC		<input type="checkbox"/> 2015	ASSESSED VALUE AND NET TAXES				
	PO BOX 1155			CITY		20466.06		
	MILWAUKEE WI 532011155		<input type="checkbox"/>	SPECIAL		16061.63		
REF KEY		LAND	233100	COUNTY		6096.21		
		IMPROVE	671700	CREDITS		81.09-		
		TOTAL	904800	TOTAL		42542.79		
		NO BONDS						
XREF	ENFORC	ACCT STATUS	RE DELINQUENT					
	STATUS	ACTION TRN	201603080					
	PAGE 1 OF 1 : 6	> ADDITIONAL INFORMATION: PRESS F17				TOTAL IF PAID		
YEAR	COUNTY	CITY	INTEREST	PENALTY	COST&FEES	<input type="checkbox"/> 09	<input type="checkbox"/> 30	<input type="checkbox"/> 2016
2015	6077.60	36465.15	3403.42	1701.71				47647.88
2014	6173.21	30240.06	7282.65	3641.33				47337.25
2013	6186.74	32586.88	12407.56	6203.78				57384.96
2012	6046.46	29722.67	13738.41	7869.21				58376.75
2011	5413.81	22124.87	15421.66	7710.83				50671.17
2010 >		3734.22	2539.27	1269.63	135.00			7678.12
SUMMARY	29897.82	154873.85	56792.97	28396.49	135.00			270096.13

EXHIBIT B. RECORDS

1. Phase I Environmental Site Assessment Report of 2203 West Michigan Street, Milwaukee, WI, dated April 11, 2016 prepared by GZA GeoEnvironmental, Inc. (“GZA”).
2. Special Inspection Warrant, issued by Milwaukee County Circuit Court Judge Moroney on 01/26/2016
3. Information collected or communicated by Sigma, including, the Phase II environmental assessment results.
4. DNR file on the Parcel, if any.

EXHIBIT C.
BUYER'S DIRECT OR INDIRECT OWNERSHIP INTEREST IN CITY OF
MILWAUKEE REAL ESTATE

1665 N. Water Street (City Street address refers to 1675 N. Water)

1661 N. Water Street

2123 W. Michigan Street

1609 E. Prospect Avenue

6766 W. Appleton Avenue

3120 W. Wisconsin Avenue

936 N. 25th Street

843 N. 24th Street

915 N. 24th Street