

75.106 IN REM ASSIGNMENT CONTRACT

<u>Developer-Buyer:</u> <u>Developer-Buyer</u> <u>Contact Information:</u>	Sherman Perk, LLC (Robert F. Olin, Sole Member, Sole Manager) Address: 3292 North 48 th Street, Milwaukee, WI 53216 Phone: (414) 444-1961 Facsimile: (414) 444-6003 E-mail Address: olin@execpc.com
<u>Delinq. Owner of Record:</u> <u>Address of Delinq.</u> <u>Owner:</u>	Action Imports 2848 West Wells Street Milwaukee, WI 53208
<u>Parcel:</u> <u>Tax Key No.:</u> <u>Total Tax Delinquencies:</u> <u>Eligible Tax</u> <u>Delinquencies:</u>	4924 West Roosevelt Drive; Parcel 69 in 2000 #3 File 288-1059-000-0 1991-2000 (2/01 pay-off is \$26,386.43) 1991-1998

This 75.106 In Rem Assignment Contract ("Contract") by and among the above-named developer-buyer ("Buyer"), City of Milwaukee ("City"), and the Redevelopment Authority of the City of Milwaukee ("RACM"), and (for ¶ 13 purposes), Buyer's lawyer, dated as of _____, 2000;

WITNESSETH

Whereas, Buyer wants City to foreclose against the above-referenced Parcel (i.e. 4924 W. Roosevelt Drive) under Wis. Stat. § 75.521 so Buyer and City can act under Wis. Stat. § 75.106; and

Whereas, 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;

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. owner of record" above ("Delinq. Owner") is currently the owner of record of the parcel above called the "Parcel" and above identified by address and key number (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 tax years identified above as the Total Tax Delinquencies and identified on the pay-out statement attached hereto as **Exhibit A** (the "Total Delinquencies"). 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 are being foreclosed against in City's in rem foreclosure action under § 75.521 (Case No. 00-CV-008706), 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. § 75.106(3). See, ¶ 14 below concerning payment required for 1999 and 2000 taxes.

2. **Brownfield; Records; Environmental Assessment.**

Copies of the records described on **Exhibit B** ("Records") have been transmitted, or made available, by City to each of Buyer and the WI Dept. of Natural Resources ("DNR"). Buyer and City believe the Records: (a) show that the Parcel is a "brownfield" as defined in 75.106(1)(a) and 560.13(1)(a) and as required by 75.106(2)(d); (b) show that an environmental assessment of the Parcel has already been conducted (City and Buyer view the documents at items 2, 3, and 7 on **Exhibit B** as an "environmental assessment of the parcel" (75.106(2)(e)); and (c) show that the Parcel is or might be contaminated by the discharge of a hazardous substance (§ 75.106(2)(f)) as determined by the environmental assessment.

3. **Buyer Good Standing.**

Buyer represents and warrants to City (a) that Buyer is a limited liability company duly organized and existing under Ch. 183 of the Wisconsin Statutes; (b) that Buyer is in good standing; (c) that Buyer's current managers and members are as set forth below; (d) 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 exemption¹; and (e) that neither Buyer nor any of its managers or members: (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

¹ 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 Parcel under the terms of this Contract. Rather, it is merely assigning its right to in rem foreclosure judgment on the Parcel.

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.

Buyer's Members

Robert F. Olin

Buyer's Managers

Robert F. Olin

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

- personal residence of Robert F. Olin and Patrice B. Olin, husband and wife, at 3292 N. 48th Street, Milwaukee, WI 53216.

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 and terminate this Contract, in which case, City shall have no further duty or liability hereunder.

4. **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.

5. **Buyer Plans for Parcel; Requisite Approvals.**

Buyer plans on remediating and improving the Parcel, and on operating thereon a neighborhood coffee shop. Buyer agrees that, if it does get title to the Parcel by virtue of obtaining assignment of in rem foreclosure judgment, Buyer will (i) remediate the Parcel or otherwise take all requisite action as required by the DNR Contract referred to at ¶ 11 below, and (ii) improve the Parcel and operate thereon a coffee shop.

Buyer understands that this Contract shall not, in any way: (a) relieve Buyer of its duty to obtain all permits, licenses and approvals as required by law to construct, occupy, operate, and /or use the Parcel or any improvement thereon for retail coffee shop/food sale purposes (together, the foregoing are called "Requisite Approvals", and they include, but are not limited to, any necessary zoning approval and/or any approval necessitated by virtue of "historic designation" affecting the Parcel); and (b) be deemed as City implicitly or explicitly granting, approving or preapproving, any Requisite Approvals.

6. **City In Rem Action.**

A. **City Will Commence 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)); and, but for this Contract, City had no plan to bring any foreclosure action against the Parcel. In reliance on Buyer's undertakings in this Contract, however, and subject to the terms hereof, City commenced and will 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, or make available to Buyer, 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. **Buyer to Pay Certain Foreclosure Costs.**

Within 5 business days of full execution of this Contract, Buyer 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;
- (6) Recording cost (see § 75.521(14)); and
- (7) Service of process costs (see ¶ 8.E. below).

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 ¶ 8.C.1. below) or to successfully challenge City's foreclosure action (see ¶ 8.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 ¶ 11 below – DNR Contract.**

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 Parcel is 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 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.

F. Ownership; City Ord. § 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, City Ord. § 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 City Ord. § 304-49-6-c with respect to the Parcel and City's foreclosure of the Eligible Delinquencies, City shall reject Delinq. Owner's or such person's (i) § 304-49-6-c-1 written request, and (ii) attempt to have City vacate the in rem foreclosure judgment City hereby assigns to Buyer.

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

Per City records, the Parcel was used as a gas station and auto repair garage, and not, 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.

7. Title Report.

Buyer has obtained, at its expense, and provided to City prior to City's execution of this Contract, a 10/2/00 letter report regarding the Parcel from Old Republic National Title Insurance Company (the "Title Report") and Buyer has reviewed (i) the status of title reflected therein, and (ii) Wis. Stat. § 75.521 and § 75.106. Buyer, at its expense, shall also obtain and furnish to City, promptly upon City's request, copies of any documents that may be referred to in the Title Report. Buyer, at its expense and in its sole discretion, may also obtain title insurance if Buyer so desires. [see ¶ 6.B(6) and ¶ 8].

8. 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, the Parcel (including any improvement, fixture, and/or building that might be on the Parcel), and title to 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, and title defects) (including, but not limited to, presence of asbestos, lead-based paint, 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; providing, however, that if between the date of this Contract and prior to the date of final foreclosure judgment on the Parcel, the building currently on the Parcel becomes damaged in such a way, or to such an extent, that Buyer can reasonably be expected to spend more than \$218,000 to use or rehab the building for Buyer's intended purpose (Buyer already has an estimate from Williams Construction Co. Inc. of an estimated total budget of \$204,100 that will be required to rehab the building for Buyer's intended purpose), then Buyer may — at any time that is at least 5 business days prior to the date scheduled with the Milwaukee County Circuit Court for rendering § 75.521 in rem foreclosure

judgment on the Parcel — terminate this Contract by providing written notice of such to City, together with a written estimate from Buyer's contractor detailing required expenditure of more than \$218,000. In the event of such termination by Buyer, neither Buyer nor City shall have further duty or liability hereunder.

Concerning title status, Buyer shall rely on the Title Report and the provisions in Wis. Stat. §§ 75.521 and 75.106.

B. "Parcel is Contaminated" Risk.

Buyer and City believe the Parcel is a brownfield. § 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 the environmental assessment referred to at items 2, 3 and 7 on Exhibit B. 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 City having no liability and no 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 ¶ 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 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 also dismiss its foreclosure action against the Parcel, this Contract shall terminate, and City 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 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 City shall have no liability and no 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 ¶ 12 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 on the Title Report. Without waiving any right Buyer may have against Old Republic National Title Insurance Company, Buyer expressly accepts any risk associated with (i) failure of the Title Report 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, Buyer will receive or 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.

If the Title Report 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, shall obtain and furnish to City a copy of any document that may be referenced in the Title Report 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 (by its treasurer) shall, following § 75.521(3)(c), mail, by registered or certified mail, return receipt requested, a copy of City's in rem foreclosure petition and so much of the list of tax liens as shall include the description of the Parcel (together, the copy of the petition and respective portion of the list are herein called the "Notice of Action") to the U.S.A.² at the following addresses (any such mailing is herein called the "Federal-Notice Mailings"):

² See 28 USC § 2410(a)(2) regarding the naming of the United States as a party to a civil action to foreclose a lien upon real property on which the U.S.A. has or claims a mortgage or other lien. See 26 USC § 7425(b)(2)(C) regarding the discharge or divestment, under local law (i.e. Wis. Stat. § 75.521), of a U.S.A. lien under Title 26 USC so long as City provides notice of nonjudicial sale. See, also, Wis. Stat. § 75.521(3)(b) which provides that the filing of the list of tax liens in the office of the clerk of the circuit court shall constitute and have the same effect as

(1) **Federal-Notice Mailings for IRS liens:**

- a. U.S. Attorney-Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, WI 53202

In addition to mailing to this address, City shall also have a process-server serve the Notice of Action upon the U.S. Attorney-Eastern District of Wisconsin (see 28 USC § 2410(b) concerning service upon the U.S.A.).

- b. U.S. Attorney General
Department of Justice
10th & Constitutional Avenues NW
Washington, D.C. 20530
- c. District Director
IRS-Local Office
Attn: Chief, Special Procedures Staff³
310 West Wisconsin Avenue
ME 128
Milwaukee, WI 53203
- d. Treasury Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

- (2) **Federal-Notice Mailings for Any Other USA Interest Other Than an IRS Lien:** To each of the addresses referred to at items (1).a. and b. immediately above. And, City shall also have a process-server serve the Notice of Action upon the U.S. Attorney-Eastern District of Wisconsin.

- (3) **Additional Inclusions in Federal-Notice Mailings.** Beyond mailing and serving the Notice of Action in accordance with the above, City shall also include with the Federal-Notice Mailings a copy of the Title Report that shows the nature of the interest or lien of the U.S.A. in the Parcel. 28 USC § 2410(b). And, where the Title Report reveals that the U.S.A.'s interest is a lien arising under internal revenue laws, City shall, in

the filing and recording in the office of the register of deeds a notice of the pendency of City's foreclosure action against the Parcel and shall constitute the commencement of a special proceeding by the City against the Parcel and has the same effect as the filing or recording of an individual and separate petition or complaint by the City against the Parcel to enforce payment of the tax liens for the Eligible Delinquencies against the Parcel. See, also, 26 USC § 6323(b)(6) and its indication that IRS liens are "not valid" as against City's liens for real property tax, special assessments, and special charges.

³ IRS Reg. § 301.7425-3(a)(1).

addition, per 26 USC § 7425(b)(2)(C) and § 7425(c)(1), and IRS Reg. § 301.7425-3(d)(1), include with its Federal-Notice Mailings (i) a copy of the Notice of Lien⁴, if any, that the IRS filed or recorded in the Milwaukee County Register of Deeds Office (see 28 USC § 2410(b); required contents of complaint or pleading); (ii) a copy of this Contract; and (iii) notice in substantially the same form as attached hereto as **Exhibit C**.

(4) **City To Follow § 75.521.** With the exception of the aforementioned Federal-Notice Mailings, City shall, in all other respects, 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) in the Parcel. Buyer expressly assumes all risk of the USA (or of any of its departments or agencies) (i) challenging City's foreclosure action or Buyer's judgment of foreclosure, (ii) asserting that U.S.A.'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 referred to herein, including, but not limited to, 26 USC § 6323, § 6324, § 6325, § 6327; 26 USC § 7425; and 28 USC § 2410.

(5) **Buyer May Make Request for U.S.A. Extinguishment, Release, or Discharge.** 28 USC § 2410(e) provides for the ability of making written request to the U.S.A. to have the U.S.A. extinguish junior liens (other than U.S.A. tax liens) in the Parcel.

26 USC § 6325 provides for the ability of the U.S.A. to release a U.S.A. tax lien or discharge property from a U.S.A. tax lien. 26 USC § 7425(c)(2) relates to U.S.A. consent to discharge a U.S.A. tax lien in a nonjudicial sale of property.

Per 26 USC § 6323(b)(6), even though the IRS may have filed a Notice of Lien⁵, that "lien shall **NOT BE VALID** . . . [w]ith respect to real property as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of:

(A) A tax of general application levied by any taxing authority based upon the value of such property;

⁴ See 26 USC § 6323(a) and (f) concerning IRS Notices of Lien, IRS Reg. § 301.632(f)-1(a)(1)(i), and Wis. Stat. § 779.97 (the Uniform Federal Lien Registration Act), and esp. § 779.97(2)(b), notices of liens upon real property for obligations payable to the U.S.A. must be filed in County Register of Deeds Office.

⁵ See footnote 4, supra.

- (B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or
- (C) Charges for utilities or public services furnished to such property by . . . a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.” (Emphasis added).

Wis. Stat. § 70.01 provides that real estate taxes levied under Wis. Stat. Ch. 70 are a lien upon the property against which they are charged, and that “[t]hat lien is superior to all other liens, except a lien under s. 292.31(8)(i) or 292.81⁶, and is effective as of January 1 in the year when the taxes are levied.” See, also, Wis. Stat. § 70.32, Real estate, how valued, and § 70.51, Assessment review and tax roll in first class cities.

City understands that Buyer may, if it 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, under 28 USC § 2410, 26 USC § 6325, or 26 USC § 7425, U.S.A.’s lien or judgment in the Parcel. If Buyer does make any such request, Buyer shall promptly provide City with copies evidencing or relating to: (i) such request, and (ii) the U.S.A.’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 which 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

⁶ Wis. Stat. § 292.31(8)(i) relates to expenditures made by the DNR under § 292.31 (Environmental Repair) subsections (1), (3), or (7). Wis. Stat. § 292.81 (Notice: Lien) relates to notice and filing requirements applicable to DNR expenditures for which a lien may attach.

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 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 City shall have no liability and no 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 ("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. Buyer understands that any rental units it may acquire as a result of becoming owner of the Parcel may be subject to the State of Wisconsin, Department of Industry, Labor and Human Relations, "Rental Unit Energy Efficiency Standards", Wis. Admin. Code Chapters ILHR 67 and 68, Wis. Stat. § 101.122. If applicable, Buyer likewise agrees to take subject thereto.

9. **No Entry onto Parcel: No Further Testing/Inspection.**

Buyer does not and will not require any entry onto the Parcel, or on-site review, inspections, or testing (including but not limited to environmental testing) as any Buyer contingency to this Contract, or to consummate the deal between City, RACM, and Buyer evidenced hereby. Buyer understands that Buyer has no right of entry onto the Parcel and no right to possession of the Parcel until the date that final in rem foreclosure judgment

on the Parcel is granted to Buyer. And, notwithstanding anything to the contrary that may be in the Records, neither City nor RACM will conduct any testing or analysis at the Parcel. (But see RACM duty under para. 15 below).

10. **No Rep's or Warranties.**

Buyer acknowledges that neither City nor RACM make any representations or warranties to Buyer 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 or RACM, (b) any statement or position (oral or written) made or taken by City or RACM – 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, RACM 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.

11. **DNR Contract.**

Since, regardless of any contamination or condition of the Parcel, Buyer does elect to accept in rem judgment assigned to it under this Contract and 75.106, and 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, as a *prerequisite* to City taking *any* action or having *any* duty hereunder (including, but not limited to, any duty of City to consummate any in rem foreclosure action against the Parcel), enter into an agreement with the DNR (the "DNR Contract") to, at no expense to the City or RACM, clean up the parcel to the extent practicable and as required by § 75.106(2)(f). 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. If Buyer does not enter into a DNR Contract and provide City with a copy thereof **within 15 business days of full execution of this Contract**, 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.

12. **Release, Indemnity and Hold Harmless.**⁷

Buyer hereby, now and forever, releases and discharges City and RACM (and any of its respective 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,

⁷ 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.

directly or indirectly to, any of the following (herein called "Indemnified Matters"): (a) any environmental or other condition at or affecting the Parcel, 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 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 Buyer's duties or DNR's requirements 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, Buyer 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, 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).

13. **Escrow.**

After the expiration of the answer period under Wis. Stat. § 75.521(7), and prior to, and as a condition to, the court granting any in rem foreclosure judgment on the Parcel to buyer pursuant to the assignment hereunder, Buyer shall deposit \$23,000 ("Escrow Funds") into the trust account of Buyer's lawyer, Miller, Simon, McGinn & Clark ("Buyer's Lawyer"), who shall then hold the Escrow Funds in trust, per the terms hereof. Said funds may then only be released or disbursed by written consent signed by each of the Commissioner of the City's Department of City Development or his/her designee (each is herein called "Commissioner") and Robert F. Olin ("Olin"), President of Buyer. Any such consents by Commissioner and Olin shall not be unreasonably withheld.

The purpose of the escrow shall be to ensure that Buyer remediates the Parcel or otherwise complies with Buyer's duties under the DNR Contract and/or that Buyer improves and develops the Parcel for Buyer's intended use as a coffee shop as per Buyer's plans in paragraph 5 above. Accordingly, it is contemplated that joint written consent to release or disburse Escrow Funds will be made to pay for environmental inspections, environmental remediation, environmental monitoring, if any, and other costs and expenses of Buyer required or necessitated by the DNR Contract and/or for the development and improvement of the Parcel for a coffee shop. (The foregoing costs

which may be withdrawn from Escrow Funds shall expressly include fees of environmental consultants, but exclude fees of Buyer's Lawyer or other attorneys for Buyer). And, in the event (a) Buyer remediates the Parcel and the DNR (or Department of Commerce, as the case may be) issues a no further action letter (or its equivalent) concerning the Parcel, and (b) Buyer improves the Parcel for the coffee shop and the City issues an occupancy permit or certificate for the building at the Parcel, and Escrow Funds thereafter remain in escrow, then those funds shall be released to Buyer upon Buyer's and City's joint written request of such to Buyer's Lawyer, which request must have attached thereto copies of the no further action letter and occupancy certificate. Notwithstanding the foregoing, if an occupancy certificate has been issued for a building at the Parcel used for retail coffee shop purposes, and if all remediation work required under the DNR Contract has been completed, except on-going monitoring, then Buyer shall be entitled to release of remaining Escrow Funds.

Buyer agrees to cooperate with City and Commissioner and to provide invoices and supporting documentation with respect to any requested release or disbursement of Escrow Funds that Buyer desires, together with a report as to the status of remediation and improvements.

If Buyer fails to timely deposit all Escrow Funds with Buyer's Lawyer as required hereunder (herein called "Buyer's Escrow Default"), City may, in its discretion, dismiss its foreclosure action against the Parcel and terminate this Contract, in which case, City shall have no further duty or liability hereunder.

If, after Buyer becomes owner of the Parcel per the assignment herein, City provides Buyer's Lawyer with written documentation showing: (a) City's written notice to Buyer showing City's assertion of breach by Buyer with respect to Buyer's remediation and/or improvement duties hereunder and/or under the DNR Contract, and (b) City's written assertion of Buyer's failure to cure such breach within 15 days of City's aforereferenced notice of breach to Buyer, then, notwithstanding anything to the contrary contained herein, Buyer's Lawyer shall release any Escrow Funds to City upon City's written request therefore, signed by Commissioner, in which case, City (and City's agents and contractors) shall have full right to enter the Parcel and any structure and improvement thereon to perform, at City direction, and in City discretion, remediation and/or improvement work contemplated, or called for, hereunder using Escrow Funds therefore.

Buyer's Lawyer signs this contract solely for the purpose of acknowledging its escrow duties and obligations under this paragraph 13, which duties Buyer's Lawyer agrees to undertake in good faith. Buyer and City shall each hold Buyer's Lawyer harmless from all errors, omissions, and mistakes concerning its duties under this paragraph, other than those caused by negligence or willful misconduct of Buyer's Lawyer. If Buyer's Lawyer shall become involved in any litigation by reason of the provisions of this paragraph, Buyer's Lawyer may transfer any remaining balance of the Escrow Funds to Chicago Title Insurance Company (for it to hold them in trust) or to such other escrow agent as may be approved by Buyer and City, and thereafter continue to represent Buyer as its attorney.

All notices permitted or required under this paragraph shall be given in accordance with paragraph 20 below.

Any fee or charge required or demanded by Buyer's Lawyer with respect to its performance under this paragraph 13 shall be paid by Buyer.

The escrow arrangement and agreement reflected in this paragraph shall terminate upon the date all Escrow Funds have been disbursed.

The escrow agreement and arrangement hereunder may not be amended or modified or changed except as set forth in writing executed by each of City and Buyer and Buyer's Lawyer.

14. **Payment of 1999 and 2000 Taxes and Special Assessments.**

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, 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 1999 taxes, interest and penalties as well as any balance then due for 2000 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 Buyer, whereupon, Hagopian shall transfer the funds to the City treasurer for payment of the taxes at issue. If Buyer 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 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 City shall have no further duty or liability hereunder. If, on the other hand, Buyer does timely pay as required under this ¶ 14 – but, for some reason, the Court does not grant final in rem foreclosure judgment to Buyer on the Parcel, City shall return the funds paid under this ¶ 14 to Buyer.

15. **Grant Funds.**

As evidenced by item 1 on Exhibit B (the "Grant Award"), DNR awarded RACM a \$30,000 grant to have RACM remove and dispose of seven underground storage tanks and their contents, and a hydraulic lift, and to demolish the roof of the building at the Parcel. So long as the Court does issue 75.521 in rem foreclosure judgment to Buyer on the Parcel in accordance with the assignment evidenced hereby and in reasonably sufficient time to allow RACM to thereafter enter the Parcel and conduct the work contemplated by the Grant Award, RACM agrees (a) to do that work or cause it to be promptly done, and (b) to provide the up to \$22,120 in grantee matching funds required by the Grant Award. And, Buyer, in such event, hereby agrees to allow RACM (and its agents and contractors) full and undisturbed access to the Parcel so that that work may be

performed. Buyer has read the Grant Award, and Buyer agrees to cooperate (and to cause Buyer's agents and contractors to cooperate) with RACM (and RACM's agents and contractors) and with DNR concerning access, record-keeping, inspections, and such other matters as may reasonably be required concerning RACM fulfillment of the Grant Award and the work contemplated thereunder.

RACM shall require (i) that the demo contractor for the demo work under the Grant Award, and (ii) that Giles Engineering Associates, Inc. ("Giles") (the contractor who will be used for the removal and disposal work under the Grant Award), carry insurance of the types and in the amounts as set forth in the 11/6/00 facsimile transmission from Gregg Hagopian to Perry Friesler, and that Buyer be named as an additional insured on the general liability coverage of Giles and as an additional insured on the demo contractor's coverage (except for Worker's Compensation). RACM shall submit, or cause those contractors to submit, requisite evidence of insurance to Buyer prior to those contractors entering the Parcel to do the work under the Grant Award.

16. **No Brokers.**

Neither Buyer nor City nor RACM 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, RACM's, and Buyer's respective heirs, executors, administrators, successors and assigns. Buyer may not assign this Contract (or any interest or right therein) to any person or entity unless Buyer has first obtained City's and RACM's express written consent.

18. **Buyer Review and Free Entry Into Contract.**

Prior to signing this Contract, Buyer has reviewed whatever federal, state, and local law Buyer deemed important or relevant to review, all the Records, and this Contract, and had the opportunity to have legal counsel and consultants of Buyer'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 by Buyer or Buyer's legal counsel or Buyer's consultant). Buyer freely enters this Contract.

19. **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. If the Common Council does approve this Contract and assignment, City will, in its § 75.521 foreclosure action against the Parcel, 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 Parcel, selling the Parcel, or otherwise acquiring the Parcel, City Ord. § 308-22-2-c is not applicable and there is no need for approval of this Contract by a ¼ vote of all Common Council members.

Buyer further understands that RACM approval of this Contract is also required.

20. Notices.

All notices permitted or required hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier or if sent by facsimile or e-mail, and (ii) 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 Buyer: Robert F. Olin
Sherman Perk, LLC
3292 North 48th Street
Milwaukee, WI 53216
Phone: (414) 444-1961
Facsimile: (414) 444-6003
E-mail: olin@execpc.com

With copy to: Perry Friesler
Miller, Simon, McGinn & Clark
788 North Jefferson Street, Suite 900
Milwaukee, WI 53202
Phone: (414) 271-2700
Facsimile: (414) 271-1797
E-mail: pfriesler@milbizlaw.com

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) 286-2601
Facsimile: (414) 286-8550
E-mail: ghagop@ci.mil.wi.us

If to Buyer's Lawyer (as ¶ 13 escrow agent):

Perry Friesler
Miller, Simon, McGinn & Clark
788 North Jefferson Street, Suite 900
Milwaukee, WI 53202
Phone: (414) 271-2700
Facsimile: (414) 271-1797
E-mail: pfriesler@milbizlaw.com

21. Covenant Not to Sell or Lease.

With the exception of Buyer's possible post-acquisition mortgaging of the Parcel to obtain funds to remediate it and/or improve it as called for herein, Buyer covenants that, (a) until the DNR issues a no-further-action letter concerning the remediation required hereunder, and (b) until the City issues an occupancy certificate for the building on the Parcel, Buyer shall not sell, lease, hypothecate or convey any interest in the Parcel to any person or entity without Commissioner's prior written approval, which shall not be unreasonably withheld. And, Buyer agrees to execute further documentation as City may reasonably request to evidence such covenant.

22. 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.

23. Recording.

City may, in its discretion, and at City's expense, record this Contract, or evidence of its existence, against the Parcel 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.

BUYER: SHERMAN PERK, LLC

CITY: CITY OF MILWAUKEE

By: _____
Robert F. Olin, Sole Member and
Sole Manager

By: _____
John O. Norquist, Mayor

BUYER'S LAWYER
(for ¶ 13 purposes only)

By: Miller, Simon, McGinn & Clark

Attest: _____
Ronald D. Leonhardt, City Clerk

By: _____
Perry Friesler

Countersigned by: _____
W. Martin Morics, Comptroller

**RACM: REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE**

By: _____

Name Printed: _____

Title: _____

Attest: _____

Name Printed: _____

Title: _____

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

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

- Exhibit A: Total Delinquencies, Treasurer Pay-Out Statement for Parcel
- Exhibit B: Records
- Exhibit C: Notice Under 26 USC § 7425