

**SAMPLE
CITY OF MILWAUKEE
OPTION TO PURCHASE**

Address: _____

For and in consideration of the sum of _____ and No/100ths Dollars (\$_____.00) (Option Fee) tendered herewith, the **City of Milwaukee** (hereinafter "City") does hereby grant unto _____ (hereinafter referred to as the "Buyer") an exclusive Option to Purchase the property at _____ more particularly described in Exhibit A attached hereto (hereinafter "Property"), on the following terms and conditions:

1. **Purpose/Proposed Development.** This Option is granted for the sole purpose of Buyer
Pick One constructing a building containing approximately _____ square feet of gross building area
or renovating the existing building
for use as _____,
and associated parking and landscaping in accordance with plans approved by the City ("Project");

Final building plans submitted for building permits and as a contingency of closing must be consistent with preliminary plans submitted by Buyer to obtain the Option to Purchase or conform to the City's design standards and must include modifications requested by City Planning Staff. All construction must conform to final plans approved by City as a condition of closing and at the time the building permit is issued.

2. **Purchase Price.** The purchase price shall be _____ and No/100ths Dollars (\$_____.00) payable by certified or cashier's check at time of closing, subject to the customary deductions and prorations. The City may request that Buyer divide the amount due at closing into separate checks for the City's development fee due the Redevelopment Authority, fees, sale expenses and/or the net sale proceeds. Unless specified in the Request for Proposal, no brokerage fee shall be paid by City.
3. **Option Term & Renewals.** The Option shall be for six (6) months ("Base Term"), commencing on the date of acceptance by Commissioner of the Department of City Development ("Commissioner") or designee. The Option period may be renewed at the option of the Commissioner, or designee, for up to two (2) additional three (3) month periods ("Extended Period") upon submission by Buyer of a satisfactory written progress report on efforts to obtain final building plans and financing and submission of a \$500.00 Renewal Fee for each request. If Buyer fails to close on or before the expiration of the Base Term or Extended Period, whichever is later, City may declare this Option null and void and retain the Option Fee and Renewal Fee as liquidated damages. If the Project is delayed for environmental concerns pursuant to Section, the Base Term may be extended by the Commissioner for no fee or penalty for such period needed to complete environmental testing and remediation or to obtain case closure from the Wisconsin Department of Natural Resources.
4. **Agreement for Sale/Exercise of Option.** Buyer shall exercise this Option by delivery of three copies of a signed Agreement for Sale that has been negotiated between the City and Buyer. Buyer acknowledges receipt of a sample copy of this document. This Agreement shall require:
- a. **Closing.** A closing for the Property shall occur within thirty (30) days of execution of the Agreement by Buyer, but not later than the Expiration Date of the Base Term or the Extended Period provided closing contingencies identified below have been satisfied by Buyer.
 - b. **Conveyance.** The City shall convey title by Quit Claim Deed ("Deed") subject to the terms and conditions of the Agreement for Sale and satisfaction of all closing contingencies. Conveyance shall be on an "as is, where-is" condition with all faults and defects, known or unknown, physical or otherwise, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims – including any action based on non-disclosure. Buyer shall rely on Buyer's own due diligence and independent investigation and inspection, and they shall not rely upon any oral or written statement or representation of City or any employee or agent or contractor of City. At closing, and upon delivery of the Deed to Buyer, whatever occupancy rights City has in and to the Property will become Buyer's. The cost to record the Deed shall be paid by Buyer. The Deed shall be required by City pursuant to Milwaukee Code of Ordinances § 304-49-13-b.

- c. **Title Insurance.** City shall provide a preliminary title commitment when the Purchase Price is in excess of \$5,000 of as specified in the Request for Proposal. City shall provide the cost of the title insurance for a commitment in the amount of the Purchase Price. Buyer shall be responsible for the cost of any title and gap endorsements and the cost of any title updates incurred after the initial invoice. Seller shall pay its cost of title insurance at Closing from the net Purchase Price if sufficient to cover such cost payment or by separate check. Provision of title insurance shall not change the "as is/where is" nature of this transaction.
- d. **Construction Schedule.** Construction shall commence within thirty (30) days following closing and be complete within twelve (12) months (or other time period dictated by the development) following commencement;
- e. **Plan Approval and Financing Approval Contingencies.** Buyer shall submit to the City final construction plans, including detailed landscape plans, a final construction budget based on bids and evidence of firm financing and/or equity that equals the costs of construction. All of the foregoing must be satisfactory to the City in form and substance prior to closing.
- f. **EBE Policy & Agreement.** Buyer shall execute a Best Efforts Emerging Business Enterprise (EBE) Agreement with the City of Milwaukee Emerging Business Enterprise Prop gram prior to Closing. The City's goal for EBE participation is at least 18% of the total project budget. Redeveloper is responsible for obtaining a copy of the "EBE Certification Directory.
- g. **Reversion of Title.** Title shall revert to the City in the event of default by the Buyer and Buyer is unable to cure default as is provided for in the Agreement for Sale.
- h. **Performance Deposit.** Buyer shall submit at Closing a Performance Deposit in the amount of _____ and No/100ths Dollars (\$ _____ .00) (10% of Purchase Price with a \$1,000 minimum and a \$10,000 maximum) ("Deposit"). The Deposit shall not be applied against the purchase price, but will be held by the City to guarantee completion of the improvements. The Deposit shall be returned to the Buyer without interest upon successful completion of the improvements in accordance with terms of the Agreement of Sale and the conditions expressed herein, as certified by the City. All or part of the Deposit may be retained if Buyer fails to complete the project as agreed in the Agreement for Sale.

After execution, the Agreement for Sale will be recorded with the Register of Deeds and the property title encumbered until successful completion of the project(s) as certified by the City.

- 4. **Fee Return and Credit.** The Option Fee and Renewal Fees, if any, are non-refundable except in the event the City is unable to deliver marketable title. The Option Fee shall be credited toward the Purchase Price if the Buyer closes the sale prior to expiration of the first option period. Renewal Fees, if any, shall not be credited toward the Purchase Price.
- 5. **Assignment.** This Option shall not be assigned by Buyer without the written consent of the City. Any assignment of this option by the Buyer, except that assignments to any entity owned or controlled by any of the parties of Buyer shall not require any consent. Any assignment of this option, except for permitted assignments, by the Buyer, shall result in termination of this Option by the City and retention of the Option and Renewal Fees as liquidated damages.
- 6. **Tax Proration and Special Assessments.** General real estate taxes for the current tax year, if any, will be pro-rated at the time of closing. Any special assessments of record shall be paid by the Buyer. The City shall provide details of any known or contemplated special assessments at closing or within ten (10) days of a written request by Buyer.
- 8. **Site Conditions.** Except as provided herein:
 - a. City discloses that the Property may contain old building foundations, demolition debris and other materials not suitable for construction. Without changing the "AS-IS/WHERE IS" nature of this transaction, Buyer is aware that the Property is or may be affected by adverse geotechnical conditions due to the presence of these materials or due to the bearing capacity of the soil. City has conducted no geotechnical investigation of the Property and assumes no liability for any subsurface conditions. Buyer shall include in the construction budget an allowance for extraordinary site excavation, disposal of materials unsuitable for construction and/or additional fill to allow construction. City shall not provide a survey of the Property. Buyer is encouraged to undertake a site survey, geotechnical investigation and

other due diligence reviews that it deems necessary. Upon written request of Buyer, City shall provide Buyer a right of entry to conduct such investigations of the Property upon certain conditions, including submission of a certificate of insurance in amounts specified by City naming the City as an additional insured. Buyer acknowledges that City disclosure requirements under Ch. 709, Wis. Stats. do not apply.

- b. Buyer shall be responsible for all site development costs, including, but not limited to, extension of water and sewer laterals to the property line and the provision or replacement of sidewalks and curb cuts.
- c. City shall not provide a survey of the Property.

9. **Sale Policies.** Pursuant to City policy, the City shall not sell Property to any Buyer whom:

- a. is tax delinquent on any real or personal property located in the City of Milwaukee that is owned by Buyer as an individual or by a partnership or corporation in which the Buyer has an ownership interest; or,
- b. has been convicted of failure to comply with an order of the Commissioner of Neighborhood Services of the City of Milwaukee within the 12 months preceding submission of this Option to the City or within the 12 months preceding closing of the sale.
- c. has been convicted of a felony for a crime that affects neighborhood stability;
- d. has been subject to an In Rem foreclosure or In Personam judgment by the City within the five-year period preceding the date of this Option.

Prior to closing, the City will investigate tax, building inspection and court records. If Buyer is found in violation, City will give notice to correct the violations prior to the time established for closing. If the violations are not corrected within the specified period, this Option to Purchase and/or Agreement for Sale may be canceled at the option of the City and all fees retained by the City as liquidated damages.

10. **Environmental Conditions.**

- a. The City has provided, and the Buyer acknowledges receipt of a Phase I environmental assessment dated _____ that was prepared by _____. This report is provided for informational purposes only and the City does not warrant its content or conclusions. If Buyer desires to obtain its own Phase I assessment, such report shall be at Buyer's sole expense.
 - b. The City shall not conduct any additional environmental investigations or remediation (unless specified in a Request for Proposal or negotiated with DCD). City shall convey the Property in an "as is, where is" condition with all faults and defects, known or unknown, physical or otherwise, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims – including any action based on non-disclosure. Buyer shall rely on Buyer's own due diligence and independent investigation and inspection, and they shall not rely upon any oral or written statement or representation of City or any employee or agent or contractor of City.
- or
- b. City and Buyer agree to conduct a Phase II environmental investigation if specified in the Request for Proposal or as recommended by the Commissioner. Phase II testing may only be conducted by a contractor under a master contract with the City. City and Buyer shall cooperate on the scope of work for such investigation and such scope shall be based on Buyer's proposed foundation excavation and site grading plan. The cost of the Phase II investigation shall be shared equally between City and Buyer.
 - c. Should Buyer desire Phase II testing or remediation not recommended by a City report, all such investigation, testing and reports shall be at Buyer's sole expense and responsibility.
 - d. Subject to availability of funds, the City shall conduct remediation of impacted soils and groundwater in the most cost effective manner. Such approach may involve keeping impacted soil on site for natural attenuation and encapsulation by Buyer's proposed improvement and listing the Property of a Geographical Informational System Registry on the Wisconsin Department of Natural Resources. Buyer shall be solely responsible for the preparation and approval of any required Remedial Action Plan. If Buyer elects a remediation strategy with higher costs, Buyer shall be responsible for the additional costs.
 - e. If Buyer's cost for Phase II testing or any required remediation renders a project economically infeasible, this Option may be canceled at the option of either party and all fees returned.

11. Buyer agrees to comply with all requirements of the Americans with Disabilities Act of 1990, U.S.C. #12101, et. seq.

12. It is understood that time is of the essence as to the provisions of this Option.

13. Special Conditions: _____.

The Option is executed in three (3) counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, The Buyer, _____, has signed and sealed this Option this _____ day of _____, 2007.

(Buyer Name: _____)

By _____

By _____

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 2006, _____, to me known to be the person(s) who executed the above and foregoing Option.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(SEAL)

Notary Public

My Commission _____ County,

EXHIBIT A
LEGAL DESCRIPTION

All that certain parcel or parcels of land located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

(Insert Legal)

Address: _____
Tax Key Number: ____ - ____ - ____