

WALNUT PARK APARTMENTS, L.L.C.  
PILOT AGREEMENT

OWNER: WALNUT PARK APARTMENTS, L.L.C.  
A Wisconsin Limited Liability Company

OWNER ADDRESS: 6735 Vistagreen Way, Suite 310  
Rockford, IL 61107

PROPERTY ADDRESS: 1602 through 1658 North 10th Street  
Milwaukee, WI 53205

PROPERTY PARCEL  
IDENTIFICATION NO: 362-0404-000-6

This agreement for payments in lieu of taxes ("PILOT") is made by and between Walnut Park Apartments, L.L.C., a Wisconsin limited liability company ("WALNUT PARK") and the City of Milwaukee, a Wisconsin municipal corporation ("CITY"), as of the \_\_\_\_ day of \_\_\_\_\_, 2002 ("AGREEMENT").

WITNESSETH

WHEREAS, WALNUT PARK anticipates acquisition of the real property which is legally described in Exhibit A attached hereto (the "PROPERTY"); and

WHEREAS, WALNUT PARK and CITY have each determined that it is in their best interests to enter into this AGREEMENT prior to WALNUT PARK closing the purchase of the PROPERTY, with the AGREEMENT being subject to: (i) WALNUT PARK becoming the holder of legal title to the PROPERTY; and (ii) CITY determining that the PROPERTY is tax exempt under WALNUT PARK's use, occupancy and ownership;

WHEREAS, CITY has determined that, under the facts and circumstances currently disclosed or known to the CITY and the law currently existing, and under WALNUT PARK'S intended ownership, occupancy and usage disclosed the CITY, the

PROPERTY will qualify for real and personal property tax exemption under § 70.11(4), Wis. Stats., as of January 1, 2003; and

WHEREAS, WALNUT PARK recognizes that, notwithstanding property tax exempt status of the PROPERTY, valuable government services and benefits will be provided to it and the PROPERTY, which services and benefits directly or indirectly relate to the public health, safety and welfare, and which include, but are not limited to fire and police protection, paved streets and street lights and snow removal; and

WHEREAS, WALNUT PARK wishes to make PILOT payments to CITY in recognition of those services and benefits referred to herein.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSID-ERATION, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. INCORPORATION OF WHEREAS CLAUSES.

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

2. CITY SERVICES.

A. Services Typically Covered by Property Tax

It is the parties' intent that CITY will provide public services to WALNUT PARK and the PROPERTY subject to the same terms and conditions as apply to properties owned by citizens or the public generally. Such services and benefits include, but are not limited by specific enumeration herein, those typically covered by the property tax such as fire and police protection, and on public streets, snow removal, and street lighting. CITY shall not have breached its obligations hereunder if it is prevented from providing benefits and/or services to WALNUT PARK or the PROPERTY because of typical *force majeure* reasons (e.g. war, flood, fire, labor dispute, supply shortage, act

of God, natural disaster, etc.), because of budgetary constraints, or because any person or entity shall assert a right which prevents delivery of such benefits and/or services.

B. Special Assessments, Special Charges and Fees.

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

3. PILOT PAYMENTS .

A. Calculation for 2003 and Subsequent Years.

In recognition of those services and benefits covered by paragraph 2.A. of this AGREEMENT, beginning in tax year 2003 until termination of this AGREEMENT, WALNUT PARK agrees to pay CITY an annual PILOT for the PROPERTY for each tax year (or portion thereof) during which WALNUT PARK owns the PROPERTY.

The method to be used in determining the PILOT payment shall be the Value<sup>1</sup> of the PROPERTY for that tax year determined by the CITY Assessor's office

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<sup>1</sup> "Value" herein means CITY Assessor's determination of the fair market value of the real property constituting the PROPERTY on January 1 of that tax year, subject to any revised determination under paragraph 6 of this AGREEMENT.

times the CITY 's Property Tax Rate<sup>2</sup> for that tax year, divided by 1,000. If WALNUT PARK transfers or conveys the PROPERTY, the PILOT for that year will be prorated based upon the number of full months for which WALNUT PARK owned the PROPERTY.

B. Payment Due Date.

PILOT payments for the tax year 2003 and subsequent years shall be due and payable (i) in full on or before January 31 of the year following the tax year for which the PILOT payment was calculated, or (ii) if WALNUT PARK elects to pay in installments, according to the following schedule: One-tenth of the PILOT payment by the last day of each month for the first 10 months in the year following the tax year for which the PILOT payment was calculated. WALNUT PARK shall be deemed to have elected to pay the PILOT payment in installments by making the first full installment payment on or before January 31 in the respective year in which the PILOT payment is due.

C. Use of PILOT Payment.

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

D. Voluntary PILOTs; Waiver. WALNUT PARK is bound to make the PILOT payments required hereunder only to the extent that monies are obtainable from the United States Department of Housing and Urban Development ("HUD") for such purpose. WALNUT PARK has a good faith duty to take affirmative steps to satisfy its PILOT obligations hereunder by making timely and adequate requests to HUD to fund the PILOT, in full or in part.

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<sup>2</sup> "Property Tax Rate" means the property tax rate for only the CITY as determined for taxable property in CITY from time to time. For example, the 2002 CITY's Property Tax Rate was \_\_\_\_\_ per \$1,000 in assessed value.

If WALNUT PARK meets its good faith duties under the terms of this AGREEMENT, CITY shall not take and hereby waives any enforcement or collection action against WALNUT PARK. No tax lien shall attach to the PROPERTY in the event of non-payment or partial payment.

4. EXEMPT STATUS.

CITY has determined that, if WALNUT PARK acquires the PROPERTY and uses it for the purposes described in its preliminary application for exemption, filed with CITY prior to the execution of this AGREEMENT, the PROPERTY will qualify for real and personal property tax exemption under Wisconsin law. WALNUT PARK understands and acknowledges that: (i) the earliest date that the PROPERTY can qualify for tax exemption is January 1, 2003; (ii) under the preamble to § 70.11, Wis. Stats., WALNUT PARK must, as a condition to securing an exemption, timely file an exemption application with CITY's Assessor; and (iii) CITY reserves all rights under Wisconsin law to grant or deny WALNUT PARK's application for exemption. In the event that CITY grants WALNUT PARK's application for exemption, CITY Assessor's Office may review and reconsider the PROPERTY's exempt status under § 70.11, Wis. Stats., from time to time with the respective January 1 dates being the reference dates for those exemption reviews.

If for any reason, CITY determines that all or any portion of the PROPERTY does not qualify for exemption from property tax: (i) CITY shall provide written notice of such determination to WALNUT PARK no later than May 31 of that year; (ii) no PILOT payment shall be due under this AGREEMENT with respect to any year for which exemption, in full or in part, does not apply; (iii) if a PILOT payment has been paid for such tax years, CITY shall promptly refund such PILOT payments or, at the

option of CITY, offset such PILOT payments against any property taxes due on the PROPERTY, in which case CITY will treat such offset as having been made under protest; and (iv) the PROPERTY, or any portion thereof which does not qualify for exemption, shall be placed on the property tax rolls for that and any subsequent years for which an exemption has been determined not to apply. If WALNUT PARK disagrees with CITY's determination that the PROPERTY, or any part thereof, no longer qualifies for tax exemption, WALNUT PARK may challenge such determination by following any procedure provided under Wisconsin law.

5. TERM.

A. Termination of AGREEMENT.

This AGREEMENT shall terminate on the soonest of any of the following described dates:

- (i) The day before the respective January 1 of the year for which the CITY determines that the Property no longer qualifies for property tax exemption.
- (ii) The effective date of an enactment by the State of Wisconsin of a mandatory payment for municipal services by owners of property exempt from the general property tax or similarly situated owners of exempt property for the type of municipal services covered by this AGREEMENT;
- (iii) The effective date of a repeal by the State of Wisconsin of the property tax exemption for the PROPERTY and other similarly situated property;
- (iv) Upon a determination by WALNUT PARK that continuation of the AGREEMENT is not in the best interests of WALNUT PARK and after 30 days written notice to the CITY;

(v) Upon a determination by the CITY that continuation of the AGREEMENT is not in the best interest of the CITY and after 30 days written notice to WALNUT PARK.

B. Payments Due and Payable at Termination Survive Termination.

Notwithstanding any termination of this AGREEMENT, WALNUT PARK shall continue to be liable to the CITY for all PILOT payments due and payable under this AGREEMENT until the effective date of termination hereof.<sup>3</sup>

6. APPEAL OF ASSESSED VALUE.

WALNUT PARK shall have the same rights to contest the valuation of the PROPERTY determined by the City Assessor under this AGREEMENT as an owner that is subject to property taxes under Wisconsin law. CITY acknowledges WALNUT PARK 's right to contest the valuation of the PROPERTY under the procedures provided in §§ 70.07 and 70.47, Wis. Stats., or any successor statutes thereto, and CITY expressly agrees not to dispute WALNUT PARK 's right to contest the valuation of the PROPERTY under said statutes.

7. DOCUMENTS, INSPECTION, COOPERATION.

WALNUT PARK agrees to cooperate with CITY (including, but not limited to, the City Assessor's Office, the City Attorney's Office, and the City Comptroller's Office) with respect to this AGREEMENT by allowing inspections of the PROPERTY upon reasonable written request by CITY and such documents that CITY and WALNUT PARK may reasonably agree are relevant to exemption and valuation determinations.

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<sup>3</sup> For example, if for year 2005, the CITY agrees that WALNUT PARK is exempt from property tax, then WALNUT PARK would owe the CITY a PILOT payment for the tax year 2005, payable in calendar year 2006. WALNUT PARK would remain liable to pay said PILOT payment for tax year 2005 DURING 2006 even though the AGREEMENT terminates pursuant to paragraph 5. A. of this AGREEMENT for tax year 2006.

Notwithstanding the foregoing, CITY reserves all its rights in law and equity to inspect and to obtain disclosure, documents, inspection, and information.

8. AGREEMENT SUBJECT TO WALNUT PARK OBTAINING LEGAL TITLE AND EXEMPTION DETERMINATION.

This AGREEMENT shall be subject to and shall become effective on the date on which the conditions of this paragraph are completed. In the event that WALNUT PARK does not become the holder of legal title to the PROPERTY by December 31, 2002, this AGREEMENT shall be considered void *ab initio*. Any decision by the City Assessor's Office with respect to the exemption of the PROPERTY is subject to: (i) WALNUT PARK acquiring title; (ii) WALNUT PARK submitting an Exemption Request to CITY as required under the preamble to § 70.11, Wis. Stats.; and (iii) CITY'S review and approval of tax exempt status of the PROPERTY. In the event that the City Assessor's Office does not determine that the PROPERTY is exempt, in whole or in part, from property tax for the year 2003, this AGREEMENT shall be considered void *ab initio*.

9. AMENDMENT.

This AGREEMENT may be modified and amended from time to time as CITY and WALNUT PARK shall mutually agree in writing, executed by both parties.

10. GOVERNING LAW.

The laws of the State of Wisconsin and ordinances and regulations of the City of Milwaukee shall be the governing law with respect to this AGREEMENT.

11. AUTHORITY.

WALNUT PARK represents and warrants to CITY that its representative executing this AGREEMENT has been duly authorized to so execute and to cause WALNUT PARK to enter this AGREEMENT. CITY represents to WALNUT PARK

that CITY's Common Council has authorized CITY to enter this AGREEMENT pursuant to Common Council File No. \_\_\_\_\_ adopted \_\_\_\_\_, 2002.

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

CITY OF MILWAUKEE

WALNUT PARK APARTMENTS, L.L.C.

BY \_\_\_\_\_  
JOHN O. NORQUIST, Mayor

BY \_\_\_\_\_  
THOMAS M. VANFLEET, Manager

Attest: \_\_\_\_\_  
RONALD D. LEONHARDT  
City Clerk

COUNTERSIGNED:

BY: \_\_\_\_\_  
W. MARTIN MORICS  
City Comptroller

CITY ATTORNEY'S OFFICE  
Approved as to form, execution and content  
This \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
\_\_\_\_\_  
Assistant City Attorney  
12-04-02/056-2002-3707:60997

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

Tax Key No. 362-0404-000-6

Address: 1602 through 1658 North 10th Street

Lot 2 in Block 3 in Plymouth Hill Addition, being a resubdivision of Plymouth Hill of Lots 21 to 36 inclusive, in Block A; all of Block B and vacated North Amsterdam Court, the vacated West 21.5 feet of public pedestrian way adjoining Block B on the East and the vacated public service street adjoining Block B on the North; all of Block C and vacated West Alden Court; all of Block D and vacated West Galena Court; and all of vacated private pedestrian ways adjoining or within Blocks C, B and D in the Southwest 1/4 of Section 20, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

1056-2002-3707