

75.106 IN REM
ASSIGNMENT CONTRACT

Document Number

Document Title

**75.106 IN REM
ASSIGNMENT CONTRACT**

Recording Area

Name and Return Address

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Milwaukee, WI 53202

431-0502-100-4

Parcel Identification Number (PIN)

Drafted By:
Gregg Hagopian, Assistant City Attorney

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EXHIBITS

- A Payout, Total Delinquencies.
- B Records.
- C Legal Description.

75.106 IN REM ASSIGNMENT CONTRACT

<u>Developer-Buyer:</u>	MZA PROPERTY INVESTORS, LLC (Robert A. Forrer, Sole-Managing Member and Sole Member)
<u>Developer-Buyer</u>	
<u>Contact Information:</u>	Address: 4500 W. Mitchell St., Milwaukee, WI 53214 Phone: (414) 671-7130 Facsimile: (414) 671-7133 E-mail Address: rob@sprayobond.com
<u>Delinq. Owner of Record:</u>	Ann Jennaro Zingale
<u>Address of Delinq. Owner:</u>	2012 E. Glendale Ave. Milwaukee, WI 53211-0000
<u>Parcel:</u>	1120 South Barclay Street
<u>Tax Key No.:</u>	431-0502-100-4 (legal description is attached as <u>Exhibit C</u>)
<u>Total Tax Delinquencies:</u>	1994-2003 (Nov., 2004 payoff is \$72,287.94)
<u>Eligible Tax Delinquencies:</u>	(As of Nov, 2004) 1994-2002
<u>2004 Assessment:</u>	\$164,000

This 75.106 In Rem Assignment Contract (“Contract”) by and between the above-named developer-buyer, MZA PROPERTY INVESTORS, LLC (“Buyer”), a Wisconsin limited liability company, and the City of Milwaukee (“City”), dated as of December _____, 2004;

WITNESSETH

Whereas, Buyer wants City to foreclose against the above-referenced Parcel (i.e. 1120 South Barclay Street) 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 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. § 75.106(3). See, ¶ 14 below concerning payment required for taxes, special assessments, and special charges not foreclosed against.

2. **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 560.13(1)(a) (*abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination*) 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.

Buyer agrees to obtain an environmental assessment of the Parcel (a/k/a a Phase II environmental audit) (the “Phase II”) at its expense and prior to the time that the Court would otherwise be ready to grant in rem foreclosure against the Parcel. Buyer agrees to promptly provide copies of the same to each of City and the DNR, so that Buyer may comply with Wis. Stat. §75.106(2)(e). The Phase II shall be deemed included as a Record under **Exhibit B**.

3. **Buyer Good Standing.**

Buyer represents and warrants to City: (a) that Buyer is a limited liability company duly organized and existing under Wisconsin law, and authorized to do business in Wisconsin as a limited liability company under Ch. 183 of the Wisconsin Statutes; (b) that Buyer is in good standing; (c) that Buyer’s current, respective 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; (e) that neither Buyer, nor any of its respective managers or members, nor the entity operating as Spray-O-Bond Company: (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 1999 to the present, the City foreclosed against under Wis. Stat. § 75.521; and (iii) currently has outstanding against it, him, or her any unpaid City judgment or municipal fine or forfeiture; and (f) that Buyer's registered office and registered agent in Wisconsin, as required by Wis. Stat. §183.0105, are: 4500 W. Mitchell Street, Milwaukee, WI 53214.

Buyer's Members

Robert A. Forrer

Buyer's Managers

Robert A. Forrer

Buyer further represents and warrants to City that all real estate in the City of Milwaukee in which Buyer, or its members or managers, currently has a direct or indirect ownership interest in is set forth below:

- NONE.

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 any have 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; Deadlines for Construction.

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 and its environmental condition to the extent necessary to comply with any DNR Contract referred to at, and that may be required under, ¶ 11 below; (ii) Buyer will, after improving the Parcel, lease the same to Spray-O-Bond Company and perhaps to other third parties (it being

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.

understood that Spray-O-Bond will use and occupy its portion of the premises as a warehouse, catalogue center, and repair-shop associated with building restoration and renovation activities) and (iii) Buyer will improve the Parcel by renovating the building currently on the Parcel as follows (herein called "Buyer Improvements"):

- Restore building to substantially its original look.
- Replace roof with a new deck and built-up membrane.
- Restore or install skylights to provide natural lighting.
- All masonry to be cleaned, repointed, and rebuilt. Crumbling and otherwise loose or dangerous brick to be removed.
- Rebuild "barn doors" to look substantially like the original, or in the alternative, provide new doors.
- Install new wood sash windows to replace unusable and/or damaged existing windows.
- Clean, repair, and paint front door, sheet metal.
- General update and repair to interior to meet needs of contemplated tenant(s).
- Repairs required to bring Parcel and improvements thereat into code compliance.
- Repair or replace gutters and downspouts.
- Paint exposed wood surfaces.
- Make building space suitable and available for rental to contemplated tenant(s).

Buyer understands that this Contract shall not, in any way: (a) relieve Buyer (or any tenant) 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 any improvement thereon as contemplated herein (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 or RACM implicitly or explicitly granting, approving or preapproving, any Requisite Approvals.

If Buyer does get judgment of foreclosure to the Parcel: (a. **Commencement Deadline**) Buyer agrees to start construction of the Buyer Improvements within 30 days of Buyer obtaining judgment of foreclosure; and (b. **Completion Deadline**) Buyer will substantially complete the Buyer Improvements within 12 months thereafter.

In addition to any Requisite Approvals, Buyer agrees to submit copies of all of its plans and specifications for the Buyer Improvements (together with cost estimates therefore) (together the same are called "Plans & Spec's") to City's Commissioner of the Dept. of City Development (the "Commissioner") prior to commencing any construction work; and, the Plans & Spec's shall be subject to the reasonable approval of the Commissioner or his designee.

Buyer shall also inform the Commissioner, in writing, of its construction commencement date and ending date.

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)). In reliance on Buyer's undertakings in this Contract, and subject to the terms hereof, City will commence and 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 uses 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. Buyer to Pay Certain Foreclosure Costs.

Within 5 business days of full execution of this Contract, Buyer shall pay to City \$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 ¶ 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 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.

7. Title Report.

Buyer will obtain, at Buyer's expense, a current title-insurance commitment from a title company of Buyer's choice (the "Title Report"), and provide a copy of the same (together with copies of any recorded document referred to therein) to City **within 5 days of execution of this Agreement**. Buyer understands that City is not providing, and will not provide, any title insurance to Buyer, and that if Buyer wants same, Buyer must pay for same on its own.

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 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, underground storage tanks, deteriorating condition and matters in need of repair and replacement, encroachments and other matters that would be revealed by an accurate survey, physical or scientific inspection, and/or by records checks, and rights of persons or entities under Wis. Stat. § 80.32), 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. § 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 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 ¶ **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 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 ¶ 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 has relied upon the official records of the City Treasurer's Office and the Title Report. 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 ¶ 6.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 Report (see para. 7 above) 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 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 (517 East Wisconsin Avenue, Milwaukee, WI 53202) and to the Milwaukee IRS Office (310 West Wisconsin Avenue, Milwaukee 53203-2221) 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 Delinq' Owner's filing of bankruptcy 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, or other legal protection of debtors or their assets from creditors and creditor-collection efforts. 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 located at the Parcel. Buyer acknowledges that there currently is personal property at the Parcel that City is not acquiring, foreclosing upon, or transferring in any way to anyone. City makes no representation or warranty

with respect to any such personal property, its ownership, or what should or might be done with it. Buyer shall be solely responsible for the personal property, and for dealing with the same, as Buyer sees fit, and for all consequences thereof.

- I. **Railroad Interests Risk.** Buyer understands that behind (and east of) the building at the Parcel there appears to be evidence of there having been railroad tracks, and further east still, at a higher elevation, there are railroad tracks, that, apparently, are still in active use. Buyer accepts all risk: of any railroad company having actual or potential rights or interests in the Parcel or in any railroad improvements that may exist thereon; and of the State of Wisconsin or its Department of Transportation having a right to acquire any property used in operating a railroad or railway, including land and rails, ties, switches, trestles, bridges, and the like located thereon, that has been abandoned. See, Wis. Stat. § 85.09.

- J. **Tenant Risk.** Buyer understands the Parcel is currently occupied by third-parties, including a blacksmith operation. Buyer accepts all risk associated with the Parcel being occupied by third-parties.

9. **Contingencies - Environmental.**

The Milwaukee County Circuit Court, Case No. 02-CV-005930, granted a “Special Inspection Warrant and Order” (the “Court Order”) allowing the City, its agents, officers, or designees to enter the Parcel to conduct environmental testing.

Buyer shall have Sigma Environmental Engineering (“Sigma”) prepare a scope of work and cost estimate for Phase II testing of the Parcel (the “Scope of Work”). See ¶ 2 above. Buyer shall be responsible for, and shall prepay, all costs associated with the Scope of Work and any work performed thereunder (including the issuance of a written Phase II report). Buyer must obtain the DCD Commissioner’s approval of the Scope of Work prior to any entry upon the Parcel or under the Court Order and prior to any testing activities. After the Commissioner (or his designee) has approved the Scope of Work and Buyer has prepaid Sigma for work and services thereunder: (a) entry onto the Parcel under the Court Order shall be at Buyer’s sole risk, shall be solely to carry out the Scope of Work, shall be at times agreed to in advance by the Commissioner, and the Commissioner may require accompaniment by City personnel; (b) testing and investigation shall be strictly limited to the Commissioner-approved Scope of Work; and (c) Buyer is responsible for restoration duties as the Commissioner may reasonably require.

Buyer must, within 30 days of entry onto the Parcel to investigate and test per the Scope of Work, deliver to each of the City and the DNR a written Phase II report prepared by Sigma detailing the results of the testing and investigation.

Within 15 days of Buyer’s delivery of the written Phase II report to City (the “Contingency Deadline”), Buyer shall have the right to terminate this Contract by

sending written notice of Termination to City explaining that, in Buyer's good faith determination after review of the Phase II report, the environmental conditions at the Parcel are such that Buyer's proposed acquisition and improvement of the Parcel would be financially imprudent. Time is of the essence.

If Buyer fails to timely deliver written notice of Termination by the Contingency Deadline and in accordance with the "notice" provisions of this Contract, then Buyer's contingency rights under this paragraph shall forever more 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 – providing, however, that Buyer shall still be responsible for restoration duties associated with its entry and testing.

10. No Rep's or Warranties.

Buyer acknowledges that the 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 its Redevelopment Authority (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 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 or RACM, clean up 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 **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. 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.

12. Release, Indemnity and Hold Harmless.²

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 and RACM (which such defenses are hereby waived), releases and discharges City and RACM (and any of their respective agents, officers, employees, departments, or instrumentalities) (together each of the foregoing and City and RACM are, for purposes of this paragraph no. 12, individually and collectively called “City”) of and from any and all claims, demands, actions, loss, 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 ¶ 8 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 ¶ 8.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

² 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.

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).

Buyer also agrees that, if Buyer terminates this Contract by virtue of its contingency rights herein, Buyer shall indemnify and hold City harmless with respect to any and all claims, demands, actions, loss, 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 accident or injury to persons or property caused, directly or indirectly, by Buyer, or its agents, representatives, employees, consultants, or contractors entry onto or inspection of the Parcel.

13. Escrow for Improvement and Remediation. [INTENTIONALLY DELETED].

14. Assignment; Consideration; Payment of 2003 and Future 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, \$1 (ONE DOLLAR), calculated below (the “Acquisition Fee”), PLUS 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 2003 taxes, interest and penalties). § 75.106(3). The Acquisition Fee is calculated as follows:

\$164,000

less 25% brownfield credit of \$41,000

less credit for remediation and demolition costs \$122,999

EQUALS ACQUISITION FEE OF \$1 (ONE DOLLAR).

(The above credits are regardless of what the actual costs may be – Buyer assuming all risks of insufficient credit and all risks of actual costs, or anticipated or unanticipated other costs, exceeding any credited or estimated amounts).

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 to satisfy payment of amounts due under the first sentence of this paragraph.

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 neither City nor Buyer shall have 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.

The Acquisition Fee to City for the assignment of foreclosure judgment contemplated hereby 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 taxpaying hands; improvement of the Parcel; and environmental remediation as the DNR may require.

15. Grants. [INTENTIONALLY DELETED].

16. 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.

17. Successors and Assigns.

This Contract (and all its terms and provisions) shall be binding upon each of City's and Buyer's respective heirs, executors, administrators, successors and assigns. Buyer may not, however, assign this Contract (or any interest or right therein) to any person or entity unless Buyer has first obtained City's express written consent.

18. Buyer Review and Free Entry Into Contract; Buyer Authority to Sign.

Prior to signing this Contract, Buyer has reviewed whatever federal, state, and local law it 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 its legal counsel or consultant). Buyer freely enters this Contract. Buyer represents and warrants that its manager signing this Contract has the authority to execute this Contract on behalf of

Buyer, and after that manager signs, this Contract shall be the binding obligation of Buyer, enforceable against Buyer, in accordance with its terms.

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. 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, City Ord. § 308-22-2-c is not applicable and there is no need for approval of this Contract by a ¾ vote of all Common Council members.

20. Notices.

All notices permitted or required hereunder shall be considered given **(i)** upon receipt if hand-delivered by commercial courier or otherwise personally delivered, **(ii)** if successfully sent (without error message) 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:

If to Buyer:

Robert Forrer
c/o Spray-O-Bond Company
4500 West Mitchell Street
Milwaukee, WI 53214
Phone: (414) 671-7130
Facsimile: (414) 671-7133
E-mail: rob@sprayobond.com

With copy to:

Attorney Don Gallo
Reinhart, Boerner, Van Deuren, S.C.
W 233 N 2080 Ridgeview Pkwy.
Waukesha, WI 53188
Phone: (262) 951-4555
Facsimile: (262) 951-4690
E-mail: dgallo@reinhartlaw.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: rmarco@mkedcd.org

With copy to:

Matt Haessly
809 North Broadway, Second Floor
Milwaukee, WI 53202
Phone: (414) 286-5736
Facsimile: (414) 286-5467
E-mail: mhaess@mkedcd.org

With further copy to:

Gregg C. Hagopian, Assistant City Attorney
800 City Hall
200 East Wells Street
Milwaukee, WI 53202
Phone: (414) 286-2620
Facsimile: (414) 286-8550
E-mail: ghagop@milwaukee.gov

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 to improve it as called for herein, and with the exception of the contemplated leasing of a portion of the Parcel from Buyer to Spray-O-Bond Company and another portion of the Parcel to the blacksmith operation currently at the Parcel or to other possible third-party tenants meeting the Commissioner's prior approval, Buyer covenants that, (a) until the DNR issues a no-further-action letter concerning the remediation required hereunder (in the event DNR requires a DNR Contract) (or the Commissioner otherwise agrees in writing that remediation as contemplated and required hereunder or under the DNR Contract has been adequately

completed), and (b) until the DCD Commissioner agrees that the Buyer Improvements have been completed and the DCD Commissioner has executed the document referred to in para. 23 below, Buyer shall not sell, hypothecate or convey any interest in the Parcel (or lease 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, or by any of the recordings referred to in para. 23 below.

23. Recording.

City shall, at Buyer's expense, record this Contract against the Parcel in the Milwaukee County Register of Deeds Office. Upon the DCD Commissioner's agreeing that the conditions in para. 21, subitems (a) and (b) have been completed and satisfied, the City and Buyer agree to execute a document, for recording in the Register of Deed's Office at Buyer's expense, that will terminate the effect of the Contract having been recorded against title, but that will not terminate Buyer's contractual duties to City.

24. Counterparts 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.

25. 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.

26. 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) that 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.

27. **Comptroller Audit.**

The City's Comptroller may, if it elects, audit (or have an independent auditor audit) Buyer's Books. In such event, Buyer shall cooperate with the Comptroller and make available to it all relevant records, books and accounts for review and inspection.

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

BUYER:
MZA PROPERTY INVESTORS, LLC

CITY:
CITY OF MILWAUKEE

By: _____
Robert A. Forrer, Sole Manager
With Signatory Authority

By: _____
Tom Barrett, Mayor

Attest: _____
Ronald D. Leonhardt, City Clerk

Countersigned by: _____
Comptroller's Office
Name Printed: _____
Title: _____

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

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

GUARANTEE

Spray-O-Bond Company also signs this Contract in its capacity to personally guarantee the duties and obligations of Buyer (MZA Property Investors, LLC) under this Contract.

Spray-O-Bond Company

By: _____

Robert A. Forrer, President

Attest: _____

Name Printed: _____

DOC NO 87035

Exhibit A: Total Delinquencies, Treasurer Pay-Out Statement for Parcel

Exhibit B: Records

Exhibit C: Legal Description

MZA and SPRAY-O-BOND NOTARY

STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 2004, Robert A. Forrer, who identified himself as the sole member and the sole manager of MZA Property Investors, LLC, and as President of Spray-O-Bond Company, with authority to sign for that LLC and that company, and who by their respective authority and on their behalf, executed the foregoing instrument (including the guaranty) and acknowledged the same.

NOTARY PUBLIC, State of _____
My Commission Expires: _____

STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, 2004, _____, who identified himself as the _____ of Spray-O-Bond Company, with authority to sign for that company, and who by its authority and on its behalf, executed the foregoing instrument (the guaranty) and acknowledged the same.

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, Ronald D. Leonhardt, the City Clerk of the City of Milwaukee who executed the foregoing instrument on behalf of the City and acknowledge the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, _____ of the City of Milwaukee Comptroller’s Office who executed the foregoing instrument on behalf of the City and acknowledge the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

EXHIBIT B. RECORDS

1. Historical Land Use Investigation, 1120 S. Barclay Street, Milwaukee, Wisconsin, dated October 4, 2000 (City Phase I), prepared by City Health Department and DCD.
2. Special Inspection Warrant and Order, dated June, 2002, case number 02-CV-005930.
3. Information collected by Buyer or Spray-O-Bond or its consultants, engineers, contractors, employees, or agents
4. Information collected or communicated by Sigma, including, any estimate or proposal for, or actual, Phase II environmental assessment, or Phase II environmental audit of the Parcel, and any follow-up thereto that Buyer may obtain.
5. DNR Files on the Parcel.

EXHIBIT C. LEGAL DESCRIPTION

Lots 24 and 25 in Subdivision of Block 15 in Milwaukee Proper and a part of Lot 5 of Fractional Section 32, in Township 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, together with the South ½ of the alley adjoining said Lot 25 on the North and North ½ of the alley adjoining said Lot 24 on the South.

Tax Key No. 431-0502-100-4

ADDRESS: 1120 South Barclay Street

Above information is to the best of City's knowledge and belief, without warranty or representation.