

75.106 IN REM ASSIGNMENT CONTRACT

<u>Developer-Buyer:</u>	ESV LLC (Pamela J. Zeman ¹ and Diane G. Bennetts, Sole-Members, Pamela J. Geiken-Zeman, Sole-Manager)
<u>Developer-Buyer Contact Information:</u>	Address: 2163 North Farwell Ave., Milwaukee, WI 53202 Phone: (414) 276-0701 Facsimile: (414) 276-7019 E-mail Address: zemangeiken@milwpc.com
<u>Delinq. Owner of Record:</u>	Milwaukee Waste Paper Company
<u>Address of Delinq. Owner:</u>	P.O. Box 17256 Milwaukee, WI 53217-0256
<u>Parcel:</u>	2342 North Newhall Street (approx. 50,172 s.f.)
<u>Tax Key No.:</u>	320-1531-100-1
<u>Total Tax Delinquencies:</u>	1993-2001 (12/31/02 pay-off is \$133,414.84)
<u>Eligible Tax Delinquencies:</u>	1993-2000
<u>2001 Assessment:</u>	\$75,000 (L: 62,700 + I: 12,300 = 75,000)

This 75.106 In Rem Assignment Contract (“Contract”) by and among the above-named developer-buyer, ESV LLC (“Buyer”), Small Animal Hospital, LLC (“SAH”) the City of Milwaukee (“City”), the Redevelopment Authority of the City of Milwaukee (“RACM”), and, for para. 13 purposes, Buyer’s lawyer, dated as of April 15, 2002;

WITNESSETH

Whereas, Buyer wants City to foreclose against the above-referenced Parcel (i.e. 2342 N. Newhall Street) under Wis. Stat. § 75.521 so Buyer and City can act under Wis. Stat. § 75.106; and

Whereas, in reliance upon Buyer’s and SAH’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;

¹ Pamela J. Zeman is a/k/a Pamela J. Geiken-Zeman and Pamela J. Geiken.

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 2001 taxes.

2. Brownfield; Records; Environmental Assessment.

Copies of the records described on **Exhibit B** (“Records”) have been made available by City to each of Buyer, SAH, and the WI Dept. of Natural Resources (“DNR”). Buyer, SAH, 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 certain environmental assessments of the Parcel have already been conducted (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 assessments.

3. Buyer Good Standing.

Buyer represents and warrants to City **(a)** that each of Buyer and SAH is a limited liability company duly organized and existing under Ch. 183 of the Wisconsin Statutes; **(b)** that each of Buyer and SAH is in good standing; **(c)** that Buyer’s and SAH’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 exemption²; and **(e)** that neither Buyer nor SAH, nor any of their respective managers or members: **(i)** directly or indirectly own real or personal property in the City that is currently tax-delinquent or the

² 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.

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 1995 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.

Buyer's Members

Pamela J. Zeman, D.V.M.
Diane G. Bennetts, D.V.M.

Buyer's Managers

Pamela J. Zeman, D.V.M.

SAH's Members

Pamela J. Zeman, D.V.M.
Diane G. Bennetts, D.V.M.

SAH's Managers

Diane G. Bennetts, D.V.M.

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

- Existing location of Small Animal Hospital, LLC at 2163 N. Farwell Avenue.

- Other? (none).

If any of Buyer's or SAH'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 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. Upon acquiring in rem foreclosure judgment, Buyer plans on leasing the Parcel to SAH.

5. Buyer Plans for Parcel; Requisite Approvals.

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, or otherwise take all requisite action as required by the DNR Contract referred to at ¶ 11 below, (ii) demolish the existing one-story structure (with basement) on the Parcel and also the existing pavement on the Parcel, and remove all demo debris, (iii) improve the Parcel by constructing thereon a new building with a minimum of 5,600 square feet of space, and with on-site parking and landscaping, and (iv) lease the Parcel to SAH so that SAH may operate on the Parcel a veterinarian clinic with an indoor and

outdoor animal grooming and boarding business. City understands that, in such event, SAH would be relocating its existing veterinarian clinic at 2163 N. Farwell to the Parcel, and that Buyer or SAH will seek to erect signage at the Parcel relating to the veterinarian clinic and SAH's business operations at the Parcel.

Buyer and SAH understand that this Contract shall not, in any way: (a) relieve Buyer or SAH of any duty to obtain all permits, licenses and approvals as required by law to construct, improve, occupy, operate, and/or use the Parcel or any improvement thereon as contemplated above, and/or to engage in the demolition activities contemplated above (together, the foregoing are called "Requisite Approvals", and they include, but are not limited to, any necessary zoning and signage approval); and (b) be deemed as City implicitly or explicitly granting, approving or preapproving, any Requisite Approvals.

If Buyer does get judgment of foreclosure to the Parcel: Buyer agrees to complete the demolition activities and the construction of the new building thereon (such that City will have issued an occupancy certificate therefor) **within 16 months of being granted the foreclosure judgment** by the court; Buyer agrees to lease the Parcel to SAH; and SAH agrees to lease the Parcel from Buyer and operate thereon a veterinarian clinic with an indoor and outdoor animal grooming and boarding business. Buyer shall provide to City promptly after full execution of the same, a copy of the lease between Buyer and SAH.

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

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 and SAH'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 list under § 75.521(3) that City uses 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 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 and SAH understand 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.

City obtained a title insurance commitment regarding the Parcel from Chicago Title Insurance Company (Commitment No. 1117580/ COM, dated 7/16/01), but that commitment is now old and may not show all liens and judgments against the Parcel. Buyer, at its expense, shall obtain an updated title insurance commitment from Chicago Title (the “Title Report”), and, as soon as possible and, in any event, **prior to final execution of this Contract**, provide a copy of same to City (together with any document referred to therein that City may request). [see ¶ 8 and 9.B.]. Buyer understands that City is not providing, and will not provide, any title insurance to Buyer or SAH, and that if Buyer or SAH wants same, Buyer or SAH must pay for same on its own.

8. Buyer and SAH Acknowledge Risk.

Buyer and SAH freely enter this Contract despite knowing there are attendant risks, including, but not limited to the following risks. And, Buyer and SAH hereby expressly accept 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 and SAH 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, and title defects) (including, but not limited to, presence of asbestos, lead-based paint, lead, petroleum products,

volatile organic compounds, and underground storage tanks), whether those faults and defects are known or unknown, discovered or to be discovered, and whether revealed by the Records or not. Moreover, Buyer and SAH expressly assume 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 and SAH shall rely on the provisions in Wis. Stat. §§ 75.521 and 75.106, and on any title insurance they buy on their own.

B. “Parcel is Contaminated” Risk.

Buyer, SAH, and City believe the Parcel is a brownfield. § 75.106(2)(d). And, Buyer and SAH acknowledge 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 and SAH nonetheless accept the Parcel **AS-IS**.

C. In Rem Action Risks.

- (1) **Redemption Risk.** Buyer and SAH understand 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 and SAH understand 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 may 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 and SAH understand 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 and SAH acknowledge 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 shall rely on the Title Report and official records of the City Treasurer's Office. Without waiving any right Buyer or SAH may have against Chicago Title, Buyer and SAH expressly accept any risk associated with (i) failure of the Title Report, or 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 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 (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 and SAH assume 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 SAH, and Buyer and SAH are expressly aware of and take 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 or SAH may, if they so elect, 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 or SAH 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 and SAH understand 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 and SAH accept that risk and, in addition, expressly acknowledge and accept, and take subject to, the following risks.

(1) **Automatic Stay Risk.** Buyer and SAH understand that City's ability to act hereunder may be adversely affected by the filing of bankruptcy by Delinq. Owner and "automatic stay" provisions under bankruptcy law that prevent or restrict enforcement and collection matters. City's duties hereunder are contingent upon Delinq. Owner not filing bankruptcy and City not being subject to or limited by any automatic stay. City states, however, that, based on its check of bankruptcy records, Delinq. Owner does not have any current bankruptcy action or petition pending. Buyer and SAH, however, are encouraged to make their 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 and SAH understand 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 and SAH further understand 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 and SAH accept the risk of, and agree: (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.

9. **Contingencies.**

- A. **Buyer's Title Inspection Contingency.** If the Title Report Buyer obtains and provides to City under para. 7 above reveals, as an exception to coverage listed on Schedule B-II of the same, any matter that Buyer or SAH reasonably believe will adversely and materially affect Buyer's ownership of the Parcel or its intended development on the same, or SAH's intended use or occupancy, Buyer shall provide written notice of such to City (the "Title Notice") within 3 days of full execution of this Contract, specifying the particular exceptions and Buyer's or SAH's beliefs as to adversity and materiality, in which case, this Contract shall be deemed terminated and no party hereto shall have further obligation or duty hereunder, and, City may, if it desires, dismiss or not file foreclosure action against the Parcel. Failure of Buyer to provide, or to timely provide, the Title Notice shall be deemed a waiver by Buyer and SAH of this contingency and of Buyer's rights and SAH's rights under this para. 9.B.

B. Financing Contingency.

Buyer's and SAH's duties hereunder (except Buyer's duty to pay the \$1,500 as required by para. 6.B., and Buyer's duty to provide the Title Report to City as required by para. 7) are contingent upon their ability to obtain loans and grants for a total amount of at least \$1,125,800, upon such terms and conditions as are reasonably acceptable to them. Buyer and/or SAH are in the process of seeking such from third parties, and they agree to use good faith and best efforts concerning their pursuit. If Buyer and SAH are unable to obtain loans and grants for a total amount of at least \$1,125,800, they may terminate this Contract by providing joint written notice of such to City (the "Financing Termination Notice") at any time prior to the time that is 10 days after the answer period has passed in City's foreclosure action (see § 75.521(7)). If Buyer does timely provide Financing Termination Notice, then this Contract shall terminate, and no party hereto shall have further liability or duty hereunder. If, however, Buyer and SAH fail to timely provide Financing Termination Notice, then this contingency and Buyer's and SAH's rights under this para. 9.B. shall be deemed waived.

10. No Rep's or Warranties.

Buyer and SAH acknowledge that neither City nor RACM makes any representations or warranties concerning the Parcel, its title, its condition, or its fitness for development, occupancy, or use by Buyer, SAH, 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, or 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, subject to Buyer's and SAH's contingency rights above, 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.³

If Buyer does get title to the Parcel by virtue of obtaining the assignment of in rem foreclosure judgment, Buyer and SAH hereby, now and forever, and regardless of any statute of limitation defense that Buyer or SAH may otherwise be able to assert against City and RACM (which such defenses are hereby waived), release and discharge 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, 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, whether known or unknown, detected or undetected, 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 neither Buyer nor SAH caused, 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 neither Buyer nor SAH caused 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 and SAH agree, if Buyer does get title to the Parcel by virtue of obtaining assignment of in rem foreclosure judgment, to fully indemnify City and hold City harmless from and against any and all claims, demands, actions, costs, fees, fines, penalties, liability, expense, damage, or other monetary liability of whatever nature or

³ 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.

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 and SAH expressly agree, 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 and SAH 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 for Improvement and Remediation.

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 \$40,000 (“Escrow Funds”) into the trust account of Buyer’s lawyer, John J. Kastl (“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 Pamela Zeman (“Pam”), manager of Buyer. Any such consents by Commissioner and Pam shall not be unreasonably withheld.

The purpose of the escrow shall be to ensure that, after Buyer owns, Buyer remediates the Parcel per the DNR Contract and its duties hereunder, Buyer engages in the demolition activities contemplated in para. 5 above, and Buyer improves and develops the Parcel for Buyer’s and SAH’s intended use as a veterinary clinic as per Buyer’s and SAH’s plans in para. 5 above. Accordingly, it is contemplated that joint written consent to release or disburse Escrow Funds will be made to pay for post-judgment environmental inspections, environmental remediation, environmental monitoring, if any, and other costs and expenses of Buyer required or necessitated by the DNR Contract, demolition expenses, and/or for expenses associated with the development and improvement of the Parcel for a veterinary clinic with an indoor and outdoor animal grooming and boarding business. (The foregoing costs which may be withdrawn from Escrow Funds shall expressly include fees of Temco, as an environmental consultant, 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 by constructing a new building to be used for veterinarian purposes with an indoor and outdoor animal grooming and boarding business, and the City issues an occupancy permit or certificate for the new 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 veterinarian 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, demolition, and improvement.

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, neither City nor RACM shall have 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, demolition, 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, demolition, 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; and 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 \$10,000, and of 2001 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, \$10,000, 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, but not limited to, any balance of 2001 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. 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 RACM 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.

15. **MEDC Grant and Other Grants.** The Milwaukee Economic Development Corporation (“MEDC”), by letter dated 8/30/01, awarded SAH a grant (the “MEDC Grant”) in the maximum amount of \$8,283, conditioned on expenditure of at least \$16,566 for qualified site assessment and environmental testing costs. Buyer understands that City (or its Redevelopment Authority), as of 1/11/02, paid Giles \$13,487.09 for work Giles did on the Parcel. By signing this Contract, Doctors Zeman and Benetts, for themselves, SAH, and Buyer, hereby waive and rescind any right to that MEDC Grant. In turn, City agrees not to seek reimbursement or contribution from Buyer, Doctors Zeman and Benetts, or SAH concerning the \$13,487.09 spent. And, Buyer acknowledges that any further testing done on the Parcel hereunder or after Buyer becomes owner of the Parcel shall be done at Buyer's sole expense, Buyer being free, however, to seek grants and other financial aids (including other grants from MEDC) to help with Buyer's expenses. In the event Buyer does apply for or receive other grants, Buyer to provide City with copies of grant applications and notices of grant awards/denials.

DNR awarded RACM a grant (SAG-055) for \$29,900 for “demolition” and “petroleum product storage tank removal and disposal.” 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 such grant award, RACM agrees to do that work or cause it to be promptly done, in accordance with and as required by the grant award. And, Buyer and SAH, in such event, hereby agree to allow RACM (and its agents and contractors) full and undisturbed access to the Parcel so that that work may be performed. Buyer and SAH agree to cooperate (and to cause their 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 any such grant award and the work contemplated thereunder.

RACM shall require (i) that the demo contractor for the demo work under such grant award, and (ii) that Giles Engineering Associates, Inc. ("Giles") (the contractor who will be used for the removal and disposal work under such grant award), carry insurance of the types and in the amounts set forth in the 11/6/00 facsimile transmission from Gregg Hagopian to Perry Friesler, and that buyer and SAH 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, SAH, RACM, or 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, RACM's, SAH's, and Buyer's respective heirs, executors, administrators, successors and assigns. Neither Buyer nor SAH may assign this Contract (or any interest or right therein) to any person or entity unless Buyer or SAH, as the case may be, has first obtained City's express written consent.

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

Prior to signing this Contract, Buyer and SAH have reviewed whatever federal, state, and local law they 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 and SAH'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 SAH's legal counsel or consultant). Buyer and SAH freely enter this Contract.

19. Common Council Approval and Treasurer Affidavit.

Buyer and SAH understand 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 and Mayor do approve this Contract and assignment, after this Contract has been fully signed, and so long as Buyer is not in breach hereunder, 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 ¾ vote of all Common Council members.

Buyer and SAH further understand 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 otherwise personally delivered, **(ii)** if sent by facsimile or e-mail during business hours (i.e. 8:30 A.M to 4:30 P.M., Monday through Friday) on nonlegal holidays, 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 or SAH:

Dr. Pamela J. Zeman
c/o Small Animal Hospital, LLC
2163 North Farwell Ave.
Milwaukee, WI 53202
Phone: (414) 276-0701
Facsimile: (414) 276-7019
E-mail: zemangeiken@milwpc.com

With copy to: John Kastl
2112 Crestview Court
Wauwatosa, WI 53226
Phone: (414) 258-4319
Facsimile: (414) 258-4319
E-mail: kastl@execpc.com

With further copy to:
Thomas Mueller
TEMCO
P.O. Box 856
Cedarburg, WI 53012-0856
Phone: (262) 675-6000
Facsimile: (262) 675-6170
E-mail: tjmueller@temco-llc.com

If to City or RACM:

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 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@ci.mil.wi.us

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, do demolition work, and/or to improve it as called for herein, and with the exception of the contemplated lease of the Parcel from Buyer to SAH, Buyer and SAH covenant 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 a new building on the Parcel with at least 5,600 square feet, neither Buyer nor SAH shall sell, lease, sublease, 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 and SAH agree to execute further documentation as City may reasonably request to evidence such covenant.

22. Survival of Buyer's and SAH's Covenants.

Buyer's and SAH'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.

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 typical “force majeure” ones such as, strikes, war, adverse weather and other acts of God, labor or material unavailability or shortages, embargos, etc.

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

BUYER: ESV LLC

CITY: CITY OF MILWAUKEE

By: _____
Dr. Pamela J. Zeman, Member
And Manager

By: _____
John O. Norquist, Mayor

Attest: _____
Ronald D. Leonhardt, City Clerk

By: _____
Dr. Diane G. Benetts, Member and Manager

Countersigned by: _____
W. Martin Morics, Comptroller

SAH: SMALL ANIMAL HOSPITAL, LLC

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

By: _____
By: _____

By: _____
Name Printed: _____
Title: _____
Attest: _____
Name Printed: _____
Title: _____

BUYER’S LAWYER (for ¶ 13 purposes only)

John Kastl

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 B RECORDS

1. 9/7/01 Asbestos Identification Survey and Special Construction Demolition Debris Survey, prepared by Giles.
2. Historical Land Use Investigation, 2342 N. Newhall (City Phase I), dated 11/22/00.
3. 7/98 AES Consultants Report.
4. 9/7/01 letter from Giles to Rudy Salcedo, "Proposal for UST Removal, Site Investigation and Remedial Action Plan Development", \$47,966.
5. Chicago Title title commitment, no. 1117580, dated 7/16/01.
6. 8/1/01 letter from City to Giles, "Magnetometer Survey, WDNR File Review, Asbestos Survey, and Hazardous Materials Identification Survey", City's notice of contract award for \$16,566 work.
7. Special Inspection Warrant and Order, signed by Court on 5/15/01, Milw. Co. Circ. Ct. Case No. 01-CV-004327, together with City's petition therefore and supporting affidavits.
8. Information from State D.F.I. on Milwaukee Waste Paper Company.
9. 7/17/01 Giles Proposal (\$16,566).
10. 8/22/01 Giles Soils Analytical Results.
11. 8/22/01 Giles Groundwater Analytical Results.
12. 8/30/01 MEDC Grant Award Letter to Dr. Geiken-Zeman.
13. Materials that TEMCO submitted with respect to Buyer's or SAH's efforts to obtain grant funds from the State Department of Commerce or the State Department of Natural Resources.
14. Brownfield Site Assessment Grant Application.
15. Department of Commerce Brownfield Grant Application.