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September 25, 2017

Alderman James Bohl  
5<sup>th</sup> Aldermanic District  
City Hall – Room 205

Re: Detailed Planned Development ("DPD") for the Property Located  
at 1550 N. Prospect Avenue

Dear Alderman Bohl:

On September 14, 2017, pursuant to a request from Alderman Bauman, this office issued an opinion regarding the Legality of Contract Between the City and a Property Owner Requiring Compliance with Small Business Enterprise ("SBE") and Resident Preference Program ("RPP") Participation Percentages as a Condition of Detailed Planned Development ("DPD") Approval. In short, our opinion was that such a contract would be illegal.

Subsequent to Alderman Bauman's written request for the opinion described above, he introduced Common Council File Number 170817, "Resolution relating to Memorandum of Understanding between Goll Mansion LLC and the City of Milwaukee for the provision of community benefits and preservation of the Frederick T. and Eleanor Goll House in conjunction with Goll Mansion LLC's development of the property located at 1550 North Prospect Avenue." (the "Resolution").

In addition to the SBE and RPP requirements discussed in our September 14, 2017 opinion, the Resolution directs the City to enter an agreement with Goll Mansion LLC (the "Developer") which requires the Developer to place \$1,000,000 in an escrow account prior to receiving any permits for the Developer's plan to move, restore, and preserve the Goll Mansion to the satisfaction of the City's Historic Preservation Commission ("HPC"). The Resolution provides that should the Developer "successfully move[] the Goll Mansion, and properly restore[] and preserve[] it upon relocation, as determined by the Historic Preservation Commission then the escrowed funds are to be returned to the Developer. If however, the Developer fails to complete the relocation, restoration, and preservation of



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the Goll Mansion, the escrowed funds are to be moved to the Housing and Infrastructure Preservation Fund.”

As discussed in our September 14, 2017 opinion, both Wis. Stat. § 62.23(7) and Milwaukee Code of Ordinances 295-907 limit the subject matter of Detailed Planned Development (“DPD”) agreements to items of land use. While a requirement that a Developer properly move, restore, and preserve the Goll Mansion may be a proper land use related subject for a DPD agreement, we believe that requiring a \$1,000,000 deposit into an escrow account is not, nor is it a proper pre-condition for obtaining the zoning approval required for a land development project to proceed.<sup>1</sup>

For the same reasons set forth in our September 14, 2017 opinion as to why the SBE/RPP provisions would be an impermissible inclusion in a DPD agreement, requiring the deposit of \$1,000,000 in an escrow account to be forfeited to the City upon unsatisfactory completion of the relocation, restoration, and preservation of the Goll Mansion, is also an impermissible subject for a DPD Agreement.

Very truly yours,



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JRM:lmc

c: James Owczarski  
Rocky Marcoux  
Ald. Robert Bauman

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<sup>1</sup> This assumes of course that the Developer is amenable to such a requirement, as Wis. Stat. §62.23(7)(b) permits the City to establish planned development districts only “with the consent of the owner[.]”