

**Name and Return Address:**

City of Milwaukee  
DCD - Real Estate Section (Turim)  
809 North Broadway, 2nd Floor  
Milwaukee, WI 53202-3617

Tax Key No.: See **Exhibit A**.

**Drafted By:** Gregg Hagopian, Assistant City Attorney, City of Milwaukee. GH 11-12-2019, CAO Doc 264656

Recording Area

THIS SCATTERED SITES NO. 2 PURCHASE AND SALE AGREEMENT (“**Agreement**”) is between the **CITY OF MILWAUKEE** (“**City**”), a municipal corporation existing under Wisconsin law, and **MILWAUKEE SCATTERED SITES NO. 2, LLC**, a Wisconsin limited liability company (“**MSS2**”), with offices located at 200 North Main Street, Oregon, WI 53575, and is dated as of **DECEMBER \_\_, 2019**, and is for good and valuable consideration, receipt and sufficiency of which are acknowledged. City and MSS2 hereby agree as follows.

**SEC. 1. SALE**

City agrees to sell and MSS2 agrees to buy, the properties identified in **Exhibit A** and legally described in **Exhibit B** (individually and collectively “**Property**”) on the terms and conditions contained herein.

**SEC. 2. PROJECT DESCRIPTION**

MSS2 shall develop and improve the Property as follows and these activities constitute the “**Project**”:

1. Rehabilitate the residential structures on the Property pursuant to **Sec. 3** (including landscaping that may be required) in accordance with applicable laws and requisite permits and so that the City issues a Certificate of Code Compliance (“**COCC**”) for each such rehabbed structure and Property.
2. Finance the Project in part with state and federal low-income housing tax credits (“**LIHTC**”) allocated by the Wisconsin Housing and Economic Development Authority (“**WHEDA**”), together with permanent loans, and construction loan financing.
3. Operate the Project as affordable housing units in accordance with Section 42 of the U.S. Code (“**Section 42**”) and as required by applicable WHEDA and LIHTC requirements for the duration of the compliance period (as defined in Section 42) (the “**Compliance Period**”).

**SEC. 3. MSS2 REHAB ACTIONS FOR PROJECT**

(a) In connection with the Project, MSS2 shall:

1. Submit a final construction budget and evidence of financing for the Project, approved by the Department of City Development (“**DCD**”) at or prior to Closing (defined in **Sec. 5(a)**).
2. Conduct a closing with MSS2’s equity investor and construction lender simultaneously with the Closing for the Property or within 10 days of Closing.
3. Commence construction of the Project within **30 days** following Closing for the Property and complete same within **24 months** following Closing, subject only to the forced delay/force majeure section below, and per the Plans.
4. Be responsible for all site development, rehab and Project expenses.

MSS2 must satisfy City Building Code requirements. *By the **24-month** deadline above, MSS2 must obtain a COCC for the Property and the DCD Commissioner issued CC (defined in **Sec. 7** below).*

(b) **NSP**. At Closing, MSS2 shall execute an agreement with the City for NSP funding in form and substance meeting DCD’s approval and mutually acceptable to MSS2 and City.

#### **SEC. 4. PURCHASE PRICE & OTHER COSTS/FEES**

(a) **Purchase Price**. The Purchase Price for the Property is \$43.00 (\$1.00 per parcel) (“**Purchase Price**”). MSS2 shall pay the Purchase Price to City at Closing, by cashier’s check or by wire transfer to City’s account, subject to usual and customary credits and prorations (as applicable).

(b) **RACM Administrative Fee; Triangle Money Balance**. On or before Closing, MSS2 shall produce a letter signed on behalf of MSS2 and Century City Homeowner’s Initiative, LLC, a Wisconsin limited liability company (“**Entity**”), the entity that had paid \$25,000 to the Century City Redevelopment Corporation (“**CCRC**”) for the Century City Triangle Neighborhood project (“**Triangle Money**”). The letter must be in form and substance approved by DCD and reflect that MSS2, the Entity, City, CCRC and the Redevelopment Authority of the City of Milwaukee (“**RACM**”) agree that the Triangle Money balance is now \$21,200, that the Triangle Money balance has been and is being held by RACM, that CCRC and MSS2 and Entity, give up rights in and to the Triangle Money balance and direct that it be paid to RACM, as RACM’s sole property, for an administrative, Closing, and legal fee required hereby. City shall cause RACM and CCRC to join in the execution of such letter confirming that RACM and CCRC agree to its terms.

(c) **City DNS Costs; Raze Order**. At Closing, City and MSS2 shall each pay 50% of the DNS costs listed on **Exhibit A**. MSS2 shall pay its share by cashier’s check or by wire transfer to City’s account at Closing. At or prior to Closing, MSS2 shall pay Knight Barry to record a satisfaction or rescission of the Raze Order recorded as ROD Document No. 10395818 (2646-2648 North 37th Street), which document City shall provide, signed by City. MSS2’s Project includes rehabbing the structure that is the subject of this Raze Order.

(d) **City Broker Fees**. MSS2 acknowledges that the City has been holding the Property off the market while MSS2 was waiting for acknowledgment about a WHEDA LIHTC award for the Project, and that City listing brokers had certain parcels removed from listing as a result of such actions. Those parcels are identified in **Exhibit A** with a “Broker Cost” column. On or before Closing, MSS2 shall pay, in good funds, the “Broker Costs” shown on **Exhibit A**, together with an additional Broker Cost of \$500 for 2205-2207 North 39th Street, Ogden Real Estate. City provided invoices from each broker entitled to receive any portion of the “Broker Costs” (the “**Eligible Brokers**”). The City hereby represents and warrants to MSS2 that no brokers or agents are entitled to a commission or other form of compensation

with respect to the Property or the transactions contemplated under this Agreement arising from any act or omission on the part of the City, except the Eligible Brokers, whether acting as buyer's agent, seller's agent or subagent. MSS2 hereby represents and warrants to the City that no brokers or agents are entitled to a commission or other form of compensation with respect to the Property or the transactions contemplated under this Offer arising from any act or omission on the part of MSS2, including any subagents and cooperating agents of such broker.

(e) **Performance Deposit.** MSS2 shall pay, at Closing, by cashier's check or by wire transfer to City's account, a Performance Deposit to RACM in the amount of **\$10,000 ("Deposit")**. The Deposit shall serve as security for the performance of MSS2's obligations to construct and rehabilitate, and complete the Project, as provided herein. DCD shall authorize return of the Deposit concurrently with its formal approval of the CC pursuant to **Sec. 7** or shall retain the Deposit if MSS2 does not successfully and timely complete the Project as called for herein. No interest shall be paid on the Deposit.

(f) **Recording Costs – Deed & Agreement.** MSS2 shall have Knight Barry Title, Inc. ("**Knight Barry**"), at MSS2's expense, promptly record this Agreement with the Milwaukee County Register of Deeds ("**ROD**") at Closing. At Closing (defined below), MSS2 will also have Knight Barry record the Deed. MSS2 shall pay all fees for recording. No real estate transfer fee is due with respect to the Deed (Wis. Stat. 77.25 (2)). MSS2 and the City shall provide information necessary to complete the Real Estate Transfer Return.

(g) **DNS Property Ownership and Vacant Building Registration Programs.** MSS2 shall, at its expense, and on or before Closing, register the Property as required by the City Department of Neighborhood Services ("**DNS**") Property Recording Program (MCO 200-51.5) and by the DNS Vacant Building Registration Program (MCO 200-51.7). MSS2 shall provide DCD with copies of any MCO 200-51.7 (5)(d) exemption that it provides to DNS. MSS2 shall pay the registration fees to City in accordance with City ordinances.

(h) **Prorations.** Taxes and utility charges, if any, shall be prorated to the date of Closing.

(i) **Special Assessments; Special Charges.** City is responsible for all special assessments levied against the Property prior to Closing, and MSS2 is responsible for all special assessments levied after that date. MSS2 is responsible for all special charges and improvement district charges levied against the Property. MSS2 will have Knight Barry order special assessment letters at MSS2's expense.

## **SEC. 5. CONVEYANCE OF PROPERTY; CLOSING**

(a) **Closing.** Closing on this transaction and conveyance of the Property from City to MSS2 ("**Closing**") shall be conducted at a date and time mutually agreed to by the parties, which shall be no later than **December 30, 2019**, and which shall take place at Knight Barry Title Insurance Company at 201 East Pittsburgh Avenue, Milwaukee or by escrow per escrow agreement approved by Knight Barry, MSS2 and City, provided MSS2 is not in breach of this Agreement, and has satisfied the City closing contingencies and requirements in this **Sec. 5** and in **Sec. 4** above. MSS2 shall pay Knight Barry's closing fee and escrow fee.

(b) **City Closing Contingencies.** Notwithstanding anything to the contrary contained herein, the City's duties to Close and convey the Property are contingent upon:

1. **Financing and/or Equity.** MSS2 submitting to City on or before Closing evidence of financing without contingencies and/or equity in an amount sufficient to complete the Project and equal to the **Final Budget**, meeting DCD's approval.
2. **NSP and Escrow.** MSS2 and City agreeing upon NSP funding documents, and a Closing Escrow Agreement, and signing same on or before Closing.
3. **Other.** MSS2 meeting its other duties hereunder required to be met by Closing (including those in **Sec. 4** above and in the rest of this section).
4. **Buyer Policies.** MSS2 being in compliance with the City buyer policies in subsection (e) below and in MCO 304-49-9.

(c) **Form of Deed; AS IS.** City shall, at Closing and upon submission of the Purchase Price, convey the Property to MSS2 by Quit Claim Deed ("**Deed**") in the form attached as **Exhibit C** in "**as is, where is**" condition with all faults and defects, known or unknown, physical or otherwise, including but not limited to environmental and geotechnical defects, whether disclosed or not disclosed, known or unknown, and without representation or warranty, express or implied. The Property may contain old building foundations, rubble and debris, lead-based paint, and asbestos-containing material, and may be serviced by lead laterals. These "as is" provisions bar all tort, warranty, and misrepresentation claims, including any action based on non-disclosure. Besides the "as is" nature of the conveyance, MSS2 understands it will take title subject to: applicable federal, state and local laws; easements and matters of record; matters that would be revealed by accurate survey; and also:

1. **Restrictive Covenant** against property-tax exemption as provided in the Deed;
2. **Restrictive Covenant** requiring joinder of the vacant lots being conveyed to the adjacent improved lot as provided in the Deed;
3. **This Agreement** including City's retained reversionary interest set forth in this Agreement.

(d) **Title Insurance; Surveys.** City shall not provide evidence or insurance of title or surveys. MSS2 shall, at its expense, obtain a title insurance commitment for the Property from Knight Barry together with special assessment letters, and MSS2 shall provide copies of same to City prior to Closing (along with any updated commitments or endorsements that MSS2 may require). City shall execute customary title affidavits and a gap indemnity if MSS2 requires limited to the best of City's knowledge.

MSS2 shall provide City, upon City request, with copies of any survey MSS2 obtains for the Property.

(e) **City Buyer Policies.** Pursuant to City policy and MCO 304-49-9, City will not sell property to any buyer if the buyer or an entity related to buyer:

1. is tax delinquent in the payment of any property tax (real or personal property), special assessment, special charge or special tax to the City;
2. has an outstanding City judgment against it;
3. has outstanding building or health code violations or orders from the City's Health Department or DNS that are not actively being abated;
4. has been convicted of violating an order of the Health Department or DNS within 12 months preceding Closing;
5. has lost property to City property-tax foreclosure within 5 years preceding Closing.

MSS2 represents that neither it nor its related entities violate the City buyer policies. If City determines a violation exists, City shall give MSS2 notice to correct the violation by Closing or other such period as

determined by the DCD Commissioner. If the violation is not corrected within the specified period, this Agreement may be terminated at the option of the City and City shall have no duty to Close.

## **SEC. 6. PRE-CLOSING ACCESS**

Prior to Closing and conveyance of the Property, City shall permit representatives of MSS2 to have access to the Property, at reasonable times and subject to the provisions herein, for the purpose of MSS2 obtaining data and making various tests and inspections that will facilitate the Project, but MSS2 may not undertake rehab work until after Closing. Prior to any such entry, MSS2 shall provide DCD with written notice of desire to enter, Property address, and purpose of entry, and MSS2 shall submit evidence of insurance according to City's minimum guidelines and meeting DCD's approval. MSS2 shall await DCD's approval to enter prior to entering. Data and inspection results must be shared with City upon DCD request. Any pre-Closing entry is at MSS2's sole risk, and MSS2 shall indemnify and hold City harmless regarding any damage, expense, claim, or injury to person or property resulting from any such entry. MSS2 is responsible for restoring any disturbance to preexisting condition in the event that Closing does not occur. After Closing and conveyance of the Property to MSS2, MSS2 shall permit City representatives access to the Property at reasonable times for purposes of this Agreement, including, but not limited to, inspection of all work being performed in connection with the Project. No charge shall be made by any party for the access provided for in this section.

## **SEC. 7. CERTIFICATE OF COMPLETION**

Promptly after completion of the Project (including rehab and landscaping), in accordance with this Agreement, MSS2 shall request that the DNS Commissioner issue a COCC for the Property and that the DCD Commissioner issue a Certificate of Completion ("CC") for the Project and return the Deposit. ***The issuance of the CC and recording of same in the ROD Office shall be conclusive determination of satisfaction and termination of the covenants in this Agreement and the Deed with respect to the obligations of MSS2 to undertake and complete the Project and the dates for the beginning and completion thereof, and shall terminate City's reversionary interest.***

Representatives of the City shall inspect the Property within **30** days following receipt of MSS2's request to determine if the work has been completed according to City-approved Plans and this Agreement. If the Property is determined to be in conformance, and *so long as the DNS Commissioner has issued the COCC for the Property*, the DCD Commissioner shall execute the CC within 30 days of the inspection and shall present the CC to MSS2. If the DCD Commissioner refuses to authorize the CC, the City shall within 30 days of the Property inspection provide MSS2 with a written statement indicating in adequate detail how MSS2 failed to complete the Project in conformity with approved Plans or this Agreement, or is otherwise in default, and what measures or acts are necessary, in the opinion of the DCD Commissioner, for MSS2 to take or perform in order to obtain the CC. Concurrent with DCD Commissioner's consideration of the request for the CC, the City shall consider return of the Deposit. All or part of the Deposit may be retained by the City (as its sole property) if the Project is not completed, and/or not timely completed, in accordance with this Agreement. A check for the amount of Deposit authorized for return by the City shall be provided within 10 days of issuance of the CC by the City.

Notwithstanding the above, MSS2 may request COCC's for any individual parcels of Property timely completed per this Agreement, providing however that City has no duty to make release or return of the Deposit or any part thereof until the CC is issued, and the City may retain the entire Deposit if the entire Project is not completed timely or completed as otherwise required hereby.

**SEC. 8. RESTRICTIONS ON USE**

MSS2 agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, to:

- (a) Devote the Property to use as affordable housing in accordance with this Agreement for the duration of the Compliance Period pursuant to Section 42 and as required by applicable WHEDA and LIHTC requirements and in accordance with applicable NSP funding requirements.
- (b) Not discriminate upon the basis of race, color, creed, sex, religion, or national origin in the sale, lease or rental, or in the use or occupancy of the Property or any improvements located or to be erected thereon, or any part thereof.
- (c) Comply with all requirements of the Americans with Disabilities Act of 1990, U.S.C. #12101, et. seq.

**SEC. 9. AFFORDABLE HOUSING COVENANT & ANTI-DISPLACEMENT CC 190401**

MSS2 on behalf of itself and any successor in interest agrees, for the benefit and in favor of, and enforceable by, any of the City, the State of Wisconsin and/or the United States, that MSS2 shall operate the Property as affordable housing for the duration of the Compliance Period pursuant to Section 42 and as required by applicable WHEDA and LIHTC requirements.

In that less than 20 units in zip codes 53204, 53208, 53212, and 53233 are involved in the Project, the City’s Anti-Displacement Neighborhood Preference Policy from City Common Council Resolution No. 190401 does not apply.

**SEC. 10. TRANSFER OF PROPERTY; PERMITTED SUCCESSORS**

MSS2 has not made or created, and (except as otherwise permitted by this Agreement) will not, prior to the completion of the Project as certified by DCD (by CC issuance), make or suffer to be made any other sale, assignment, conveyance, lease or transfer in any other form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or contract or agree to do any of the same, without the prior written approval of the DCD Commissioner, provided that MSS2 may, after written notice to the City, assign or transfer to an entity which has the substantially similar ownership as MSS2 who agrees to be bound hereby. A transfer of an interest in the MSS2 entity or any member thereof is not a transfer of interest in the Property or an interest in this Agreement.

Until Project completion as certified by DCD (by CC issuance), MSS2 must be in compliance with all the City Buyer Policies.

Notwithstanding the foregoing, City consent is not required for:

- (a) any foreclosure action or sheriff sale under Wis. Stat. Ch. 846 by the mortgage lender or its nominee or designee pursuant to foreclosure proceedings;
- (b) conveyance of the Property to mortgage lender or its designee or nominee in lieu of foreclosure;
- (c) any sale or conveyance by mortgage lender or its nominee or designee after acquisition of title pursuant to either (a) or (b);

(d) a mortgage to a mortgage lender to secure financing for the Project in accordance with **Sec. 11** below;  
or

(e) lease of a Property to a tenant for affordable housing as contemplated by the Project.

The foregoing (a) through (e) persons/entities are herein called “**Permitted Successors.**” Any transfer described in this Section shall be subject to the provisions of this Agreement.

## **SEC. 11. LIMITATION UPON ENCUMBRANCE OF PROPERTY**

Prior to issuance of the CC, neither MSS2 nor any successor in interest to the Property shall engage in any financing or any other transaction creating any mortgage or other encumbrances or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property except for the purposes only of obtaining: **(a)** funds only to the extent necessary for the Project (and the construction and rehabilitation required thereby); and **(b)** materials and supply contracts and construction/rehab contracts necessary for the Project.

Until issuance of the CC, MSS2 shall notify the City in advance of any financing secured by mortgage or other similar lien instrument it proposes to enter into with respect to the Property and of any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of MSS2 or otherwise.

## **SEC. 12. MORTGAGEES NOT OBLIGATED TO CONSTRUCT**

Notwithstanding anything to the contrary contained herein, the holder of any mortgage authorized by this Agreement (including any holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof - but not including **(a)** any other party who thereafter obtains title to the Property or such part from or through such holder, and **(b)** any other purchaser at foreclosure sale other than the holder of the mortgage itself - shall not be obligated by the provisions of this Agreement to complete the Project construction or rehabilitation or to guarantee such completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder.

## **SEC. 13. FORCED DELAY IN PERFORMANCE; FORCE MAJEURE**

Neither the City nor MSS2 shall be considered in breach or default of its obligations with respect to this Agreement or the Project in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control, without its fault or negligence, and that occur despite good faith efforts to circumvent and that constitute “force majeure.” The time for the performance of the obligations shall be extended for the period of the forced delay, as determined by City, if the party seeking the extension shall request it in writing of the other party within 10 days after the beginning of the forced delay.

## **SEC 14. REMEDIES**

(a) **General.** In the event of breach of this Agreement, the parties have their respective rights hereunder, and those available at law and in equity. City expressly retains all rights under Wis. Stat. 893.80.

(b) **Prior to Conveyance.** If, prior to City’s conveyance of the Property, MSS2 assigns or attempts to assign this Agreement or any rights hereunder (without City’s prior written consent) or fails to pay the Purchase Price and take title to the Property upon City’s offer of conveyance, the City may, at its option,

terminate this Agreement and retain any fees submitted by MSS2 as liquidated damages or sue for specific performance.

(c) **Notice of Breach and Right to Cure.** Except as otherwise provided herein, in the event of default or breach (“**Default**”) by either party hereto, the defaulting party shall, upon written notice from the other, cure or remedy such Default within 30 days after receipt of notice and demand to cure providing, however, that if the Default is one that cannot reasonably be cured with said 30 days, the defaulting party must diligently and faithfully pursue cure, and if the Default is not then remedied or cured with a reasonable time, or if the defaulting party fails to faithfully and diligently pursue cure, then (in any of the events described above) the aggrieved party may institute such proceedings and/or take such action to secure any rights as the aggrieved party may have available to it hereunder or at law or in equity, including, but not limited to, an action to compel specific performance and/or seeking damages. **Investor Member** and **Lender** (as respectively identified in the “notice” section below) may cure any Default by MSS2 hereunder on the same terms as MSS2. City shall give Investor Member and Lender notices as per the “notice” section below.

(d) **Waiver.** No delay, waiver, omission or forbearance on the part of any party to exercise any right or power arising out of any other party’s Default shall be deemed a waiver by that party of such right or power against the other party for any subsequent Default.

(e) **City’s Retained Reversionary Interest.**

1. **City’s Right to Reverter.** Notwithstanding anything to the contrary contained herein, or in the Deed, if subsequent to conveyance of the Property to MSS2 and prior to issuance of the CC:
  - i. MSS2 or any successor defaults on or violates its obligations with respect to the Project, including the nature of, and the dates for beginning and completion there, or abandons or substantially suspends construction, and any such default, violation, abandonment or suspension shall not be cured, ended or remedied with 90 days after City written demand so to do; or
  - ii. MSS2 or any successor fails to pay real estate taxes, special assessment or special charges on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy, lien, or attachment to be made, or any materialman, mechanic, or construction lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessment shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to City made for such payment, removal or discharge, within 90 days after City written demand so to do; or
  - iii. there is any transfer of the Property or any part thereof in violation of this Agreement, and such violation shall not be cured within 90 days after City written demand;

then the City shall have the right to reenter and take possession of the Property and to record against the Property in the Milwaukee County Register of Deeds Office a “**Notice of Reverter.**”

City’s reversionary right is a material provision of this Agreement, without which, City would not have entered into this transaction.

MSS2 agrees that the recording of such Notice of Reverter shall have the effect of delivering and recording a deed from MSS2 to City, and shall automatically terminate all of the MSS2’s right, title and interest in



and to the Property (and any interest of any successor that has taken title from or through MSS2, except Permitted Successors) and revert in City, subject to rights of Permitted Successors, the full estate conveyed by the Deed. Any reversion pursuant to this subsection shall be subject to mortgages and liens of record as permitted under **Sections 10 and 11** of this Agreement. The intent of this provision, together with other provisions of this Agreement, is that the conveyance of the Property to MSS2 pursuant and subject to this Agreement shall be made upon a condition subsequent to the conveyance that in the event of any default, failure, violation, breach or other action or inaction by MSS2 specified in subsections (a)(1)(i), (ii), or (iii) above, and the failure on the part of MSS2 to remedy, end, abrogate or otherwise cure such default, failure, violation, breach or other action or inaction, within the period and in the manner stated in such subdivisions, City at its option may effect a termination of the estate conveyed to MSS2 in favor of City in which case all rights and interests of MSS2 (and of any successor or assign to MSS2 or the Property, except Permitted Successors), shall revert to, and thereafter be solely and fully vested in, City. And such reversion of title in City shall be subject to, limited by, and shall not defeat, render invalid or limit **(a)** the lien of any mortgage authorized by this Agreement, **(b)** any right or interest provided in the Agreement for the protection of the holder of such mortgage, and **(c)** any right of any Permitted Successor, including any lessee from MSS2 authorized by this Agreement.

As this is a scattered site development Project, City may exercise its reversionary rights against any or all parcels that comprise the Property.

Notwithstanding the foregoing, City agrees that it shall not exercise its right to revert pursuant to this section or record a “Notice of Reverter” with respect to the Property (or any parcel comprising the Property) (each a “**Reverter Remedy**”) unless and until Investor Member and Lender have first been given 30 days’ written notice of the default or Defaults giving rise to the City’s right to complete such Reverter Remedy and Investor Member and Lender have failed, within such 30 day period to cure such default(s) and/or Default(s), as applicable, provided, however, that City shall be entitled during such 30 day period to continue to pursue all of its rights and remedies under this Agreement. City shall give Investor Member and Lender notices as per the “notice” section below.

2. **Deposit.** If City exercises its reversionary right as set forth above, City may also retain the Deposit.

3. **Resale of Re-Acquired Property; Disposition of Proceeds.** Upon the reversion in the City of title to the Property or any part thereof due to City’s exercise of its reversionary rights, City shall use best efforts to resell the Property or part thereof (subject to rights of Permitted Successors) as soon and in such manner as the City shall find feasible and consistent with the objectives of applicable law to a qualified and responsible party or parties (as determined by the City) who will either **(a)** assume the obligation of making or completing the Project as shall be satisfactory to the City, or **(b)** agree to undertake such other project at the Property as shall meet City’s reasonable approval (or, alternatively, the Project with such modifications to which City may agree).

Upon City resale of the Property (or part thereof) the proceeds thereof shall be applied:

(a) First, to reimburse the City, on its own behalf or on behalf of the City, for all costs and expenses incurred by the City, including, but not limited to, salaries of personnel in connection with the reversion in title, management and resale of the Property or part thereof (but less any income derived by the City from the Property or part thereof in connection with such management); all taxes, assessments, and utility, water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the City, an amount, if paid, equal to such taxes, assessments or charges (as determined by the City

assessing official) that would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of MSS2, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Project (or such modified or alternate project as City may establish or to maintain the Property), and any amounts otherwise owing the City by MSS2 and its successors or transferee; and

(b) Second, to the extent of available funds, to reimburse MSS2, its successor or transferee, up to the amount equal to the sum of the net Purchase Price paid by it for the Property (or allocable to the part thereof) and the cash, labor and material actually invested by it in performing any construction on or rehabilitation of the Property or part thereof as part of the Project, less any gains or income withdrawn or made by it from the Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by City as its property.

#### **SEC. 15. CONFLICT OF INTEREST: CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE**

No City member, official or employee shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No City member, official or employee shall be personally liable to MSS2 or any successor in the event of any City default or breach or for any amount which may become due to MSS2 or successor or on any obligations under the terms of this Agreement.

#### **SEC. 16. INDEMNIFICATION**

MSS2 agrees to defend, indemnify and hold harmless City and its respective officers, agents and employees, from and against all claims, demands, damages, liability, suits, judgments and decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever that may come or be asserted against City on account of: (a) MSS2's (or anyone acting for or at the direction of, or anyone claiming by, through, or under MSS2) pre-acquisition entry onto or investigations at the Property; and (b) if MSS2 closes on this transaction and becomes owner of the Property, the condition of the Property, including environmental and geotechnical; provided, however, that if City takes title to the Property, or any part thereof, pursuant to any rights of reverter contained herein, the foregoing indemnification shall not apply to any conditions of the Property which existed prior to the date of Closing and shall only be effective with respect to conditions created by MSS2. The provisions in this Section shall survive completion of the Project, recording of the Certification and any termination of this Agreement.

#### **SEC. 17. PROVISIONS NOT MERGED WITH DEED**

No provision of this Agreement is intended to or shall be merged by reason of any deed transferring title to the Property from the City to the MSS2 or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement. At Closing, this Agreement shall be recorded with the Milwaukee County Register of Deeds at MSS2's expense.

## **SEC. 18. GOVERNING LAW**

This Agreement shall be construed according to Wisconsin Law.

## **SEC. 19. PUBLIC RECORDS**

This Agreement and certain documents relating hereto are, or may be, subject to Wisconsin's Open Records Law (Wis. Stat. Chapter 19, Subchapter II and Wis. Stat. 19.36 (3), which includes or may include records produced or collected hereunder). MSS2 agrees to cooperate with City if City receives a request under Wisconsin's Open Records Law for any such record.

## **SEC. 20. SUCCESSORS AND ASSIGNS.**

This Agreement is binding upon the parties hereto and their successors and assigns, including successors in interest to the Property. Notwithstanding the foregoing, until issuance of the CC, except as otherwise expressly provided herein, MSS2 may not assign this Agreement or its rights hereunder without City's prior written consent.

## **SEC. 21. APPROVALS**

In any instance in which City's approval or consent and/or the approval or consent of the DCD Commissioner is required under this Agreement, such approval or consent shall not be unreasonably withheld or delayed.

## **SEC. 22. NOTICES**

Notices required to be sent under this Agreement shall be in writing and given either by personal delivery, by U.S. mail postage prepaid or other nationally recognized commercial delivery service (such as UPS or Fed Ex), or by email or facsimile to the following individuals. Notices personally delivered shall be deemed delivered upon actual receipt or upon refusal to accept delivery. Notices sent by U.S. mail or commercial delivery service shall be deemed delivered two business days after mailing. Notices sent by facsimile or email shall be deemed delivered on the date of sending – providing, however, no error or similar message indicating inability to send is prompted by the sending of such notice by facsimile or email. Notice recipient and sending information may be changed from time to time by sending written notice of the same to all parties in accordance with this paragraph.

**IF TO CITY**

Amy Turim  
City Real Estate Officer  
Department of City Development  
809 North Broadway, 2<sup>nd</sup> Floor  
Milwaukee, WI 53202-3617

Phone: 414-286-5732  
Facsimile: 414-286-0395  
Email: aturim@milwaukee.gov

**With Copy to**

Gregg Hagopian  
Asst. City Attorney  
841 North Broadway, 7<sup>th</sup> Floor  
Milwaukee, WI 53202

Phone: 414-286-2620  
Facsimile: 414-286-3967  
Email: ghagop@milwaukee.gov

**IF TO MSS2**

Milwaukee Scattered Sites No. 2, LLC  
c/o Gorman & Company, Inc.  
Attn: President  
200 North Main Street  
Oregon, WI 53575

Phone: 608-835-5513  
Facsimile: 608-835-5568  
Email: bswanton@GormanUSA.com

**With Copy to**

Atty. Stephen Elliott  
Rhinehart, Boerner, Van Deuren, S.C.  
1000 North Water Street, Suite 1700  
Milwaukee, WI 53202

Phone: 414-298-8257  
Facsimile: 414-298-8097  
Email: selliot@reinhardtllaw.com

**With Copy to Investor Member**

Cinnaire Fund for Housing 34 Limited Partnership  
c/o Cinnaire-34, Inc.  
1118 South Washington  
Lansing, MI 48910  
Attn: Christopher C. Cox, CFO  
Phone: 517-364-8908

**With a copy to:**

Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Attn: Max Crawford, Esq.

Phone: 402-661-8642  
Facsimile: 402-346-1148  
Email: maxwell.crawford@kutakrock.com

	<p><b>With Copy to Lender</b></p> <p>Wisconsin Housing and Economic Development Authority 201 West Washington Avenue, Suite 700 Madison, WI 53703 Attn: General Counsel</p> <p>Phone: 1-800-334-6873 Fax: 608-267-1099 Email: matt.fortney@wheda.com</p>
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**SEC. 23. SPECIAL PROVISIONS**

(a) MSS2 will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. MSS2 agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City or the Wisconsin Department of Industry, Labor and Human Resources setting forth the provisions of this nondiscrimination clause.

(b) MSS2 will include the provisions of Paragraph (a) in every construction contract for this property, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provisions will be binding upon each such contractor or subcontractor, as the case may be.

**SEC. 24. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall constitute one and the same instrument. Facsimile or PDF or email signatures shall be accepted as originals. Original signatures shall be provided if required for recording purposes.

SIGNATURE PAGES FOLLOW



## EXHIBIT A

### Description of Property

#	<u>House #</u>	<u>2nd House # (if any)</u>	<u>Street</u>	<u>Zip Code</u>	<u>Tax Key #</u>	<u>Duplex/SF</u>	<u>DNS Cost</u>	<u>Broker Cost</u>
1	3136	3138	N. 28th St.	53216	2860214000	Duplex		
2	2920	2922	N. 29th St.	53210	3090240000	Duplex		
3	1519	1521	N. 32nd St.	53208	3651115000	Duplex		
4	1726	1728	N. 37th St.	53208	3660370000	Duplex		
5	2646	2648	N. 37th St.	53210	3271551000	Duplex (Subject to Raze Order to be satisfied)	1,585.00	
6	2722	2724	N. 37th St.	53210	3080928000	Duplex		
7	2114	2116	N. 36th St.	53208	3481117000	Duplex		
8	2406	2408	N. 36th St.	53210	3271268000	Duplex		
9	2973	2975	N. 29th St.	53210	3090200000	Duplex		
10	2824	2826	N. 37th St.	53210	3080896000	Duplex		500.00
11	2455	2457	N. 40th St.	53210	2860214000	Duplex		
12	2039	2041	N. 40th St.	53208	3090240000	Duplex		500.00
	<u>House #</u>	<u>2nd House # (if any)</u>	<u>Street</u>	<u>ZIP Code</u>	<u>Tax Key #</u>	<u>Duplex/SF</u>	<u>DNS Cost</u>	<u>Broker Cost</u>
13	2826		N. 28th St.	53210	3090316000	SF		
14	3204		N. 33rd St.	53216	2860637000	SF	2,751.00	
15	2515		N. 36th St.	53210	3270313000	SF		
16	2625		N. 36th St.	53210	3271569100	SF		
17	2627 (vacant lot adjoining 2625 above)		N. 36th St.	53210	3271570000	VACANT LOT		
18	2547		N. 37th St.	53210	3271621000	SF		
19	2661	2661A	N. 29th St.	53210	3260121000	Duplex/Convert to SF		500.00
20	2212		N. 39th St.	53208	3480979000	SF		500.00
21	2556		N. 39th St.	53210	3271069000	Duplex/Convert to SF	2,570.00	
22	2772		N. 28th St.	53210	3090427000	SF		
23	2778 (vacant lot adjoining 2772 above)		N. 28th St.	53210	3090428000	VACANT LOT		
24	3203		N. 29th St.	53216	2861063000	SF		
25	3205	3205A	N. 29th St.	53216	2861062000	Duplex/Convert to SF		
26	2009		N. 38th St.	53208	3480264100	SF		

	<u>House #</u>	<u>2nd House # (if any)</u>	<u>Street</u>	<u>ZIP Code</u>	<u>Tax Key #</u>	<u>Duplex/SF</u>	<u>DNS Cost</u>	<u>Broker Cost</u>
27	4221		W. Bonny Pl.	53216	2870140000	SF		
28	2708		W. Auer Ave.	53216	2860266000	SF		
29	3322		N. 29th St.	53216	2861006000	SF		
30	3274		N. 34th St.	53216	2860017000	SF		500.00
31	1714	1714A	N. 37th St.	53208	3660367000	Duplex/Convert to SF		
32	2633	2635	N. 29th St.	53210	3260129000	Duplex/Convert to SF		
33	2657	2659	N. 29th St.	53210	3260122000	Duplex/Convert to SF		
34	2024		N. 38th St.	53208	3480254000	SF	4,150.00	
35	2026-28 (vacant lot adjoining 2024 above)		N. 38th St	53208	3480255000	VACANT LOT		
36	2530	2530A	N. 38th St.	53210	3271639000	Duplex/Convert to SF		
37	3826		W. Brown St	53208	3480267000	SF		
38	3820 (vacant lot adjoining 3826 above)		W. Brown St.	53208	3480268000	VACANT LOT		
39	2453		N. 29th St.	53210	3261287000	Duplex/Convert to SF		
40	2449 (vacant lot adjoining 2453 above)		N. 29th St.	53210	3261286000	VACANT LOT		
41	3283		N. 25th St	53206	2850603000	Duplex/Convert to SF		
42	2160		N. 29th St	53208	3492108000	SF		
43	2455		W. Chambers	53206	3100581100	SF		

MSS2 to also pay \$500 broker cost to Ogden Real Estate concerning 2205-2207 North 39th Street (an alternate property that will not be conveyed to MSS2).



**EXHIBIT B**  
Legal Descriptions of the Property

**EXHIBIT C**  
**QUIT CLAIM DEED**

WITH RESTRICTIVE COVENANTS

Document Number

**After Recording, Return To:**

Milwaukee Scattered Sites No. 2, LLC  
c/o Gorman & Company, LLC  
Attn: President  
200 North Main Street  
Oregon, WI 53575

**Exempt From Fee.** This Deed and conveyance are exempt from the Wisconsin Real Estate Transfer Fee per Wis. Stat. 77.25 (2).

**Drafted By:** City of Milwaukee, Dept. of City Development. CAO Doc 264424.

Recording Area

**SEE EXHIBIT A**

Parcel Identification Number (TIN)

**THIS QUIT-CLAIM DEED** is made as of December \_\_\_\_\_, 2019 by the **CITY OF MILWAUKEE**, a Wisconsin municipal corporation (“**City**”), as Grantor, to Milwaukee Scattered Sites No. 2, LLC, a Wisconsin limited liability company as “**Grantee.**”

**1. Conveyance of Property.** City hereby conveys and quit-claims to Grantee, on an “AS-IS, WHERE-IS” basis, with all faults and defects, known or unknown, physical or otherwise, and without representation or warranty, express or implied, all of City’s right, title, and interest, whatsoever, in and to the real estate located in the City and County of Milwaukee, State of Wisconsin, described on **EXHIBITS A** and **B** (the parcels therein described are individually and collectively herein called the “**Property**”).

**2. Restrictive Covenants.** City’s conveyance of the Property is made subject to the following restrictive covenants, which are binding upon Grantee, its heirs, successors and assigns, including successor owners of the Property. The terms and conditions of these Restrictive Covenants were a material inducement to City conveying the Property to Grantee.

**A. Joinder Deed Restriction.** The vacant lots identified in **EXHIBIT A** (“**Vacants**”) (and also shown in the table below) are hereby combined, merged, and joined together, with their respective adjoining lots that are identified in **EXHIBIT A** (and also shown in the table

below) to create 5 combined whole parcels (the 5 “**Combined Wholes**”). No part of any Combined Whole may be sold, transferred, conveyed, or mortgaged, without the entirety of the Combined Whole. The intent is that the two parcels (the vacant lot and the respective adjoining lot) shall be one sole and single parcel. Grantee shall, and hereby does, request that the City of Milwaukee Assessor combine the addresses and tax key numbers for the vacant lots and their respective adjoining lots into one address and one tax key number, and Grantee shall promptly provide a copy of this recorded document to the Assessor.

If any property tax, special assessment, special charge, or special tax is levied, presently or in the future, against any of the vacant lots and their respective adjoining lot, said tax, assessment or charge shall be foreclosable and actionable by the City of Milwaukee against the Combined Whole so as to prevent the separation of the two component parcels through tax foreclosure.

This restriction shall be a permanent covenant that runs with the land and may only be released by resolution passed by the City of Milwaukee’s Common Council and by City recording a Release of Restriction with the Milwaukee County Register of Deeds (“**ROD**”) that has attached to it a copy of the authorizing Common Council resolution.

<b>VACANT LOT (A)</b>	<b>ADJOINING LOT (B)</b>	<b>COMBINED WHOLE = A + B</b>
2627 North 36th Street	2625 North 36th Street	A + B
2778 North 28th Street	2772 North 28th Street	A + B
2026-28 North 38th Street	2024 North 38th Street	A + B
3820 West Brown Street	3826 West Brown Street	A + B
2449 North 29th Street	2453 North 29th Street	A + B

**B. Tax Exemption Prohibition Restrictive Covenant.** All of the Property on **EXHIBIT A** (including each of the Combined Wholes) must be taxable for property-tax purposes and no owner or occupant of any of said parcels (or any part thereof) shall apply for, or seek, or accept, property-tax exemption, whether under Wis. Stat. 70.11 or otherwise, for any of the parcels, or any part thereof. This restriction shall be a permanent covenant that runs with the land and may only be released by resolution passed by the City of Milwaukee’s Common Council by a 2/3 vote (see, MCO 304-49-13) and by City recording of a Release of Restriction with the ROD Office that has attached to it a copy of the authorizing Common Council resolution.

**4. Grantee Consent.** Grantee joins in signing this Deed to evidence Grantee’s acceptance of the conveyance of the City Lot and Grantee’s acceptance of the terms and conditions contained herein including the restrictive covenants.

**5. Agreement.** This conveyance is also subject to the terms and conditions of that certain Scattered Sites No. 2 Purchase and Sale Agreement entered into between City and Grantee of even date herewith, including City’s reversionary interest as described therein Upon the recording in the ROD Office of a City issued Certificate of Completion as described in **Sec. 8** of said Agreement, then the Agreement shall no longer be an encumbrance against title, City’s reversionary interest in

