

## Schedule 1

- \* New Location : Sun Plaza, 52nd Street and 36th Avenue
- \* Estimated Sale Date of Existing Building by Kenosha County
- \* Design Phase: 2022, Partners in Design
- \* Estimated Construction: Late 2022 - Mid 2024
- \* Move from Existing to New Building: Mid 2024
- \* Estimated Lease Period; Mid 2024 - 2029 (Must be 5 Years)
- \* Estimated Purchase of New Facility by Kenosha County:

Purchase Price Calculation		Rent Calculation	
Hard & Soft Costs		Hard & Soft Costs	
Building Acquisition	2,600,000	Soft Costs	100,000
Soft Costs	100,000	Construction Costs	16,000,000
Construction Costs	16,000,000	Solar Cost	750,000
Solar Cost	750,000	Total Cost	16,850,000
Total Cost	19,450,000		
Grants and Credits - Shared 50/50		Grants and Credits	
State Grant (s)	(1,750,000)	State Grant (s)	(3,500,000)
New Market Tax Credits (Est.)	(1,500,000)	New Market Tax Credits (Est.)	(3,000,000)
Solar Credit	(82,500)	Total Credits	(6,500,000)
Total Credits	(3,332,500)	Total Dollars Spent	10,350,000
Total Purchase Price	16,117,500	Interest Rate	3.50%
		Annual Base Rent	362,250
		Sq. Ft	130,000
		CAM / Sq Ft.	\$2.40
		Est. Annual CAM Rent	312,000
		Total Annual Rent	674,250
		Annual Rent per Sq. Ft.	\$5.19

## **HUMAN SERVICES BUILDING RELOCATION PROJECT DOCUMENTS**

• Lease	Pages 1-19
• Exhibit A – Rent Schedule	Page 20
• Exhibit B – Rules and Regulations	Pages 21 – 23
• Exhibit C – We Energies Notification	Pages 24 – 25
• Exhibit D – Condominium Plat	Page 26
• Exhibit E – Condominium Declaration	Pages 27 – 68
• Exhibit F – Lessor’s Improvement Work	Page 69
• Exhibit G – Sale of Sheridan Rd. Bldg	Pages 70 – 79
• Exhibit G – Purchase 52 <sup>nd</sup> Street Bldg	Pages 80 – 88
• Exhibit H – Construction Contracts	Pages 89 - 112

SUN PLAZA  
LEASE

In consideration of the mutual promises and covenants contained in this Lease, Lessor and Lessee agree as follows:

1. Fundamental Lease Provisions, Definitions and Exhibits.

"LESSOR":	BREG6, LLC, or its assigns
"LESSOR'S ADDRESS FOR NOTICE":	4015 - 80 <sup>th</sup> Street, Kenosha, WI 53142 Attention: Stephen R. Mills
"MANAGEMENT AGENT":	Bear Property Management, Inc. 4015 - 80 <sup>th</sup> Street, Kenosha, WI 53142 Phone: (262)697-9616
"LESSEE":	Kenosha County, Wisconsin, A Wisconsin Municipal Corporation.
"LESSEE'S ADDRESS FOR NOTICE":	3408 52 <sup>nd</sup> Street, Suite Kenosha, WI 53144
"LESSEE'S PHONE"	262-697-9616
"BUILDING":	The Building located at 3408 52 <sup>nd</sup> Street (consisting of approximately 161,816 sq. ft) which is part of the Project, as hereinafter expanded from time to time.
"PROJECT":	Sun Plaza, located at 3408 52 <sup>nd</sup> Street, being a commercial center development in which the Building is located.
"PREMISES":	Unit 2 of the Sun Plaza Condominium, located at 3408 52 <sup>nd</sup> Street, as depicted on the Condominium Plat attached hereto as Exhibit D, initially consisting of 107,270 Rentable Square Feet and to be expanded up to a maximum of 130,736 Rentable Square Feet in a manner as described in Section 3 hereof and the Declaration of Condominium attached hereto as Exhibit E.

"LEASE TERM":	Commencing on the Commencement Date and ending on the Termination Date.
"COMMENCEMENT DATE":	Upon the completion of Lessor's Improvement Work, but in any event, no later than 16 months following Lessor's execution of the Construction Contract, the receipt of all permits described in Section 6.1.1, whichever is later.
"TERMINATION DATE":	The later of May 31, 2029, or the event New Market Tax Credits are utilized in financing, the last day of the 84 <sup>th</sup> full month following the Commencement Date.
"LEASE YEAR":	The twelve-month period beginning the Commencement Date.
"PERMITTED USE":	Office and resource facility for the Kenosha County Jobs Center and other divisions of the Kenosha County Department of Human Services.
"BASE RENT":	See Attached Exhibit A.
"ADDITIONAL CAM RENT":	Approximately \$26,145 per month 130,726 sq. ft. x (\$2.40 ÷ 12) based on actual expense incurred.
"RENTABLE SQUARE FEET":	As to the Premises, the Building and the Project, the respective measurement of floor area as may from time to time be subject to lease by Lessee and all lessees of the Project, as determined by Lessor and applied on a consistent basis throughout the Project.
"LESSEE'S PERCENTAGE":	_____% , which is the percentage of Rentable Square Feet in the Project represented by the Premises, which shall be adjusted to reflect the actual Rentable Square Feet located within the Premises following completion of Lessor's Improvement Work.
"SECURITY DEPOSIT":	None

"EXHIBITS":

The following exhibits are attached to this Lease and incorporated herein by reference:

Exhibit A -Rent Payment Schedule  
Exhibit B - Rules and Regulations  
Exhibit C – WE Energies-3<sup>rd</sup> Party Notification Agreement  
Exhibit D – Plat of Condominium  
Exhibit E – Declaration of Condominium  
Exhibit F - Lessor's Improvement Work  
Exhibit G -Purchase and Sale Agreement  
Exhibit H – Construction Contract

2. Lease of Premises. Lessor hereby leases the Premises to Lessee, and Lessee hereby leases the Premises from Lessor, for the term and upon the conditions set forth in this Lease.

3. Condition of Premises. Except for the Lessor's Improvement Work which shall include any current existing code violations, fire code compliance or ADA requirements, as hereinafter defined, Lessee accepts the Building and Premises in its existing condition. Upon execution of this Lease, Lessee shall, at Lessee's expense, diligently pursue and shall, on or before September 15, 2022, submit for Lessor's review and approval; which shall not be unreasonably withheld, conditioned or delayed, Lessee's budget and final construction drawings for the improvements and build out of the Premises, including, but not limited to the vertical expansion of the Premises up to the Maximum Rentable Square Feet set forth in Section 1 hereof, the extension of any and all mechanical, electrical, plumbing (inclusive of sprinklers) and fire/life safety plans necessary to service the Premises. It is expressly understood and agreed that in approving Lessee's plans and specifications, Lessor shall have no liability whatsoever for any defects, errors or omissions in the documentation furnished to Lessor by Lessee or as a result of its approval. Upon Lessor's approval of such plans and specifications, such plans shall be initialed by the parties and affixed hereto as Exhibit E ("Lessor's Improvement Work"). Thereafter, Lessor shall enter into a Construction Contract in the form attached hereto as Exhibit H, with Lessor's related entity, Construction Management Associates, Inc. for the construction of said Lessor's Improvement Work on a cost-plus basis (defined as actual costs of construction together with General Conditions/Overhead/Contractor profit on a 4%/2%/6% basis). The costs incurred by Lessor under such Construction Contract, together with any and all out of pocket costs incurred by Lessor for the performance of Lessor's Improvement Work, including but not limited to financing costs, legal fees, federal and state income taxes due from the sale of credits or receipt of grant income, payments to third party professionals, all additional costs traditionally referred to as "soft costs" of construction shall collectively be referred to herein as the "Lessor's Improvement Costs". Lessor shall provide an itemization of all such costs, together with copies of all invoices, evidence of payment and other records comprising the Lessor's Improvement Costs, on a not less than quarterly basis. Lessee's representative shall have the right to inspect the premises during the construction period at reasonable times and upon reasonable notice.

Upon execution of the Construction Contract, Lessor shall diligently pursue completion of the Lessor's Improvement Work. Lessor shall give Lessee notice when the Lessor's Improvement Work has been substantially completed. Lessee shall then have fifteen (15) days to inspect the Premises. If, as a result of such inspection, Lessee discovers - exceptions or variations from Exhibit E of a nature commonly found on a "punch list" (as that term is used in the construction industry), Lessee shall notify Lessor of such exceptions in writing within such fifteen (15) day period. Lessor shall correct or remedy actual exceptions within a reasonable time. The existence of such punch list items shall not postpone the Commencement Date nor the obligation of Lessee to pay rent or other charges due under the Lease unless they are of such a nature to interfere with Lessee's occupying the premises. Lessee's occupancy of the Premises shall be conclusive evidence that Lessee has accepted the Lessor's Improvement Work, subject to any punch list items.

Lessor shall use its best efforts to substantially complete any Lessor's Improvement Work on or before the Commencement Date set forth in section 1 of this Lease. If Lessor, through no fault of Lessee, has not substantially completed the Lessor's Improvement Work by the Commencement Date, the Commencement Date shall be postponed until such work is substantially completed. If Lessor, through no fault of Lessee, has not substantially completed the Lessor's Improvement Work within one hundred eighty (180) days after the Commencement Date set forth in section 1 of this Lease, Lessee may terminate this Lease by giving written notice to Lessor within fifteen (15) days after the end of such 180-day period, whereupon this Lease shall terminate and Lessor shall return any amounts paid by Lessee under this Lease; provided, however, that Lessor's time for completing the Lessor's Improvement Work shall be extended for a time period equal to the duration of any delay caused by strike, labor dispute, governmental order, pandemic, or inability to obtain labor, materials, or equipment which is beyond the control of Lessor. Termination of this Lease shall be Lessee's sole remedy and Lessee shall have no other rights or claims hereunder at law or in equity. If the Lessor's Improvement Work is substantially completed and Lessee occupies the Premises prior to the scheduled Commencement Date, the Commencement Date shall be the date of occupancy.

In the event that Lessee fails to take possession of the Premises following execution of this Lease for any reason other than Lessor's failure to substantially complete the Lessor's Improvement Work, Lessee shall reimburse Lessor promptly upon demand for all costs incurred by Lessor in connection with entering into this Lease including, but not limited to, brokerage commissions, sums paid for the preparation of floor and/or space plans for the Premises, costs incurred in performing the Lessor's Improvement Work, loss of rental income, attorney's fees and costs, and any other damage for breach of this Lease established by Lessor.

4. Common Areas. Lessee shall be entitled to the non-exclusive use of any common parking areas, driveways, sidewalks and additional common areas serving the Project, all as they may from time to time exist, but such use shall be in common with Lessor and all others to whom Lessor has or may hereafter grant rights to use the same, and such use shall be subject to such rules and regulations ("Rules and Regulations") as Lessor may from time to time adopt governing the same. Rules and Regulations now in force are attached hereto as Exhibit B and made a part hereof. Lessor shall at all times have full control, management and direction of the common areas, and shall maintain and repair same. Lessor reserves the right to reduce, increase, enclose, or otherwise change from time to time the configuration, size, number, location and nature of the common areas and



facilities and the other tenancies in the Project, construct additional improvements, and to place signs on the Building and the Project; except such shall not interfere with Lessee's access to or use of the premises.

5. Term of Lease. The Lease Term shall commence on the Commencement Date and expire on midnight on the Termination Date unless sooner terminated as hereinafter provided.

6. Contingencies. Notwithstanding any provisions of this Lease as to the Lease Term, the obligations of Lessor and Lessee as set forth hereunder shall be contingent upon the following:

6.1.1. To the extent required by local ordinance, the receipt by Lessor of any and all permits necessary for the completion of Lessor's Improvement Work, including but not limited to a Conditional Use Permit, from the City of Kenosha on or before August 31, 2023.

6.1.2 The execution by Lessor and Lessee of the Purchase and Sale Agreement for the Premises in the form attached hereto as Exhibit G, which shall be executed contemporaneous to the execution of this Lease.

In the event of the failure of any of the foregoing contingencies, this Lease Agreement shall terminate, and the parties shall have no liability or obligation to one another as a result of this Agreement. Additionally, the deadlines set forth in this Section 6 may be extended by the parties upon the execution of an amendment expressing any such extension, executed by Lessor and by the Lessee (by action of County Executive).

7. Holding Over. If Lessee shall retain possession of the Premises after termination or expiration of this Lease, then (a) for each day, or part thereof the Lessee so retains possession of the Premises without Lessor's consent, Lessee shall pay Lessor double the amount of the daily rate of Rent and other charges payable by Lessee as Rent during the calendar month immediately preceding such termination or expiration together with any damages sustained by Lessor as a result thereof. If such retention of the Premises is with the express or implied consent of Lessor, such tenancy shall be from month to month and, in no event, from year to year or any period longer than month to month at the rental rate in effect before the expiration of the Lease term or such rate agreed to by the parties.

8. Rent. Lessee covenants and agrees to pay to Lessor, in accordance with the Rent Payment Instructions set forth in section 1 of this Lease, or at such other place designated by Lessor, without prior demand and without deduction or set off, rent ("Rent") for the Premises consisting of the Base Rent and Additional Rent (which shall include "Additional CAM Rent" as provided in sections 8.1 and 8.3, and any other additional payments due under this Lease. Base Rent shall be payable as itemized on the attached Exhibit A. The obligation of Lessee to pay Base Rent and Additional CAM Rent shall begin on the Commencement Date and shall be due on the first day of each month thereafter during the term of this Lease. Base Rent, Additional CAM Rent and any other payments for any partial month at the beginning or end of the term of this Lease shall be prorated based upon the actual number of days of such month included in the term of this Lease.

8.1 Operating Costs and Real Estate Taxes.

8.1.1. For any calendar year falling partly or wholly within the term of this Lease, Lessee shall pay to Lessor, as Additional CAM Rent, Lessee's Percentage of Operating Costs (as hereafter defined).

8.1.2. As used in this Lease, the term "Operating Costs" shall mean any and all expenses, costs and disbursements (other than Real Estate Taxes) of any kind and nature whatsoever incurred by Lessor in connection with the ownership, management, operation, maintenance and repair of the Premises, the Building, the Project and the parcel of land on which they are located, which Lessor shall pay or become obligated to pay during a year, regardless of when such Operating Costs were incurred. Operating Costs shall include, without limitation, fire insurance (including but not limited to fire and such other endorsements to a fire policy as Lessor may, in its discretion, determine to be desirable); public liability insurance; water, sewer, electric and gas charges for common areas; repairs and maintenance of the Project, including costs of materials and supplies used in connection therewith; costs incurred in connection with the operation, inspection and servicing (including outside maintenance contracts) of electrical, plumbing and mechanical equipment for common areas, and the cost of materials and supplies in connection therewith; repairs, resurfacing and restriping of the driveways and parking areas; the cost of snow plowing, snow and ice removal, landscaping and lawn mowing; property management fees (for which Lessee's proportionate share shall not exceed \$0.27 per rentable square foot); repainting and cleaning of all common areas; and other costs necessary in Lessor's reasonable judgment for the maintenance of the common areas, the Building and the Project in a good and attractive condition. Operating Costs shall not include the following:

- a. costs of alterations of Lessee's premises;
- b. depreciation;
- c. interest and principal payments on mortgages, and other debt costs or ground lease payments;
- d. the portion of any cost or expenditure (or portion thereof) for which Lessor is reimbursed, whether by insurance proceeds or otherwise; and
- e. the cost of any service furnished to any other occupant of the Project which Lessor does not provide to Lessee hereunder.

Notwithstanding anything contained herein to the contrary, the reasonable annual amortization, with interest, of any capital improvements made after the Lease Commencement Date which are intended to reduce Operating Costs, or which are required under any governmental laws, regulations, or ordinances which were not



applicable to the Project at the time it was constructed, shall be included in Operating Costs.

Lessor reserves the right to separately meter at Landlords sole expense any rentable area of the Project for heating, ventilating and air conditioning ("HVAC") and for water and sewer services. Notwithstanding anything in this section 8.1.2 to the contrary, if any rentable area of the Project is separately metered for such services, then (i) the Lessee in that space shall contract with and pay the public utility or utilities directly for the measured consumption of services for that space, (ii) the charges for the remainder of the Project shall be included in the calculation of Operating Costs only for the other lessees (the "Nonmetered Lessees"), and (iii) any costs charged to the Nonmetered Lessees shall be allocated in the proportion that the Lessee's Percentage for each Nonmetered Lessee bears to the Total Lessee's Percentage for all Nonmetered Lessees.

8.1.3. For any calendar year falling partly or wholly within the term of this Lease, Lessor shall be responsible for the payment of Lessee's Percentage of Real Estate Taxes (as hereafter defined).

8.1.4. As used in this Lease, the term "Real Estate Taxes" shall mean:

- a. any and all taxes, charges and assessments (general or special, ordinary or extraordinary) levied with respect to the Building, the parcel of land on which it is located, the Project or the land on which the Building or Project is located;
- b. any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes and assessments;
- c. costs and expenses incurred by Lessor in connection with the attempt to reduce any of the foregoing, whether by negotiation or contest.

8.1.5. By April 15 of each year during the term of this Lease, or as soon thereafter as practicable, Lessor shall deliver to Lessee a written statement ("Statement") setting forth the total amount of Operating Costs for the preceding year and the Lessee's Percentage thereof. If Lessee's Percentage of Operating Costs for such year exceed the estimated Additional Rent paid by Lessee pursuant to this section 8.1, Lessee shall pay the amount of such excess to Lessor, as Additional Rent, within thirty (30) days of receipt of such Statement by Lessee. If such Statement shows an amount due from Lessee that is less than the payments previously paid by Lessee, the amount of such overpayment by Lessee shall be credited by Lessor to the next accruing Additional CAM Rent payable by Lessee.

8.1.6. Lessee or its representatives shall have the right to examine Lessor's books and records of Operating Expenses during normal business hours within thirty

(30) days following the furnishing of the Statement to Lessee. Unless Lessee takes written exception to any item within forty-five (45) days following the furnishing of the Statement to Lessee (which item shall be paid in any event), such Statement shall be considered as final and accepted by Lessee. Should Lessee's investigation of the Operating Expenses show that Lessee has been overbilled by more than five (5%) percent then Lessor shall pay all costs and expenses of Lessee's investigation and all overbilling shall be promptly repaid to Lessee.

8.1.7. For the years in which this Lease commences and terminates, Lessee shall pay only that proportion of the amount otherwise payable under this section 8.1 which the number of days of the term of the Lease falling within such year bears to 365 days, based upon the actual amounts due for the year of commencement and the estimated amounts due pursuant to section 8.1.5 for the year of termination.

8.2. Additional Improvement Rent. N/A.

8.3. Additional Rent. Lessee shall pay, as Additional Rent, all sums of money or charges required to be paid by Lessee under this Lease. If such amounts and charges are not paid at the time provided in this Lease, they shall be collectable as Additional Rent with the next installment of Rent thereafter becoming due, but nothing contained herein shall be deemed to limit any other remedy of Lessor.

9. Security Deposit. N/A.

10. Use. The Premises shall be used and occupied for the Permitted Use only.

10.1. Nonrepresentation of Lessor. Lessee acknowledges that Lessor has made no representations or warranties as to the suitability of the demised premises for the conduct of Lessee's business, other than its warranty that the intended use is consistent with permitted uses and zoning for the Premises.

10.2. Lessor's Permission for Additional Use. The Premises may not be used for any purpose, except as found above, without Lessor's prior, express and written consent, which shall not be unreasonably delayed or withheld.

10.3. Interference with Tenant's Rights. Lessee shall not do or permit anything to be done in or about the Leased Premises that will obstruct or interfere with the rights of other Project tenants, or injure, or interfere with their use of the common areas, or allow the Premises to be used for any immoral or unlawful purpose; nor shall Lessee cause, maintain, or permit any nuisance in, on, or about the Premises or common areas.

11. Warranties and Representations of Lessor. The Lessor provides the following warranties and makes the following representations:

11.01 Size The total square feet rented herein is at a minimum 120,000 square feet, to be expanded as set forth in Section 3 hereof and in the Declaration of Condominium attached hereto as Exhibit E.

11.02. Violation of other Leases. Lessee's disclosed use of the premises does not violate the terms of any other tenant's lease in the Shopping Center

11.03. Warranty of Lessor's Improvement Work. Lessor warrants all of Lessor's Improvement Work for a period of one (1) year from the date of Occupancy by Lessee.

11.04. Environmental. Lessor has no actual knowledge or notice of any environmental condition affecting the Premises. Lessor shall indemnify, defend, and hold Lessee, harmless from and against any and all damages, including the cost of remediation, which result from Hazardous Materials which existed on the Premises prior to Lessee's occupancy, or which are caused by the negligence or willful misconduct of Lessor. Lessee shall have no obligation to remediate, clean up, monitor, abate, or to comply with any law regarding, or to reimburse, release, indemnify, or defend Lessor with regard to any such Hazardous Materials which existed on the Premises prior to Lessee's occupancy thereof.

11.1. Maintenance by Lessee. Lessee shall at all times keep and maintain the Premises, including the interior of all ceilings, walls, partitions, glass, floor coverings, fixtures, equipment and appurtenances including, but not limited to the heating, ventilating and air conditioning systems, as well as electrical and all plumbing, installed by Lessor which provide service exclusively to the Premises, whether installed or owned by Lessor or Lessee in good order, condition, and repair (to the extent not covered by warranty) and shall do such periodic painting, decorating and cleaning of the Premises as may be reasonably required by Lessor. Excepting damage caused by Lessor, its vendors, tenants or contractors, Lessee shall be responsible for the maintenance and upkeep of all doors and windows associated with the Leased Premises, inclusive of the exterior and interior of all such doors and windows. Lessee shall also reimburse Lessor for all repairs to the project, or premises which are made necessary as a result of any misuse or neglect by Lessee or any of its employees, contractors, agents, customers or guests. Lessee reserves the right to negotiate, with Lessor, grounds maintenance including but not limited to snow plowing and landscaping during tenancy.

11.2. Maintenance by Lessor. As part of Operating Expenses, Lessor shall keep and maintain the foundations, roof, and structural portions of the walls of the building of which the Premises are a part in good condition and repair, except for repairs thereto as may be required by reason of the acts of Lessee, its employees, agents, invitees, licensees and contractors. Lessor shall also maintain as part of Operating Expenses all main electric lines, main gas lines and main water lines which supply the building in which the Premises are a part.

12. Utilities and Services.

12.1. Basic Services. Lessor shall:

12.1.1. Furnish electricity to the common areas.

12.1.2. Provide water service to the common areas.

12.2. Extraordinary Services. Should Lessee require special services from time to time, Lessor shall, upon reasonable advance notice by Lessee, furnish such additional service and Lessee agrees to pay to Lessor, within ten (10) days after being billed therefore, as additional rent, Lessor's cost of labor, materials supplied, and utilities consumed in providing such additional service plus five percent (5%) of such cost. The amount of such payment and expenses shall be excluded from the determination of Operating Expenses.

12.3. Lessor Not Liable. Lessor does not warrant that any of the services referred to in this Lease, or any other services which Lessor may supply, shall be free from interruption, curtailment, or suspension. Lessee acknowledges that any one or more of such services may be suspended by reason of accident or repairs, alterations, or improvements, or by reason of causes beyond the reasonable control of Lessor. No interruption, curtailment, or suspension of service shall be deemed an eviction or disturbance of Lessee's use and possession of the Premises or any part thereof, or render Lessor liable to Lessee for damages, or relieve Lessee from the full and complete performance of all Lessee's obligations under this Lease, nor shall there be any abatement of Rent or other charges.

13. Lessee's Utility Service. Lessee agrees to contract with and pay the public utility directly for the measured consumption of electricity, gas, sewer, and water for the Premises; each of which shall be separately metered upon completion of Lessor's Improvement Work. Lessor shall not be liable or responsible to Lessee for any loss, damage, or expense which Lessee may sustain or incur if the quantity or character of utility service is changed or is no longer available or is no longer suitable for Lessee's requirements. Lessee shall execute a copy of the WE Energies Notification Agreement in the form attached hereto as Exhibit C.

14. Lessee's Covenants. Lessee agrees that it shall, at its expense:

14.1. Rules and Regulations. Observe the Rules and Regulations and any amendments thereto as may be adopted by Lessor from time to time for the general safety, comfort and convenience of Lessor, tenants, and occupants of the Project. Lessor shall not be responsible to Lessee for the noncompliance by any other tenant of the Project with any of the Rules and Regulations, and any failure by Lessor to enforce any Rules and Regulations against either Lessee or any other tenant in the Project shall not constitute a waiver hereof.

14.2. Lessor Access. Give Lessor, its employees, contractors, agents and any other person or persons authorized by Lessor, access to the Premises at all reasonable times without charge or diminution of rent, to enable them to examine the Premises and to make such repairs, alterations and improvements as Lessor may deem advisable, or to enter, view,



show and inspect the Premises, provided it is done, if possible, in a manner so as not unduly to interfere with the conduct of Lessee's business.

14.3. Signage. Not place any signs or any other projection upon the Project or the Premises or any lettering on the windows or doors thereof except pursuant to Lessor's written consent which shall not be unreasonably delayed or withheld.

14.4. Compliance with Laws. Comply with all laws, regulations, ordinances and orders of federal, state, county and municipal authorities and with any direction made pursuant to law of any public officer, relating to Lessee's use of the Premises.

14.5. Hazardous Substances. Not permit the use, storage, or disposal of any Hazardous Substances at the Premises. "Hazardous Substances" means any hazardous waste, substance, or toxic materials regulated under any federal, state, or local environmental law or regulation including, without limitation, asbestos containing materials, PCBs, and petroleum products. The foregoing shall not apply to items used in Lessee's business so long as said items are handled in accordance with all applicable rules and regulations, as well as industry standards.

14.6. Personal Property Taxes. Pay, before delinquency, any and all taxes levied or assessed, and which become payable during the term hereof upon Lessee's fixtures, equipment, furniture and other personal property located in the Premises.

15. Lessor's Covenant of Quiet Enjoyment. Lessor covenants that if Lessee shall pay the Rent and observe and perform all the terms, covenants, and conditions of this Lease on its part to be observed and performed, Lessee may peaceably and quietly enjoy the Premises subject to the terms and conditions of this Lease.

16. Insurance.

16.1. Lessor's Obligation. During the term of this Lease, Lessor shall keep in full force and effect, as an Operating Expense, insurance against fire, vandalism, malicious mischief, and such other perils as are from time to time included in a standard extended coverage endorsement insuring the Project in an amount of not less than one hundred percent (100%) of its replacement value.

16.2. Lessee's Obligation. During the term of this Lease, Lessee shall keep in full force and effect, at its expense: (a) a policy of general liability insurance covering the Premises, with a combined single limit of not less than \$2 million (or such higher amount as Lessor may from time to time require of all tenants); and (b) insurance against fire, vandalism, malicious mischief, and such other perils as are from time to time included in a standard extended coverage endorsement, insuring Lessee's fixtures, equipment, furniture and all other items of personal property of Lessee located on or within the Premises in an

amount equal to not less than their full replacement value. All policies of insurance to be carried by Lessee shall: (a) name Lessor, Management Agent, Lessee, and any other parties in interest designated by Lessor as additional insureds; (b) contain such endorsements as Lessor may from time to time reasonably require; and (c) shall be in form and substance reasonably satisfactory to Lessor. A copy of the paid-up policies evidencing such insurance or certificates of insurers certifying to the issuance of such policies shall be delivered to Lessor prior to the commencement date of this Lease and upon renewals not less than thirty (30) days prior to the expiration of such coverage.

16.3. Waiver of Subrogation. Notwithstanding anything in this Lease to the contrary, Lessor shall not be liable to Lessee for loss arising out of damage or destruction of the Premises or Lessee's fixtures of personal property if such damage or destruction is caused by a peril included within a standard form of fire insurance policy, with full extended coverage endorsement added, as from time to time issued in Wisconsin. Lessee shall carry insurance on its fixtures and personal property located in the Premises at its own expense, and Lessee shall look to its insurer for reimbursement of any loss, and the insurer involved shall have no subrogation rights against Lessor. Lessee shall advise its insurance company of this release and such policy shall, if necessary, contain a waiver of subrogation by the insurer against Lessor.

17. Signage. The parties acknowledge that the Premises are part of an integrated and uniform commercial center and that control of exterior signs by Lessor on the Property is essential to maintain uniformity and aesthetic value in the Property. Lessee may not erect and maintain any signs on the exterior of the Building Premises without the advance, written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. Such signage must be in accordance with Lessor's specifications and contracted through a sign contractor approved in advance by Lessor. Installation of all door and window signage shall be subject to Lessor's advance, written approval and the Rules and Regulations for the Project. Upon termination of this Lease, Lessee, upon Lessor's request shall remove any such signage and restore and/or repair the façade of the building or both, as the case may be, to its original condition prior to installation of any such signage.

18. Alterations and Improvements. Lessee may not make any alterations or improvements ("Improvements") to the Premises without the prior written approval of Lessor which shall not be unreasonably delayed or withheld. Improvements by Lessee shall be made at Lessee's sole expense. Lessee shall obtain all necessary permits from governmental authorities and provide Lessor with copies thereof prior to commencement of construction. All Improvements shall be made in a good and workmanlike manner and in compliance with all governmental requirements. Lessee shall promptly repair any damage and perform any necessary cleanup resulting from any Improvements made by Lessee. Lessee agrees not to create or permit any lien against the premises or the Project by reason of any Improvement and Lessee agrees to hold Lessor harmless from and against any such lien claim. At its expense, Lessee shall cause to be discharged, within thirty (30) days after the filing thereof, any construction lien claim filed against the premises or the Project for work claimed to have been done for, or materials claimed to have been furnished to, or on behalf of



Lessee. Further, any alterations or improvements which require any penetration of the building's roof must be done in a manner which does not void any warranties provided to Lessor and therefore must be performed by a contractor specified by Lessor. Failure to do so will result in Lessor performing any alteration, repair or inspection deemed necessary by Lessor at Lessee's sole cost and expense.

19. Damage or Destruction. In case of damage to the Premises or the Building by fire, vandalism, malicious mischief, or any other casualty, Lessor shall (unless this Lease shall be terminated as hereinafter provided) diligently proceed to make all the repairs necessary to restore the Premises (excluding any property of Lessee or improvements installed by Lessee) and the Building to substantially the condition in which they existed immediately prior to such destruction or damage subject to delays which may arise by reason of adjustment of loss under insurance policies and delays beyond the reasonable control of Lessor. To the extent that the premises are rendered unrentable, the Rent shall proportionately abate unless such damage was caused by the negligent act or omission of Lessee, its employees, contractors, agents, customers, or guests, in which case, there shall be no abatement of Rent. If the Premises or the Building are damaged to such an extent that (a) Lessor, in its sole discretion, determines not to rebuild or repair or (b) Lessee's ability to conduct business in the Premises is materially impaired, then either Lessor or Lessee may terminate this Lease upon written notice thereof to the other within sixty (60) days after the date of such damage in which event this Lease shall terminate as of the date of such damage, the Rent shall be adjusted to the date of such damage, and Lessee shall thereupon promptly vacate the Premises. The term "materially impaired" shall be defined as impacting the Lessee's use of the premises by twenty-five (25) per cent or more and Lessor is unable or unwilling to rebuild or repair the Premises within 180 days from the date of such loss or casualty.

20. Eminent Domain.

20.1. In the event the entire Premises or Building are lawfully condemned or taken in any manner for any public or quasi-public use or purpose, or sold or conveyed in lieu of condemnation, this Lease shall terminate as of the date of such taking or conveyance and Lessee shall have no interest in any award resulting from such taking except for moving expenses and Improvements included in the award which shall have been installed and paid for by Lessee.

20.2. In the event only a portion of the Premises or Building is taken or conveyed, the Base Rent and Lessee's Percentage shall be equitably adjusted, unless Lessor or Lessee shall elect to terminate this Lease as of the date of such taking or conveyance, provided Lessee's right to terminate this Lease as a result of a partial taking shall only arise if such partial taking materially impairs the conduct of Lessee's business from the Premises. Lessee may terminate this Lease upon written notice thereof within thirty (30) days of such taking or conveyance. Lessor shall notify Lessee of such equitable adjustment or its election to terminate this Lease within sixty (60) days of such taking or conveyance.

21. Indemnification. Except as covered by insurance to be provided by Lessee, Lessee shall defend and indemnify Lessor and save it harmless from and against any and all liability,

damages, costs, or expenses, arising from any act, omission, or negligence of Lessee or its employees, contractors, agents, customers, or guests in or about the Premises or the Project, or arising from any breach or default under this Lease by Lessee. Except as covered by insurance to be provided by Lessor, Lessor shall defend and indemnify Lessee and save it harmless from and against any and all liability, damages, costs, or expenses, arising from any act, omission, or negligence of Lessor or its employees, contractors, agents, customers, or guests in or about the Project, or arising from any breach or default under this Lease by Lessor. It is not the intent of the parties to waive any statutory or common law protections or impose liability beyond that imposed by state statutes.

22. Lessor's Liability. Lessor shall not be liable to Lessee except for liability, damages, costs, or expenses resulting from injuries to third parties caused solely by the negligence, recklessness, or willful misconduct of Lessor or its employees or agents,. Subsequent to Lessee's occupancy of the Premises, In no event shall Lessor be liable to Lessee or anyone claiming under Lessee for any damage to the Premises or for any loss, damage, or injury to any property of Lessee located in the Premises caused by bursting, rupture, leakage, or overflow of any plumbing or other pipes (including without limitation, water, steam, or refrigerant lines), sprinklers, tanks, drains, drinking fountains, or wash stands, the failure of any systems or facilities in the Premises or the Building or other similar cause.

Anything in this Lease to the contrary notwithstanding, the covenants, undertakings and agreements herein made on the part of Lessor are made and intended not as personal covenants, undertakings and agreements or for the purpose of binding Lessor personally or the assets of Lessor except Lessor's interest in the Premises and the Project, as the same may from time to time be encumbered. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against Lessor or its officers or their respective heirs, legal representatives, successors, and assigns arising from this Lease or Lessor's obligations with respect to the Premises and the Project, or arising from any covenant, undertaking, or agreement of Lessor contained in this Lease.

23. Assignment and Subletting.

23.1. Assignment of Sublease. Lessee shall not voluntarily, involuntarily, or by operation of law assign, transfer, mortgage, or encumber this Lease, nor sublease the whole or any part of the Premises, without first obtaining Lessor's written consent, which shall not be unreasonably delayed or withheld. No such assignment or sublease shall relieve Lessee of any liability under this Lease. Consent to any such assignment or sublease shall not operate as a waiver of the necessity of a consent to any subsequent assignment or sublease, and the terms of such consent shall be binding upon any person holding by, under, or through Lessee.

23.2. Assignee Obligations. Any assignee or subtenant approved by Lessor shall assume all obligations of Lessee and shall be jointly and severally liable with Lessee for the payment of Base Rent and Additional Rent and performance of all terms, covenants, and conditions of this Lease. In connection with any sublease or assignment, Lessee shall provide Lessor with copies of all assignments, subleases, and assumption instruments.

23.3. Administrative Fee. Lessee shall pay Lessor, in advance, an administrative fee of Five Hundred Dollars (\$500.00) for processing any request for consent to assignment or sublease.

24. Default by Lessee and Rights of Lessor.

24.1. Defaults. If Lessee:

- a. fails to pay any installment or Rent or other charges due hereunder within thirty (30) days after written notice from Lessor; or
- b. shall vacate, abandon, or fail to occupy for thirty (30) days all or a substantial portion of the Premises, or fail to continuously operate its business in the premises whether or not Lessee is in default of the rental payments due under this Lease; or
- c. fails to perform any other covenant, term, agreement, or condition of this Lease within thirty (30) days after written notice of such failure from Lessor; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a breach of this Lease by Lessee if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

then, in either case, Lessor, in addition to all other rights and remedies available to Lessor at law or in equity or by other provisions hereof, may immediately re-enter the Premises and remove all persons and property, and, at Lessor's option, terminate this Lease or terminate Lessee's right to possession of the Premises without terminating this Lease. Notwithstanding the termination of this Lease, Lessor may either declare all rent due under this Lease for the balance of the term immediately due and payable, and Lessee shall pay the same to Lessor, together with all loss which Lessor may sustain from termination and re-entry, or relet any part of the Premises for reasonable rent and on reasonable terms, whereupon Lessee shall be obligated to pay Lessor as liquidated damages the full balance of the Lessor's Improvement Costs. The Lessee will reimburse the Lessor for the costs of removing and storing Lessee's or other occupant's property and hold Lessor harmless for any damage there from. Neither acceptance of Rent or other charges by Lessor, with or without knowledge of breach or default, nor failure of Lessor to take action on account of any breach or default hereof or to enforce its rights hereunder shall be deemed a waiver of any breach or default, and absent specific written notice or consent to the contrary, said breach or default shall be a continuing one.

24.2. Right of Lessor to Cure Defaults. If Lessee shall default in the observance or performance of any term or covenant of this Lease, or if Lessee shall fail to pay any sum of money, other than Base Rent and Additional Rent, required to be paid by Lessee hereunder,



Lessor may, without waiving or releasing Lessee, remedy such default at the expense of Lessee, immediately and without notice in case of emergency, or in any other case only upon Lessee's failure to remedy such default within thirty (30) days after written notice to Lessee.

24.3. Unpaid Sums, Returned Checks and Late Charge. If any payment of Base Rent or Additional Rent is not paid within five (5) business days of the date when due, Lessee shall pay a late charge equal to ten percent (10%) of the amount of such overdue payment per month or portion thereof as liquidated damages for Lessor's extra expense in handling such past due account. In the event any check issued by Lessee, given to Lessor in payment of any obligation due hereunder is returned by the bank for non-payment, Lessee agrees to pay an administrative fee to Lessor in the amount of \$50.00 per incident.

24.4. Bankruptcy and Insolvency. If, at the Lease Commencement Date or at any time during the term of this Lease, there shall be filed by or against Lessee in any court pursuant to any statute either of the United States or of any state, a petition in bankruptcy or insolvency or for liquidation, reorganization or involuntary dissolution or for the appointment of a receiver or trustee of all or a portion of Lessee's property, or if Lessee makes an assignment for the benefit of creditors or petitions for or enters into an arrangement with creditors, this Lease, at the option of Lessor, exercised within a reasonable time after notice of the happening of any one or more of such events, may be cancelled and terminated and, in which event, neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of an order of any court, shall be entitled to possession or to remain in possession of the Premises, but shall forthwith quit and surrender the same, and Lessor, in addition to the other rights and remedies Lessor has by virtue of this Lease or any statute or rule of law, may retain as security for its damages any Base Rent, Additional rent, or monies received by Lessor from Lessee or others on behalf of Lessee.

24.5. Attorney's Fees. In the event Lessor or Lessee makes any expenditure or incurs obligations for the payment of money in connection with any default by the other party, including but not limited to Lessor or Lessee's actual attorney's fees, the unsuccessful party shall pay to the successful party in any action filed in a court of competent jurisdiction to resolve any such default or dispute under this Lease, together with any and all such sums paid, or obligations incurred by such successful party.

## 25. Sale or Mortgage of Lessor's Interest.

25.1. Conveyance of Lessor's Interest. Lessor may sell, assign, or otherwise transfer, in whole or in part, its interest in this Lease and its reversion hereunder, to an affiliated entity owned or controlled by the Lessor and or its principals. Any assignment by Lessor to a third party other than such an affiliate shall require Lessee's written consent. Lessor shall require the transferee to accept the interest transferred subject to this Lease. The transfer shall release Lessor from any further liability to Lessee hereunder and, after any such transfer, Lessee shall look solely to the transferee for the performance of the obligations of the party who from time to time is the Lessor under this Lease. If Lessor transfers to such a transferee any security deposit Lessor holds for performance of Lessee's obligations

hereunder, Lessor shall have no further liability to Lessee concerning such security and Lessee shall henceforth look solely to the transferee.

25.2. Estoppel Certificate. Within ten (10) days after written request from Lessor, Lessee shall execute, acknowledge and deliver to Lessor an estoppel certificate in form and content acceptable to Lessor, which shall include at a minimum: (a) certification that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect), the dates to which rent and any other charges payable by Lessee hereunder are paid in advance, if any, and the amount of the Security Deposit; (b) acknowledgment that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder or specifying such defaults if any are claimed; and (c) in case of a transfer of Lessor's interest, an agreement to attorney to the transferee. Lessee's failure to deliver such estoppel certificate to Lessor within said 10-day period shall conclusively evidence Lessee's representation and agreement that: (i) this Lease is in full force and effect, without modification, except as Lessor may represent; (ii) there are no uncured defaults in Lessor's performance hereunder; and (iii) Lessee has not paid more than one month's rent in advance nor made a Security Deposit in excess of one month's rent.

26. Subordination. This Lease, and the term and estate hereby granted, and all of the rights of Lessee hereunder, are subject and subordinate the liens of any mortgage or mortgages now or hereafter in force against the Project, as well as to any and all zoning laws, ordinances and regulations, conditions and agreements affecting said real estate at any time, and Lessee shall execute such further instruments subordinating this Lease to the lien or liens of any such lease or mortgage as shall be requested by Lessor; provided, however, that this subordination and any such further instruments shall not, so long as Lessee is not in default in the performance of any of the terms, covenants and conditions of this Lease, terminate or modify this Lease or any of the rights of Lessee hereunder.

27. Miscellaneous Provisions.

27.1. No Accord and Satisfaction. No payment by Lessee or receipt by Lessor of a lesser amount than the Base Rent, Additional Rent and other charges stipulated in this Lease shall be deemed to be other than on account of the earliest stipulated Base Rent, Additional Rent, or other charges, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Lessor shall accept such check or payment without prejudice to Lessor's right to recover the balance of such Base Rent, Additional Rent and other charges or pursue any other remedy in this Lease.

27.2. Non-Waiver. Waiver by Lessor of any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant, or condition of this Lease.

27.3. Time of the Essence. Time is of the essence as to the payment of rent and the performance of all other obligations of Lessee under this Lease.

27.4. Entire Agreement. This Lease constitutes the entire agreement between the parties and no modification shall be binding unless in writing and signed by both parties.

27.5. Successors and Assigns. The rights and obligations of the parties hereto shall inure to the benefit of and be binding upon their heirs, executors, personal representatives, successors and assigns.

27.6. Notices. All notices under this Lease shall be deemed properly given or made if mailed by first-class mail, postage prepaid, or by personal delivery, to the Lessor's or Lessee's Address for Notice as set forth in section 1 of this Lease, or at such other address as either party may from time to time provide to the other by a written notice complying with this section. A notice that is mailed shall be effective upon deposit in the U.S. Mail.

27.7. Governing Law. It is agreed that this Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Wisconsin.

27.8. Severability. In the event that any term or provision of this Lease is found by a court of competent jurisdiction to be void, invalid or otherwise unenforceable, such interpretation shall have no effect on the remaining terms, conditions and provisions of this Lease which shall remain in full force and effect.

27.9. Paragraph Headings. The titles to the paragraphs of this Lease are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of this Lease.

27.10. Recording. Neither Lessor nor Lessee shall record this Lease nor a short form memorandum of this Agreement without the written consent of the other, which consent shall not be unreasonably withheld, conditioned, or delayed.

27.11. Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.



IN WITNESS WHEREOF, each party to this Lease has caused it to be executed by one duly authorized, to be effective on the last date signed by a party hereto.

LESSOR: BREG6, LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Stephen R. Mills, Authorized Member

LESSEE: COUNTY OF KENOSHA, WISCONSIN

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**RENT SCHEDULE**

**Monthly Base Rent Installment:**

A monthly sum equal to the sum of Lessor's Improvement Costs, multiplied by an interest rate equal to the lesser of the interest rate charged by Lessor's primary financial lender for the project or Five (5.0%) percent per annum, divided by twelve. By way of example, if the Additional Improvement Rent is equal to \$16,00,000.00, the interest rate charged by Lessor's lender is 3.5% per annum, the Base Rent Monthly Installment shall be equal to \$\_\_\_\_\_ per month (\$16,000,000 x (3.5%) = \$560,000.00/12 = \$46,666.67).

The Monthly Base Rent Installment shall be due and payable as provided in Section 8 of this Lease.

**EXHIBIT B**  
**RULES AND REGULATIONS**

The following rules and regulations have been adopted by Lessor:

1. The driveways, sidewalks, parking lot, exits and entrances shall not be obstructed by Lessee or used for any purpose other than for ingress to and egress from its respective premises. Lessor shall, in all cases, retain the right to control and prevent access by all persons whose presence, in the judgment of Lessor, shall be prejudicial to the safety, character, reputation and interests of the Project and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom the tenants normally deal in the ordinary course of business, unless such persons are engaged in illegal activities. Lessee shall not and no employees and invitees of any tenant shall go upon the roof of the Project.

2. No sign shall be attached to or placed in windows without Lessor's prior written approval. No awning or shade shall be affixed or installed over or in the windows of the exterior of the Premises. The windows of the Project shall not be covered or obstructed.

3. Except as is customary in an office and/or shop environment:

A. Electric and computer wiring of any kind shall be introduced and connected as directed by Lessor and no boring or cutting for wires will be allowed except with the consent of Lessor; and

B. The location of telephone service facilities, call boxes, etc., shall be prescribed by Lessor.

4. No additional lock or locks shall be placed by Lessee on any door in the Project if prohibited by local fire department or governmental agency, rule, or regulation and unless written consent of Lessor shall have first been obtained; which consent shall not be unreasonably withheld.

5. Lessee shall cause its employees to park in areas designated from time to time for employee parking.

6. No aerial or antenna (including "dish" antennas) shall be erected on the roof or exterior walls of the Premises, or on the grounds, without in each instance, the written consent of Lessor.

7. All garbage, refuse, or trash shall be placed by Lessee in the receptacles provided by Lessor for that purpose.

8. Lessee agrees that it shall comply with all fire and security regulations that may be issued from time to time by Lessor, (subject to Lessor's obligation under Section 3 of this Lease) and Lessee also shall provide Lessor with the name of a designated responsible employee to represent Lessee in all matters pertaining to such fire or security regulations.

9. Lessee shall see that the doors of the Premises are closed and securely locked before leaving the Premises

10. The requirements of Lessee will be attended to only upon application to the Management Agent.

11. Lessor reserves the right, by written notice to Lessee, to add to, rescind, alter, or waive these Rules and Regulations at any time prescribed for the Project when, in Lessor's reasonable judgment, it is necessary, desirable, or proper for the best interest of the Project and its tenants, provided that no such addition, revocation, alteration, or waiver will adversely affect the use of the premises as then carried on by Lessee unless required by governmental authority or regulation. No assent or consent to any waiver of any part hereof by Lessor in spirit or letter shall be deemed or taken as made except when the same is done in writing and attached to or endorsed hereon by Lessor.

12. Lessee shall not disturb, solicit, or canvass any occupant of the Project and shall cooperate to prevent same.

13. Lessee, its servants, employees, customers, invitees and guests shall, when using the common parking facilities in and around the Project, observe and obey all signs regarding fire lanes and no parking zones, and when parking, always park between the designated lines. Lessor reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked or parked in a no parking zone. All vehicles shall be parked at the sole risk of the owner, and Lessor assumes no responsibility for any damage to or loss of vehicles.

14. All city and county ordinances shall be observed by tenants in the use of this Project and leased Premises.

In the event of any conflict between these rules and regulations or any further or modified rules and regulations from time to time issued by Lessor and the Lease provisions, the Lease provisions shall govern and control.

EXHIBIT C



To: WE Energies Customer Service  
Small Commercial Center  
Fax: 262-523-7823

RE: 3<sup>rd</sup> Party Notification Agreement

To Whom It May Concern:

I hereby authorize WE Energies to notify Bear Property Management, Inc. of any disconnect notices concerning my/our accounts for the property address(s) noted below from this date forward. Said notices are to be sent to Bear Property Management, Inc. at 4015 - 80<sup>th</sup> Street, Kenosha, WI 53142

Property Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved by:

\_\_\_\_\_  
Inc.

Company Name

Accepted by:

\_\_\_\_\_  
Bear Property Management,

Company Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



---

WE Energies Account Number

WE Energies Account Number

---

WE Energies Account Number

WE Energies Account Number

# EXHIBIT D

## PLAT OF CONDOMINIUM-SUN PLAZA CONDOMINIUM

### CONDOMINIUM PLAT OF SUN PLAZA A CONDOMINIUM

Being a part of Midtown Subdivision and a part of Wilson Heights, a subdivision, in the Southeast 1/4 and Southwest 1/4 of the Northwest 1/4 of Section 36, Township 2 North, Range 22 East, City of Kenosha, Wisconsin.

#### SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN)  
WAUKESHA COUNTY) SS

I, John P. Konopacki, Professional Land Surveyor, do hereby certify that I have surveyed and mapped the lands shown and described herein and that this is a true and correct representation of SUN PLAZA, a condominium and that the identification and location of each unit and the common elements can be determined from this plat.

SIGNED:  JANUARY 20, 2022  
JOHN P. KONOPACKI, PROFESSIONAL LAND SURVEYOR S-2461

UNIT 1: 45,893 SQ. FT.  
(1.0536 ACRES)

UNIT 2: 107,270 SQ. FT.  
(2.4626 ACRES)

UNIT 3: 41,981 SQ. FT.  
(0.9637 ACRES)

EXPANSION LAND "A":  
25,532 SQ. FT.  
(0.5861 ACRES)

EXPANSION LAND "B":  
15,712 SQ. FT.  
(0.3607 ACRES)

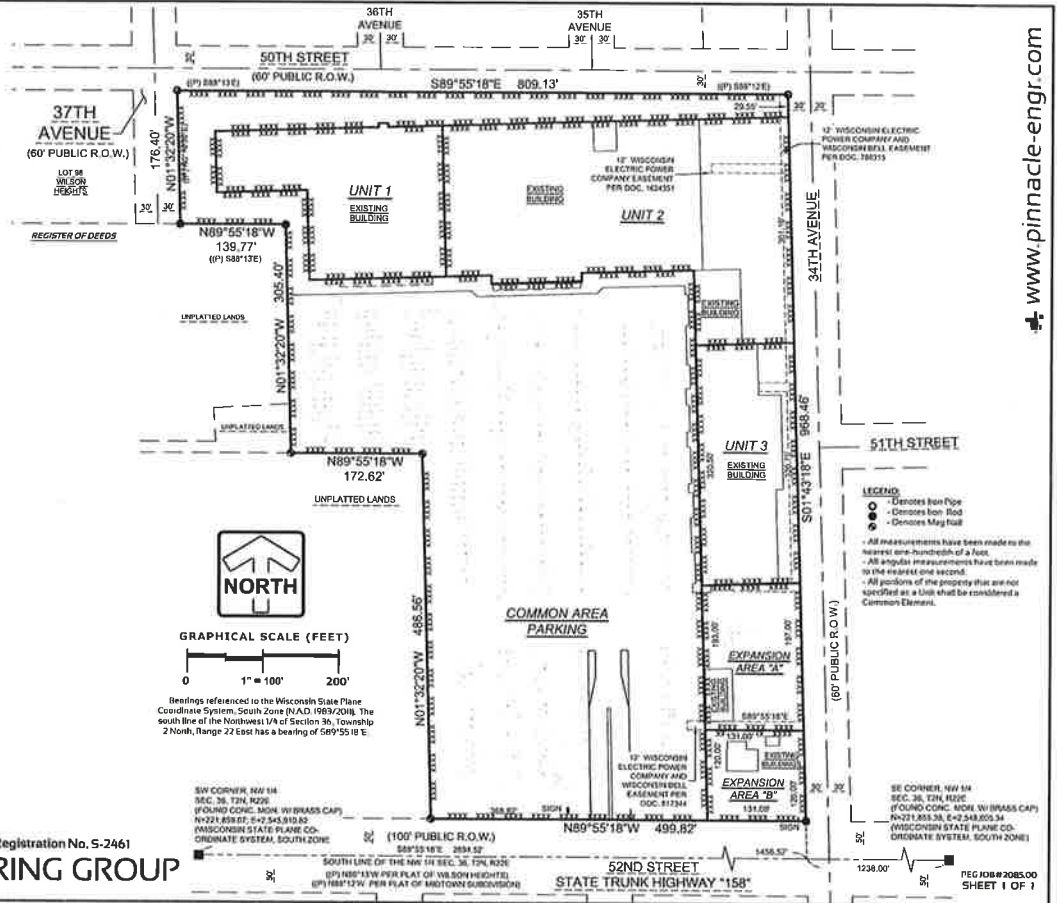
Prepared by:  
PINNACLE ENGINEERING GROUP  
20725 WATERTOWN ROAD | SUITE 100  
BROOKFIELD, WI 53186  
OFFICE: (262) 754-8888

DECLARANT: BREG6 LLC

Prepared for:  
BREG6 LLC  
4015 80th Street  
Kenosha, WI 53142

This instrument drafted by John P. Konopacki, PLS-Registration No. S-2461

**PINNACLE ENGINEERING GROUP**



www.pinnacle-engr.com

**EXHIBIT E**

**DECLARATION OF CONDOMINIUM-SUN PLAZA CONDOMINIUM**

**DECLARATION OF  
CONDOMINIUM OF  
SUN PLAZA CONDOMINIUM**

Document Title

Document Number

**Recording Area**

**Name and Return Address:**

Katherine R. Rist, Esq.  
Foley & Lardner LLP  
150 E. Gilman Street  
Madison, WI 53703

PIN: 09-222-36-254-001

## TABLE OF CONTENTS

	Page
ARTICLE 1 PURPOSE, LEGAL DESCRIPTION, NAME, ADDRESS AND DEFINITIONS .....	1
1.1 Purpose .....	1
1.2 Legal Description of Condominium Property .....	2
1.3 Name and Address .....	2
1.4 Definitions .....	2
1.5 Covenants, Conditions, Restrictions and Easements .....	6
ARTICLE 2 DESIGNATION AND DESCRIPTION OF THE UNITS .....	8
2.1 Description of Condominium .....	8
2.2 Designation and Description of Units .....	8
2.3 Items Included within Each Unit .....	11
ARTICLE 3 BOUNDARY RELOCATION; SUBDIVISION; PARTITION .....	13
3.1 Boundary Relocation .....	13
3.2 Unit Merger .....	14
3.3 Unit Separation .....	14
3.4 No Revocation or Partition .....	15
3.5 Provisions Controlling .....	15
3.6 Removal of Partitions Upon Boundary Adjustment .....	15
ARTICLE 4 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS .....	15
4.1 Description of Common Elements .....	15
4.2 Description of Limited Common Elements .....	16
4.3 Ownership of Common Elements .....	17
4.4 Improvements to Limited Common Elements .....	17
ARTICLE 5 OTHER RIGHTS AND OBLIGATIONS OF OWNERS AND INCIDENTS OF UNIT OWNERSHIP .....	17
5.1 Use of Units .....	17
5.2 Rules and Regulations .....	17
5.3 Separate Operation of Units .....	18
5.4 Separate Mortgages on Unit(s) .....	18
5.5 Alteration of Units .....	18
5.6 Construction and Mechanics' Liens .....	18
5.7 Maintenance, Repair and Replacement of Units and Limited Common Elements .....	18
5.8 Maintenance Standards .....	19
ARTICLE 6 ASSOCIATION MEMBERSHIP AND VOTING RIGHTS .....	20
6.1 Membership .....	20

6.2	Voting Rights .....	20
6.3	Suspension of Voting Rights .....	20
6.4	Association Instruments .....	20
6.5	Formation of Association; Power and Responsibility Prior to Establishment .....	20
ARTICLE 7	RIGHTS AND OBLIGATIONS OF THE ASSOCIATION .....	21
7.1	Management and Control of the Common Elements .....	21
7.2	Services .....	21
7.3	Modification of Parking and Entrances and Exits .....	21
7.4	Personal Property For Common Use .....	21
ARTICLE 8	COMMON EXPENSES AND ASSESSMENTS .....	22
8.1	Common Expenses .....	22
8.2	Budget .....	22
8.3	Assessments .....	22
8.4	Statutory Reserve Account .....	23
8.5	Liability of Owners; Lien Rights of Association .....	23
ARTICLE 9	INSURANCE; DAMAGE OR DESTRUCTION; EMINENT DOMAIN .....	24
9.1	Insurance .....	24
9.2	Damage or Destruction of Common Elements .....	24
9.3	Damage or Destruction of Unit .....	26
9.4	Condemnation .....	26
ARTICLE 10	EASEMENTS AND RESERVATIONS .....	27
10.1	Additional Easements .....	27
10.2	Binding Nature .....	32
10.3	Easement Indemnification .....	32
ARTICLE 11	RIGHTS OF MORTGAGE HOLDERS .....	32
11.1	Notice .....	32
11.2	Mortgagee Acquisition of Unit .....	33
11.3	Amendment of Provisions Affecting Mortgagees .....	33
11.4	Owners of Unmortgaged Units .....	33
ARTICLE 12	AMENDMENT OF DECLARATION .....	33
12.1	General .....	33
12.2	Special Approvals of Certain Amendments .....	34
ARTICLE 13	GENERAL PROVISIONS .....	34
13.1	Enforcement .....	34



13.2	Attorneys' Fees.....	35
13.3	Non-waiver .....	35
13.4	Severability .....	36
13.5	Covenants to Run with the Land.....	36
13.6	Construction and Effect .....	36
13.7	Headings and Captions .....	36
13.8	Resident Agent.....	36
13.9	Notices .....	36
13.10	Assignment by Declarant.....	36 <sup>1</sup>

---

<sup>1</sup> NTD: Table of Contents to be updated upon finalization of draft.

**DECLARATION OF CONDOMINIUM**  
**OF**  
**SUN PLAZA CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM (this “Declaration”) is made, entered into and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2022, by BREG6, LLC, a Wisconsin limited liability company (the “Declarant”), pursuant to Chapter 703 of the Wisconsin Statutes, the Condominium Ownership Act, as the same may be amended, renumbered or renamed from time to time (the “Act”).

**RECITALS**

WHEREAS, Declarant is the fee simple owner of that certain real property, including the land and any and all buildings, fixtures and improvements existing thereon, together with any and all rights, titles and interests appurtenant thereto, generally located at the southeast corner of the intersection of 52nd Street and 34th Avenue, in the City of Kenosha, Kenosha County, Wisconsin, as the same is legally described as set forth on the attached Exhibit A, which is incorporated herein by reference (the “Property”). Declarant’s interest in the Property, including all buildings, fixtures and improvements existing, and to be constructed, thereon, and together with all easements, rights and appurtenances pertaining to the Property, are collectively referred to herein as the “Condominium Property”; and

WHEREAS, Declarant intends by this Declaration to submit the Condominium Property, including any and all rights, title and interests appurtenant thereto, to the condominium form of ownership under the Act and further desires to establish, for its own benefit and for that of all future owners and occupants of the Condominium (defined below), certain easements, rights, restrictions and obligations with respect to the ownership, use and maintenance of the Condominium on the terms and conditions hereinafter set forth.

NOW, THEREFORE, Declarant by this Declaration hereby (i) submits the Condominium Property, including any and all appurtenant rights, title and interests, thereto, and subject to those matters referred to in Section 1.5 below, to the condominium form of ownership as provided in the Act and this Declaration; (ii) establishes and imposes the following provisions, restrictions, conditions, easements and uses to which the Condominium shall be subject; and (iii) specifies that the provisions of this Declaration shall constitute covenants to run with the land and shall be binding on Declarant, its successors and assigns, and all subsequent owners, occupants, users and invitees of all or any part of the Condominium.

**ARTICLE 1**

**PURPOSE, LEGAL DESCRIPTION, NAME, ADDRESS AND DEFINITIONS**

1.1 Purpose. The purpose of this Declaration is to submit the Condominium Property described herein to the condominium form of ownership under the Act.

1.2 Legal Description of Condominium Property. The real property subject to this Declaration is more particularly described as the Condominium Property, as the same is described in Exhibit A attached hereto and made a part hereof.

1.3 Name and Address. The condominium to which this Declaration shall apply shall be known as the “Sun Plaza Condominium” and its address shall generally be 3408 52nd Street, Kenosha, Wisconsin, as such address may be renumbered or otherwise modified in the future.

1.4 Definitions. As used in this Declaration and the exhibits and schedules attached hereto, capitalized terms not otherwise defined have the meanings set forth below:

“Abutting Wall” means those certain abutting walls within the Building, lying along the common perimetrical boundaries between (i) Unit 1 and Unit 2, being part of the Eastern wall of the building currently existing within Unit 1 and the Western wall of the building currently existing within Unit 2 and (ii) between Unit 2 and 3, being part of the Southern wall of the building currently existing within Unit 2 and the Northern wall of the building currently existing within Unit 3.

“Act” means the Wisconsin Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes, as amended or renumbered from time to time (and any successor statute).

“Assessment” means any General Assessment or Special Assessment.

“Association” means and refers to the entity to be formed and to be known as Sun Plaza Condominium Association, Inc., a Wisconsin non-stock corporation.

“Association Instruments” mean the Association’s Articles of Incorporation, Bylaws and Rules and Regulations, as same may be adopted and amended from time to time.

“Board” or “Association’s Board” means the Board of Directors of the Association.

“Building” generally means and refers to the Existing Shopping Center currently located on the Property, as the same may be altered, modified and reconstructed in the future, as well as any other buildings that may be constructed on the Condominium Property in the future.

“Common Elements” mean all those portions of the Condominium which are not included in the definition of a Unit, including Limited Common Elements, unless otherwise provided herein.

“Common Expenses” means the expenses of the Association as defined in Article 9 hereof.

“Condominium” means the Condominium Property, together with all rights, titles, interests, obligations and easements appurtenant thereto which are by this Declaration made subject to the Act.

“Condominium Instruments” mean this Declaration, the Condominium Plat, the Association Instruments, and all exhibits and schedules attached thereto, all as may be amended from time to time as herein provided.

“Condominium Plat” means the condominium plat of Sun Plaza Condominium, as recorded in the Office of the Register of Deeds of Kenosha County, Wisconsin, a copy of which is attached hereto as Exhibit B, as amended from time to time.

“Condominium Property” shall have the meaning assigned to such term in the Recitals above.

“Consideration Period” shall have the meaning assigned to such term in Section 14.1(b) below.

“Construction Funds” shall have the meaning assigned to such term in Section 10.2(f) below.

“Declaration” means this Declaration which subjects the Condominium Property to the Act, and all exhibits and schedules attached hereto, as amended from time to time.

“Declarant” means BREG6, LLC, a Wisconsin limited liability company and its respective successors and assigns pursuant to assignment under Section 14.10 below.

“Default Special Assessment” shall have the meaning assigned to such term in Section 14.1(a) below.

“Expansion Areas” means the areas designed as expansion areas on the Condominium Plat.

“Existing Shopping Center” means the shopping center building currently constructed on the Property at the time of this Declaration and as shown on the Condominium Plat.

“General Assessments” shall have the meaning assigned to such term in Section 9.3(a) below.

“Individual Unit Service Elements” shall have the meaning assigned to such term in Section 2.3(a) below.

“Invitees” mean any employees, customers, patrons, agents, guests, tenants, licensees, invitees and other users (including the members/managers/shareholders/partners of the respective Unit Owner and such Unit Owner itself) who are authorized or permitted, expressly, impliedly or by acquiescence, to access, use, occupy or enter upon a Unit, or any portion thereof, by the respective Unit Owner described herein.

“Limited Common Elements” means those Common Elements which are assigned to and limited to the exclusive use of one or more Units to the exclusion of all other Units (except for easements and other use rights granted in the Condominium Instruments) certain of which may be identified on the Condominium Plat or described herein.

“Limited Common Elements Serving More Than One Unit” shall have the meaning assigned to such term in Section 4.2(d) below.

“Majority” means the Unit Owners holding more than fifty percent (50%) of the votes as provided for in Exhibit C.

“Majority of the Board” means the vote of directors of the Board appointed by Unit Owners holding more than fifty percent (50%) of the votes of Unit Owners whose appointed directors are present at a meeting of the Board at which a quorum is present.

“Merged Unit” shall have the meaning assigned to such term in Section 3.2 below.

“Mortgage” means a mortgage or land contract encumbering a Unit.

“Mortgagee” means the (i) holder of any mortgage encumbering one or more of the Units, (ii) a land contract vendor under a land contract by which equitable title in a Unit was conveyed, or (iii) a Unit Owner of any unmortgaged Unit pursuant to Section 12.4 below.

“Percentage Interest” means the undivided ownership interest in the Common Elements appurtenant to each Unit expressed as a percentage of the total improved interior square footage of each respective Unit compared to the total improved interior square footage of all Units and identified for each respective Unit in Exhibit C attached hereto, which may be subject to recalculation due to improvements to a Unit or expansion under Article 7.

“Person” means a natural person (individual), corporation, partnership, association, trust, limited liability company or other legal entity, or any combination thereof.

“Petition” shall have the meaning assigned to such term in Section 14.1(b) below.

“Petitioner” shall have the meaning assigned to such term in Section 14.1(b) below.

“Property” shall have the meaning assigned to such term in the Recitals above.

“Rules and Regulations” mean the rules and regulations which may be adopted by the Association from time to time, and as amended from time to time, which govern the manner in which a Unit Owner may use, enjoy and occupy the Common Elements.

“Service Elements” shall have the meaning assigned to such term in Section 2.3(a) below.

“Special Assessments” shall have the meaning assigned to such term in Section 9.3(b) below.

“Unit” means that part of the Condominium designed and intended for the exclusive and independent use, enjoyment and possession by, or under the authority of, its Owner, as further defined herein and in the Act.

“Unit Owner” or “Owner” means a Person who holds legal title to a Unit or who holds equitable title to a Unit as a land contract vendee.

“Unit 1” means the Unit of the Condominium designated on the Condominium Plat as “Unit 1” as further described in Article 2 of this Declaration.

“Unit 1 Users” mean the Invitees authorized by the Unit Owner of Unit 1 to access and use Unit 1.



“Unit 2” means the Unit of the Condominium designated on the Condominium Plat as “Unit 2” as further described in Article 2 of this Declaration.

“Unit 2 Users” mean the Invitees authorized by the Unit Owner of Unit 2 to access and use Unit 2.

“Unit 3” means the Unit of the Condominium designated on the Condominium Plat as “Unit 3” as further described in Article 2 of this Declaration.

“Unit 3 Users” mean the Invitees authorized by the Unit Owner of Unit 3 to access and use Unit 3.

1.5 Covenants, Conditions, Restrictions and Easements. The Condominium shall be, on the date this Declaration is recorded, subject to:

- (a) General taxes and special assessments not yet due and payable;
- (b) Easements and rights in favor of gas, electric, telephone, fiber optics, water, sewer, cable television and other utilities and utility providers;
- (c) All other plats, matters, easements, covenants, declarations and restrictions of record on the date this Declaration is recorded, including, but not limited to, any easements and restrictions created by the recording of this Declaration;
- (d) All municipal zoning and building ordinances; and
- (e) All other governmental laws and regulations applicable to the Condominium.

## ARTICLE 2

### DESIGNATION AND DESCRIPTION OF THE UNITS

2.1 Description of Condominium. The Condominium shall consist of three (3) Units, which are identified as “Unit 1”, “Unit 2”, and “Unit 3” on the Condominium Plat. The Units may be separated or merged pursuant to Article 3 of this Declaration. The general location and dimensions of the Units are shown on the Plat and described below. The Existing Shopping Center is also shown on the Condominium Plat. The Abutting Walls shall serve as the Eastern wall of Unit 1 and the Western wall of Unit 2 and as the Southern wall of Unit 2 and the Northern Wall of Unit 3, as shown on the Plat. The Condominium shall be subject to expansion as described in Article 7.

2.2 Designation and Description of Units.

(a) Designation of Units. Units are identified by designation and number as on the Condominium Plat. There are three (3) Units, each of which is limited to the uses set forth in Article 5.

(b) Description of Units. Each Unit shall consist of a cubicle of air whose perimetrical boundaries shall be as set forth for such Unit on the Condominium Plat, whose lower boundary is an imaginary horizontal plane located parallel to and fifty (50) feet below the surface of the ground,

extended to the perimetrical boundaries; and whose upper boundary is an imaginary horizontal plane located parallel to and two hundred (200) feet above the surface of the ground, extended to the perimetrical boundaries. Each Unit and the approximate area, location, and appurtenant Common Elements and Limited Common Elements to which said Unit has access are, to the extent feasible, generally shown on the Condominium Plat.

(c) Discrepancies. Each Unit Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage of the Unit may vary by more than a nominal amount. Additionally, as a result of field construction, other permitted changes to the Unit, and settling and shifting of improvements, final actual square footage of a Unit may be affected. By accepting title to a Unit, the applicable Unit Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of the Condominium Plat or otherwise. Without limiting the generality of this section, Declarant does not make any representation or warranty as to the actual size, dimensions (including ceiling heights), square footage or improved square footage of any Unit or the Common Elements and each Unit Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage of the Unit and Common Elements.

### 2.3 Items Included within Each Unit.

(a) Utilities. All utility, steam, heating and air conditioning equipment, machinery, lines, pipes, wires, vents, flues, chimneys, ducts, cables, conduits, antennae, communication lines, utility lines, fire prevention installations, security installations and service-equipment, including, without limitation, roof units (collectively, the “Service Elements”), serving only one Unit, and whether or not located within the boundaries of such Unit or of any other Unit, the Common Elements or any Limited Common Elements, shall be a part of the Unit served (the “Individual Unit Service Elements”). Unless otherwise expressly provided herein, the Unit Owner of the Unit to which such Individual Unit Service Elements are appurtenant shall, at its sole cost and expense, be responsible for the inspection, operation, maintenance, repair, replacement and restoration of the Individual Unit Service Elements appurtenant to its Unit. Said Individual Unit Service Elements shall be kept and maintained in good, safe, orderly condition and repair. The Unit Owner of a Unit to which Individual Unit Service Elements are appurtenant shall have a non-exclusive easement on, over and across any Units, Limited Common Elements and/or Common Elements as may be reasonably necessary to inspect, operate, maintain, repair, replace, restore, improve or alter said Individual Unit Service Elements, and for ingress and egress thereto, provided that the exercise of the rights under such easements will not materially interfere with the use and enjoyment of the Units of other Unit Owners, the Limited Common Elements appurtenant to the Units of other Unit Owners, or Common Elements.

(b) Doors and Windows. Unless expressly shown or designated herein or on the Condominium Plat as Common Elements or Limited Common Elements, all doors and door frames (including overhead doors and any mechanical systems related to same), windows and window frames and enclosures, screens, jambs, interior walls, interior ceilings, floors, floor and wall coverings, whether or not any such items open or face onto or into any Limited Common Elements or

Common Elements or onto the exterior of any Building, shall be included as part of the Unit served thereby.

(c) Overhead Canopies, Sidewalks and Roof Areas. Unless expressly shown or designated herein or on the Condominium Plat as Common Elements or Limited Common Elements, all overhead canopies, sidewalks, roof areas and any related improvements and attachments thereto, shall be included as part of the Unit in or on which overhead canopies, sidewalks, roof areas and any related improvements and attachments thereto, are attached to and/or situated within.

(d) Structural Components; Exterior Surfaces. All structural components located within the boundaries of a Unit, including but not limited to, walls (load-bearing and otherwise), slabs, floors, roofs (including roofs of any rooftop equipment and machinery rooms and other enclosures), pillars, columns and related structural improvements, shall be included as part of the Unit within which they are located, unless otherwise designated or defined herein or on the Condominium Plat as a Common Element or Limited Common Element. Any exterior surfaces of any Building, including but not limited to, stone, brick, block, glass, metal, masonry or other exterior surface, shall be included as part of the Unit in which they are located.

### ARTICLE 3

#### **BOUNDARY RELOCATION; SUBDIVISION; PARTITION**

3.1 Boundary Relocation. The common boundary between any two Units may be relocated, consistent with this Section 3.1 and Section 703.13(6) of the Act. Unit Owners desiring a common boundary between their respective Units to be relocated shall provide a written application to the president of the Association signed by the applicant Unit Owners and a minimum of thirty (30) days written notice of such intent to each other Unit Owner in the Condominium. Following expiration of such thirty (30) day period, the Unit Owners desiring relocation shall cause an amendment to this Declaration and addendum to the Condominium Plat to be prepared at their cost and expense consistent with the requirements of the Act, including, without limitation, language of conveyance between the respective Unit Owners. The Unit Owners shall specify within the Declaration amendment an allocation of Percentage Interest, Common Expenses and voting (if appropriate) as to each Unit's post-boundary relocation if any change is to be made consistent with the Unit area changes, the totals of which shall be the same as the totals assigned to the two Units prior to boundary relocation. The amendment to this Declaration shall be signed by the president of the Association and it, together with the addendum to the Condominium Plat, recorded in the register of deeds at the expense of the applicant Unit Owners.

3.2 Unit Merger. Two contiguous Units may be merged into a single Unit consistent with this Section 3.2 and Section 703.13(8) of the Act. An application for such merger signed by the applicant Unit Owner(s) shall be submitted to the president of the Association and a minimum of thirty (30) days written notice of such intent to each other Unit Owner. The application will state the intended new identifying number of the surviving Unit after such merger ("Merged Unit"). The merged Unit shall enjoy all rights to Limited Common Elements as were appurtenant to the Units being merged. The Unit Owner or Owners proposing such merger shall further prepare an amendment to the Declaration and addendum to the Condominium Plat at their cost and expense, which effectuates the proposed merger and specifies the Percentage Interest, Common Expenses and votes to be allocable to the Merged Unit, the totals of which shall be the same as the totals

allocable to the Units being merged. Following expiration of such thirty (30) days after written notice to all other Unit Owners, the president of the Association shall execute the Declaration amendment, which shall then, along with the addendum to the Condominium Plat, be recorded in the register of deeds at the expense of the Unit Owner or Owners proposing the merger.

3.3 Unit Separation. Each Unit Owner shall have the right to separate its Unit into two or more Units, consistent with Section 703.13(7) of the Act. The applicant Unit Owner shall provide a written application to the president of the Association and a minimum of thirty (30) days' written notice to each other Unit Owner in the Condominium. The Unit Owner proposing such separation shall further prepare an amendment to the Declaration and addendum to the Condominium Plat at its cost and expense, which effectuates the proposed separation. Following expiration of such thirty (30) days after written notice to all other Unit Owners, the president of the Association shall execute an amendment to this Declaration and addendum of the Condominium Plat prepared at the cost and expense of the Unit Owner requesting separation. The separation amendment and addendum shall assign new identifying numbers to the separated Units and allocate to those separated Units, in a manner acceptable to the Board, the Percentage Interests, Common Expenses and votes allocable to the Unit prior to separation, the totals of which shall be the same as the totals assigned to the Unit being separated prior to separation. The Declaration amendment and Condominium Plat addendum shall be recorded in the register of deeds at the expense of the Unit Owner proposing separation.

3.4 No Revocation or Partition. Except as otherwise set forth herein, the Common Elements shall remain undivided and no Unit Owner or any other person shall bring or have the right to bring any action for partition or division thereof, nor shall the Common Elements be abandoned by act or omission, unless the condominium form of ownership is waived and terminated by agreement of all of the Unit Owners.

3.5 Provisions Controlling. The provisions for amendments to the Declaration and Condominium Plat as provided in this Article 3 shall be controlling over any contrary provision provided in Article 13 or elsewhere in the Condominium Documents to the contrary. If any Units proposed for boundary relocation, merger or Unit separation are subject to a Mortgage, the proposed amendment to this Declaration and Condominium Plat addendum shall be not effective unless joined by the Mortgagee(s) of all Units involved in the proposed boundary relocation, merger or separation. Amendments evidencing such proposals shall be executed by the president of the Association. The recordation of an amendment pursuant to this Article 3 shall be conclusive evidence that boundary relocation, merger or Unit separation, as the case may be, described therein did not violate the Condominium Instruments.

3.6 Removal of Partitions Upon Boundary Adjustment. A Unit Owner acquiring an adjoining Unit, or an adjoining part of an adjoining Unit, may remove all or any part of any intervening partition or create doorways or other apertures therein, even if the partition may in whole or in part be a Common Element, provided such acts do not impair the structural integrity or lessen the support of any portion of the Condominium. The creation of doorways or other apertures is not deemed an alteration of Unit boundaries.



## ARTICLE 4

### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

4.1 Description of Common Elements. The Common Elements shall consist of the entire Condominium other than the Units, and shall specifically include the following:

(a) Service Elements. All Service Elements, whether existing or to be constructed, that serve each and every Unit, if any, and which are not designated and/or included herein or on the Condominium Plat as part of a Unit or as a Limited Common Element of one or more Units, whether or not located within the designated boundaries of a Unit, shall be a Common Element. Notwithstanding anything to the contrary set forth above, and whether or not described more specifically herein, in the event a Service Element serves more than one Unit but fewer than all of the Units, such Service Element, whether or not located within the designated boundaries of a Unit, shall be a Limited Common Element of those specific Units that it serves;

(b) Common Elements Depicted on Condominium Plat. All areas designated as “Common Element” or “Common Area” on the Condominium Plat, if any, shall be a Common Element.

(c) Miscellaneous. Except as otherwise specifically set forth in this Declaration, any rights, titles, interests, covenants, obligations and responsibilities arising pursuant to any and all easements, rights-of-way, agreements, declarations, restrictions, hereditaments and other rights, either existing as of the date of this Declaration, or arising in the future, that benefit and/or burden the Condominium Property.

4.2 Description of Limited Common Elements. The Limited Common Elements consist of those Common Elements which are assigned to and limited to the exclusive use of one or more Units to the exclusion of all other Units (except for easements and other use rights granted in the Condominium Instruments), certain of which Limited Common Elements may be shown on the Condominium Plat. The Limited Common Elements include without limitation, those areas shown as Limited Common Elements on the Condominium Plat, if any, including the following:

(a) Structural Components. Notwithstanding anything to the contrary contained herein, and whether or not described more specifically herein or designated on the Condominium Plat, in the event any foundation walls, footings, slabs, girders, beams, caissons, load-bearing columns and walls and/or other structural components of a Building which exist or may exist in the future serve or provide material support for more than one Unit, such structural component(s), whether or not otherwise located within the designated boundaries of a Unit, shall be deemed a Limited Common Element of those specific Units served or supported;

(b) Abutting Walls. The Abutting Wall between Unit 1 and Unit 2 shall be deemed a Limited Common Element serving Unit 1 and Unit 2 and the Abutting Wall between Unit 2 and Unit 3 shall be deemed a Limited Common Element serving Unit 2 and Unit 3;

(c) Existing Pylon Sign. The existing pylon sign located at the intersection of [ ] shall be deemed a Limited Common Element serving [ ]; and

(d) Limited Common Elements Serving More Than One Unit. The following shall constitute the “Limited Common Elements Serving More Than One Unit”: All Limited Common Elements described herein and/or identified on the Condominium Plat, if any, as serving more than one, but less than all, of the Units.

4.3 Ownership of Common Elements. The undivided ownership interest in the Common Elements appurtenant to each Unit shall be equal to such Unit’s Percentage Interest. Any deed, mortgage, lease or other instrument purporting to convey, encumber or lease any Unit shall be deemed to include such Unit’s appurtenant Percentage Interest (including, but not limited to, any rights and interests in any insurance proceeds and condemnation awards even though such rights and interests may not be expressly described or referred to therein).

4.4 Improvements to Limited Common Elements. A Unit Owner may improve, including the enclosure of, any Limited Common Elements appurtenant exclusively to Units owned by that Unit Owner, provided the following conditions are met:

(a) A statement describing the improvement, including a description of the project, the materials to be used, and the project’s proposed impact on the appearance of the Condominium, and identifying the project contractor is submitted to the Board of the Association;

(b) The improvement will not materially interfere with the use and enjoyment of the Units of other Unit Owners or the Limited Common Elements appurtenant to the Units of other Unit Owners of the Condominium;

(c) The improvement will not materially impair the structural integrity of the Condominium.

All costs and expenses of an improvement under this section and any increased costs of maintenance and repair of the Limited Common Elements resulting from the improvement are the obligation of the Unit Owner. The Unit Owner shall protect the Association and other Unit Owners from liens on property of the Association or from liens on property of other Unit Owners that otherwise might result from the construction of the improvement.

## ARTICLE 5

### **OTHER RIGHTS AND OBLIGATIONS OF OWNERS AND INCIDENTS OF UNIT OWNERSHIP**

5.1 Use of Units. The occupancy and use of the Units and Common Elements may be for any purpose or purposes not expressly prohibited by any applicable laws except as expressly limited below:

(a) The Units may not be used for any of the following uses, provided however, that any use of a Unit at the time of this Declaration may continue and is not prohibited by this Section 5.1(a):

(i) Gaming, betting, gambling or anything similar thereto;

(ii) Liquor store (except as part of a grocery or convenience store operation) or medical marijuana dispensary;



- (iii) Adult oriented products or entertainment, including, without limitation, any wholesale or retail stores, services, clubs, theaters, movie stores or other business or service relating to the adult oriented industry;
  - (iv) Any use which would materially and adversely interfere with the ability to occupy Unit 1 of the Condominium as a multifamily housing project;
  - (v) Any business, service or other enterprise which is unlawful or would permit unlawful conduct therein;
  - (vi) Any use that would unreasonably increase the rate of casualty insurance upon the Condominium above rates generally paid by mixed-use property/property of similar size within the general geographic area surrounding the Condominium;
  - (vii) Any use that would cause the cancellation of any insurance policy on the Condominium and prevent the replacement of said policy on commercially reasonable terms;
  - (viii) Massage or sun tanning parlor or hot tub facility;
  - (ix) Disco, night club, cocktail lounge;
  - (x) Funeral parlor;
  - (xi) Dry cleaning establishment in which cleaning services occur on the premises (excluding drop-off dry cleaners);
  - (xii) Cinema;
  - (xiii) Liquidator/flea market type of operation;
  - (xiv) Tattoo parlor;
  - (xv) Soup kitchen or other free food distribution center;
  - (xvi) Day laborer employment agency;
  - (xvii) Joke shop (defined as a gag gift, magic shop or similar shop);
  - (xviii) Bus station or other transportation depot;
  - (xix) Pool hall;
  - (xx) Political campaign headquarters; or
  - (xxi) Drug paraphernalia shop.
- (b) Each Unit Owner shall be obligated to maintain said Unit Owner's Unit in a manner consistent with the applicable terms and provisions of this Declaration, the Bylaws and Rules and Regulations.

(c) A Unit Owner is prohibited from making any alteration, installation, removal, reconstruction, or repair to its Unit which could impair the structural integrity of any Building; or lessen the support of any portion of any Building; or if the alteration, installation, removal, reconstruction or repair of its Unit could impair any mechanical or electrical system serving the other Units; or adversely affect the thermal, fire protective, or acoustical character of the other Units or create a nuisance substantially affecting the use and enjoyment of the other Units or the Common Elements; or violate the Condominium Documents or any applicable law, ordinance or governmental rule, regulation or order.

(d) Abutting Wall. Unit Owners shall each have the right to insert beams, rafters, timbers, Service Facilities or other materials up to, but not beyond, a vertical line drawn through the center and along the length of the Abutting Walls and the right to attach plaster or other decoration to its side of the Abutting Wall. In no event does that right of use include the right to use the Abutting Wall in any manner which interferes with the use and enjoyment of the other portion of the Abutting Wall by the other Unit Owner, injures or weakens the structural integrity of the Abutting Wall, or overloads the structural capability of the Abutting Wall, or violates any applicable law, ordinance or regulation or violates any other terms and provision of the Bylaws and Rules and Regulations.

5.2 Rules and Regulations. Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Common Elements of the Condominium, may be promulgated from time to time by the Board, in their reasonable discretion, subject to the right of the Association to change such Rules and Regulations. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Unit Owners by the Board promptly after the adoption of such Rules and Regulations or any amendments thereto. In no event shall such Rules and Regulations materially and adversely affect any Unit Owner's rights under this Declaration. In addition, each Unit Owner shall have the right to enact additional rules and regulations applicable to its respective Unit and Invitees.

5.3 Separate Operation of Units. All of the Units within the Condominium may be operated as separate and distinct business entities, and shall have the ability to freely conduct their own independent businesses thereon, provided that the use of each Unit complies with the Condominium Instruments and all applicable laws and ordinances.

5.4 Separate Mortgages on Unit(s). Each Unit Owner shall have the right to mortgage or otherwise encumber its respective Unit, together with its Percentage Interest in the Common Elements. No Unit shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever any other portion of, or interest in, the Condominium excepting its own respective Unit and the appurtenant Percentage Interest in the Common Elements applicable thereto.

5.5 Alteration of Units. A Unit Owner may make improvements or alterations within its respective Unit; provided that said improvements or alterations do not materially impair the structural soundness or integrity, or lessen the support, of any other Unit in the Condominium and do not create an unlawful nuisance substantially affecting the use and enjoyment of other Units or the Common Elements of the Condominium. Unit Owners are permitted to make alterations to the exterior appearance of its respective Unit without approval of the other Unit Owners provided that any alterations otherwise comply with other provisions of this Declaration and all applicable

municipal zoning and building ordinances. All alterations or improvements must be accomplished in accordance with all applicable laws, ordinances and regulations. All expenses involved in any such improvement or alteration, including reasonable expenses of the Association in enforcing the provisions of this Section and modifying the Condominium Plat (which may be charged as a Special Assessment to the affected Unit) shall be the responsibility of the Unit Owner seeking the alteration.

5.6 Construction and Mechanics' Liens. Any and all work conducted within a Unit, including, without limitation, the build-out of a Unit, such as the construction of partition walls, the construction or installation of internal HVAC, electrical and plumbing systems within a Unit and any and all similar or related work, shall be at the direction of and for the benefit of said Unit and the Unit Owner of said Unit only, and any all contractors, materialmen and others providing work and/or materials in connection therewith shall have a right only to place a lien on said Unit as permitted by law and shall have no right, whatsoever, to place a lien on the Condominium as a whole or any other Unit thereof.

5.7 Maintenance, Repair and Replacement of Units and Limited Common Elements. Each Unit Owner shall be responsible for the cleaning, maintenance, repair and replacement of its Unit, including, without limitation, the roof, structural and nonstructural walls, windows, exterior doors, mechanical systems, electrical systems and plumbing and sewer systems, except to the extent that the same are considered Common Elements, and shall otherwise keep its Unit in good condition and repair, ordinary wear and tear excepted. Units sharing party walls described in this Declaration, including the Abutting Wall, shall be jointly responsible for the maintenance, repair and replacement of such party walls. All other rights and obligations of such Units respecting such party walls shall be as prescribed by Wisconsin common law. The Association shall be responsible for the operation, maintenance, repair and replacement of the any Limited Common Element Serving More Than One Unit. Each Unit served by certain Limited Common Element Serving More Than One Unit shall be responsible for the cost of such operation, maintenance, repair and replacement by the Association. Such costs shall be borne by each such Unit in the proportion that the Percentage Interest appurtenant to each such Unit bears to the total Percentage Interests of all Units so served. The Association may request that the Unit Owner in whose Unit the Limited Common Element Servicing More Than One Unit is located perform and bill for such operation, maintenance, repair and/or replacement; however, the Unit Owner shall not be obligated to comply with such request. If any Unit for which a Unit Owner is responsible, including without limitation any improvements and landscaping, falls into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or a condition that results in damage to the Common Elements or to any other Unit or Limited Common Elements appurtenant to another Unit or Units, the Association, upon fifteen (15) days' prior written notice to the Unit Owner of such Unit, shall have the right to correct such condition or to restore the Unit to its condition existing prior to the disrepair, or the damage or destruction if such was the cause of the disrepair, and to enter into such Unit for the purpose of doing so, and the Unit Owner of such Unit or responsible for such Unit shall promptly reimburse the Association for the cost thereof. All amounts due for such work shall be paid within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Association, be levied against the Unit as a Special Assessment under Section 9.3(b).

5.8 Maintenance Standards. The Association shall maintain, or cause to be maintained, the Common Elements and Limited Common Elements, and each Unit Owner shall maintain, or cause to be maintained, its Unit in good order, condition and repair. All Buildings and other

improvements shall be repaired or replaced with materials of a quality which is at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony and integration of the Property as a whole. The maintenance and repair obligation of the Association with respect to the Common Elements and Limited Common Elements shall include, but shall not be limited to, the following:

- (a) maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and restriping, when necessary, to maintain clearly visible parking stall and traffic control lines;
- (b) removing of all papers, debris, filth, refuse, ice and snow to the extent necessary to keep the Property in a first-class, clean and orderly condition;
- (c) placing, painting, maintaining, repairing, replacing and repainting, as and when necessary, all directional signs, markers, striping and pedestrian crossings upon or within the Property;
- (d) maintaining, repairing and replacing, when necessary, traffic directional signs, markers and lines, and all informational signs such as "Handicapped Parking", in good repair and condition;
- (e) lighting the exterior portions of the Property and operating, maintaining, repairing and replacing, when necessary, all artificial lighting facilities as shall be reasonably required, including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, contacts and electricity (except that each Unit Owner shall maintain and provide electricity to all lighting fixtures attached to its respective Unit, if any, at its sole cost and expense);
- (f) maintaining and watering, including the expense of such water, all landscaped areas within the Common Areas; maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; replacing shrubs and other landscaping as necessary;
- (g) maintaining, repairing and replacing, when necessary, all Limited Common Elements;
- (h) maintaining, repairing and replacing, when necessary, all ingress storm drains, sewers, lift stations and other utility not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the Buildings and improvements;
- (i) providing security and security protection services on and about the Property, if determined necessary by the Association; and
- (j) plowing, removing and treating all accumulated ice and snow.

The Association or responsible Unit Owner, as applicable, may perform itself or contract with a competent third party or parties to perform any of the services described herein. Any repair or maintenance work reasonably expected to cause the temporary closing of any portion of the Common Areas shall be scheduled in a manner intended to minimize the performance of any such work between October 1 and January 4 and during the 30-day period prior to Easter, except in case of emergency or if required by applicable legal requirements.



5.9 Real Property Taxes. Each Unit owner shall be responsible for the payment of all real property taxes and assessments levied by the taxing authority with respect to said Unit.

## ARTICLE 6

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

6.1 Membership. Each Unit Owner shall be a member of the Association with such membership to take effect simultaneously with the acquisition of legal or equitable title to a Unit. Membership in the Association shall be appurtenant to the Unit upon which it is based, and shall be transferred automatically by conveyance of that Unit. No person other than a Unit Owner may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of legal or equitable title to a Unit; provided, however, that the voting rights of a Unit Owner may be assigned to a Mortgagee as further security for a loan secured by a lien on a Unit, and that the Declarant has rights as contained herein. In the case of a Unit that is owned by an entity rather than an individual, any natural person designated by such entity shall be considered a "Unit Owner" for purposes of this requirement only.

6.2 Voting Rights. Each Unit is entitled to the number of votes as set forth on Exhibit C, with regard to the affairs of Association. This Declaration, and the Bylaws of the Association that may be adopted from time to time, shall establish the manner in which the Unit Owners shall be entitled to exercise their voting rights.

6.3 Suspension of Voting Rights. An Owner of a Unit against which the Association has recorded a condominium lien (as authorized by this Declaration, the Act and the Association Instruments) shall not be permitted to vote with regard to the affairs of the Association (and such Unit shall be disregarded for purposes of the vote taken, including the establishment of a quorum) unless and until the Owner has paid to the Association all amounts required of it as a condition to the Association's duty to release the lien or as otherwise provided in Section 9.5. The foregoing suspension of voting rights shall not apply to a Mortgagee who has acquired title to a Unit by a deed in lieu of foreclosure or similar voluntary conveyance by an Owner to a Mortgagee.

6.4 Association Instruments. The provisions of this Article 6 are to be supplemented by the Association Instruments, provided, however, that the provisions thereof shall not substantially alter or amend any of the rights or obligations of the Unit Owners set forth in this Article 6.

6.5 Formation of Association; Power and Responsibility Prior to Establishment.

(a) Establishment. Pursuant to Section 703.15(2)(a) of the Act (as such section may be renumbered from time to time), Declarant shall establish and form the Association not later than the date of the first conveyance of a Unit to a party other than the Declarant. After it is established, the membership of the Association shall at all times consist exclusively of all of the Unit Owners as further described in Section 6.1 above.

(b) Power and Responsibility Prior to Establishment. Pursuant to Section 703.15(2)(b) of the Act (as such section may be renumbered from time to time), until the Association is established as described in subpart (a) above, the Declarant shall have the power and responsibility to act in all

instances where the Act, any other provision of the law, or this Declaration require action by the Association or its officers.

## ARTICLE 7

### RIGHT TO EXPAND

7.1 Reservation of Right. Declarant hereby reserves the right to expand the Condominium by adding all or a portion of the property described as Expansion Areas on the Condominium Plat. Such right to expand may be exercised from time to time within ten (10) years from the date of recording of this Declaration within the Office of the Kenosha County Register of Deeds. Any such expansion shall be in the sole discretion of Declarant, and no Unit Owner or other person shall have the right to require the same. Each Owner, by accepting a deed to a Unit, acknowledges that the expansion lands or parts thereof may be developed for uses other than as part of the Condominium, including, but not limited to, multi-family residential development, a separate condominium development or any other use permitted by law at the time of development.

7.2 Number, Location, and Style of Units. The maximum number of Units in the Condominium as expanded shall be [five (5)]. Declarant currently anticipates that any Units created within the Expansion Area shall be positioned as shown on the Condominium Plat, but Declarant reserves the right to change the location if required to achieve the best development in the opinion of Declarant. The additional improvements shall be compatible with and shall be of the same or similar quality of construction and materials as the existing improvements.

7.3 Effect on Percentage Interest in Common Elements. Upon any expansion as described in this Article 7, the Percentage Interest in the Common Elements appurtenant to each Unit shall be recalculated.

7.4 Effective Date of Expansion. The Condominium shall be deemed expanded when an amendment to this Declaration, executed by Declarant, is recorded in the Office of the Kenosha County Register of Deeds, which amendment shows the new Percentage Interests of the Unit Owners and the votes which each Unit Owner may cast in the Condominium as expanded, and when an amendment to the Condominium Plat is recorded as required in Section 703.26, Wisconsin Statutes. Declarant reserves the right to amend this Declaration, its Exhibits, and the Condominium Plat, without any other consent or approval, for the purpose of effecting an expansion of the Condominium.

7.5 Effect of Expansion. Upon the recording of an amendment to the Declaration and Condominium Plat, each Unit Owner, by operation of law, shall have the percentage interests in the Common Elements, liabilities in the Common Expenses, and shall have the number of votes set forth in the Declaration amendment. Following any such expansion, the interest of any Mortgagee shall attach, by operation of law, to the new percentage interests in the Common Elements appurtenant to the Unit on which it has a lien. Declarant shall have an easement over, through, and under the existing Common Elements to facilitate the expansion; provided, however, any damage to the Common Elements because of Declarant's use of the easement shall be Declarant's responsibility.



## ARTICLE 8

### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

8.1 Management and Control of the Common Elements. The Association, subject to the specific rights and duties of Unit Owners set forth in this Declaration, and the rights and obligations of the Declarant as set forth in Section 6.5(b) above, shall be responsible for the exclusive management and control of the Common Elements (except to the extent that same are designated Limited Common Elements), including, by way of illustration:

- (a) Establishing Rules and Regulations with regard to the use and enjoyment thereof by Unit Owners and their respective Invitees.
- (b) Maintaining, repairing, insuring, operating and replacing the Common Elements (except to the extent such maintenance, repair and replacement is the responsibility of a Unit Owner as otherwise provided herein), including, by way of illustration, landscaping, snow removal, painting, cleaning, and any related activities.
- (c) Keeping the Common Elements in good repair and in a clean and attractive condition.

8.2 Services. The Association may obtain and pay a commercially reasonable management fee for the services of any person or business to manage, or assist in the management of, its affairs, or any aspect thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation, management and control of the Common Elements, whether such personnel are furnished or employed directly by Association, or by any Person with whom or which it contracts. The Association may obtain and pay for any management, legal and accounting services necessary or desirable in connection with the operation, management and control of the Common Elements or the enforcement of the provisions of the Condominium Instruments.

8.3 Personal Property For Common Use. The Association may acquire and hold for the use and benefit of all of the Unit Owners, tangible and intangible personal property, and may dispose of the same by sale or otherwise.

## ARTICLE 9

### **COMMON EXPENSES AND ASSESSMENTS**

9.1 Common Expenses. Each Unit Owner shall be liable for the share of the Common Expenses related to the Common Elements of the Condominium assessed by the Association against such Owner's Unit. "Common Expenses" shall include, by way of illustration and not limitation, expenses incurred by the Association for insurance, repairs, maintenance, operation, replacement, management services, reserves, capital improvements, acquisition of property necessary to the conduct of Association affairs, office supplies and such other reasonable and necessary expenses as reasonably determined by the Association's Board from time to time.

9.2 Budget. The Association shall annually adopt a budget of Common Expenses and levy General Assessments therefor against the Units in the manner described in Section 9.3 (a) below,

except as set forth herein. The budget shall include the funding of an adequate replacement reserve for Common Elements out of General Assessments and, as may be provided for more specifically in the Bylaws adopted from time to time, shall generally set forth the following: (a) all anticipated Common Expenses related to the Common Elements and any amounts to be allocated to any replacement reserve account, if any, and to any other funds for future expenditures, (b) the amount and purpose of any other anticipated Association expenditure, (c) the amount in any replacement reserve account or any other funds held for future expenditures, (d) any common surpluses, (e) the amount and source of any income, other than assessments from Owners, and (f) the aggregate amount of any Assessment to be levied against Owners and the purpose of the Assessment.

### 9.3 Assessments.

(a) General Assessments. The Association shall levy monthly general assessments (the “General Assessments”) against the Units for the purpose of maintaining a fund from which Common Expenses may be paid, as applicable.

(i) Except as otherwise provided in the Bylaws that may be adopted from time to time, General Assessments for the expenses related to the Limited Common Elements described in Sections 4.2(a) – (c), as well as any party walls, shall be levied against the Units to which such Limited Common Elements are designated as appurtenant in the proportion that each served Unit’s Percentage Interest bears to all served Units’ applicable Percentage Interests.

(ii) Except as otherwise provided in the Bylaws that may be adopted from time to time, General Assessments for the expenses related to any Common Elements described in Sections 4.1(a) – (c) shall be levied against the Units in proportion to their respective Percentage Interests.

General Assessments shall be due in advance on the first day of each month, or in such other manner as the Association may set forth in the Bylaws that may be adopted from time to time. Any General Assessment not paid when due shall bear interest until paid as determined by the Association, or as otherwise set forth in the Bylaws that may be adopted from time to time, and, together with interest, collection costs, and reasonable attorneys’ fees, shall constitute a lien on the Unit on which it is assessed if a statement of condominium lien is filed within two (2) years after the assessment becomes due as provided in the Act.

(b) Special Assessments. The Association may, whenever necessary or appropriate, levy special assessments (the “Special Assessments”) as follows:

(i) against the Units for deficiencies in the case of destruction or condemnation as set forth in Article 10, in which case the Special Assessments shall be levied against the Units in accordance with their respective Percentage Interests or as otherwise provided in the Bylaws that may be adopted from time to time;

(ii) against any Unit or Units for defraying the cost of improvements to the Common Elements in which case the Special Assessments shall be levied against the Units in accordance with their respective Percentage Interests; or, if and to the extent the Association reasonably determines that the cost of such improvements can be better allocated to individual Units based on usage or benefit derived, the Association will, acting reasonably and in good faith, so allocate such costs to

individual Units on the basis of the Association's best estimate of each Unit's percentage of usage or benefits derived from such category of costs;

(iii) against any Unit to cure any violation by the Unit Owner under Section 5.7, in which case the Special Assessment shall be levied solely against such Unit; or

(iv) against any Units for the purpose of covering any unbudgeted expense or for funding any operating deficit, in which case the Special Assessments shall be levied against the Units in accordance with their respective Percentage Interests; or, if and to the extent the Association reasonably determines that such expense can be better allocated to individual Units based on usage or benefit derived, the Association will, acting reasonably and in good faith, so allocate such expense to individual Units on the basis of the Association's best estimate of each Unit's percentage of usage or benefits derived from such category of expense.

9.4 Statutory Reserve Account. In no event shall any reserve account established by the Association be deemed to be a statutory reserve account pursuant to Section 703.163 of the Act. The Declarant hereby elects not to establish a statutory reserve account at this time under the provisions of Section 703.163 of the Act.

9.5 Liability of Owners; Lien Rights of Association. A Unit Owner shall be liable for Assessments assessed against its Unit and for interest on delinquent Assessments, and costs of collection (including reasonable attorneys' fees), as such interest and costs of collection may be imposed by the Association and/or set forth in the Bylaws to be adopted from time to time. If a Unit is owned by more than one Owner, such liability shall be joint and several. This liability shall not terminate upon the voluntary or involuntary transfer of the Unit. The assessment of Assessments, together with such interest as the Association may impose for delinquencies and costs of collection (including reasonable attorneys' fees and expenses), shall constitute a lien on the Unit against which the Assessment has been made as provided in this Article 9 and as may be provided in the Bylaws adopted from time to time. Attachment, recording, effectiveness, priority and enforcement of the lien shall be governed by the Act, including without limitation the provisions of Section 703.165 of the Act, pursuant to which such liens are subordinate to all sums unpaid on a first mortgage (or any amendments, extensions, replacements or restatements thereof) recorded prior to the making of the Assessment and such other liens described in Section 703.165(5) of the Act. When a Unit Owner fails to pay Assessments when due, the Association may bring an action at law against the Owner or foreclose the lien against the Unit in like manner as a mortgage of real estate, provided any Mortgagee of the Unit is first provided the notice set forth in Article 12 below. Any Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure (in its own name or in the name of an affiliate owned and controlled by it), shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other fees and charges against the Unit which became payable prior to such sale or transfer but shall be subject to all subsequently accruing Assessments.



## ARTICLE 10

### INSURANCE; DAMAGE OR DESTRUCTION; EMINENT DOMAIN

10.1 Insurance. The Association Board and Unit Owners shall obtain and maintain insurance as provided in Section 703.17 of the Act, or as otherwise may be set forth and established in the Bylaws that may be adopted by the Association from time to time. Generally, (A) the Association, as a Common Expense, shall maintain or cause to be maintained commercial general liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Common Areas by the Unit Owners and the each of their tenants, agents, contractors, employees, licensees, customers and invitees; and (B) each Unit Owner, at said Unit Owner's sole cost and expense, shall at all times keep all improvements which are now or hereafter located within said Unit Owner's Unit insured against loss or damage by fire and the extended coverage hazards at full replacement value with loss payable to said Unit Owner and its mortgagees or such other parties as the Unit Owner may designate, as their interests may appear.

#### 10.2 Damage or Destruction of Common Elements.

(a) Determination to Reconstruct or Repair. If all or any part of the Common Elements (including the Limited Common Elements) become damaged or destroyed by any cause, the damaged Common Elements shall be repaired or reconstructed except as herein specifically provided otherwise.

(i) Damage Less Than 5% of Replacement Cost of Common Elements. If the cost to repair or reconstruct the damaged Common Elements is less than 5% of the replacement cost of the Common Elements, the damaged Common Elements shall be repaired or reconstructed even if the cost of such repair or reconstruction exceeds the available insurance proceeds. Acceptance by a Unit Owner of a deed to a Unit (or any part thereof) shall be deemed to be consent to authorize the Association to repair or reconstruct, as may in the future be needed from time to time, up to such amount.

(ii) Damage Equal To or Greater Than 5% of Replacement Cost of Common Elements; Insurance Available. If the cost to repair or reconstruct the damaged Common Elements is equal to or greater than 5% of the replacement cost of the Common Elements, and the insurance proceeds plus 5% of the replacement cost of the Common Elements are sufficient to complete such repair or reconstruction, the damaged Common Elements shall be repaired or reconstructed even if the cost of such repair or reconstruction exceeds the available insurance proceeds. Acceptance by a Unit Owner of a deed to a Unit (or any part thereof) shall be deemed to be consent to authorize the Association to repair or reconstruct, as may in the future be needed from time to time, up to the amount of the available insurance proceeds plus 5% of the replacement cost of the Common Elements.

(iii) Damage Equal to or Greater Than 5% of the Replacement Cost of the Common Elements; Insurance Not Available. If the cost to repair or reconstruct the damaged Common Elements is equal to or greater than 5% of the replacement cost of the Common Elements and the available insurance proceeds are insufficient to complete such repair or reconstruction, the damaged Common Elements shall be repaired or reconstructed unless within thirty (30) days of the date the

Association receives repair or reconstruction estimates, the Unit Owners having seventy-five percent (75%) or more of the votes consent in writing to not repair or reconstruct the damaged Common Elements. Delivery of such written consent under the circumstances described in this Section 10.2(a)(iii) shall be deemed to be consent to subject the Condominium to an action for partition.

(b) Plans and Specifications. Any reconstruction or repair of the Common Elements shall, as far as is practicable, be made in accordance with the maps, plans, and specifications used in the original construction of the damaged improvements, unless: (a) the Unit Owners having at least a Majority of the votes approve of the variance from such plans and specifications; (b) the Board authorizes the variance; and (c) in the case of reconstruction of or repair to any of the Units, the Unit Owners of the damaged Units authorize the variance. In the event that a variance is authorized from the maps, plans, and specifications used in the original construction, then, if permitted by law, an amendment to the Condominium Plat and Declaration shall be recorded as necessary by the Association setting forth such authorized variance from the original construction.

(c) Responsibility for Repair. In all cases after a casualty has occurred to the Common Elements, the Association has the responsibility of reconstruction and repair, and immediately shall obtain reliable and detailed estimates of the cost to rebuild or repair.

(d) Insurance Proceeds and Construction Fund. All insurance proceeds received with respect to the Common Elements shall be held by the Association as trustee for the benefit of the Unit Owners and Mortgagees and shall be disbursed by the Association for the repair or reconstruction of the damaged Common Elements. The Association shall have no responsibility to repair, reconstruct, or replace any Unit or any improvements located within a Unit. Unit Owners and Mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds received with respect to the Common Elements unless there is a surplus of insurance proceeds after the damaged property has been completely restored or repaired.

(e) Assessments For Deficiencies. If the proceeds of insurance received with respect to the Common Elements are not sufficient to defray the costs of reconstruction and repair by the Association, a Special Assessment shall be made pursuant to the applicable formulas, provisions and procedures set forth in Section 9.3 against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. All assessed funds shall be held and disbursed by the Association as trustee for the Unit Owners and Mortgagees involved.

(f) Surplus in Construction Funds. All insurance proceeds and Special Assessments held by the Association as trustee for the purpose of rebuilding or reconstructing any damage to the Common Elements or any Condominium Property taken by eminent domain are referred to herein as "Construction Funds." It shall be presumed that the first monies disbursed in payment of costs of reconstruction or repair are insurance proceeds. If there is a balance in the Construction Funds after payment of all costs of reconstruction or repair, such balance shall be divided among the Unit Owners in proportion to the manner in which the Special Assessments were assessed under Section 10.2(e) above.

(g) Partition and Sale Upon Consent. If following damage or destruction described in Section 10.2(a)(iii), the Unit Owners having seventy-five percent (75%) of the votes consent to subject the Condominium to an action for partition, the Association shall record with the office of the Register

of Deeds for Kenosha County, Wisconsin, a notice setting forth such facts, and upon the recording of such notice, the Condominium shall be subject to an action for partition, in which event the net proceeds of sale together with any amounts held by the Association as Construction Funds shall be considered as one (1) fund and shall be divided among the Unit Owners according to their respective Percentage Interests.

(h) Mortgagees' Consent Required. No approval, consent or authorization given by any Unit Owner under this Section 10.2 shall be effective unless it is consented to in writing by the Mortgagee (if any) holding the first lien against the Unit.

10.3 Damage or Destruction of Unit. Following any damage or destruction to any Unit, the Unit Owner shall repair and restore such Unit to its substantially the same or better condition as existed prior to the damage or destruction as soon as commercially reasonable, provided that there are sufficient insurance proceeds to cover the costs and expenses related to repairing and restoring the respective Unit. Any reconstruction or repair of the Unit shall, as far as is practicable, be made in accordance with the maps, plans, and specifications used in the original construction of the damaged improvements, unless: (a) the Unit Owners having at least a Majority of the votes approve of the variance from such plans and specifications; (b) the Board authorizes the variance; and (c) in the case of reconstruction of or repair to any of the Units, the Unit Owners of the damaged Units authorizes the variance. In the event that a variance is authorized from the maps, plans, and specifications used in the original construction, then, if permitted by law, an amendment to the Condominium Plat and Declaration shall be recorded as necessary by the Association setting forth such authorized variance from the original construction.

#### 10.4 Condemnation.

(a) Allocation of Award. Any damages (net of any costs incurred by the Association in obtaining the award of damages) for a taking of all or part of the Condominium shall be awarded as follows:

(i) Every Unit Owner shall be allocated the entire award for the taking of all or part of its respective Unit or any improvements located therein and for consequential damages to the Unit or improvements located therein.

(ii) In the event no reconstruction is undertaken, any award for the taking of Common Elements shall be allocated to all Unit Owners in proportion to their respective Percentage Interest.

(b) Determination to Reconstruct Common Elements. Following the taking of part of the Common Elements, the Common Elements shall be restored or reconstructed, unless the Unit Owners having seventy-five percent (75%) of the votes consent to subject the Condominium to an action for partition. In that event, the Association shall record with the office of the Register of Deeds for Kenosha County, Wisconsin, a notice setting forth such facts, and upon the recording of such notice, the Condominium shall be subject to an action for partition, in which event the net proceeds of sale together with any amounts held by the Association as Construction Funds shall be considered as one (1) fund and shall be divided among the Unit Owners according to their respective Percentage Interests determined prior to the taking.



- (c) Determination to Reconstruct Units. Following the taking of part of a Unit, the Unit Owner shall cause the balance of the Unit to be restored or reconstructed, unless the restoration or reconstruction of the Unit to a usable whole is impractical or impossible.
- (d) Plans and Specifications for Common Elements or Unit. Any reconstruction of any partially taken Common Elements or any partially taken Unit shall, as far as is practicable, be made in accordance with the maps, plans and specifications used in the original construction, unless the Board shall authorize a variance from such plans and specifications. In the event that a variance is authorized from the maps, plans, and specifications used in the original construction, then, if permitted by law, an amendment to the Condominium Plat and Declaration shall be recorded as necessary by the Association setting forth such authorized variance from the original construction.
- (e) Responsibility for Reconstruction. In all cases after a taking of all or part of the Common Elements, the responsibility for restoration and reconstruction shall be that of the Association and it shall immediately obtain reliable and detailed estimates of the cost to rebuild. In all cases after a taking of all or part of a Unit, the responsibility for restoration and reconstruction shall be that of the Unit Owner.
- (f) Assessments for Deficiencies. If the condemnation award for the taking of the Common Elements is not sufficient to defray the costs of reconstruction by the Association, Special Assessments shall be made against the Unit Owners in accordance with their respective Percentage Interests in sufficient amounts to provide funds for the payment of such costs.
- (g) Surplus in Construction Fund. It shall be presumed that the first monies disbursed in payment of costs of reconstruction or restoration shall be from the award for taking. If there is a surplus of Construction Funds after payment of all costs of construction, such balance shall be divided among the Unit Owners in accordance with their respective Percentage Interests.
- (h) Percentage Interests Following Taking. Following the taking of all or any part of any Unit, then, unless the Condominium is submitted to an action for partition under (b), above, the Percentage Interest appurtenant to any Unit shall be equitably adjusted to reflect the respective relative values of the remaining Units (or portions thereof) to all of the Units,
- (i) Mortgagees' Consent Required. No approval, consent or authorization given by any Unit Owner under this Section 10.4 shall be effective unless it is consented to in writing by the Mortgagee (if any) holding the first lien against the Unit.

## ARTICLE 11

### EASEMENTS AND RESERVATIONS

11.1 Additional Easements. In addition to and in supplementation of the easements provided for elsewhere in this Declaration and by Section 703.32 of the Wisconsin Statutes, as amended and renumbered from time to time, and other provisions of the Act, and any and all licenses, easements, rights-of-way, covenants, limitations and restrictions of record, the Condominium shall be subject to the following easements and restrictions:

(a) Utility and Other Easements. The Units, Limited Common Elements and Common Elements, as well as the Condominium Property, shall be, and are hereby, made subject to easements in favor of the Declarant, any Unit Owner, the Association, appropriate utility and service companies and governmental agencies or authorities for (1) any existing Service Elements that serve any portion of the Condominium Property as of the recording of this Declaration, and (2) any additional Service Elements that may be necessary or desirable in the future to serve any portion of the Condominium Property but only if such additional Service Elements (i) are approved by, and in locations designated by the unanimous approval of the Association Board, and (ii) do not materially interfere with the use and enjoyment of any Units, Limited Common Elements and/or Common Elements. Subject to the requirements set forth in this section, the easements provided for by this Section 11.1(a) shall include, without limitation, rights of Declarant, any Unit Owner, the Association, any providing utility, any service company, and any governmental agency or authority and any of them to install, lay, maintain, repair, relocate and replace Service Elements and any other appropriate equipment and facilities over, under, through, along and on the Units, Limited Common Elements and Common Elements. Notwithstanding the foregoing provisions of this section, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of initial construction or so as not to materially interfere with the use or occupancy of the Unit by its occupants.

(b) Easement for Ingress and Egress Through Common Elements. Each Unit Owner, along with their respective Invitees, is hereby granted an easement in common with each other Unit Owner, and their respective Invitees, for ingress and egress through all Common Elements intended for such purposes, subject to the Rules and Regulations. Each Unit is hereby burdened with and subjected to an easement for ingress and egress through all Common Elements by persons lawfully using or entitled to the same.

(c) Easements Across and Through Units and Limited Common Elements. Each Unit Owner, along with its Invitees, is hereby granted a non-exclusive easement in common with all other Unit Owners, and their respective Invitees, for pedestrian ingress and egress through certain designated areas of the Units and Limited Common Elements appurtenant to the Units, and the use and enjoyment of, those certain portions of the Condominium Property that may exist from time to time and that consist of sidewalks, outdoor areas and any other similarly used and situated area of the Condominium to the extent that such areas of the Units and Limited Common Elements appurtenant to the Units are maintained as public spaces of the Condominium Property and have not been designated for the exclusive use of a tenant, occupant or other authorized Invitee of a Unit, closed off to public access for any reason or otherwise restricted as to use pursuant to any Rules and Regulations that may be adopted by the Board from time to time. Notwithstanding anything to the contrary set forth herein, as may be required by any and all applicable municipal or other codes and regulations that may be in effect from time to time, all Units and Limited Common Elements appurtenant to the Units shall be subject to an easement for ingress and egress as may be necessary for the provision of any emergency services or as otherwise may be necessary with regard to emergency egress from any Building situated as part of the Condominium Property. The easements granted herein shall not grant Unit Owners the right to actually enter interior portions of the other Units that are not intended for ingress, egress and access.

(d) Intentionally deleted.

(e) Common Elements and Limited Common Elements Easement in Favor of Unit Owners. The Common Elements and the Limited Common Elements shall be and are hereby made subject to the following easement in favor of the Association and the Units benefited:

For the installation, repair, maintenance, use, removal and/or replacement of Service Elements, whether or not such Service Elements are located in any of the other Units or in any other part of the Condominium, to the extent such Service Element serves any Unit or is necessary for service to any Unit provided that any such installation, repair, maintenance, use, removal and/or replacement of any such item does not, in the determination of the Majority of the Association Board, unreasonably interfere, in any material adverse respect for any significant time period, with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of any Building, or impair or structurally weaken any Building or the systems serving any Building and any and all such work is performed in a good and workmanlike manner. Any such installation, repair, maintenance, use, removal and/or replacement shall be conducted by and in the manner provided that may be further provided in the Bylaws.

(f) Units, Limited Common Elements and Common Elements Easement in Favor of Association. The Units, Limited Common Elements and the Common Elements are hereby made subject to the following easements in favor of the Association and its agents, employees and independent contractors:

(i) For inspection of the Units, Common Elements and Limited Common Elements as may be commercially and reasonably necessary in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible and to correct or remove therefrom any violations of the Condominium Instruments or applicable governmental regulations;

(ii) For inspection, installation, maintenance, repair, replacement, renovation, alteration, improvement, or relocation of Service Elements, the Common Elements, or the Limited Common Elements situated in or accessible from such Units, Limited Common Elements or Common Elements;

(iii) For correction of emergency conditions in one or more Units, Limited Common Elements or Common Elements; and

(iv) For inspection, assessment, repair, replacement, renovation, alteration or improvement as may be necessary or desirable as a result of a casualty or condemnation to any of the Limited Common Elements, Common Elements or Units.

Any installation, replacement or relocation of the Limited Common Elements, Common Elements or Service Elements within a Unit shall be located at or near previous locations (if any) or, to the extent commercially feasible, in locations which will not unreasonably disturb the use of the Unit for its intended purposes. Except in an emergency, any right of access to a Unit granted pursuant to this section shall be exercised only after five (5) business days advance notice and with commercially reasonable efforts to minimize interference with the use of such Unit. The Unit shall promptly be restored by the Association to its condition immediately prior to such access after completion of any work in a Unit conducted pursuant to any right of access granted in this



Section 11.1(e). Notwithstanding the foregoing, in case of an emergency such right of entry shall be immediate and without notice, whether or not the Unit Owner is present at the time.

(g) Unit Access, Support and Maintenance Easements in Favor of Unit Owners. The Units are hereby made subject to the following easements in favor of the Unit Owners and their invitees, agents, employees and independent contractors: (i) for pedestrian and vehicular ingress and egress to and from the entrance to Units on and over any driveways, entrances, exits or roads that may exist on the Units from time to time; (ii) for structural support of any portion of a Building or Unit located above another Building or Unit, as shown on the Plat; and (iii) for inspection, repair, maintenance and replacement of any Limited Common Elements Serving More Than One Unit that are located within the boundaries of such Unit.

(h) Abutting Wall Easements. The Abutting Walls shall be and are hereby made subject to the following easement in favor of the Association and the Units benefited: For the installation, repair, maintenance, use, removal and/or replacement of Service Elements, whether or not such Service Elements are located in any of the other Units or in any other part of the Condominium, to the extent such Service Element serves any Unit or is necessary for service to any Unit; provided that any such installation, repair, maintenance, use, removal and/or replacement of any such item does not, in the determination of the Association, unreasonably interfere, in any material adverse respect for any significant time period, with the common use of any part of the Abutting Wall, adversely affect either the thermal or acoustical character of the Units or impair or structurally weaken the Units or the separate systems serving the Units and any and all such work is performed in a good and workmanlike manner.

11.2 Binding Nature. All easements and rights described herein are granted and reserved to and shall inure to the benefit of and be binding upon, Declarant, the Association, all Unit Owners and their respective Invitees, and all owners of any units created pursuant to Section 3.3 herein and their respective successors and assigns. Either the Association or Declarant, as applicable, shall have the authority to execute all documents necessary to carry out the intent of this section.

11.3 Easement Indemnification. With respect to any easement granted pursuant to this Declaration by any Unit Owner or the Association to any other Unit Owner, their Invitees or the Association, as the case may be, the party exercising the specific easement rights granted hereunder will, to the extent not covered by any insurance carried by any Unit Owner or the Association, indemnify and hold harmless the Unit Owner (in the case of an easement over any Unit) or the Association (in the case of any easement over any Common Element) for any loss, damages, claims and liabilities to the extent resulting from such benefiting party's exercise of its easement rights.

## ARTICLE 12

### RIGHTS OF MORTGAGE HOLDERS

12.1 Notice. Any holder of a mortgage (including the vendor's interest in a land contract) encumbering a Unit that makes written request on the Association for the following, identifying the name and address of such person and the Unit number or address, any such holder will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its mortgage;
- (b) Any thirty (30) day delinquency in the payment of assessments owed by the Owner of the Unit on which it holds a mortgage or any breach of the provisions of any instrument or rule governing the Condominium which is not cured by such Owner within thirty (30) days of such Owner's receipt of notice of such breach;
- (c) A lapse, cancellation or material modification of any insurance policy maintained by the Association;
- (d) Any proposed action that requires the consent of mortgage holders as specified in this Article 12;
- (e) Any proposed amendment to the Condominium Instruments; and
- (f) The commencement of any condemnation or eminent domain proceedings with respect to any part of the Condominium Property.

12.2 Mortgagee Acquisition of Unit. A Mortgagee acquiring title to a Unit pursuant to remedies provided in its mortgage or by a deed in lieu of foreclosure following an Owner's default under the mortgage shall not be liable for such Unit's unpaid assessments accruing prior to the Mortgagee's acquisition of title to the Unit. A Mortgagee's acquisition of title to a Unit as described above shall not relieve such Mortgagee (or another Person taking title through such Mortgagee) from liability for any Common Expenses or other assessments provided herein becoming due and payable after the date of its acquisition of the Unit.

12.3 Amendment of Provisions Affecting Mortgagees. Notwithstanding the provisions of Article 13 of this Declaration, neither Article 12 nor any section of this Declaration requiring the approval of a Mortgagee to any action, nor any section of this Declaration expressly benefitting a Mortgagee shall be amended unless all Mortgagees have given their prior written approval.

12.4 Owners of Unmortgaged Units. Whenever any provision contained in this Declaration requires the consent or approval (whether by vote or in writing) of a Mortgagee or Mortgagees to any decision, each Unit Owner of any unmortgaged Unit shall be considered a "Mortgagee" as well as a "Unit Owner" for purposes of such provision.

## ARTICLE 13

### AMENDMENT OF DECLARATION

13.1 General. Except as otherwise provided herein, this Declaration may be amended only by the written consent of Unit Owners owning Units to which sixty-seven percent (67%) of the votes in the Association appertain. A Unit Owner's consent is not effective unless approved by the Unit's first lien Mortgagee, if any. Amendments shall be prepared and executed by the president of the Association and shall become effective when recorded in the Kenosha County Register of Deed's Office. No action to challenge the validity of an amendment shall be commenced more than one (1) year after the amendment is recorded (except that a first lien Mortgagee shall be

entitled to bring a challenge to an amendment after this one (1) year period if the challenge is based upon a failure to obtain the first lien Mortgagee's consent to such amendment as required by this Section). Notwithstanding the foregoing, Declarant can unilaterally amend this Declaration to expand the condominium to include the Expansion Area.

### 13.2 Special Approvals of Certain Amendments.

- (a) No amendment shall adversely affect a special right conferred on or reserved to Declarant under this Declaration without Declarant's written consent.
- (b) If the revision or adoption of a building code or zoning ordinance prevents or substantially affects the construction of a Unit, Limited Common Element or Common Element as platted, the Declarant may reasonably modify the Condominium Plat, by addendum in accordance with Section 703.095 of the Act, to the extent necessary to comply with the code or ordinance in order to construct the Units, Limited Common Elements or Common Elements.
- (c) If the revision or adoption of a building code or zoning ordinance prevents or substantially affects the reconstruction of a Unit, Limited Common Element or Common Element as platted, the Declarant, Unit Owner, or Association, as appropriate, may reasonably modify the Condominium Plat, by addendum in accordance with Section 703.095 of the Act, to the extent necessary to comply with the code or ordinance in order to reconstruct the Units, Limited Common Elements or Common Elements.
- (d) Except as expressly provided in Section 13.2(b) and (c) above, no amendment shall materially and adversely affect a Unit or Unit Owner differently than the majority (calculated by Percentage Interest) of Units or Unit Owners, unless the affected Unit Owner or Unit Owner of the affected Unit has consented to the amendment or voted for the amendment.

## ARTICLE 14

### GENERAL PROVISIONS

#### 14.1 Enforcement.

- (a) Enforcement by Association. The Association shall not have the right to enforce any provisions of this Declaration against any Unit Owner for failing to comply with any provision of this Declaration, the Bylaws or the Rules and Regulations unless the Association has first given the Unit Owner written notice describing the failure and such failure remains uncured fifteen (15) days after delivery of the notice, except that no notice shall be required where an emergency condition (such as the threat of immediate harm to persons or property) exists and the Association takes immediate action to remedy the same. Thereafter, the Association shall have the right to take any and all actions necessary to enforce the terms of this Declaration, including, without limitation, (a) correcting the failure at the Unit Owner's expense, and/or (b) enforcing the provisions of this Declaration by proceedings at law or in equity, and/or (c) imposing a commercially reasonable fine for each day the violation continues, at such amount as may from time to time be set forth in the Bylaws or the Rules and Regulations. The Association may levy a Special Assessment (the "Default Special Assessment") to recover any costs actually incurred by the Association and/or commercially reasonable fines levied by the Association. The Default



Special Assessment may be levied against the Unit of the Unit Owner who has failed to comply with any provision of this Declaration, the Bylaws or the Rules and Regulations after taking into account any applicable notice and cure period. Any Unit Owner who owns a Unit against which a Special Assessment has been levied as a result of the Unit Owner's alleged default, may elect to contest the Default Special Assessment by submitting the issue to arbitration under Section 14.1(c) below.

(b) Enforcement by Unit Owner. Any Unit Owner (the "Petitioner") who wishes to enforce the provisions of this Declaration against any other Unit Owner shall first submit to the Association (with a copy to the other Unit Owner) a petition asking the Association to redress the violation or attempted violation of any of the provisions of this Declaration by any other person or entity (the "Petition"). The Association shall then have thirty (30) days from the date the Petition is filed (the "Consideration Period") to consider the Petition. If the Association denies or fails to act upon the Petition to the satisfaction of the Petitioner within the Consideration Period, thereafter the Petitioner shall have the right to enforce the provisions of this Declaration (except for the collection of assessments), to the extent that the Petitioner shall so have petitioned, by commencing arbitration proceedings under Section 14.1(c), below to seek monetary actual damages or by commencing proceedings in equity to restrain the violation; provided, however, that the Petitioner shall be a Unit Owner at the time of commencement of such proceedings and that the Petitioner shall commence the proceedings within a period of sixty (60) days from the earlier to occur of (i) the date of the Association's denial of such petition, or (ii) the passage of the Consideration Period.

(c) Arbitration.

(i) Default Special Assessments. Any Unit Owner against whose Unit a Default Special Assessment is levied may, within twenty (20) days of such levy, contest the Default Special Assessment by submitting the same to arbitration, in which case execution upon the levy shall be suspended pending final decision in such arbitration. The arbitrator shall have the power to reduce or eliminate the Default Special Assessment.

(ii) Monetary Damages. Any claim brought by the Association or any Petitioner seeking monetary actual damages against any Unit Owner shall be submitted to arbitration.

(iii) Arbitration Procedure. Where any dispute arising under this Declaration is required to be submitted to arbitration, the arbitration shall be conducted by a single, neutral arbitrator selected by mutual agreement of the parties, or, if they cannot reach agreement within sixty (60) days of the matter being submitted to arbitration by a party delivering written notice of a demand for arbitration to the other party, by the American Arbitration Association ("AAA") under its standard selection procedures, and the arbitration shall be conducted under its Arbitration Rules for the Real Estate Industry. Arbitration shall take place in Kenosha, Wisconsin. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties. The arbitration provisions contained herein shall not apply to any action against a Mortgagee taking title to a Unit via foreclosure or deed in lieu of foreclosure.

14.2 Attorneys' Fees. In the event of any proceeding at law or in equity as provided for in Section 14.1 above, the prevailing party in any such proceeding shall be awarded their reasonable attorneys' fees and expenses in prosecuting or defending such proceeding, as the case may be.

14.3 Non-waiver. No covenant, restriction, condition, obligation, right or other provision contained in this Declaration or the Association Instruments shall be deemed to have been waived or abrogated by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur, or any lapse of time.

14.4 Severability. The invalidity of any covenant, restriction, condition, limitation, easement, reservation or any other provision of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of any provision of this Declaration not declared invalid or unenforceable by a court of competent jurisdiction.

14.5 Covenants to Run with the Land. The provisions of this Declaration shall be deemed and taken to be covenants running with the land and shall be binding upon any Person having at any time any interest or estate in the Condominium.

14.6 Construction and Effect. Whenever used herein, unless the context shall otherwise require, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

14.7 Headings and Captions. The article, section and paragraph headings and captions are for ease of reference only and shall in no way define or limit the scope or intent of any article, section or paragraph.

14.8 Resident Agent. The Declarant shall be the initial resident agent for the Condominium and the address shall be 4015 80th Street, Kenosha, Wisconsin 53142. A successor resident agent may be named by the Board which shall be effective when the name of the successor is duly filed with the Wisconsin Department of Financial Institutions.

14.9 Notices. A notice to be given hereunder to a Unit Owner shall be deemed given upon personal delivery to the Owner (or any one of the Owners, if a Unit is owned by more than one Owner), or upon mailing in the United States Mail, first class postage affixed, addressed to the Unit Owner as such address is reflected on the records of the Association from time to time.

14.10 Estoppel. The Association, or any Owner, as the case may be, shall, from time to time, within fourteen (14) days after receipt of written request from any other Owner or the Association, as the case may be (the "Requesting Party"), execute, acknowledge and deliver to the Requesting Party or to any existing or prospective purchaser or mortgagee designated by the Requesting Party, a certificate (the "Estoppel Certificate") confirming that (a) there are no defaults (or if defaults, provide) by the Unit Owner or Association under the terms, conditions or restrictions of the Declaration, (b) there are no outstanding assessments or charges due and owing by said Unit Owner under the Declaration; (c) the regular and periodic Assessment amounts for said Unit; and (d) confirmation as to whether any special assessments or charges are anticipated or levied. The Association or Unit Owner, as applicable, may charge a reasonable fee for preparation of the estoppel.

14.11 Assignment by Declarant. Subject to any prohibitions within the Act, all of the rights and obligations conferred on or reserved herein for Declarant in its status as such (as opposed to those rights or obligations conferred on or reserved for all Owners or groups thereof) may be assigned as follows: (a) to any person by an instrument in writing specifically identifying the rights and obligations so assigned which is recorded in the Kenosha County Register of Deed's Office, or (b) to any purchaser of the Declarant's rights in a foreclosure sale or deed in lieu of foreclosure, without any specific written assignment of Declarant's rights, or (c) to any person or entity to which Declarant's rights have been collaterally assigned upon the exercise of such person's or entity's right under such collateral assignment, without any specific written assignment of Declarant's rights. An assignment of Declarant's rights is effective from the date of recordation of the assignment under (a), the deed under (b), or notice by such collateral assignee of such exercise under (c). A mortgage or other security interest granting a collateral assignment of Declarant's rights does not confer on the mortgagee or holder of the security interest the right to act as Declarant without some further act under (a) or (b) or (c). From and after each assignment, or after the affirmative activation of such collateral right, only the assignee may act as Declarant under this Declaration with respect to the rights assigned and all prior persons holding Declarant's right shall no longer be entitled to exercise such rights. No successor Declarant shall be responsible or liable for the obligations of a Declarant arising before the date on which such successor Declarant may act as above.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, Declarant has caused this Declaration to be signed by its authorized officer effective as of the first day set forth above.

**BREG6, LLC,**  
a Wisconsin limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF WISCONSIN    )  
                                      ) SS.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, the above-named \_\_\_\_\_, who is known to me to be the \_\_\_\_\_ of BREG6, LLC, a Wisconsin limited liability company, who executed the foregoing instrument and acknowledged the same in the capacity set forth above.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

## JOINDER OF OWNER OF EXPANSION AREA "B"

BREG 3404, LLC, a Wisconsin limited liability company ("BREG 3404"), as owner of that portion of the Expansion Area designed as Expansion Area "B" on the Condominium Plat ("Expansion Area B"), hereby joins this Declaration and (i) consents to and approves to the inclusion of Expansion Area B in the Expansion Area and (ii) agrees that Declarant has the right, in its sole discretion, to include Expansion Area B in a future expansion of the Condominium.

**BREG 3404, LLC,**  
a Wisconsin limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ACKNOWLEDGEMENT

STATE OF WISCONSIN    )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2022, the above-named \_\_\_\_\_, who is known to me to be the \_\_\_\_\_ of BREG 3404, LLC, a Wisconsin limited liability company, who executed the foregoing instrument and acknowledged the same in the capacity set forth above.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

THIS DOCUMENT WAS DRAFTED BY  
AND SHOULD BE RETURNED TO:

Attorney Katherine R. Rist  
Foley & Lardner LLP  
150 E. Gilman Street  
Madison, WI 53703  
(608) 258-4317



Exhibits Attached:

Exhibit A – Legal Description of Property

Exhibit B – Condominium Plat

Exhibit C – Percentage Interests in Common Elements and Number of Votes

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

[To be inserted]

# EXHIBIT B

## PLAT OF CONDOMINIUM-SUN PLAZA CONDOMINIUM

### CONDOMINIUM PLAT OF SUN PLAZA A CONDOMINIUM

Being a part of Midtown Subdivision and a part of Wilson Heights, a subdivision, in the Southeast 1/4 and Southwest 1/4 of the Northwest 1/4 of Section 36, Township 2 North, Range 22 East, City of Kenosha, Wisconsin.

#### SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN  
WAUKESHA COUNTY, SS

I, John P. Konopacki, Professional Land Surveyor, do hereby certify that I have surveyed and mapped the lands shown and described herein and that this is a true and correct representation of SUN PLAZA, a condominium and that the identification and location of each unit and the common elements can be determined from this plat.

SIGNED  JANUARY 20, 2022  
JOHN P. KONOPACKI, PROFESSIONAL LAND SURVEYOR 5-2461

UNIT 1: 45,893 SQ. FT.  
(1.0536 ACRES)

UNIT 2: 107,270 SQ. FT.  
(2.4626 ACRES)

UNIT 3: 41,981 SQ. FT.  
(0.9637 ACRES)

EXPANSION LAND "A":  
25,532 SQ. FT.  
(0.5861 ACRES)

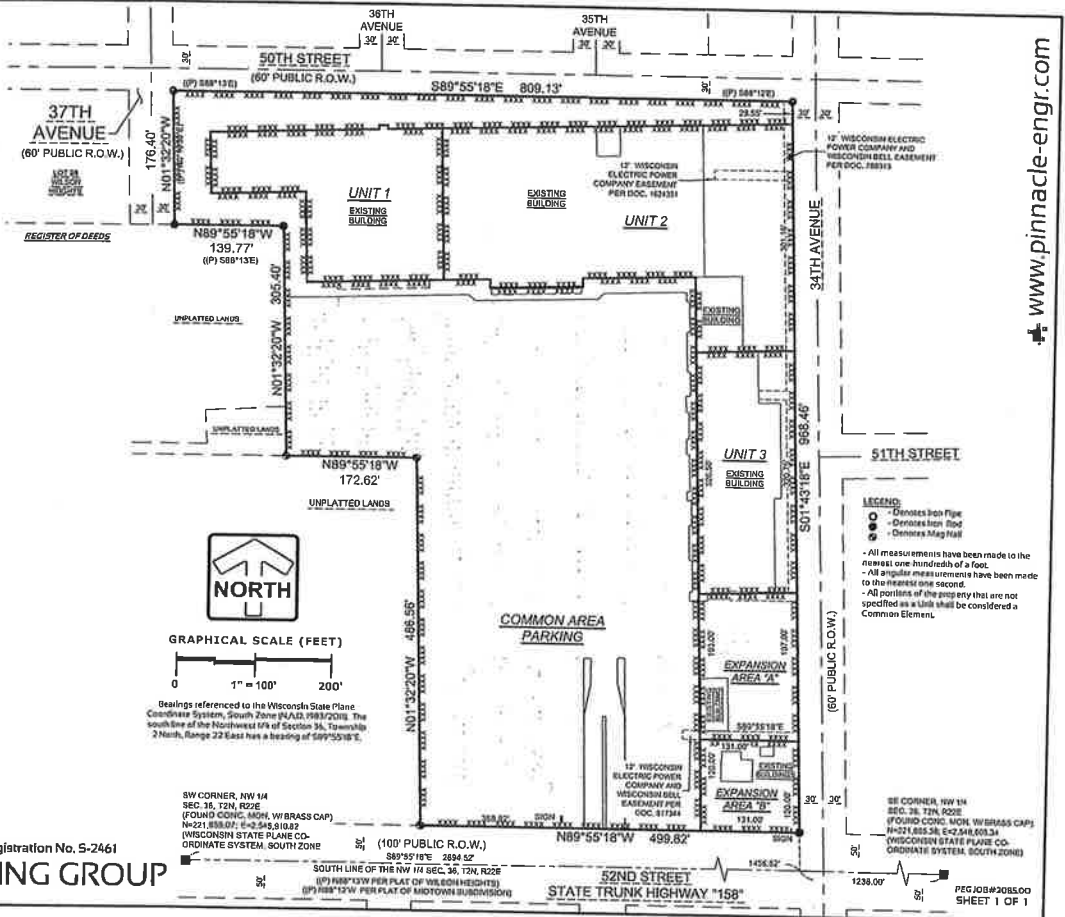
EXPANSION LAND "B":  
15,712 SQ. FT.  
(0.3607 ACRES)

Prepared by:  
PINNACLE ENGINEERING GROUP  
20725 WATERTOWN ROAD, SUITE 100  
BROOKFIELD, WI 53086  
OFFICE: (262) 754-8888  
DECLARANT: BREG6 LLC

Prepared for:  
BREG6 LLC  
4015 80th Street  
Kenosha, WI 53142

This instrument drafted by John P. Konopacki, PLS-Registration No. 5-2461

**PINNACLE ENGINEERING GROUP**



## **EXHIBIT C**

### **PERCENTAGE INTERESTS IN COMMON ELEMENTS AND NUMBER OF VOTES<sup>2</sup>**

<b><u>Unit</u></b>	<b><u>Percentage Interest</u></b>	<b><u>Number of Votes</u></b>
<b>Unit 1</b>		
<b>Unit 2</b>		
<b>Unit 3</b>		

---

<sup>2</sup> NTD: The percentage interest breakdown is based on a total improved square footage of [ ] broken up as follows:

Unit 1 = [ ]

Unit 2 = [ ]

Unit 3 = [ ]

**EXHIBIT F**

**LESSOR'S IMPROVEMENT WORK**

**FINAL VERSION WILL BE AVAILABLE  
UPON COMPLETION OF DESIGN PHASE**



**EXHIBIT G**

**PURCHASE AND SALE AGREEMENT**

**2 DOCUMENTS**

- **SALE OF SHERIDAN RD. TO BEAR**
- **SALE OF 52<sup>nd</sup> STREET TO COUNTY**

## **PURCHASE AGREEMENT**

This Purchase Agreement (“**Agreement**”) is by and between:

- County of Kenosha (hereinafter referred to as “**Seller**”) and
- Bear Capital, LLC, a Wisconsin limited liability company, or its assigns (hereinafter referred to as “**Buyer**”).

1. **Sale and Purchase.** Pursuant to this Agreement, Seller shall sell and Buyer shall purchase the real property known as 8600 Sheridan Road, located in the City of Kenosha, Kenosha County, Wisconsin (approximately 8.13 acres), together with the additional parcel consisting of approximately 0.42 acres located along Sheridan Road known as Tax Parcel Number 06-123-18-201-001 (hereinafter collectively referred to as the “**Property**”). The Property shall include all improvements and fixtures located thereon, together with rights pertaining thereto, including without limitation, each and every easement, access right, privilege, and appurtenance thereto.

2. **Purchase Price.**

2.1. The purchase price for the Property (the “**Purchase Price**”) shall be One Million Six Hundred Thousand (\$1,600,000.00) Dollars to be paid at the time of closing.

2.2. Buyer will pay Earnest Money in the amount of Twenty Five Thousand Dollars (\$25,000.00) (the “**Deposit**”) within five (5) business days after the Effective Date (as defined in Section 16.3) to an escrow account with Brandon Schulta, First American Title Insurance Company, 833 E. Michigan Street, Suite 550, Milwaukee, WI 53202 (“**Title Company**”), and the parties shall execute the standard Joint Order Escrow Agreement to be provided by Title Company. The Deposit shall be applied to the Purchase Price at Closing.

3. **Information.** Within seven (7) days of the Effective Date, Seller shall provide Buyer with copies of all title documents (including, but not limited to a copy of any existing leases affecting the Property, covenants, conditions and/or restrictions affecting the Property), title insurance commitments and/or policies, an “as-built” survey and any other surveys in Seller’s possession, site plans, blue prints of structures located on the Property, studies, engineering reports, environmental studies, soils reports, results of municipal inspections of the Building or Property of any kind, copies of any and all warranties on structures located on the Property, copies of service contracts associated with the Property, agreements pertaining to any water rights or supply, matters similar to the results of inspections and other materials prepared for Seller, in Seller’s possession or available to Seller relating to the Property and shall disclose in writing any other reports of which Seller is aware. If this Agreement is canceled, the information provided will be returned to Seller within ten (10) days of Seller’s request and Buyer will repair all damages to the Property resulting from the Buyer’s Inspections and will return the Property to its condition it was in prior to the Inspections. Seller shall disclose any material changes with respect to any information contained in this Agreement which occur prior to Closing.

4. Buyer's Contingencies. Buyer's obligation to close the transaction described hereunder shall be contingent on the following:

4.1. The execution of a Lease, together with Purchase Agreement for the Property known as Unit 2 of the Sun Plaza Condominium, located at 3408 52<sup>nd</sup> Street, Kenosha, WI, by and between Seller and Buyer's Affiliate on or before April 30, 2022, each in the form attached hereto as Exhibit A-1 and A-2 respectively.

4.2. The satisfaction of all contingencies under the Lease and the occupancy of the Leased Premises by Seller occurring on or before December 31, 2024.

4.3. Until Closing, Buyer shall have the right to seek various governmental and quasi-governmental approvals, permits, certifications, clarifications, authorizations, agreements, or other entitlements deemed necessary or desirable by Buyer for its intended use of the Property, including but not limited to, zoning ordinance approvals, clarifications, variances, or changes (the "**Governmental Approvals**"). Seller shall, in all ways, fully cooperate with Buyer in the pursuit of the Governmental Approvals including, without limitation, executing any application and other documents or instruments related thereto as reasonably requested by Buyer, but Seller will not be required to expend funds to assist Buyer.

4.4. Buyer may, at Buyer's expense, obtain a current ALTA survey of the Property, dated subsequent to the Effective Date of this Agreement in accordance with the "Minimum Standard Detail Requirements for Land Title Surveys" adopted by the American Title Association and the American Congress on Survey and Mapping (2011) (the "**Survey**"). The surveyor shall certify the Survey to the Title Insurer, the Buyer, and the Buyer's lender, if any. The Survey shall show each Schedule B exception contained in the Commitment and its effect on the Property.

5. Title Review. On or before ten (10) days from the Effective Date, Seller shall have the Title Company, at Seller's expense, provide Buyer with a commitment for an ALTA owner's title policy on the Property (the "**Commitment**"), and copies of all instruments shown by the Commitment as exceptions and the vesting deed(s). At Closing, Seller shall pay and release all amounts secured by mortgages, deeds of trust, or other liens on the Property, including without limitation any and all taxes or special assessments levied or for work commenced prior to Closing ("**Monetary Liens**"). Buyer shall have five (5) days after receipt of the Commitment, copies of all documents constituting exceptions to title and survey, and Survey (the Survey will be deemed (whether or not it in fact is obtained or received) to be received for these purposes on the earlier of when it is actually received or twenty five (25) days after the Effective Date) (the "**Review Period**"), to review the Commitment and Survey. If Buyer objects to any matters in the Commitment or Survey, Buyer shall notify Seller in writing ("**Buyer's Objection Notice**"). Seller shall notify Buyer in writing within five (5) days of receipt of Buyer's Objection Notice as to whether or not it will cure such objections. If Seller elects to cure such objections, it shall do so within five (5) days of receipt of Buyer's Objection Notice (the "**Cure Period**") or such longer period not exceeding thirty (30) days needed to cure the objection with reasonable diligence. Notwithstanding anything to the contrary stated herein, if Seller



elects not to clear title or fails to cure title by the expiration of the Cure Period, then Buyer may waive said title defects or elect to terminate this Agreement by delivering written notice of said termination to Seller prior to the Closing, and Buyer shall receive a refund of the Deposit or other non-refundable payment. Except for Monetary Liens and matters to which Buyer objects, exceptions contained in the Commitment are the “**Permitted Exceptions**”. If the Commitment is amended or supplemented after Buyer has submitted its objections to Seller, the same time periods, procedures and notices for objections and clearance of title shall apply to matters disclosed thereby.

6. Right of Entry and Inspection. At any time prior to Closing and upon advance notice, at Buyer’s sole expense, Buyer or its authorized agents may enter upon the Property accompanied by Seller or its agent, for any lawful purpose, including making Inspections (as defined below) as Buyer deems necessary. Buyer may select qualified professionals to make “**Inspections**” (including tests, borings, surveys, studies, inspections, investigations, and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards. Buyer shall work with Seller’s broker to obtain permission from any existing Tenant prior to entry on to the Property. Buyer shall keep the Property free of any liens and repair any material physical damages to the Property arising from the Inspections. Buyer shall indemnify and hold Seller harmless with respect to claims, damages, losses, costs, expenses, and liabilities arising from Buyer’s or its representatives’ inspection activities, except to the extent such claims relate to the discovery or (to the extent required by law) reporting of pre-existing conditions at the Property. If any Inspections, undertaken during the Feasibility Period and before waiver of contingencies, disclose matters unsatisfactory to Buyer, which Seller is unable or unwilling to correct at Seller’s expense, Buyer may, in its sole and absolute discretion, cancel this Agreement by written notice to Seller, given prior to the expiration of the Feasibility Period, and receive a refund of the Deposit and all accrued interest thereon.

7. Operation of Property. From the date of this Agreement to Closing Date, Seller shall:

7.1. Keep and preserve the Property in the condition existing as of the date of this Agreement and not deposit or authorize to be deposited thereon any garbage, fill, hazardous waste, or other refuse material without the Buyer’s prior written consent.

7.2. Not enter into any lease or other agreement with respect to the Property which will extend in force beyond Closing and purport to bind Buyer or the Property after Closing or will not be fully performed by Seller prior to Closing without first obtaining the written approval from Buyer.

7.3. Not initiate, petition for, or consent to the change in any zoning applicable to the Property or in any other governmental law, ordinance, or regulation applicable to the construction, use, occupation, or operation of the Property without the prior written consent of Buyer.

8. Seller’s Warranties. Seller makes the following representations and warranties which are true and accurate as of the Effective Date and as of Closing. These are Seller’s

only representations and warranties, and Seller makes no other representations and warranties express or implied. Without limitation, Buyer waives the right to receive any other representations and warranties, including receipt of a property condition report. For the purposes of this Section Seller's "knowledge" means to the actual knowledge of those employees of Seller who have responsibility with respect to the Property.

8.1. To the best of Seller's knowledge, the Property constitutes the tracts of land as described above that have been lawfully subdivided from all other land and is assessed separately from all other land for purposes of taxes and assessments.

8.2. To the best of Seller's knowledge, there are no pending or threatened governmental actions or proceedings (including, but not limited to, eminent domain proceedings, zoning changes, plans to modify adjacent roads, or proposed assessments) that will affect the Property.

8.3. To the best of Seller's knowledge, the Property is adjacent to publicly dedicated and accepted rights of way and direct vehicular access is permitted between the Property and said rights of way.

8.4. To the best of Seller's knowledge, no litigation is pending, threatened or likely with respect to the Property, Seller's interest therein, or which would inhibit Buyer obtaining clear title to the Property.

8.5. To the best of Seller's knowledge, Seller has no actual knowledge of any facts concerning the Property or any covenants, restrictions, agreements, or other encumbrances (recorded or unrecorded) affecting the Property that would prohibit or otherwise adversely affect the current use of the Property.

8.6. Except as disclosed to Buyer in writing, there are no unrecorded leases, arrangements, agreements, understandings, options, contracts (including, but not limited to, service contracts), or rights of first refusal affecting or relating to the Property in any way. In addition, Seller shall not enter into any of the foregoing without the prior written consent of Buyer, which consent may be withheld in Buyer's reasonable discretion, if they will bind the Property after Closing, interfere with Inspections, or interfere with the Closing.

8.7. The individual signing this Agreement on behalf of Seller has the authority to bind the Seller to the agreements set forth herein.

9. Notices. All notices and communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to Buyer:

Bear Capital, LLC  
Attn: S. R. Mills  
4011 – 80<sup>th</sup> Street  
Kenosha, WI 53142



Telephone: (262) 842-0452

If to Seller:

County of Kenosha  
1010 56<sup>th</sup> Street  
Kenosha, WI 53140

Notice shall be deemed to have been given upon receipt or refusal.

10. Closing. Closing shall occur at a place and time designated by Buyer, but in any event, shall occur no later than ten (10) days following the satisfaction of the contingencies described in Section 4.1 and 4.2 of this Agreement (the “**Closing**”). Seller shall deliver title to the Property to Buyer at Closing as required hereunder. Further, Seller shall assign to Buyer any and all warranties in Buyer’s possession pertaining to the improvements located on the Property.

10.1. Closing Costs. Notwithstanding anything to the contrary contained herein, Closing Costs shall be paid as follows:

10.1.1. By Seller:

10.1.1.1. Title insurance examination and standard owner’s policy premium and any additional premium for the modification and deletion of standard exceptions.

10.1.1.2. Expenses of placing title in proper condition.

10.1.1.3. Preparation of the Deed, affidavits, and any other documents required to convey title.

10.1.1.4. Revenue stamps, transfer tax, documentary stamps, or excise tax.

10.1.1.5. All costs associated with any other Seller transaction indirectly related to the sale of the Property (e.g., loan pay-offs, lien pay-offs, third party claims, etc.).

10.1.1.6. One-half the escrow fee, if any.

10.1.2. By Buyer:

10.1.2.1. Recording fees.

10.1.2.2. One-half the escrow fee, if any.

10.1.2.3. The cost of any title endorsements for which Buyer is responsible pursuant to Section 10.6 of this Agreement.

10.2. Intentionally Omitted.

10.3. Possession. Legal possession of the Property and all other conveyance

documents as required herein shall be delivered to Buyer at Closing. At Closing, or thereafter, if necessary, each party hereto shall, without cost or expense to the other party, execute and deliver to or cause to be executed and delivered to the other party, such further instruments of transfer and conveyance as may be reasonably requested, and take such other action as a party may reasonably require to carry out more effectively the transactions contemplated herein. Title and all ownership obligations (including payment of real estate taxes) will transfer and become the responsibility of the Buyer upon Closing.

10.4. Prorations. Interest, water, and sewer use charges, if any, shall be prorated as of Closing, inclusive of such date. All Property income and expenses, including taxes, shall accrue to Seller as of, and including, Closing. Rent received by the Seller from existing tenant(s), if any, shall be prorated as of the Closing Date, and the portion thereof allocable to periods beginning with the Closing Date shall be credited to the Buyer at Closing. Assessments, either general or special, for improvements for which any work commenced prior to Closing, or for any and all such assessments levied or assessed prior to Closing, shall be paid in full on or before Closing by Seller.

10.5. Seller's Affidavit. Seller shall execute, acknowledge, and deliver an affidavit on the customary form of the title insurance company issuing such commitment sufficient to have all construction liens (other than for work done by Buyer) removed from title and that no leases or other agreements creating any possessory rights in the Property exist.

10.6. Title Insurance and Deed. At Closing, Seller shall convey marketable fee simple title to the Property to Buyer, by warranty deed in a form acceptable to Buyer, subject only to the Permitted Exceptions (the "**Deed**"). The Deed shall specifically list the Permitted Exceptions on an exhibit and shall not contain language such as or similar in context to "subject to all matters of record". Buyer shall obtain at Closing, at Seller's expense, a standard form ALTA Owner's Title Insurance Policy (the "**Policy**") issued by the Title Company, together with an ALTA Extended Coverage Endorsement, insuring marketable fee simple title to Buyer, dated as of the date of Closing, in the full amount of the Purchase Price and containing no exceptions or conditions other than the Permitted Exceptions. Buyer has the right to elect to obtain any other endorsements to the Policy as Buyer may require, at Buyer's expense.

13. Risk of Loss and Condemnation. Until Closing, Seller shall assume all risk of loss or damage to the Property. If any loss or damage occurs prior to Closing, Buyer may, at its option, either (i) cancel this Agreement and receive a refund of all funds deposited with Title Company, or (ii) accept the Property with the Purchase Price reduced by the cost of replacement or repair. If all or any part of the Property is condemned or any condemnation action or proceeding is commenced prior to Closing, Buyer may, at its option, either (a) cancel this Agreement and receive a refund of all funds deposited with Title Company, or (b) complete the purchase, with all condemnation proceeds and claims being assigned to Buyer.

14. Remedies of Seller. If Buyer defaults under this Agreement, Seller may (a) recover

from the Buyer all reasonable expenses paid or incurred by Seller in connection with this Agreement, together with any actual damages sustained by Seller as a result of such default, (b) proceed with this Agreement and purchase the Property pursuant to this Agreement with an offset for costs or damages caused by such default, or (c) pursue a suit for specific performance.

15. Remedies of Buyer. If Seller defaults under this Agreement, Buyer may (a) cancel this Agreement in which case the Title Company is irrevocably instructed to return all funds deposited with it, to Buyer, Seller shall be responsible for any escrow cancellation fees and Buyer may recover from the Seller all reasonable expenses paid or incurred by Buyer in connection with this Agreement, together with any actual damages sustained by Seller as a result of such default, (b) proceed with this Agreement and purchase the Property pursuant to this Agreement with an offset for costs or damages caused by such default, or (c) pursue a suit for specific performance.

16. Miscellaneous

16.1. Binding. Seller and Buyer hereby acknowledge and agree that they intend this Agreement to be binding and enforceable, subject to the terms and conditions set forth herein. Each party hereby waives any right to challenge the enforceability of this Agreement on the basis that the contingencies set forth herein are at the discretion of Buyer. Seller acknowledges and agrees that Buyer will expend significant time and money investigating the Property and attempting to satisfy the contingencies precedent to the purchase of the Property and the expenditure of such time and money by Buyer, constitutes good and sufficient consideration to Seller for Seller to accept this Agreement and agree to be bound hereto. This Agreement may be withdrawn prior to delivery of the accepted Agreement.

16.2. Dates of Performance. If any date for performance of any obligation hereunder falls on a Saturday, Sunday or nationally established holiday, the time for performance of such obligation shall be extended until the next business day following such date. Calendar days will be used when computing time periods, except time periods of five (5) days or less.

16.3. Effective Date. The “**Effective Date**” of this Agreement shall be the latest signature date on this Agreement. This Agreement shall be binding upon Buyer so long as Seller accepts the offer tendered herein by Buyer, by returning Seller’s signature on the Agreement, as described in Section 16.10, on or before 5:00 p.m., in Kenosha, Wisconsin, on or before April 30, 2022.

16.4. Enforceability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof.

16.5. Entire Agreement. This Agreement contains the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements, or representations, either written or oral or express or implied, concerning



the sale contemplated by this Agreement.

16.6. Headings. The Section headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.

16.7. Modifications and Waiver. This Agreement may be amended only by an instrument in writing signed by both Seller and Buyer. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both Seller and Buyer. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.

16.8. Section 1031 Exchange. Seller hereby acknowledges that Buyer may, in its discretion, elect to complete a tax-deferred exchange under IRC Section 1031 which will not delay the Closing or cause additional expense to the Seller and without Seller taking title to any other property. The Buyer's rights under this Agreement may be assigned to a qualified intermediary of the Buyer's choice for the purpose of completing such an exchange.

16.9. Assignment. This Agreement may be assigned by Buyer, in its sole discretion, to an affiliated entity of said Buyer, provided that Buyer shall remain jointly and severally liable with any such Assignee, for the obligations of Buyer hereunder.

16.10. Signatures. This Agreement may be effectuated through the transmission of signature pages by facsimile or electronic mail and in several counterparts, each of which shall be deemed to be an original, and all of such counterparts together shall constitute one and the same Agreement.

16.11. Successors. This Agreement shall inure to the benefit of and bind the parties hereto and their respective executors, heirs, administrators, successors, and assigns. Seller may not assign this Agreement without the prior written consent of Buyer. Buyer may freely assign this Agreement without consent by Seller, provided Buyer remains liable hereunder through the Closing.

16.12. Survival. All warranties, indemnities, representations, and covenants herein contained shall survive Closing for a period of three hundred sixty-five (365) days.

16.13. Time of Essence. Time is of the essence of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date last signed by a party hereto.

Dated: \_\_\_\_\_, 2022

SELLER:  
County of Kenosha

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2022

BUYER:  
Bear Capital, LLC

By: \_\_\_\_\_  
Stephen R. Mills, Authorized Member



## **PURCHASE AGREEMENT**

This Purchase Agreement (“**Agreement**”) is by and between:

- BREG6, LLC (hereinafter referred to as “**Seller**”) and
- County of Kenosha, Wisconsin, a Wisconsin Municipal Corporation (hereinafter referred to as “**Buyer**”).

WHEREAS, Buyer and Seller have on the even date hereof, executed a Lease for the Property defined in Section 1 of this Agreement (the “**Lease**”); and

WHEREAS, as a condition of entering into the aforementioned Lease, Buyer and Seller have agreed to enter into this Agreement, providing for the Purchase by Buyer and the Sale by Seller of the Property following the expiration or termination of said Lease; and

NOW THEREOFRE, in consideration of the execution of the Lease and the foregoing recitals, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

1. Sale and Purchase. Pursuant to this Agreement, Seller shall sell and Buyer shall purchase the real property known as Unit 2 of the Sun Plaza Condominium, located at 3408 52<sup>nd</sup> Street, as depicted on the Condominium Plat attached hereto as Exhibit A attached hereto initially consisting of 107,270 Square Feet and to be expanded up to a maximum of 130,736 Square Feet in a manner described in the Declaration of Condominium for said Sun Plaza Condominium and the Lease (hereinafter referred to as the “**Property**”). The Property shall include all improvements and fixtures located thereon, together with rights pertaining thereto, including without limitation, each and every easement, access right, privilege, and appurtenance thereto.
2. Purchase Price. The purchase price for the Property shall be equal to the sum of Two Million Six Hundred Thousand (\$2,600,000.00) Dollars, the Lessor’s Improvement Costs (as defined in the Lease) and the total of the Grant and Tax Credit Adjustment as defined in Section 5 of this Agreement (the “**Purchase Price**”). The Purchase Price shall be paid from Buyer to Seller at the time of Closing.
3. Information. Within seven (7) days of the Effective Date, Seller shall provide Buyer with copies of all title documents (including, but not limited to a copy of any existing leases affecting the Property, covenants, conditions and/or restrictions affecting the Property), title insurance commitments and/or policies, an “as-built” survey and any other surveys in Seller’s possession, site plans, blue prints of structures located on the Property, studies, engineering reports, environmental studies, soils reports, results of municipal inspections of the Building or Property of any kind, copies of any and all warranties on structures located on the Property, copies of service contracts associated with the Property, agreements pertaining to any water rights or supply, matters similar to the results of inspections and other materials prepared for Seller, in Seller’s possession or available to Seller relating to the Property and shall disclose in writing any other reports of which Seller is aware. Seller shall disclose any material changes with respect to any

information contained in this Agreement which occur prior to Closing.

4. Title Review. On or before ten (10) days from the Effective Date, Seller shall have the Title Company, at Seller's expense, provide Buyer with a commitment for an ALTA owner's title policy on the Property (the "**Commitment**"), and copies of all instruments shown by the Commitment as exceptions and the vesting deed(s). At Closing, Seller shall pay and release all amounts secured by mortgages, deeds of trust, or other liens on the Property, including without limitation any and all taxes or special assessments levied or for work commenced prior to Closing ("**Monetary Liens**"). Buyer shall have ten (10) days after receipt of the Commitment, copies of all documents constituting exceptions to title and survey, and Survey (the Survey will be deemed (whether or not it in fact is obtained or received) to be received for these purposes on the earlier of when it is actually received or thirty (30) days after the Effective Date) (the "**Review Period**"), to review the Commitment and Survey. If Buyer objects to any matters in the Commitment or Survey, Buyer shall notify Seller in writing ("**Buyer's Objection Notice**"). Seller shall notify Buyer in writing within ten (10) days of receipt of Buyer's Objection Notice as to whether or not it will cure such objections. If Seller elects to cure such objections, it shall do so within ten (10) days of receipt of Buyer's Objection Notice (the "**Cure Period**") or such longer period not exceeding thirty (30) days needed to cure the objection with reasonable diligence. Notwithstanding anything to the contrary stated herein, if Seller elects not to clear title or fails to cure title by the expiration of the Cure Period, then Buyer may waive said title defects or elect to terminate this Agreement by delivering written notice of said termination to Seller within seven (7) days of the expiration of the Cure Period. Except for Monetary Liens and matters to which Buyer objects, exceptions contained in the Commitment are the "**Permitted Exceptions**". If the Commitment is amended or supplemented after Buyer has submitted its objections to Seller, the same time periods, procedures and notices for objections and clearance of title shall apply to matters disclosed thereby.

5. Seller's Grant and Tax Credit. Buyer and Seller acknowledge that in connection with the development and construction of Lessor's Improvement Work under the Lease, that Buyer and Seller, have and will continue to apply for various local, state and federal development incentives for the benefit of the Property as described in the Lease, including but not limited to New Market Tax Credits, Solar Energy Credits, and certain Wisconsin Economic Development Corporation (WEDC) grants (collectively the "Incentives"). The parties have agreed to share equally in the benefit of any such Incentives and therefore agree that, based upon the nature of how any such Incentives are delivered and/or received by the parties, that the Purchase Price shall be adjusted as follows:

5.1. For any Incentives received by the Seller or Buyer for the benefit of the Property which are retained by Seller (by way of example income tax credits of any kind that Seller elects to retain for its benefit), the Purchase Price shall be reduced by a sum equal to Fifty Percent (50%) of the total amount of any such Incentive so retained by Seller.

5.2. For any Incentives received by the Buyer or Seller which are applied to the balance of, or are in any manner utilized to reduce the Lessor's Improvement Costs (as

defined under the Lease), the Purchase Price shall be increased by a sum equal to Fifty Percent (50%) of the total amount of any such Incentives.

The sum of the adjustments described in Sections 5.1 and 5.2 above shall collectively be referred to as the **“Grant and Tax Credit Adjustment”**.

7. Operation of Property. From the date of this Agreement to Closing Date, Seller shall:

7.1. Subject to the rights to the Property of the Buyer as Lessee, keep and preserve the Property in the condition existing as of the date of this Agreement and not deposit or authorize to be deposited thereon any garbage, fill, hazardous waste or other refuse material without the Buyer's prior written consent.

7.2. Other than the Lease, not enter into any lease or other agreement with respect to the Property which will extend in force beyond Closing and purport to bind Buyer or the Property after Closing or will not be fully performed by Seller prior to Closing without first obtaining the written approval from Buyer.

7.3. Not initiate, petition for, or consent to the change in any zoning applicable to the Property or in any other governmental law, ordinance, or regulation applicable to the construction, use, occupation, or operation of the Property without the prior written consent of Buyer.

8. Seller's Warranties. Seller makes the following representations and warranties which are true and accurate as of the Effective Date and as of Closing. These are Seller's only representations and warranties, and Seller makes no other representations and warranties express or implied. Without limitation, Buyer waives the right to receive any other representations and warranties, excepting receipt of a property condition report to be provided upon execution of this Agreement. For the purposes of this Section Seller's "knowledge" means to the actual knowledge of those employees of Seller who have responsibility with respect to the Property.

8.1. To the best of Seller's knowledge, the Property constitutes the tracts of land as described above that have been lawfully subdivided from all other land and is assessed separately from all other land for purposes of taxes and assessments.

8.2. To the best of Seller's knowledge, there are no pending or threatened governmental actions or proceedings (including, but not limited to, eminent domain proceedings, zoning changes, plans to modify adjacent roads, or proposed assessments) that will affect the Property.

8.3. To the best of Seller's knowledge, the Property is adjacent to publicly dedicated and accepted rights of way and direct vehicular access is permitted between the Property and said rights of way.

8.4. To the best of Seller's knowledge, no litigation is pending, threatened or likely with respect to the Property, Seller's interest therein, or which would inhibit Buyer obtaining clear title to the Property.



8.5. To the best of Seller's knowledge, Seller has no actual knowledge of any facts concerning the Property or any covenants, restrictions, agreements or other encumbrances (recorded or unrecorded) affecting the Property that would prohibit or otherwise adversely affect the current use of the Property.

8.6. Except as disclosed to Buyer in writing, there are no unrecorded leases, arrangements, agreements, understandings, options, contracts (including, but not limited to, service contracts), or rights of first refusal affecting or relating to the Property in any way. In addition, Seller shall not enter into any of the foregoing without the prior written consent of Buyer, which consent may be withheld in Buyer's reasonable discretion, if they will bind the Property after Closing, interfere with Inspections, or interfere with the Closing.

8.7. The individual signing this Agreement on behalf of Seller has the authority to bind the Seller to the agreements set forth herein.

9. Notices. All notices and communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to Buyer:

County of Kenosha

Attn: \_\_\_\_\_

1010 56<sup>th</sup> Street

Kenosha, WI 53140

If to Seller:

BREG6, LLC

Attn: S. R. Mills

4011 – 80<sup>th</sup> Street

Kenosha, WI 53142

Telephone: (262) 842-0452

Notice shall be deemed to have been given upon receipt or refusal.

10. Closing. Closing shall occur at the office of the Title Company on or before ten (10) days following the expiration or termination of the Lease (the "**Closing**"). Seller shall deliver title to the Property to Buyer at Closing as required hereunder. Further, Seller shall assign to Buyer any and all warranties in Buyer's possession pertaining to the improvements located on the Property.

10.1. Closing Costs. Notwithstanding anything to the contrary contained herein, Closing Costs shall be paid as follows:

10.1.1. By Seller:

10.1.1.1. Title insurance examination and standard owner's policy premium and any additional premium for the modification and deletion of standard

exceptions.

10.1.1.2. Expenses of placing title in proper condition.

10.1.1.3. Preparation of the Deed, affidavits, and any other documents required to convey title.

10.1.1.4. Revenue stamps, transfer tax, documentary stamps, or excise tax.

10.1.1.5. All costs associated with any other Seller transaction indirectly related to the sale of the Property (e.g. loan pay-offs, lien pay-offs, third party claims, etc.).

10.1.1.6. One-half the escrow fee, if any.

10.1.2. By Buyer:

10.1.2.1. Recording fees.

10.1.2.2. One-half the escrow fee, if any.

10.1.2.3. The cost of any title endorsements for which Buyer is responsible pursuant to Section 10.6 of this Agreement.

10.2. Intentionally Omitted.

10.3. Possession. Legal possession of the Property and all other conveyance documents as required herein shall be delivered to Buyer at Closing. At Closing, or thereafter, if necessary, each party hereto shall, without cost or expense to the other party, execute and deliver to or cause to be executed and delivered to the other party, such further instruments of transfer and conveyance as may be reasonably requested, and take such other action as a party may reasonably require to carry out more effectively the transactions contemplated herein. Title and all ownership obligations (including payment of real estate taxes) will transfer and become the responsibility of the Buyer upon Closing.

10.4. Prorations. Interest, water, and sewer use charges, if any, shall be prorated as of Closing, inclusive of such date. All Property income and expenses, including taxes, shall accrue to Seller as of, and including, Closing. Rent received by the Seller from existing tenant(s), if any, shall be prorated as of the Closing Date, and the portion thereof allocable to periods beginning with the Closing Date shall be credited to the Buyer at Closing. Assessments, either general or special, for improvements for which any work commenced prior to Closing, or for any and all such assessments levied or assessed prior to Closing, shall be paid in full on or before Closing by Seller.

10.5. Seller's Affidavit. Seller shall execute, acknowledge, and deliver an affidavit on the customary form of the title insurance company issuing such commitment sufficient to have all construction liens (other than for work done by Buyer) removed from title and that no leases or other agreements creating any possessory rights in the



Property exist.

10.6. Title Insurance and Deed. At Closing, Seller shall convey marketable fee simple title to the Property to Buyer, by warranty deed in a form acceptable to Buyer, subject only to the Permitted Exceptions (the "**Deed**"). The Deed shall specifically list the Permitted Exceptions on an exhibit and shall not contain language such as or similar in context to "subject to all matters of record". Buyer shall obtain at Closing, at Seller's expense, a standard form ALTA Owner's Title Insurance Policy (the "**Policy**") issued by the Title Company, together with an ALTA Extended Coverage Endorsement, insuring marketable fee simple title to Buyer, dated as of the date of Closing, in the full amount of the Purchase Price and containing no exceptions or conditions other than the Permitted Exceptions. Buyer has the right to elect to obtain any other endorsements to the Policy as Buyer may reasonably require, at Buyer's expense.

13. Risk of Loss and Condemnation. Until Closing, Seller shall assume all risk of loss or damage to the Property. If any loss or damage occurs prior to Closing, Buyer may, at its option, either (i) cancel this Agreement and receive a refund of all funds deposited with Title Company, or (ii) accept the Property with the Purchase Price reduced by the cost of replacement or repair. If all or any part of the Property is condemned or any condemnation action or proceeding is commenced prior to Closing, Buyer may, at its option, either (a) cancel this Agreement and receive a refund of all funds deposited with Title Company, or (b) complete the purchase, with all condemnation proceeds and claims being assigned to Buyer.

14. Remedies of Seller. If Buyer defaults under this Agreement, Seller may (a) recover from the Buyer all reasonable expenses paid or incurred by Seller in connection with this Agreement, together with any actual damages sustained by Seller as a result of such default, (b) proceed with this Agreement and purchase the Property pursuant to this Agreement with an offset for costs or damages caused by such default, or (c) pursue a suit for specific performance.

15. Remedies of Buyer. If Seller defaults under this Agreement, Buyer may, at its option, (a) may recover from the Seller all reasonable expenses paid or incurred by Buyer in connection with this Agreement, together with any actual damages sustained by Buyer as a result of such default, (b) proceed with this Agreement and purchase the Property pursuant to this Agreement with an offset for costs or damages caused by such default, or (c) pursue a suit for specific performance.

16. Miscellaneous

16.1. Binding. Seller and Buyer hereby acknowledge and agree that they intend this Agreement to be binding and enforceable, subject to the terms and conditions set forth herein. Each party hereby waives any right to challenge the enforceability of this Agreement on the basis that the contingencies set forth herein are at the discretion of Buyer. Seller acknowledges and agrees that Buyer will expend significant time and money investigating the Property and attempting to satisfy the contingencies precedent to the purchase of the Property and the expenditure of such

time and money by Buyer, constitutes good and sufficient consideration to Seller for Seller to accept this Agreement and agree to be bound hereto. This Agreement may be withdrawn prior to delivery of the accepted Agreement.

16.2. Dates of Performance. If any date for performance of any obligation hereunder falls on a Saturday, Sunday or nationally established holiday, the time for performance of such obligation shall be extended until the next business day following such date. Calendar days will be used when computing time periods, except time periods of five (5) days or less.

16.3. Effective Date. The “**Effective Date**” of this Agreement shall be the latest signature date on this Agreement. This Agreement shall be binding upon Buyer so long as Seller accepts the offer tendered herein by Buyer, by returning Seller’s signature on the Agreement, as described in Section 16.10, on or before 5:00 p.m., in Kenosha, Wisconsin, on or before April 30, 2022.

16.4. Enforceability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof.

16.5. Entire Agreement. This Agreement contains the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements, or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement.

16.6. Headings. The Section headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.

16.7. Modifications and Waiver. This Agreement may be amended only by an instrument in writing signed by both Seller and Buyer. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both Seller and Buyer. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.

16.8. Section 1031 Exchange. Seller hereby acknowledges that Seller may, in its discretion, elect to complete a tax-deferred exchange under IRC Section 1031 which will not delay the Closing or cause additional expense to the Seller and without Seller taking title to any other property. The Seller’s rights under this Agreement may be assigned to a qualified intermediary of the Buyer’s choice for the purpose of completing such an exchange.

16.9. Assignment. This Agreement may not be assigned by either Buyer or Seller, without the written consent of the other party, other than Seller may assign this agreement to an affiliated entity who purchases or otherwise acquires the Property from

Seller, without the necessity of such consent.

16.10. Signatures. This Agreement may be effectuated through the transmission of signature pages by facsimile or electronic mail and in several counterparts, each of which shall be deemed to be an original, and all of such counterparts together shall constitute one and the same Agreement.

16.11. Successors. This Agreement shall inure to the benefit of and bind the parties hereto and their respective executors, heirs, administrators, successors and assigns. Seller may not assign this Agreement without the prior written consent of Buyer. Buyer may freely assign this Agreement without consent by Seller, provided Buyer remains liable hereunder through the Closing.

16.12. Survival. All warranties, indemnities, representations, and covenants herein contained shall survive Closing for a period of three hundred sixty-five (365) days.

16.13. Time of Essence. Time is of the essence of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date last signed by a party hereto.

*[signatures on following page]*

Dated: \_\_\_\_\_, 2022

SELLER:  
BREG6, LLC

By: \_\_\_\_\_  
Stephen R. Mills, Authorized Member

Dated: \_\_\_\_\_, 2022

BUYER:  
County of Kenosha

By: \_\_\_\_\_

**EXHIBIT H**  
**CONSTRUCTION CONTRACT**



# **AIA® Document A102™ – 2017**

**Standard Form of Agreement Between Owner and Contractor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the     day of     in the year  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

BREG6 LLC  
4011 80th Street  
Kenosha, WI 53142

and the Contractor:  
(Name, legal status, address and other information)

Construction Management Associates, Inc., Subchapter S Corporation  
4015 80th Street, Suite F  
Kenosha, WI 53142  
Telephone Number: 262-942-3500  
Fax Number: 262-942-3505

for the following Project:  
(Name, location and detailed description)

3408 52nd St - Suite 2 Construction Project  
3408 52nd Street  
Unit 2  
Kenosha, WI 53144  
Construction a multi-story building addition, renovate existing interior and exterior building sections to create new office space. Renovate the site and parking areas.

The Architect:  
(Name, legal status, address and other information)

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A102™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	RELATIONSHIP OF THE PARTIES
4	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
5	CONTRACT SUM
6	CHANGES IN THE WORK
7	COSTS TO BE REIMBURSED
8	COSTS NOT TO BE REIMBURSED
9	DISCOUNTS, REBATES AND REFUNDS
10	SUBCONTRACTS AND OTHER AGREEMENTS
11	ACCOUNTING RECORDS
12	PAYMENTS
13	DISPUTE RESOLUTION
14	TERMINATION OR SUSPENSION
15	MISCELLANEOUS PROVISIONS
16	ENUMERATION OF CONTRACT DOCUMENTS

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's

Init.

interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

#### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☐ The date of this Agreement.

☐ A date set forth in a notice to proceed issued by the Owner.

☒ Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

TBD

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 4.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 4.3 Substantial Completion

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

☐ Not later than ( ) calendar days from the date of commencement of the Work.

☒ By the following date: TBD

§ 4.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

**Portion of Work**

**Substantial Completion Date**

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

#### ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)*

General Conditions 4% of Project Costs; Overhead 2% of Project Costs and Profit 6% of Project Costs

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

as defined in 5.1.1

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Init.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed    percent (    %) of the standard rental rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price Per Unit (\$0.00)
------	-----------------------	-------------------------

§ 5.1.6 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

§ 5.1.7 Other:

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

## § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed ( \$    ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

### § 5.2.2 Alternates

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
------	-------

§ 5.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price:

*(Identify each allowance.)*

Item	Price
------	-------

§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:

*(Identify each assumption.)*

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract

Init.

AIA Document A102® - 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:35:17 ET on 01/27/2022 under Order No.5692878151 which expires on 07/31/2022. This document is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).

User Notes:

(1398171512)

Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

## **ARTICLE 6 CHANGES IN THE WORK**

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 5, 7 and 8 of this Agreement.

Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 7 COSTS TO BE REIMBURSED**

### **§ 7.1 Cost of the Work**

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

### **§ 7.2 Labor Costs**

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

Init.



§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

**§ 7.3 Subcontract Costs**

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

**§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 7.6 Miscellaneous Costs**

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

Init.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

## § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

## § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the

Init.



related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

## **ARTICLE 8 COSTS NOT TO BE REIMBURSED**

**§ 8.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

## **ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS**

**§ 9.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

**§ 9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 10.1** Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

**§ 10.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 10.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is

awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

## ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 12 PAYMENTS

### § 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the Fifth day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Twenty-Sixth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty ( 30 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing



(a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 12.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

#### § 12.1.8 Retainage

§ 12.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

§ 12.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

§ 12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*



§ 12.1.8.3 Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

§ 12.1.9 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 12.1.10 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 12.1.11 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 12.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated

Init.

amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

**§ 12.2.3** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

**§ 12.2.4** If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

**§ 12.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
(Insert rate of interest agreed upon, if any.)

12.00 % per annum

**ARTICLE 13 DISPUTE RESOLUTION**

**§ 13.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.  
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

**§ 13.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:  
(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 15 of AIA Document A201-2017
- ☐ Litigation in a court of competent jurisdiction
- ☐ Other (Specify)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 14 TERMINATION OR SUSPENSION**

**§ 14.1 Termination**

**§ 14.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

Init.

**§ 14.1.2 Termination by the Owner for Cause**

**§ 14.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 14.1.2.2** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

**§ 14.1.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

**§ 14.2 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 15.2** The Owner's representative:

*(Name, address, email address and other information)*

Stephen R. Mills

**§ 15.3** The Contractor's representative:

*(Name, address, email address and other information)*

Jonah Hetland

Telephone Number: (262) 942-3500

Init.

AIA Document A102™ – 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:35:17 ET on 01/27/2022 under Order No.5692878151 which expires on 07/31/2022. This document is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).

User Notes:

(1398171512)

Fax Number: (262) 942-3505  
Mobile Number: (262) 818-8114  
Email Address: [jonah@cmaofwi.com](mailto:jonah@cmaofwi.com)

§ 15.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 15.5 Insurance and Bonds**

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 15.5.2 The Contractor shall provide bonds as set forth in AIA Document A102™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 15.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 15.7 Other provisions:

**ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS**

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A102™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

- .5 Drawings

Number	Title	Date
--------	-------	------

- .6 Specifications

Section	Title	Date	Pages
---------	-------	------	-------

- .7 Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16.

Init.

AIA Document A102™ - 2017. Copyright © 1920, 1925, 1951, 1958, 1961, 1963, 1967, 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 15:35:17 ET on 01/27/2022 under Order No.5692878151 which expires on 07/31/2022. This document is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes:

(1398171512)



**.8 Other Exhibits:**  
(Check all boxes that apply.)

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

Title	Date	Pages
-------	------	-------

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

**.9 Other documents, if any, listed below:**  
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** (Signature)

Stephen R. Mills  
(Printed name and title)

\_\_\_\_\_  
**CONTRACTOR** (Signature)

Jonah Hetland, C.O.O.  
(Printed name and title)

Init.



## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, Jonah P. Hetland, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 15:35:17 ET on 01/27/2022 under Order No. 5692878151 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A102™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*

# **AIA** Document A102™ – 2017 Exhibit A

## **Insurance and Bonds**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the    day of    in the year  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

3408 52nd St - Suite 2 Construction Project  
3408 52nd Street  
Unit 2  
Kenosha, WI 53144

**THE OWNER:**  
(Name, legal status and address)

BREG6 LLC  
4011 80th Street  
Kenosha, WI 53142

**THE CONTRACTOR:**  
(Name, legal status and address)

Construction Management Associates, Inc., Subchapter S Corporation  
4015 80th Street, Suite F  
Kenosha, WI 53142

### **TABLE OF ARTICLES**

- A.1      GENERAL**
- A.2      OWNER'S INSURANCE**
- A.3      CONTRACTOR'S INSURANCE AND BONDS**
- A.4      SPECIAL TERMS AND CONDITIONS**

#### **ARTICLE A.1    GENERAL**

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

#### **ARTICLE A.2    OWNER'S INSURANCE**

##### **§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

## § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

## § A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

### Causes of Loss

### Sub-Limit

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

### Coverage

### Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

## § A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

Init.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.



(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

☐ § A.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. (Indicate applicable limits of coverage or other conditions in the fill point below.)

☐ § A.2.5.2 **Other Insurance**  
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

## ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

### § A.3.1 General

§ A.3.1.1 **Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 **Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 **Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

### § A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

### § A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each occurrence, Two Million Dollars and Zero Cents (\$ 2,000,000.00 ) general aggregate, and Two Million Dollars and Zero Cents (\$ 2,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

1. damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

Init.

- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each accident, One Million Dollars and Zero Cents (\$ 1,000,000.00 ) each employee, and One Million Dollars and Zero Cents (\$ 1,000,000.00 ) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

### § A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

- ☐ § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

- ☐ § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

- ☐ § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- ☐ § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

- ☐ § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.



[ ] § A.3.3.2.6 Other Insurance

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

Coverage

Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

Type

Penal Sum (\$0.00)

Payment Bond

Performance Bond

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.