

Attachment N - Model Development Agreement

DEVELOPMENT AGREEMENT

PARK EAST CORRIDOR DEVELOPMENT OF BLOCK ____

THIS AGREEMENT is made as of the ____ day of _____, 20__, by and between MILWAUKEE COUNTY (the "County"), _____, a _____ limited liability company (hereinafter "Developer") and _____ (hereinafter "____") who is the managing member of _____ and the guarantor of its obligations hereunder.

RECITALS

On or about the date herewith, the Developer is acquiring certain property in the City of Milwaukee, Milwaukee County, Wisconsin as more fully described on **Exhibit A** attached hereto (the "Property") from the County pursuant to a certain Option to Purchase dated ____, 200__ and attached hereto as **Exhibit B** (the "Option Agreement"). The Property consists of approximately ____ acres of land and is located within the former Park East Freeway Corridor in the City of Milwaukee. The parties now desire to enter into this Agreement to set forth the terms and conditions by which the Property will be developed and to establish certain additional covenants and restrictions for the benefit of the Property acquired by the Developer.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein and in the Option Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms used herein shall have the following meanings:

(a) "Building" means the improvements to be initially constructed by the Developer on the Property in conformity with plans and specifications approved by the County and the City of Milwaukee, all as more particularly described on **Exhibit C**.

(b) "Community Benefits Reporting" means the records from the Developer demonstrating its compliance and good faith efforts undertaken with respect to Section 2.4, 2.6, 2.7 and 2.8 of this Agreement. The form and substance of the records ("Community Benefits Records") will be specified in the Developer's PERC Compliance Plan.

(c) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), fees and expenses of defense of any claim and of any settlement or judgment, including without limitation, attorneys' fees and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property, including without limitation: (i) damages for personal injury, or injury to property or natural resources occurring upon or off the Property, foreseeable or unforeseeable, including without limitation, lost profits, consequential damages, interest and penalties, including, but not limited to, claims brought on behalf of employees of the Developer or the County; (ii) diminution in the value of the Property, and damages for the loss of or restriction on the use of or adverse impact on the marketing of rentable or usable space or of any amenity of the Property; (iii) fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other fees incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements, including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remedial, removal, containment, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Property or otherwise expended in connection with such conditions; (iv) liability to any third person or governmental agency to indemnify such person or agency for fees expended in connection with the items referenced in this subparagraph.

(d) "Environmental Requirements" means all applicable past, present and future laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, the State of Wisconsin and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: (i) all requirements, including, but not limited to, those pertaining to best management practices, reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Material (as defined herein) and (ii) all requirements pertaining to the protection of the health and safety of employees or the public.

(e) "Hazardous Material" means any substance: (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any federal, state, or local statute, regulation or ordinance or amendments thereto, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C.

section 9601 et seq.); and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Wisconsin, or any political subdivision thereof; or (iv) the presence of which is on the Property; or (v) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

(f) "Park East Redevelopment Compact" or "PERC" means Milwaukee County Board Resolution File No. 04-492 attached hereto as **Exhibit D**.

(g) "Project" means the Building, roads, driveways, parking areas, signs, walkways, loading areas, fences and walls, sewer, electrical, gas, water and other utility distribution systems, landscaping, drainage and other improvements to be initially constructed on the Property by or for the Developer in conformity with the approved plans and specifications, all as more particularly described on **Exhibit E**.

(h) "Redevelopment Plan" means the redevelopment plan adopted by the City of Milwaukee Common Council on June 15, 2004, and any amendments thereto. The Redevelopment Plan consists of the following three documents: (i) the Renewal Plan that contains language that satisfies the State statutes in order to carry out the renewal activities within the Park East Redevelopment Project boundaries, (ii) the Master Plan that links the Redevelopment Plan to the Milwaukee Downtown Plan and (iii) the Development Code that defines land use and design standards.

(i) "Request for Proposal" means the Official Notice No. _____, Request for Proposals, Park East Corridor Development, Milwaukee, Wisconsin relating to the Property and attached hereto as **Exhibit F**.

(j) "Material Alteration of the Project" means (a) a 10% (ten percent) variance in the square footage of the project or any material alteration to: (ii) the exterior materials, (b) the general appearance, (c) the scope and use of the project, or (d) the stated intentions of the Project - each of the above as reflected in the most current submitted plans as reflected in **Exhibits C, E and G**. "Material Alteration of the Project" also means any change to the PERC Compliance Plan, approved by the Milwaukee County Community Business Development Partners ("CBDP") and the County Economic Development Division.

2. Development of the Project.

2.1 Construction by the Developer. The Developer shall, at its own cost and expense, cause the construction of the Project on the Property in a good and

workmanlike manner and in compliance with all then applicable building codes and ordinances, and the Redevelopment Plan and Request for Proposal. The Developer represents that the total projected cost of acquiring the Property and constructing the Project thereon shall be as specified on **Exhibit H**. Construction of the Project on the Property shall be completed substantially in conformity with the plans, specifications, landscape plan, signage plan, drainage plan and parking plan as submitted by the Developer and approved by County Board Resolution _____ which is attached hereto as **Exhibit I**, and as approved by the City of Milwaukee (the "Approved Plans") the cover page of which is attached hereto as **Exhibit G**.

The Approved Plans may be modified from time to time during the course of construction and shall not require the consent of the County except the advance written consent of the County shall be required in the following instances: (a) to the extent that such modifications are a "Material Alteration of the Project" as defined herein or (b) to the extent the Developer is required to obtain approval for such modification by the City of Milwaukee. In the event that County approval is required, the Developer shall not institute such modification until receiving written approval from the County's Director of Economic and Community Development. If approval of the County is required, the County shall respond in writing within ten (10) business days of its having been notified of the need for approval. If the County does not notify the Developer on or before said 10th business day of its approval or disapproval, approval shall be deemed to be granted. To the extent necessary to approve or disapprove a Material Alteration of the Project, the County shall be allowed – upon notice to the Developer – a reasonable amount of time beyond 10 business days (which additional time may include the time needed to seek approval by the Milwaukee County Board) to provide its approval or disapproval. The foregoing notwithstanding, a Material Alteration of the Project relating to DBE and Park East Redevelopment Compact Compliance Plan requirements, referenced in Section 1i(vi) and (vii), shall automatically come back to the Economic Development Committee for review and determination whether this item shall require County Board approval. It is expressly understood that such approvals cannot be accomplished in 10 business days. Thus, such additional time shall be permitted to seek Economic Development Committee review and Milwaukee County Board approval or disapproval.

The Developer agrees (i) to commence construction, which shall mean commencement of excavation, of the Project on the Property within __ days after closing ("Closing") of its acquisition of the Property (the "Project Commencement Date"), (ii) within __ months after Closing, achieve completion of excavation of the location for the Building and commencement of construction of the foundation (the "Excavation Completion Date"), and (iii) to diligently prosecute construction to completion within ___ months after Closing pursuant to the construction schedule as set forth on **Exhibit J** (the "Project Completion Date"). The Project Commencement Date and Project Completion Date (as defined on **Exhibit J**) shall be confirmed by the Developer's Project architect delivering certificates to the County stating that excavation on the Property has

been completed and construction of the foundation has commenced or with respect to substantial completion, that the entire Project has been substantially completed. In the event the Developer ceases construction of the Project on the Property, other than due to a Force Majeure Delay, for 60 consecutive days, such event shall be deemed a "Construction Stoppage."

Prior to the execution of this Agreement and Closing, the Developer shall deliver to the County a Performance Deposit (the "Deposit") in the amount of \$50,000. The Deposit shall serve as a security on deposit for the full and complete performance of all of the obligations, agreements and covenants in this Agreement, the Developer's proposal approved by the Milwaukee County Board of Supervisors and County Executive, the Request for Proposal, and as a guaranty for the completion of the development approved by the City of Milwaukee, which obligations shall be performed in compliance with the other terms and conditions of this Agreement. The Deposit shall be in a form approved in advance in writing by the County. The Deposit shall be returned to the Developer within 10 days after the earlier of (i) the date of substantial completion of the Project as evidenced by a certificate of substantial completion from the Developer's architect; or (ii) the date a certificate of occupancy is issued, provided the Developer has submitted the proper Community Benefits Records to satisfy its Community Benefits Reporting obligation.

2.2 Condition of Property; Construction of Infrastructure. At Closing, as contemplated by the Option Agreement, the County shall deliver possession of the Property to the Developer in substantially the condition as existed on the date of the Option Agreement but otherwise "AS-IS" (as to physical condition) except as otherwise represented herein or in the Option Agreement. The County shall not be responsible for performing any grading or compaction work with respect to the Property. The Property was part of the former Park East Freeway Corridor and contained above and below grade freeway structures. The demolition of the elevated freeway structures included the partial or complete removal of the below-grade freeway support elements and related infrastructure (except piles). The City of Milwaukee, Department of Public Works managed the demolition of the elevated freeway structures as well as the removal of the below-grade freeway support elements and related infrastructure. Prior to the existence of the freeway, the subject property contained various buildings and/or structures as more particularly described in the Request for Proposal. Therefore, the property may contain foundations, building materials, and/or various debris from the previous demolition, and any remaining freeway support elements or related infrastructure. The Developer is solely responsible for and must make adequate allowance for all excavation and disposal costs necessary for the Project. The Request for Proposal provides additional information regarding the condition of the Property. The Developer shall be solely responsible for all property development costs, including, but not limited to, extension of water and sewer laterals to the Property and the replacement of sidewalks and curb cuts. Developer hereby releases and disclaims any claim, damage, loss, injury or obligation whatsoever of

the County in any way relating to or arising out of the physical condition of the Property, any matters described in this Section 2.2, and/or any material, substance, or contaminant located in, under, upon, or migrating to or from the Property, regardless of the source. Such disclaimer and release shall include any action at law or in equity, whether arising out of contract or tort law.

2.3 General Requirements. The Developer agrees that during construction it shall use reasonable efforts to (a) cause its contractors working on the Project to remove all waste products and rubbish from the Property and the infrastructure areas related to their work in a manner and time consistent with industry standards, and if any such waste products and rubbish are left on site, it shall be responsible for removing the same, and (b) use reasonable efforts to keep the Property and areas of access thereto in a neat and presentable state.

2.4 Labor Standards. The construction of the Project on the Property shall be subject to the following labor standards: (a) overtime at prevailing overtime rates for work on Saturday, Sunday and legal holidays and for more than 40 hours per week or 8 hours in any calendar day, (b) minimum hourly base wage rates and minimum hourly fringe benefits as specified in the Wisconsin Department of Workforce Development's Final Determination of annual prevailing wages in Milwaukee County and Attachment M of the Request for Proposal and (c) compliance with the Prevailing Wages and Employment Data section of the Park East Redevelopment Compact. These labor standards shall be included in each contract and subcontract in connection with development of the Project. The Developer shall maintain records of compliance and require each contractor and subcontractor to maintain records of compliance for verification as reasonably requested by the County. Failure to pay prevailing wages could result in the Developer forfeiting all or a portion of its Performance Deposit to the County as liquidated damages, restitution to workers not paid the appropriate wage, and being disqualified from obtaining future contracts from the County.

2.5 Nondiscrimination and Affirmative Action. In construction of the Project and performance of its duties and obligations hereunder, the Developer shall not discriminate against any employee or applicant for employment (and the Developer shall use reasonable efforts to eliminate any such discrimination by its contractors) based on ancestry, arrest record, conviction record, creed, genetic testing, honesty testing, marital status, membership in the national guard, state defense force or any reserve component of the military forces in the United States or the State of Wisconsin, pregnancy or child birth, sexual orientation, race, color, national origin, age, sex or disability which shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. The Developer will post in conspicuous places, accessible to employees, notices setting forth the provisions of the foregoing nondiscriminatory clause. The Developer will strive to

implement the principles of equal employment opportunities through an effective affirmative action program, which program shall have as its objective to increase the utilization of women, minorities and handicap persons, and other protected groups in the Developer's employment at the Project for so long as it is located there, and in construction of the Project. The Developer shall cause its contractors and subcontractors and any assignee to comply with this Section 2.5 and Section 2.6 with respect to construction of the Project.

2.6 DBE Participation Goals. The Developer and its contractors shall commit to ensuring that Disadvantaged Business Enterprises (DBEs) certified through the Wisconsin Uniform Certification Program (WIUCP) have an equal opportunity to receive and participate in the Project. Developer and its contractors shall be required to meet a goal of 25 percent DBE participation for construction project costs and 17 percent DBE participation for professional services project costs (“Minimum DBE Goal”). To satisfy this requirement, the Developer must meet or exceed the Minimum DBE Goal, or demonstrate that it has made a “good faith effort” to reach the goal (“Minimum Good Faith Efforts”). Prior to Closing, the County will assist the Developer in developing a detailed compliance plan (“PERC Compliance Plan”) which will outline the Minimum DBE Goal, what constitutes Minimum Good Faith Efforts and what monthly reporting requirements the Developer must undertake. The PERC Compliance Plan, an example of which is attached hereto as **Exhibit K**, is subject to the approval of the County. The County shall use the standards, policies and procedures of the CBDP Section of Milwaukee County to determine acceptability of the DBE provisions. Failure to abide by the DBE portion of its PERC Compliance Plan could result in the Developer forfeiting all or a portion of its Deposit to the County as liquidated damages and being disqualified from obtaining future contracts with the County.

2.7 Workforce Goals – Residential Hiring. The Developer shall commit to a goal of _____ percent of total Project hours (construction and professional services) being allocated to Milwaukee County residents. The Developer’s PERC Compliance Plan will restate this goal, outline the minimum good faith efforts necessary to achieve the goal and specify the reporting requirements of the Developer. Monitoring of this goal by the Developer will be provided through the monthly payroll reporting of contractors and subcontractors. Failure to reach this goal could result in the Developer forfeiting all or a portion of its Deposit to the County as liquidated damages and being disqualified from obtaining future contracts with the County.

2.8 Workforce Goals – Apprenticeship and Training Opportunities. The Developer shall commit to a goal of having _____ percent of all worker hours (construction and professional services) participate in job training or apprenticeship programs. The Developer’s PERC Compliance Plan will restate this goal, outline the minimum good faith efforts necessary to achieve the goal and specify the reporting requirements of the Developer. Participation will be monitored through payroll reports

from all contractors and subcontractors, and with the assistance of local organizations. Achievement of this goal is consistent with the terms of the Enhanced Apprenticeship and Training section of the PERC. Failure to reach this goal could result in the Developer forfeiting all or a portion of its Deposit to the County as liquidated damages and being disqualified from obtaining future contracts with the County.

2.9 Public Transportation Opportunities. The Developer shall agree to include in its project a planned area to be used for Milwaukee County Transit System (MCTS) Bus Stops, BikeShare kiosks, and/or Milwaukee Streetcar boarding areas. In the absence of a current transportation route located along the Project boundaries, the Developer shall agree to grant the County a floating easement along the right-of-way for purposes of establishing such area in the future. Developer will determine the location of the easement in conjunction with Milwaukee County's Department of Public Works and/or the City of Milwaukee.

3. Defaults and Remedies.

3.1 Events of Default by the Developer. Any one or more of the following events are hereby defined as, declared to be, and constitute an "Event of Default" by the Developer for purposes of this Agreement: (a) a Construction Stoppage (as defined in Section 2.1 hereof) by the Developer, subject to extension for Force Majeure Delays; (b) the Developer fails to commence construction of the Project by the Project Commencement Date, or achieve the Excavation Completion Date, subject to extension for Force Majeure Delays; (c) the Developer falls materially behind in the Construction Schedule subject to Force Majeure Delays; (d) the Developer fails to complete construction of the Project by the Project Completion Date, subject to extension for Force Majeure Delays or (e) the failure of the Developer to perform any other term, condition or covenant to be performed or observed by the Developer, subject to extension for Force Majeure Delays. In the event an Event of Default by the Developer shall occur, the County shall send written notice to the Developer (the "Default Notice") specifying the nature of the default in detail, and the Developer shall have 30 days after receipt of the Default Notice to cure such Event of Default. In the event that the Developer does not cure such Event of Default within such 30-day period (or such other reasonable time as necessary if such default cannot be cured within 30 days and the Developer, upon receipt of such notice, promptly commences the process of curing such default and diligently and continuously pursues such cure to completion), the County may pursue any available remedy against the Developer, either at law or in equity, including, without limitation, the right to pursue specific performance, collect actual damages for the Developer's failure to perform (including, without limitation, the damages, if any, related to, or arising out of, the infrastructure related to the Property and the cost of financing used to construct such infrastructure, and any guaranty thereof, any costs associated with overtime or additional labor forces in order to timely construct the Project, and other

outside fees, including reasonable attorneys' fees). In addition to the other remedies provided for herein, the Developer agrees to pay the County an additional per day payment of \$2,000 for each day the Developer is late in achieving the required milestone dates described in Section 3.1(b), (c) and (d) (the "Late Payments"). These Late Payments shall be made immediately upon demand by the County.

The Developer agrees that damages will not be an adequate remedy at law and that the County shall have the right to an injunction or other judgment of specific performance to enforce any provision in this Development Agreement, the Request for Proposal, the Redevelopment Plan, the Disadvantaged Business Enterprise and Prevailing Wages and Employment Data sections of the Park East Redevelopment Compact, the City of Milwaukee zoning code, the County ordinances or any other State or Federal law. Venue for such action shall be Wisconsin State Court with venue in Milwaukee County. The County shall be entitled to its reasonable attorneys' fees in any action, in which it prevails, to enforce such provisions, including the actual costs of Milwaukee County Corporation Counsel's office if it is the attorney for the County or reasonable attorney fees for other attorneys that may be hired by the County.

In the case of an Event of Default under Section 3.1(b) hereof, which is not cured by the Developer within 30 days after receipt of a Default Notice, the County may exercise an option to repurchase the Property at a purchase price equal to 85% of the purchase price paid by the Developer for the Property less the option fee paid by the Developer by giving the Developer notice thereof. If the County paid brokerage fees to the Developer's registered broker at Closing, the amount shall be credited to the County, thereby reducing the 85% repurchase price. In the event that the County exercises its option to repurchase, the Developer shall re-convey the Property to the County within 30 days of receipt of such notice by general warranty deed, free and clear of all liens and encumbrances except those liens and encumbrances described in the warranty deed delivered by the County to the Developer in the Developer's acquisition of the Property plus no monetary encumbrances which do not materially affect the value or use of the Property, utility easements granted by the Developer, and real estate taxes for the year of repurchase, if any, with a customary proration credit to the County for real estate taxes for such year. The Developer shall also execute the applicable Wisconsin Real Estate Transfer Return, pay all transfer taxes in connection with the transfer and execute a certificate of nonforeign status and other reasonably requested documentation as is customary for similar transfers.

3.2 Events of Default by the County. If the County shall fail to perform any other term, condition or covenant to be performed or observed by the County for more than 30 days after receipt by the County of written notice from the Developer specifying in detail the nature of such failure (or such other reasonable time as is necessary if such default cannot be cured within 30 days and the County, upon receipt of such notice, promptly commences the process of curing such default and diligently and

continuously pursues such cure to completion), the Developer may pursue any available remedy against the County at law or in equity including, without limitation, the right to pursue specific performance or injunctive relief and collect actual damages for the County's breach of failure to perform (including reasonable attorneys' fees).

3.3 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times of any other rights or remedies for the same default or any other default by the other party.

3.4 Costs and Attorneys' Fees. In the event any legal or equitable action or proceeding shall be instituted to enforce any provision or agreement contained herein, the party prevailing in such action shall be entitled to recover from the losing party all of its costs including court costs and reasonable attorneys' fees. The prevailing party shall be such party that substantially obtains the relief sought with or without the commencement of litigation.

4. General Provisions.

4.1 Conveyance of the Property. Prior to substantial completion of construction of the Project, the Developer shall not, except as permitted by this Agreement, convey any interest in the Property without the prior written approval of the County, which approval shall not be unreasonably withheld or delayed. This prohibition shall not be deemed to prohibit or restrict leasing to tenants for occupancy, conveying condominium units for occupancy and/or granting any other right to occupy and use any portion or portions of a Building. Further, notwithstanding the foregoing, the Developer may assign its interest in this Agreement to an affiliate of the Developer or an entity of which the Developer or some or all of the members or shareholders of the Developer are members or shareholders. As used in this Section 4.1, "affiliate" means any corporation, limited liability company, limited liability partnership or other entity, which directly or indirectly controls or is controlled or is under common control the Developer. Nothing herein shall be deemed to prohibit, restrict or otherwise limit the Developer from selling, leasing or otherwise transferring the Property or interest therein after substantial completion of construction of the Project on such Property.

Notwithstanding anything to the contrary contained in this Agreement, the Developer reserves the right, at its sole discretion at any time during the term of this Agreement, to join and associate with other individuals or entities in joint ventures, partnerships or otherwise for the purpose of developing the Project subject, however, to the following conditions:

(a) The Developer shall promptly notify the County in writing of the identity of any such additional parties;

(b) The Developer shall remain fully responsible to the County as provided in this Agreement, shall not be released from its obligations hereunder and shall remain the Developer's managing member; and

(c) Such additional parties shall be deemed approved unless rejected in writing by the County within twenty (20) days after written notice thereof to the County by the Developer. In connection with the County's determination hereunder, the County shall only take into consideration the reputation of any such additional parties, and the County shall not withhold approval unreasonably. Any notice from the County disapproving such additional parties shall specify the reasons therefore.

Notwithstanding any other provision contained herein, nothing herein shall limit, restrict or prohibit the Developer from entering into any mortgage, deed of trust, sale and lease-back or any other form of conveyance or any form of equity or income participation, including but not limited to a partnership or joint venture, required by a lending institution for the purpose of securing a loan to be used for financing the acquisition of the Property, the construction of the Project thereon and any other expenditures necessary and appropriate to develop the Property. The words "mortgage" and "deed of trust" as used herein includes all other appropriate modes of financing real estate acquisition, construction and land development.

4.2 Liens. Until the Project is substantially completed in compliance with the requirements contained herein, the Developer shall take all commercially reasonable steps to prohibit any construction liens to be filed against the Property or the Project thereon.

4.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, neither the Developer nor the County shall be considered in breach or default of its obligations with respect to the construction of the Project (including the Project Commencement Date, Construction Stoppage or the Project Completion Date) or the construction of any items of the infrastructure, as the case may be, in the event that a delay in the performance of such obligations is due to causes which were beyond its reasonable control, such as adverse weather conditions, strikes, acts of God, acts of a public enemy, acts of any governmental authorities (including the County in the case of the Developer), fire, flood, epidemics, embargoes or shortages of material from all reasonable sources, which shall not in any event include any economic hardship or delay due to the condition of the economy or real estate market ("Force Majeure Delay"). In the event of a Force Majeure Delay, the time for performance of the affected obligation shall be extended for the period of the Force Majeure Delay; provided, however, the delayed party shall, within 15 business days after the occurrence of the event causing the

Force Majeure Delay, deliver written notice to the other party of the cause thereof. Failure to deliver written notice of such delay (with appropriate back-up documentation) shall constitute a waiver of the delayed party's right to claim an extension of its time period because of the Force Majeure Delay.

4.4 Notices. All notices and demands by either party to the other shall be given in writing and personally delivered or sent by United States certified mail, return receipt requested, postage prepaid, and addressed:

To the County: Teig Whaley-Smith, Economic Development
 Director
 Department of Administrative Services
 2711 West Wells Street
 Milwaukee, WI 53208

with a copy to: _____, Principal Assistant
 Milwaukee County Corporation Counsel
 901 North 9th Street, Room 303
 Milwaukee, WI 53233

To the Developer:

with copies to:

Either party may, upon prior notice to the other, specify a different address for the giving of notice. Notices shall be deemed given upon receipt or refusal to accept delivery.

4.5 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) The captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(c) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and masculine genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(d) The laws of the State of Wisconsin shall govern this Agreement.

(e) Since both parties to this Agreement have had adequate opportunity to review and negotiate its terms, in no event shall this Agreement be construed against the drafter.

4.6 Waivers. Waiver by the County or the Developer of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of any future breach of the same or any other term, covenant or condition of this Agreement.

4.7 Severability. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

4.8 Entire Agreement and Amendments. This Agreement, including exhibits, and all documents referenced herein, contains all the covenants and agreements between the County and the Developer relating in any manner to development of the Project and other matters set forth in this Agreement. No prior oral agreements or understandings pertaining thereto shall be valid or of any force or effect, and the covenants and agreements of this Agreement shall not be altered, modified or amended except in writing signed by the County and the Developer and recorded in the office of the Register of Deeds for Milwaukee County. The County and the Developer reserve the right to modify and amend this Agreement without the joinder or approval of any other party.

4.9 Duration of Covenants. The County and the Developer agree that, upon the Developer's request, within thirty (30) days after satisfaction of the applicable Developer's obligations under Article 2 herein, the County shall either concur with such request as evidenced by a recordable Certificate (in which case such unapplied portion of the Deposit shall be returned to Developer), indicating that all such applicable obligations have been satisfied hereunder and that those provisions of this Agreement have been

satisfied, or reject such request and state which applicable obligations have not yet been completed.

4.10 Authority. The Developer hereby acknowledges and agrees that it is a validly formed and existing [limited liability company] formed in the State of_____. The undersigned signatory has the requisite power and authority, statutory and otherwise, to enter into and perform this Agreement pursuant to its terms and conditions without any further notice or consent from any person or entity. Promptly following request by the County, Developer shall deliver copies of its corporate resolution or other authorizing documentation demonstrating that it has the power and authority to enter into this Agreement. The County hereby acknowledges and agrees that the undersigned signatories have the requisite power and authority, statutory or otherwise, to enter into and perform this Agreement, pursuant to its terms and conditions without any further notice or consent from any person or entity. Promptly following request by the Developer, the County shall deliver copies of its corporate resolution or other authorizing documentation demonstrating that is has the power and authority to enter into this Agreement.

4.11 Successors. Except as otherwise expressly provided herein, all of the covenants, agreements, terms and conditions of this Agreement shall run with the Property and inure to the benefit of and be binding upon the County and the Developer and their respective successors and assigns and any party obtaining any interest in the Property after the date hereof, including, without limitation, any condominium unit owner, occupants and/or tenants of the Property. Notwithstanding anything to the contrary contained herein, the right of enforcement of the terms, conditions or covenants of this Agreement to be performed or observed by the Developer is solely vested in the County or any successor entity to the County.

4.12 Independent Contractor. Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between the County or its successors and assigns and the Developer or its successors and assigns. In entering into this Agreement, and in acting in compliance herewith, the Developer is at all times acting and performing as an independent contractor duly authorized to perform acts required of it hereunder. This Agreement does not create the relationship of principal, an agent or of partnership or joint venture or any other association between the County and the Developer, the sole relationship between the County and the Developer being that of a seller and purchaser of land, with certain obligations, covenants and responsibilities described herein.

4.13 Records and Audits. Once per year, upon commercially reasonable notice by the County, the Developer shall allow the County, the Milwaukee County Department of Audit, or any other party the County may name, when and as they demand, to audit, examine and make copies of, excerpts or transcripts from any records

or other information directly relating to matters under this Development Agreement. The Developer shall maintain and make available to the County the above-described audit information for no less than three years after conclusion of the obligations and responsibilities of the Developer described herein and required by this Development Agreement.

4.14 Environmental Indemnification.

(a) Conveyance of the Property to the Developer is "AS-IS" and without warranty or representation as to soil, subsoil, Hazardous Material and other environmental conditions. The Developer hereby agrees to indemnify, hold harmless, and defend County from and against any and all liabilities, claims, penalties, forfeitures, and suits, and all reasonable costs and expenses, including the cost of defense, settlement, and reasonable attorney's fees and/or any other Environmental Damages related to, or arising out of, soil, subsoil and environmental conditions arising out of, or in any way connected with the presence of any Hazardous Material on, in, under or migrating to or from the Property, including but not limited to, liability arising out of or in any way connected with the investigation, monitoring or cleanup under any federal, state or local law or regulation or ordinance Environmental Requirements or any Hazardous Material on, in or under or migrating to or from the Property.

(b) The Developer shall be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Property or surrounding areas by the Developer, its employees, contractors, agents or guests, and/or Hazardous Materials whose presence pre-exists the inception of the Developer's possession, located in and on the Property, regardless of whether they are discovered or disturbed as a result of the Developer's construction activities on, at or near the Property. The Developer shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) related to, or arising out of, such Developer's obligations, or failure to perform such obligations described above, and any claim, action or damages asserted against the County by any party or governmental agency related to, or arising out of an Environmental Regulation or Hazardous Material at, in, under, or migrating to or from the Property.

The parties acknowledge and agree that environmental conditions and risks were factored into the purchase price of the Property and that the Developer's environmental indemnities benefiting County shall be as broadly and liberally construed as possible so as to provide the maximum

protection possible to the County from liability, and the Developer hereby further waives any right to argue that for any reason this indemnification section is ambiguous or confusing or that it should in any way be construed against the County.

(c) Notwithstanding anything else to the contrary herein, the Developer shall be released from its obligations under section 4.14 if (i) the County exercises its option to repurchase pursuant to section 3.1 but only regarding such contamination that existed prior to the Closing or (ii) there is migration of Hazardous Materials from any County owned property to the Property, and such migration of Hazardous Materials is actively caused by the County, but only regarding such contamination actively caused by the County.

4.15 Guaranty. _____ hereby guarantees the performance of all of the Developer's obligations hereunder and by the date of execution of this Agreement, shall execute a guaranty in a form approved in writing by the County.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

[Execution Pages Follow]

DEVELOPMENT AGREEMENT
MILWAUKEE COUNTY
EXECUTION PAGE

MILWAUKEE COUNTY

By: _____
Name: Chris Abele
Its: County Executive

Attest:
By: _____
Name: Joseph J. Czarnezki
Its: County Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 20__ by Chris Abele as County Executive of Milwaukee County.

(_____)
Notary Public, State of Wisconsin
My Commission _____

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 20__ by Joseph J. Czarnezki, as County Clerk of Milwaukee County.

(_____)
Notary Public, State of Wisconsin
My Commission _____

Approved for Execution by Corporation Counsel

Reviewed by Risk Management

By: _____

By: _____

DEVELOPMENT AGREEMENT

EXECUTION PAGE

_____, LLC, a _____ limited liability company

By: _____, a _____ limited liability company, managing member

By: _____

Name: _____

Its: Chief Executive Officer

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20__ by _____ as Chief Executive Officer of _____, LLC, a _____ limited liability company.

(_____)

Notary Public, State of Wisconsin

My Commission _____

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Option Agreement

EXHIBIT C

“Building” Description

EXHIBIT D

County Board Resolution File No. 04-492

EXHIBIT E

“Project” Description

EXHIBIT F

“Request for Proposal” Official Notice No. _____

EXHIBIT G

Approved City “Project” Plans

EXHIBIT H

“Project” Costs including land acquisition cost

EXHIBIT I

County "Project" Approval
Board Resolution File No. _____

EXHIBIT J

Construction Schedule

EXHIBIT K

Approved DBE Compliance Plan