

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 2021, by and between the **City of Madison**, a Wisconsin municipal corporation ("Buyer") and **BIP Enterprises, LLC** or its successors and assigns ("Seller").

In consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Buyer and the Seller (together, the Parties") hereto covenant and agree as follows:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Special Warranty Deed ("Deed") their fee simple interest to the real property located at 2002 Zeier Road in the City of Madison, Wisconsin, together with all improvements located thereon (collectively, the "Property), identified as tax parcel number 251/0810-273-0201-7, and legally described as follows:

Lots 32 & 33, Regional East Phase II, City of Madison, Dane County, Wisconsin

2. Effective Date. The "Effective Date" shall be the date first stated above.
3. Purchase Price. The total purchase price of the Property ("Purchase Price") shall be Two Million Six Hundred Thousand and no/100 (\$2,600,000.00) which amount shall be payable in cash at Closing, as defined herein, subject to the adjustments and prorations herein provided.
4. Personal Property. The transaction contemplated by this Agreement will not include any personal property.
5. Earnest Money. The Buyer will deposit with First American Title Insurance Company – NCS Madison, WI ("Title Company"), Twenty-Five Thousand Dollars (\$25,000.00) as "Earnest Money" within ten (10) days of execution of this Agreement by the Buyer, which will be non-refundable except that the Earnest Money shall be forfeited and returned to the Buyer if the Seller defaults on the terms of this Agreement. The Earnest Money shall be applied toward the Purchase Price at Closing in accordance with Paragraph 3.
6. Delivery of Documents.
 - a. The Seller shall, within (5) business days after the Seller's execution of this Agreement, provide the Buyer with complete copies of all documents in the Seller's actual possession or control relating to the physical and environmental condition of the Property. Seller makes no representations or warranties as to the accuracy of those materials prepared by third parties.

- b. Within five (5) business day after the Seller's execution of this Agreement, the Seller shall order a title insurance commitment from the Title Company with a policy amount of not less than the Purchase Price. The commitment shall include all supporting documents including, but not limited to, recorded declarations, use restrictions and annexation agreements. If the title commitment discloses any conditions, restrictions, liens, encumbrances, easements or covenants which in the Buyer's reasonable opinion would adversely affect the Buyer's intended use, the Seller shall have thirty (30) days from the date the Buyer notifies the Seller of such defects to make a good faith effort to cure such defects and furnish an updated title commitment showing such defects cured or removed. If such defects in title are not cured within thirty (30) days, the Buyer may, at its option and as its sole remedy, within ten (10) business days following the thirty-day cure period, terminate this Agreement.
- 7. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided in this Agreement, the Buyer shall purchase the Property in "AS-IS, WHERE-IS" condition and "with all faults," and shall agree that it relied upon no warranties, representations or statements by the Seller, its agents or employees, in entering into this Agreement or in closing the transaction described therein. The Buyer's Closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property. Seller hereby disclaims any duty to make any representation or warranty to Buyer, whether at common law, under Chapter 709, under Wis. Stat. §100.18, or otherwise. No employee or agent of Seller has any authority to make any representation or warranty to Buyer—past, present, or future. Buyer accepts the duty to inspect and investigate the Property and agrees not to rely on any representation or warranty made by Seller or its employees or agents—past, present, or future. Rather, Buyer will rely solely on its own inspections of the Property. Buyer agrees that no statement made by Seller or its employees or agents after the time that Buyer signs this Agreement is binding against the Seller unless made in writing.
- 8. Due Diligence Period.
 - a. The Buyer shall have ninety (90) days after execution of this Agreement by the Parties ("Due Diligence Period") to review, test and inspect all aspects of the Property, at its sole cost and expense. In the event said, review, tests or inspections disclose matters which would make the Property unsuitable for the Buyer's intended use or if the Buyer is not able to obtain adequate funding for the purchase, the Buyer may terminate this Agreement as Buyer's sole remedy, and the Seller shall return the Earnest Money. If the Buyer does not provide written notice terminating this Agreement on or prior to the ninetieth (90th) day of the Due Diligence Period, this Agreement shall remain in full force and effect, the Buyer shall accept the Property as-is, and the Parties shall proceed to Closing.

- b. Should the Buyer desire to close prior to the end of the Due Diligence Period, the Buyer may provide the Seller with written notice of its intent to do so. The provision of such notice by the Buyer shall not affect the terms contemplated in this Agreement, except that the Closing shall occur on or before fifteen (15) days from the date the Seller receives such notice, unless the Parties agree in writing to another date.
9. Inspections and Testing.
- a. The Buyer and the Buyer's authorized agents, contractors, and engineers shall be permitted access to the Property for the purpose of conducting inspections and testing, including but not limited to, including a Phase 1 or 2 Environmental Site Assessment report ("ESA") and related testing, soils testing and any other inspections or testing deemed necessary by the Buyer. Access shall be at reasonable times with advance notice to the Seller.
 - b. In the event Buyer's Phase 1 ESA recommends a Phase 2 ESA, the Buyer may notify the Seller in writing of its desire to extend the Due Diligence Period if necessary to conduct such investigation. If the Parties are unable to agree on an extension of the Due Diligence Period, the Buyer may declare this Agreement null and void by providing notice as set forth in this Agreement. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located thereon. The Buyer shall repair, at its sole cost and expense, all damages caused by any of its assessments and inspections so that the condition of the Property is returned to as good or better condition as existed prior to the assessment(s) and inspections.
 - c. In the course of its investigation of the Property, Buyer will keep the Property free and clear of any liens and will indemnify and defend Seller from all liens or any claims asserted by third parties against Seller to recover for personal injury or property damage from any entry onto the Property by Buyer or its agents. If any inspection or test disturbs the Property, Buyer will restore the Property to its condition before that inspection or test. Buyer's obligations under this section survive Closing or termination of this Agreement.
10. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing, a commitment in its final form from the Title Company to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Property, as of a date no more than fifteen (15) days before such title proof is provided to the Buyer, to be in the condition called for in this Agreement, and further subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions acceptable to the Buyer. Prior to Closing, the Buyer shall notify the Seller in writing of any valid objections to title that remain after review of the draft provided pursuant to Paragraph 6b. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out this Agreement by reason of a valid legal defect

in title which the Buyer is unwilling to waive, this Agreement shall be void, and Buyer may terminate this Agreement as its sole remedy.

11. Commissions.

- a. The Buyer acknowledges that Mid-America Real Estate Wisconsin and Raven Property Group represents the Seller as its broker in the sale of the Property and the Seller represents that it has not entered into any other contracts subject to commission. Bret A. Backus, who is authorized to sign for Seller as attorney-in-fact, is a licensed real estate broker.
- b. The Buyer represents that it has not entered into any contracts with any brokers or finders nor has the Buyer obligated itself to pay any real estate commissions or finders' fees on account of the execution of this Agreement or the close of the transaction contemplated therein. These provisions in this Agreement shall survive any expiration or termination of this Agreement and shall not merge into any deed delivered and accepted upon the closing of the transaction therein contemplated.

12. Closing.

- a. Closing shall occur on or before fifteen (15) days from; (i) the expiration of the Due Diligence Period; or (ii) the date of the Seller's receipt of notice from the Buyer requesting an earlier date of Closing; or (iii) such other date agreed to in writing by the Parties, at the office of the Title Company issuing the commitment for title insurance, unless the Parties agree in writing to an alternate Closing location.
- b. The Seller agrees to execute and deliver to the Buyer at Closing the Deed, reviewed and accepted by the Buyer prior to Closing, conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and agreements entered under them; recorded easements for the distribution of utility, municipal services; easements; recorded building and use restrictions and covenants; and all matters shown on the title commitment.
- c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by this Agreement.
- d. Real estate taxes applicable to the Property in the year of Closing shall be prorated between the Buyer and the Seller as of the date of Closing based upon the latest known assessment and latest known mill rate.
- e. The Seller shall be responsible for the payment of any existing special or area assessments, sewer interceptor charges, or any other charges payable to any municipality or utility with regard to the Property as of the date of Closing.
- f. The Seller shall pay any fees related to the Wisconsin Real Estate Transfer fee.

- g. The Title Company shall prepare and deliver at Closing the Wisconsin Transfer Return due in connection with conveyance of the Property.
- h. All costs charged by the Title Company to facilitate Closing shall be prorated between the Parties, and any closing fees shall be paid equally by Buyer and Seller.
- i. The Seller shall pay any and all broker commissions or fees due in connection with the sale of the Property.
- j. The Seller shall leave any remaining supplies relating to the building's mechanical, electrical and plumbing systems.
- k. Prior to the expiration of the Due Diligence Period, the Buyer shall obtain authorization from the City of Madison Common Council for the approval and execution of this Agreement by the Buyer. Subject to that authorization, Buyer represents and warrants that it has the authority to enter into this Agreement and to consummate the transactions contemplated hereby.

13. Representations. The Seller represents and understands the following:

- a. No Prior Right to Purchase. No party has any option, right of first refusal or similar right to purchase all or any portion of the Property.
- b. No Adverse Possessors. There are no parties in possession of any portion of the Property as tenants at sufferance or trespassers.
- c. No Lessees. The Property is not currently leased and the Seller shall not enter into any lease or rental agreement for the Property, or any portion thereof, during the Buyer's Due Diligence Period, as described in Paragraph 8, and through the date of Closing, without the prior written consent of the Buyer.
- d. Exclusive Right. The Buyer shall have the exclusive right to negotiate with the Seller concerning acquisition of the Property and the Seller agrees that it shall not directly or indirectly solicit or entertain any other proposals for such acquisition of the Property from the date of execution of this Agreement until Closing, unless otherwise released by the Buyer ("Exclusive Right"). The Seller recognizes that in consideration of the Exclusive Right, the Buyer is diligently pursuing approval of this Agreement and is expending both time and money to achieve such approval. It is therefore agreed that the Exclusive Right cannot be challenged due to a lack of consideration. This provision shall be effective and in full force upon signature of this Agreement by the Seller. Buyer grants Seller the exclusive right during the pendency of this Agreement that the Buyer will not negotiate with any other owner of real property for the intended specialized use of the Property, which is housing for the homeless, which would cause the Buyer not to proceed to Closing under this Agreement; failing which, the Seller may terminate this Agreement as its sole remedy.

- e. If Seller defaults in its obligations under this Agreement and if Buyer sues for the remedy of specific performance but the remedy of specific performance is not available to Buyer for any reason, then the Buyer shall have the right to liquidated damages in the amount of \$260,000 due to the Buyer's intended specialized use of the Property, which makes actual damages impossible to calculate. This provision shall be effective and in full force upon signature of this Agreement by the Seller.

14. Miscellaneous.

- a. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties.
- b. Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, personal representatives, successors, and assigns. The provisions herein contained shall survive Closing and delivery of the Deed and shall not be merged therein for a period of twelve months.
- c. Entire Agreement. This Agreement will contain the entire agreement between the Parties and any modification, alteration or addendum to this Agreement shall be valid only when written and executed by the Parties.
- d. Counterparts and Transmittal of Signatures. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same Agreement. A signed copy of this Agreement transmitted by facsimile electronic scanned copy (.pdf) or similar technology and shall be as valid as original. This Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. Ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.
- e. Severability. If any non-material part, paragraph, or article of this Agreement is determined to be invalid, or otherwise unenforceable, the validity of all the remaining parts, paragraphs, and articles shall not be affected thereby. Any such non-material parts, paragraphs, or articles shall be deemed severable.
- f. Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of or applicable to the State of Wisconsin.
- g. Headings. The headings in this Agreement will be for reference purpose only and shall not in any way affect the meaning or interpretation herein.

- h. § 1031 Exchange. Seller may consummate the sale of the Property as part of a so-called like kind exchange under § 1031 of the Internal Revenue Code of 1986, as amended, but only if: (i) closing will not be delayed or affected by said exchange; (ii) Seller effects said exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary; (iii) Buyer is not required to take an assignment of this Agreement for the relinquished Property or be required to acquire or hold title to any real property to consummate said exchange; (iv) Seller pays any additional costs associated with said exchange; and (v) the rights of Buyer under this Agreement are not otherwise affected or diminished in any manner by said exchange.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

BUYER: CITY OF MADISON

By: _____ Date: _____

Name: Satya Rhodes-Conway

Title: Mayor

By: _____ Date: _____

Name: Maribeth Witzel-Behl

Title: City Clerk

Approved:

David Schmiedicke, Finance Director Date

Approved:

Eric Veum, Risk Manager Date

Approved as to form:

Michael Haas, City Attorney Date

Execution of this Agreement by the City of Madison is authorized by Resolution Enactment No. RES-21-_____, File I.D. No. _____, adopted by the Common Council of the City of Madison on the _____ day of _____ 2021.

Drafted by the City of Madison Office of Real Estate Services

Project No. 11716

Signatures continue on the following page

SELLER: BIP Enterprises, LLC

By: Bret Backus
(Signature)

Date: 22JAN2021

By: Bret A. Backus, Attorney-in-Fact