

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into as of the date of the last signature on the signature page, by and between the **City of Madison**, a Wisconsin municipal corporation (“City”) and **Park Lofts, LLC**, a Wisconsin limited liability company, or its subsidiary assignee (“Buyer”).

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 parties hereto covenant and agree as follows:

1. Property. The City is the fee simple owner of the parcel legally described in Exhibit A (“Property”), located at 1202 South Park Street in the City of Madison, Wisconsin. At Closing, Buyer shall purchase and City shall sell and convey by Warranty Deed (the “Deed”) City’s right, title and interest in said Property.
2. Project Description. Buyer intends to construct a mixed-use affordable housing project containing the following components (collectively, the “Project”):
 - a. A 44 unit multi-family housing development, 44 of which units will be maintained as affordable to households with incomes at or below 60% of the Area Median Income, including the following: 10 units set aside as affordable housing for households with incomes at or below 30% of AMI; 17 units set aside as affordable housing for households with incomes at or below 50% of AMI; 17 units set aside as affordable housing for households with incomes at or below 60% of AMI. The final unit mix shall be determined by the terms of the AHF Loan documents. 11 of the units will have project-based Family Unification Program (“FUP”) vouchers to serve young adult households that qualify for the program.
 - b. Approximately 3,000 square feet of ground-floor commercial space.
3. Effective Date. The “Effective Date” shall be the later of execution of this Agreement by City or Buyer, as indicated on the signature page herein.
4. Purchase Price. The purchase price for the City’s ownership interest in the Property shall be One and no/100 Dollar (\$1.00) (“Purchase Price”). The Purchase Price shall be payable in cash at Closing, as described in Paragraph 17, subject to the adjustments and prorations provided in this Agreement.
5. Delivery of Documents. Within ten (10) business days of the Effective Date, City will send to Buyer copies of all available Property related documents (if applicable) including: plans/drawings, service contracts, leases, any environmental studies, soil reports, permits, applications, existing title insurance policy, and remediation plans or assessments of the Property in City’s possession or control. At any time prior to Closing, City shall provide any additional or supplemental documents at Buyer’s reasonable request.
6. Due Diligence Period.
 - a. Within one hundred and eighty (180) calendar days following the Effective Date (the “Due Diligence Period”) Buyer may perform the following: (i) obtain, at Buyer’s sole cost, acceptable financing, appraisal, and Survey; (ii) conduct any physical and/or environmental tests, studies, or investigations deemed necessary by Buyer, and (iii) confirm whether Buyer is able to obtain any and all municipal, state, and federal approvals, permits, licenses, consents of use, and zoning approvals from all governmental or private bodies/agencies having jurisdiction over Buyer’s intended use of the Property. In the event that municipal approvals are delayed or stalled due to unforeseen events out of the control of either party, then the Due Diligence Period shall be extended a commensurate period of time.

- b. If within the Due Diligence Period Buyer determines, in its sole discretion, that it does not desire to purchase the Property, Buyer may provide written notice to City of such desire to terminate this Agreement, and the parties shall have no further obligation or liability under this Agreement, except for any which survive the Closing or early termination of this Agreement.
 - c. Buyer agrees that if it terminates this Agreement, as provided for herein, or fails to close the transaction contemplated hereby for any reason, then, Buyer shall deliver to City, at no cost to City, but without representation or warranty with respect to the findings or information provided therein about the Property, complete copies of all third party consultant produced of Buyer's due diligence reports other than any attorney work product or attorney-client privileged documents.
 - d. Buyer shall keep the Property free of all liens arising through its inspection of the Property, and shall cause all such liens to be removed immediately upon being notified of the same.
 - e. If Buyer does not provide written notice to City terminating this Agreement on or prior to the end of the Due Diligence Period, this Agreement shall remain in full force and effect.
 - f. Should Buyer desire to close prior to the end of the Due Diligence Period, Buyer may provide City with written notice of its intent to do so. The provision of such notice by Buyer shall not affect the terms contemplated in this Agreement, except that the closing date shall occur on or before thirty (30) days from the date City receives such notice, unless the parties agree in writing to another date.
 - g. Notwithstanding the foregoing, the Buyer's Due Diligence Period may be extended upon written agreement of the Parties.
7. Access to the Property. Buyer and Buyer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing during the Due Diligence Period (and thereafter if Buyer does not terminate during the Due Diligence Period) including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of the Property at reasonable times with at least twenty-four (24) hours' prior written notice to City. Buyer's and Buyer's authorized agents, engineers, consultants, appraisers, and contractors seeking access to, and inspection of, the Property shall be at Buyer's sole risk and expense, and City shall have no responsibility therefor. Buyer shall, at Buyer's sole cost, repair all damage caused by its inspections or testing so that the condition of the Property is returned to substantially the same condition that existed prior to the inspections or testing.
8. Indemnification. Buyer shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents, or employees for damages because of bodily injury, including death, at any time resulting therefrom, sustained by any person or persons or on account of damages to Property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Buyer or its officers, officials, members, agents, employees, invitees, or subcontractors in the performance of any inspections or testing of the Property, whether caused by or contributed to by the negligence of the City or its officers, officials, agents, or employees. This paragraph shall survive termination, assignment, or transfer of this Agreement.
9. Insurance. Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors

performing work on the Property (the “Contractors”) shall carry commercial general liability insurance, including but not limited to bodily injury, property damage, and personal injury, covering as a named insured applicable Buyer or the applicable Contractors and name the City as an additional insured, with a minimum limit of one million dollars (\$1,000,000) per occurrence. These policies shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Agreement. As evidence of this coverage, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish City with a certificate of insurance on a form approved by City not to be unreasonably withheld, and, if requested in writing by the City Risk Manager, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to City prior to the performance of any work on the Property. If the coverage required above expires while this Agreement is in effect, Buyer and any of its authorized

agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to City for approval.

10. Lease. The City represents that the Property is not currently leased and the City agrees that it shall not enter into any lease or rental for the Property, or any portion thereof, or allow occupation of during the Due Diligence Period and through the date of Closing, without the prior written consent of the Buyer.
11. Personal Property. The conveyance of the Property will not include any personal property.
12. Survey. Any survey of the Property including, but not limited to, an ALTA/NSPS Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys effective February 23, 2021, that is required to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and the Title Company providing the title insurance described in Paragraph 13 shall be at the sole cost and expense of the Buyer.
13. Title Insurance. City shall provide to Buyer, at City's expense, within 15 days after the Effective Date a commitment ("Title Commitment") from a title company selected by First American Title Insurance Company in Madison, Wisconsin, or another title company mutually agreed upon by the parties, (the "Title Company") to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price ("Title Policy"). The commitment shall show the title condition of the Property as of a date no more than thirty (30) days before such title proof is provided to Buyer; however, the title shall be updated for Closing as may be required by the Title Company. The title commitment shall be subject only to liens, which will be paid out of the proceeds of the Closing and to any exceptions acceptable to Buyer ("Permitted Exceptions"). Buyer shall notify City of any objection to title, in writing, no later than forty-five (45) days of receipt of the title commitment from City. City shall have a reasonable time, but not to exceed thirty (30) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should City be unable or unwilling to remove an objection and which Buyer is unwilling to waive, this Agreement shall be void. City shall ensure that all mortgages and other monetary liens to which the Property is subject are released and discharged at or prior to Closing.
14. Limited Representations and Warranties: AS-IS Condition. Except as otherwise provided herein, and in the Deed, 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 City, its agents or employees, in entering into this Agreement or in closing the transaction described therein. Except as provided below, Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the due diligence requirement provided in Paragraph 6 above.
15. Buyer Contingencies. In addition to the Due Diligence contingency above, Buyer shall have the following contingencies:
 - a. Land Use Approvals. The Buyer will have until 30 days prior to the Closing Date, as defined in Paragraph 17, to receive all Municipal development and zoning approvals that Buyer deems necessary in Buyer's sole discretion to allow Buyer to construct the Project, including without limitation, obtaining any design, zoning approvals and utility agreements needed, with terms acceptable to Buyer.

- b. **Project Financing.** The Buyer will have until the sooner of one hundred and eighty (180) days after the Effective Date or 30 days prior to the Closing Date (the “Financing Deadline”) within which to receive all confirmations, awards, and approvals from lenders that Buyer deems necessary, at Buyer’s sole discretion to allow Buyer to develop and construct the Property for its intended use, including but not limited to any approvals needed for loans from the Wisconsin Housing and Economic Development Authority.
 - c. **Tax Credits.** It is understood and agreed that the Buyer will submit an application for 9% competitive Section 42 Housing Tax Credits from the Wisconsin Housing and Economic Development Authority (“WHEDA”) to acquire and develop the Property (the “Tax Credits”). Buyer’s obligation to purchase the Property is contingent upon:
 - i. Buyer receiving evidence of the award of the applied for amount of the Tax Credits (the “Credit Award”) for the Project from WHEDA on or before June 1, 2025.
 - ii. If Buyer has not provided the City with evidence of the Credit Award on or before June 1, 2025, then Buyer shall have the right to terminate this Agreement upon written notice to the City given on or before June 1, 2025.
16. **Construction Contingency.** The City shall provide and Buyer shall execute at Closing, an Option to Purchase to be recorded at the Dane County Register of Deeds, (the “Repurchase Option”), containing, but not limited to, the following terms and conditions:
- a. Buyer agrees to commence construction, defined as the pouring of the footings and the foundation for the Project, on the Property within eighteen (18) months of the Closing Date (“Construction Deadline”).
 - b. In the event Buyer fails to commence construction in that timeframe, City shall have the right, but not the obligation, exercisable by written notice to Buyer to purchase the Property back from Buyer at the Purchase Price.
 - c. Buyer shall pay all costs related to exercising the Repurchase Option.
 - d. The City shall provide written notice to Buyer of its election to exercise the Repurchase Option of the Property.
 - e. Any transfer back to the City shall be completed within sixty (60) days of the date the City provides notice to the Buyer of the City’s intent to exercise the Repurchase Option.
 - f. This paragraph shall survive the approved assignment or transfer of this Agreement.
 - g. The Repurchase Option shall terminate upon the earlier of (i) Buyer’s timely commencement of construction of the Project, or (ii) 5 years after the Closing Date unless Buyer commences construction prior to the City exercising the Repurchase Option. Within 30 days after the Repurchase Option has terminated, the parties shall cooperate in executing and recording a release of the Repurchase Option.
17. **Closing.** Closing shall occur on or before the last to occur of (a) 90 days after a Credit Award with respect to the Project or (b) thirty (30) days from the expiration of the Due Diligence Period; or such other date agreed to in writing by the parties, in an escrow style Closing with the Title Company, unless the Parties agree in writing to an alternate Closing location. Closing shall occur no later than December 1, 2025, unless agreed to in writing by the parties. At or before Closing, and as a condition to close and convey the Property to Buyer, Buyer and City shall execute and deliver, as applicable, the following documents, or have otherwise met the conditions as stated here:
- a. City agrees to execute and deliver to Buyer at Closing the Deed conveying the Property to Buyer subject only to Permitted Exceptions.
 - b. Buyer shall pay all recording/filing fees, except that City 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 per Paragraph 13 above.

- c. Buyer and City executing a Loan Agreement for Affordable Housing Fund proceeds (the “AHF Loan”) in the amount of up to Two Million Dollars (\$2,000,000) at or before Closing, subject to budgetary approval by the Common Council of the City of Madison in the year of Closing. Buyer and City shall close on the AHF loan at or before Closing.
 - d. Buyer and City agree to execute and record a land use restriction agreement (LURA) with no expiration date applicable to the permanently affordable AHF Units (“AHF Units”) within the Project at or before Closing.
 - e. Buyer has provided evidence of a reservation by WHEDA of the Tax Credits to developer the Project.
 - f. City shall be responsible for any and all special assessments against the Property existing as of the date of Closing, including any accrued interest. Buyer shall be responsible for any future special assessments against the Property assessed or levied on or following the date of Closing. City has disclosed or will disclose during the Due Diligence Period anticipated special assessments upon the Property from and after the Effective Date.
 - g. City shall complete a Wisconsin Real Estate Transfer Return and pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
 - h. City agrees to execute and deliver to the Title Company any affidavits required to issue an owner’s policy in the condition called for by this Agreement.
 - i. City shall pay all costs of providing the title commitment, Owner’s Policy of Title Insurance and a GAP endorsement to Buyer. Buyer shall be responsible for any premium for a lender’s policy, and any endorsements requested by Buyer or its lender. Buyer shall also pay all of its lender’s fees due at Closing, if any.
 - j. Buyer and City shall share equally the closing fee charged by the Title Company.
 - k. There are no general real estate taxes that are payable with respect to the Property. Buyer is responsible for all taxes assessed as a result of the acquisition of the Property subsequent to Closing.
 - l. The final storm water bill, and any other utilities, for the Property as of the date of Closing shall be paid by City.
18. Fees. Buyer will be responsible for any future fees related to any development on the Property after Closing including, but not limited to: MMSD fees, installation of all private utilities and utility hook-up charges, and any work in the right of way required by City Engineering (if any), connection fees, impact fees, interceptor fees, curb-cut/driveway apron fees, CARPC fees, etc.
19. Brokers. The parties mutually warrant and represent to one another that neither has authorized any broker to act on its behalf in respect of the transactions contemplated hereby. Each party shall provide a statutory lien waiver with respect thereto, if requested by the Title Company, at Closing. The City will not pay for any brokerage or commission fees.
20. Notices. All notices required or permitted to be given hereunder shall be in writing, dated and signed by the person sending the notice and shall be sent by electronic mail to the designated representatives for Buyer and City listed below. When sending notices via electronic mail, said emails shall be sent to the email addresses provided below and shall include a statement therein that the electronic mail constitutes notice under the terms of this Agreement. All time periods with respect to notice shall commence on the date that electronic notice is sent.

City:

Office of Real Estate Services

Attn: Dan Johns

215 Martin Luther King, Jr. Blvd., 3rd Floor

P.O. Box 2983

Madison, WI 53701-2983

Phone: (608) 243-0301

Email: djohns@cityofmadison.com

With a copy to:

City Attorney's Office

Attn: Matthew Robles

City County Building, Room 401

210 Martin Luther King Jr. Blvd.

Madison, WI 53703

Phone: (608) 267-4925

Email: mrobles@cityofmadison.com

Buyer:
Park Lofts MM, LLC
Attn: Julian Walters
3910 Dallas Dr.
Madison, WI 53719
Phone: (608) 235-5837
Email: julianwalters02@gmail.com

With a copy to:
Reinhart, Boerner, Van Deuren, s.c.
Attn: Joseph Shumow
22 E. Mifflin Street, Suite 700
Madison, WI 53703
Phone: 608-229-2249 _____
Email: jshumow@reinhartlaw.com

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other email address in substitution of the email address shown above to which notices shall be given.

21. Remedies. A material failure to perform any obligation under this Agreement is a default which may subject the defaulting party to liability for damages or other legal remedies. If either party defaults, the non-defaulting party may sue for specific performance or actual damages or seek other remedies as may be available in either law or equity, including the right to terminate this Agreement.
22. Condemnation. In the event, after the Effective Date, an eminent domain action is commenced or threatened against any portion of the Property, or there is a threatened, commenced or finalized rezoning of the Property, Buyer may elect to (i) terminate this Agreement (in which event Buyer and City shall be released from any further obligation or liability hereunder, and this Agreement shall be null and void and the Earnest Money (including any Additional Earnest Money) and any and all accrued interest thereon shall be immediately returned to Buyer); or (ii) consummate this transaction and require the City to deliver to Buyer a duly executed assignment of the City's right, title and interest to any awards or compensation paid by the governmental authority in connection with an eminent domain action.
23. Entire Agreement. This Agreement contains the entire agreement between City and Buyer and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. This Agreement may be amended only by a further written documents signed by each of the parties. City agrees that Buyer may assign its rights and obligations hereunder to a to-be-formed limited liability company, controlled by Buyer, for purposes of applying for and obtaining the Credit Award.
24. Authority. Each party hereby warrants and represents to the other that it has full power, right and authority to enter into and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement by Buyer and City have been duly and properly authorized by each party's proper company action in accordance with applicable law and each party's governing documents.
25. Captions. The captions of the paragraphs in this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.
26. Expiration. This Agreement shall expire on December 31, 2025 if Closing has not occurred or if the Agreement has not already terminated.
27. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.

28. Counterparts and Transmittal of Signatures. This Agreement may be executed in one or more counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and 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 hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

29. Time of the Essence. Time is of the essence for the performance of this Agreement.

30. Choice of Law. This Agreement shall be interpreted under the laws of the State of Wisconsin, and shall be governed by and construed in accordance with the laws of the State of Wisconsin, without giving effect to conflicts of laws principles.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the later date of signature by Buyer or City as indicated below:

BUYER:

Park Lofts, LLC

By: Park Lofts MM, LLC, its managing member

By: Eminent Development Corporation, its manager

By: _____ Date: _____
Julian Walters
President

[SIGNATURES CONTINUE ON THE NEXT PAGE]

CITY:

CITY OF MADISON

By: _____ Date: _____
Satya V. Rhodes-Conway
Mayor

By: _____ Date: _____
Maribeth Witzel-Behl
City Clerk

Approved:

Approved:

David Schmiedicke, Finance Director Date

Eric Veum, Risk Manager Date

Approved as to form:

Michael Haas, City Attorney Date

Execution of this Purchase and Sale Agreement by the City of Madison is authorized by Resolution Enactment No. RES-23-_____, File I.D. _____, adopted by the Common Council of the City of Madison on _____, 2023.

Drafted by the City of Madison Office of Real Estate Services

Project No. 11657

EXHIBIT A
Legal Description

The Southeasterly 20 feet of Lot Four (4), Block Two (2), all of Lot Five (5), Block Two (2), and the Northwesterly forty-five (45) feet of Lot Six (6), Block Two (2), Grand View Addition to South Madison, in the City of Madison, excepting the Northeasterly 20 feet thereof.