

## ATTACHMENT - AGREEMENT

### PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the **City of Madison**, a Wisconsin municipal corporation (the “Seller”) and **Starkweather, LLC**, a Wisconsin limited liability company (the “Buyer”).

This Agreement provides terms and conditions for the acquisition by the Buyer of the City-owned real property located at 3614 Milwaukee Street, Madison, Wisconsin, as legally described in the attached Exhibit A and depicted on attached Exhibit B (the “Property”), for assemblage into the Buyer’s anticipated mixed-use residential and commercial project including the Property and certain other parcels of land adjacent to the Property, as detailed in Subparagraph 5.b. (the “Project”).

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 Seller (together, the “Parties”) hereto covenant and agree as follows:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Quit Claim Deed (the “Deed”) fee simple ownership in the Property.
2. Effective Date. The “Effective Date” shall be the later date of execution of this Agreement by the Seller or the Buyer, as indicated on the signature page.
3. Purchase Price. The total purchase price for the Seller’s interest in the Property (the “Purchase Price”) shall be Two Hundred Sixty-Six Thousand Seven Hundred Dollars (\$266,700.00). The Purchase Price shall be payable in cash at the date of conveyance (the “Closing”), subject to the adjustments and prorations herein provided.
4. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Due Diligence Period as described in Paragraph 6, the Seller will reproduce at the Seller’s expense and send, either electronically or by hard copy, to the Buyer at the Buyer’s office, copies of the following documents in the Seller’s possession or control: all environmental studies, reports, permits, applications and remediation plans or assessments of the Property.
5. Contingencies. This Agreement and the conveyance of the Property at Closing from the Seller to the Buyer are contingent upon the Buyer providing evidence satisfactory to the Seller, at the Seller’s reasonable discretion, that the Buyer has completed the following (the “Contingencies”):
  - a. Not later than December 31, 2024, prepared a subdivision plat that includes the Property and the area of the Project (the “Plat”), as well as obtained all needed Plat approvals and signatures so the Plat is ready to record prior to or at Closing. As a condition for Seller to proceed with the Closing, Buyer must record the Plat, in its entirety, at or before Closing.
  - b. Not later than December 31, 2024, acquired the following parcels, to be included in the Plat:

<b>Parcel Address</b>	<b>Tax Parcel No.</b>
3420 Milwaukee Street	251-0710-051-1017-8
3450 Milwaukee Street	251-0710-051-1019-4
3490 Milwaukee Street	251-0710-051-1020-1
3510 Milwaukee Street	251-0710-051-1021-9
3590 Milwaukee Street	251-0710-042-0078-0

- c. Not later than December 31, 2024, Buyer shall provide Seller evidence that Buyer has obtained or will obtain all Municipal development, zoning and/or rezoning approvals for the Project.
- d. Not later than one hundred fifty (150) days after the date of this Agreement, prepared an “Access Plan”, which has been approved at the reasonable discretion of the Seller and Wisconsin Department of Natural Resources, identifying how the Buyer will maintain access to the parcel of Seller-owned park land depicted on Exhibit B as the “Park Parcel”, until long-term access can be granted from the anticipated future portion of Chicago Avenue to be constructed as part of the Project. Any access agreements, access easement, or other instruments included in the Access Plan shall be approved by the Seller, at the Seller’s reasonable discretion. The Access Plan shall require access for use and maintenance similar to the current access over and across the Property (i.e. not paved or improved) and the Buyer shall have the right to alter the path of access to the Park Parcel as the Plat, and the improvements within the Plat, are completed from time to time.

Buyer shall have the right to extend each of the contingencies set forth in this Paragraph 5, except subparagraph d., for up to two hundred seventy (270) days upon written notice to Seller.

- 6. Due Diligence Period. The Buyer shall have one hundred twenty (120) days from the Effective Date (the “Due Diligence Period”) to review, test and inspect all aspects of the Property, at its sole cost and expense. If within the Due Diligence Period the Buyer determines, in its sole discretion, that it does not desire to purchase the Property, the Buyer may provide written notice to the Seller of such desire and this Agreement shall terminate immediately.

The Buyer agrees that upon termination of this Agreement, as provided herein, or failure to close the transaction contemplated hereby for any reason, then, the Buyer shall deliver to the Seller, at no cost to the Seller, complete and accurate copies of all of the Buyer’s due diligence materials other than any attorney work product or attorney-client privileged documents.

The Buyer shall keep the Property free of all liens in connection with its inspection of the Property and shall cause all such liens to be removed immediately upon being notified of same.

If the Buyer does not provide written notice terminating this Agreement on or prior to the one hundred twentieth (120th) 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 close the transaction as provided herein.

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 date shall occur on or before thirty (30) days from the date the Seller receives such notice, unless the Parties agree in writing to another date.

The Due Diligence Period may be extended upon written agreement of the Parties.

7. Access to Property. The Buyer and the 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 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) hour notice to the Seller. The Buyer's and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors access to, and inspection of, the Property shall be at the Buyer's sole risk and expense and the Seller shall have no responsibility therefor. The Buyer will repair, at the Buyer's and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors cost, all damages caused by its inspections or testing so that the condition of the Property is returned to as good or better.
8. Indemnification. The Buyer shall be liable to and agrees to indemnify, defend and hold harmless the Seller, 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 Seller 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, agents, employees, assigns, guests, invitees or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligence of the Seller, its officers, officials, agents, or employees.
9. Insurance. The Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Property shall carry commercial general liability insurance covering as insured the Buyer and naming the Seller, its officers, officials, agents and employees as additional insured's, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the Seller's Risk Manager. These policies shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the Seller 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, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish the Seller with a certificate of insurance on a form approved by the Seller, and, if requested by the Seller's Risk Manager, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to the Seller prior to the performance of any work on the Property. If the coverage required above expires while this Agreement is in effect, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to the Seller for approval.

10. Lease. The Seller shall represent that the Property is currently not leased and the Seller shall agree 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 transaction contemplated by this Agreement does not include any personal property.
12. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided herein, 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 herein. Except as provided below, 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.
13. Broker Representation. The Seller shall acknowledge that it is not represented by a licensed real estate broker on its behalf in respect of the transaction contemplated herein. The Buyer shall acknowledge that it is not represented by a licensed real estate broker on its behalf in respect of the transaction contemplated herein.
14. Closing.
  - a. The Closing shall occur the later of: (a) thirty (30) days after the date both Parties are satisfied that all the Contingencies are satisfied; or (b) thirty (30) days after the expiration of the Due Diligence Period; or (c) the date set forth in Buyer’s written notice to Seller requesting an earlier closing date; or (d) such other date agreed to in writing by the Parties.
  - b. The Seller agrees to execute and deliver to the Buyer at Closing the Deed conveying the Property to the Buyer.
  - c. The Buyer shall pay all recording/filing fees, including fees for the Plat, 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. All real estate taxes for the year of Closing with respect to the Property shall be prorated between the Buyer and Seller as of the date of the Closing based upon the period of ownership of the Parties and the latest known assessment and latest known mill rate.
  - e. The Seller shall be responsible for any and all special assessments, area assessments, 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 Wisconsin Real Estate Transfer fee or taxes due in connection with the conveyance of the Property.

- g. The Seller or Title Company shall prepare and deliver at Closing the Wisconsin Transfer Return due in connection with conveyance of the Property.
  - h. The Parties shall execute and record at Closing any access agreement, access easement, or other instruments called for in the Access Plan described in Subparagraph 5.d.
  - i. The Seller shall provide, and the Buyer shall approve and execute at Closing, an Option to Purchase to be recorded at the Dane County Register of Deeds, containing, but not limited to, the following terms and conditions:
    - i) The Buyer must commence construction of any portion of the Project, defined as completion of footings and foundations for at least one building of the Project, within ten (10) years of the date of the Closing (the "Construction Deadline");
    - ii) If the Construction Deadline is not met, the Seller shall have the right, but not the obligation, to purchase the Property back from the Buyer at the Purchase Price (the "Option");
    - iii) If the Buyer does meet the Construction Deadline, the Seller may extend up to two (2) years, at the Seller's sole discretion, the term of the Option in the event the Buyer is able to reasonably demonstrate to the Seller that starting construction was not financially feasible due to general market conditions;
    - iv) Any transfer back to the Seller shall be completed within sixty (60) days of the date the Seller provides notice to the Buyer of the Seller's intent to exercise the Option;
    - v) The Option to Purchase shall automatically terminate and be null and void upon the recording of the final Plat.
    - vi) The Buyer shall pay all costs related to exercising the Option.
  - j. Prior to Closing, Seller shall obtain any necessary consents or releases from Wisconsin Department of Natural Resources, for portions of the Property which are subject to the conditions of a Stewardship Grant (URGP2-249).
  - k. Prior to Closing, the Seller shall obtain authorization from the City of Madison Common Council for the approval and execution of this Agreement by the Seller.
15. Notices. All notices to be given under the terms of this Agreement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below. If electing to utilize electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this Agreement.

For the Seller:                      City of Madison  
    Economic Development Division  
    Office of Real Estate Services  
    Attn: Manager  
    P.O. Box 2983  
    Madison, WI 53701-2983  
    acmiller@cityofmadison.com & ores@cityofmadison.com

For the Buyer: Starkweather, LLC  
c/o Stone House Development, Inc.  
1010 East Washington Ave., Suite 101  
Madison, WI 53703  
Attn: Jillian Hayes  
Email: jillian@stonehousedevelopment.com

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

16. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance.
17. Entire Agreement. This Agreement contains the entire agreement between the Parties 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 document signed by each of the Parties.
18. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.
19. 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.
22. 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.
23. 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 the 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 hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

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

*Signatures on following two pages.*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the later date of signature by the Buyer or the Seller as indicated below.

**BUYER: STARKWEATHER, LLC**, a Wisconsin limited liability company

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

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

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

Date: \_\_\_\_\_



**SELLER: CITY OF MADISON**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Satya Rhodes-Conway  
Title: Mayor

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Maribeth Witzel-Behl  
Title: City Clerk

Approved:

Approved:

\_\_\_\_\_  
David Schmiedicke, Finance Director      Date

\_\_\_\_\_  
Eric Veum, Risk Manager      Date

Approved as to form:

\_\_\_\_\_  
Michael P. Haas, City Attorney      Date

Execution of this Purchase and Sale Agreement by the City is authorized by Resolution Enactment No. RES \_\_\_\_ - \_\_\_\_\_, File I.D. No. \_\_\_\_\_, adopted by the Common Council of the City of Madison on \_\_\_\_\_, 2024.

Drafted by the City of Madison Office of Real Estate Services

Project No. 12862

**EXHIBIT A**

Legal Description of the Property

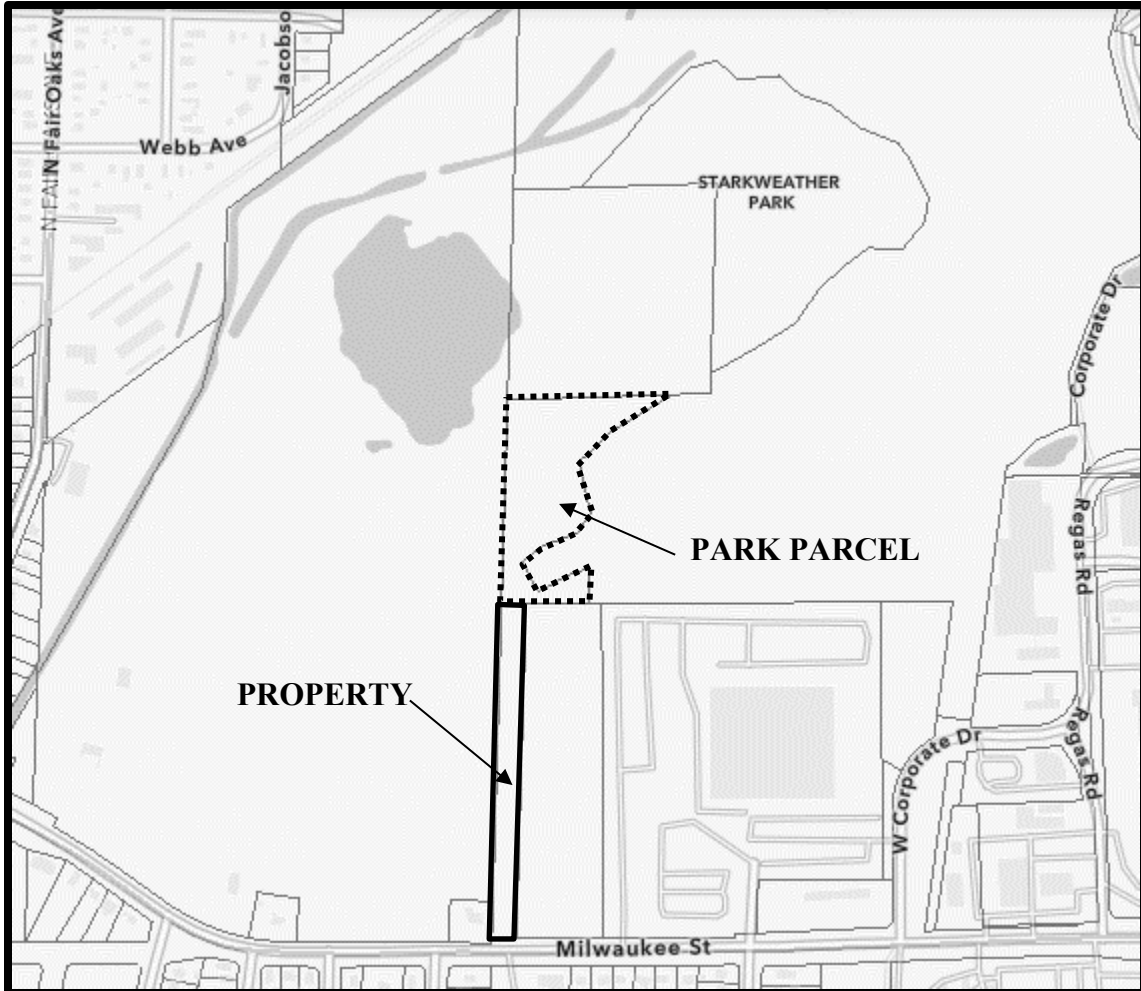
Land being located in the NW ¼ of the NW ¼ of Section 4, Township 7 North, Range 10 East, City of Madison, Dane County, Wisconsin, more particularly described as follows:

Beginning at the West ¼ corner of said Section 4; thence N01°11'40"E, 47.07 feet to the point of beginning; then continuing N01°11'40"E, 953 feet; thence N89°15'10"E, 70 feet; thence S01°11'40"W, 953 feet; thence S89°15'10"W, 70 feet to the point of beginning.

The area contains approximately 66,672 square feet (1.53 acres).

**EXHIBIT B**

Depiction of Property and Park Parcel



*Not to scale.*