



Department of Planning & Development  
**Community & Economic Development Unit**

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- Real Estate Development Section
- Community Development Section

March 27, 2008

Mr. Henry Gempeler  
Foley and Lardner  
150 East Gilman Street  
Madison, WI 53703-1481

RE: Proposal to Lease – 3650 Milwaukee Street - Project No. 7951

Dear Henry:

This letter will set forth a proposed Letter of Intent under which the City of Madison (“City”), for its Metro Transit (“Metro”) operation, proposes to sub-lease from your client, The Swiss Colony, Inc. (“TSCI”), approximately 80 parking stalls (“Subject Premises”) to be used exclusively for Metro customers who commute from the East Transfer Point during the periods set forth in this proposal, together with the nonexclusive use in common with others entitled thereto of a driveway providing access to and from Milwaukee Street (“Access Drive”). The Subject Premises and Access Drive are located at 3650 Milwaukee Street and are shown on the attached Exhibit A. The Subject Premises and Access Drive comprise a portion of certain land and improvements owned by Leo Ritter and Company (“Owner”) and leased to First Milwaukee Street Corp. (“Lessee/Sublessor”), which in turn has subleased such land and improvements to TSCI. The terms and conditions of the proposed Sub-Sublease of the Subject Premises would be as follows:

1. Letter of Intent. This document shall be a Letter of Intent (“LOI”) only and shall not constitute a binding legal contract or obligation of any party hereto unless the parties enter into a formal Sub-Sublease Agreement and all conditions precedent and required consents thereto have occurred. The obligations of TSCI under any Sub-Sublease Agreement that may be entered into hereafter shall be conditioned upon Owner and Lessee/Sublessor consenting in writing to any formal Sub-Sublease of the Subject Premises shown in Exhibit A upon terms and conditions acceptable to TSCI in its sole discretion. TSCI will send the signed LOI to Owner and Lessee/Sublessor within 10 days of the last date this LOI is signed by a party hereto and request that Owner and Lessee/Sublessor give consent to the proposals set forth herein in principle as soon as possible so the parties may proceed to finalize a formal Sub-Sublease. If a formal Sub-Sublease Agreement resulting herefrom is not executed by the parties and if written consent and commitment to sub-lease and to amend TSCI’s sublease as provided in Paragraph 4 below is not granted by Owner and Lessee/Sublessor within 60 days of the last date of this LOI being signed by a party hereto or by April 1, 2008, whichever date is later, this proposal and any formal Sub-Sublease Agreement resulting herefrom may be declared null and void by



either party upon written notice to the other, and in such event neither party shall have further obligation or recourse to the other hereunder.

2. Term and Use. The primary term of the proposed Sub-Sublease shall be ten (10) years. The term of the Sub-Sublease shall commence upon completion of TSCI's obligations contemplated under Paragraph 5 of this Letter of Intent (the "Commencement Date"). The City's use of the Subject Premises shall be restricted to the period from January 1 through September 30th of each year. TSCI may extend to the City, at TSCI's sole discretion, the use of the Subject Premises during the months of October, November and December. The use of the Subject Premises for such extended months would be on a year-to-year and month-to-month basis.
3. Rent Payment. The following factors shall be used to determine a 10-year prepaid Sub-Sublease payment:
  - a. Cost of Improvements and Engineering for Subject Premises not to exceed \$221,000 for construction in Spring/Summer of 2008.
  - b. Sub-Sublease term: 10 years
  - c. Based on a 10-year term, the City would pay in two installments a one-time rent occupancy payment based on 100% of the Cost of Improvements, which amount shall not exceed \$221,000. Because the expected use of the Subject Premises would be for nine months, the one time payment should be adjusted to an amount not to exceed \$165,750 (\$221,000 divided by 12 mos. x 9 mos.). After execution of the Sub-Sublease, the pre-paid Sub-Sublease payment of \$165,750 will be deposited in a mutually agreed upon escrow account by City with said amount to be paid by City to TSCI as follows: When Schreiber Anderson Associates, Inc. notifies the City that the base coarse improvements to the premises have been substantially completed, the City shall execute a check to TSCI for one-half of the Costs of Improvements, but not to exceed \$82,875. When Schreiber Anderson notifies the City that parking improvements to the premises are substantially completed, the City shall pay a second payment to TSCI for the remainder of the Costs of Improvements, but not to exceed \$82,875. If TSCI allows the City to utilize the Subject Premises during October, November and/or December as described in Paragraph 2, the City would pay an additional monthly rent payment not to exceed \$1,842.(\$221,000 divided by 10 years divided by 12 mos.) to be paid for each additional month's use of the Subject Premises allowed by TSCI. The monthly payment of \$1,842 shall be subject to an annual rent increase of 3% per year on the anniversary date of the commencement of the Sub-Sublease term.
  - d. If TSCI and the City agree to a five-year extension as mentioned in Paragraph 10, the City would pay rent based on a monthly payment of \$2,476 (\$1,842 increased 3% over 10 years), with 3% annual increases for each year after the first year of the extension period.

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- e. All monthly rent payments shall be paid in advance by the last day of the calendar month immediately preceding such use.
4. Land Transfer. Upon execution of the formal Sub-Sublease, the City shall transfer to Owner by Quit Claim Deed the out-parcel of property shown on Exhibit A (“Out-parcel”); and this LOI and any obligations of TSCI under a formal Sub-Sublease Agreement to be entered pursuant to this LOI are conditioned on TSCI’s sublease with Lessee/Sublessor being amended to include the Out-parcel as part of TSCI’s sublease, including all renewals or extensions thereof through exercise of current or future options, at no additional cost to TSCI. As a condition precedent to executing a formal Sub-Sublease, the City shall provide TSCI with title work evidencing good and marketable title of the Out-parcel, free and clear of any liens or encumbrances and free of any restrictions inconsistent with the intended use of the Out-parcel as contemplated herein, which evidence is reasonably satisfactory to TSCI.
5. Parking Lot Improvement and Accessible Parking. TSCI would install and construct all parking lot improvements within the Subject Premises in accordance with the plans prepared by Schreiber/Anderson Associates, Inc., consisting of 17 pages and which were approved by the City of Madison on August 30, 2007, and which are incorporated by reference herein. All such improvements would commence by May 1, 2008 (weather permitting and assuming all approvals have been obtained), and be completed within a reasonable time not later than December 31, 2008. By mutual agreement of the parties (and approvals of Owner and Lessee/Sublessor), additional curb cuts and/or pavement markings may be added to the Subject Premises for the safety and convenience of pedestrians at the City’s sole expense.
6. Indemnification. The City (“Indemnitor”) shall protect, indemnify and save harmless TSCI, Lessee/Sublessor and Owner and all their respective officers, directors, employees and agents (collectively “Indemnitees”), from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorney’s fees and expenses) imposed upon or incurred by or asserted against Indemnitees by reason of the occurrence or existence of any of the following during the Sub-Sublease term or extension thereof while the City is in, or has the right to, possession of the Subject Premises, or when the City, its employees, agents or invitees enter upon the Subject Premises for any reason, including without limitation, to enforce parking restrictions as provided in Paragraph 12 below: (a) any accident, injury to or death of persons or loss of or damage to property occurring on the Subject Premises, the Access Drive or any parts thereof; (b) any occupancy, use, non-use or condition of the Subject Premises or any part thereof resulting from the City’s use or occupancy of the Subject Premises; or (c) any failure on the part of the City to perform or comply with any of the terms of the Sub-Sublease when finalized. The indemnification obligation shall exclude any damages, penalties, costs and expenses (including without limitation reasonable attorney’s fees and expenses) to the extent caused by or contributed to by the acts or omissions of Owner’s, Lessee/Sublessor’s and TSCI’s own employees, agents or invitees. In case any action, suit or proceeding is brought against TSCI or any of its officers, directors, employees or agents by reason of any such occurrence, the City, upon request and at

the City's expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by City and reasonably approved by TSCI. The obligations of the City under this paragraph shall survive any termination of the Sub-Sublease when finalized. The furnishing of insurance required hereunder shall not be deemed to limit the City's obligations under this paragraph.

7. Insurance by Lessee. The City shall obtain, at its expense, beginning on the Commencement Date and shall maintain through the expiration or termination of the proposed Sub-sublease, a policy of commercial general liability insurance to insure against injury to property, person, or loss of life arising out of the use, occupancy, or maintenance of the Subject Premises with limits of general liability not less than \$5,000,000 per occurrence and in the aggregate.
8. Cross-Easement. The City is aware that the Owner's property at 3650 Milwaukee Street is subject to a cross-easement agreement with adjacent property owners, and that TSCI or the Owner may elect to terminate the proposed Sub-Sublease in accordance with Paragraph 9 if termination is required in order to comply with the obligations of the current cross-easement agreement.
9. Termination for Convenience or Acts of God. TSCI shall have the right to terminate the proposed Sub-Sublease without cause upon providing the City with 180 days' written notice. In the event of early termination without cause, or should the Sub-Sublease terminate due to acts of God, condemnation, bankruptcy or other unforeseen reason, TSCI would be required to reimburse the City \$16,750 (\$165,750 divided by 10 years) for each full year remaining on the initial 10-year Sub-sublease term at the time of termination (less any sums that may be owed by the City to TSCI), but reimbursement for a partial year and for any additional rents paid under Paragraph 3(c) shall be prorated to the date of termination. This provision shall also apply in the event of a default by TSCI, but shall not apply in the event of a default by the City.
10. Renewal. As described in Paragraph 3(d), the proposed Sub-Sublease may be renewed for one subsequent five (5) year term upon agreement of the parties (and assuming such renewal has been approved by Owner and Lessee/Sublessor). Thereafter the proposed Sub-Sublease could be renewed for subsequent one (1) year terms upon agreement of the parties (and assuming such renewal has been approved by Owner and Lessee/Sublessor) as to the terms of the renewal.
11. Requests for Sub-sublease Approval. TSCI shall be responsible for seeking written approval from Owner and Lessee/Sublessor regarding the proposed Sub-Sublease of the Subject Premises to the City and the other transactions contemplated herein. TSCI represents and warrants that: it has exercised, under the terms of the sublease, its option to extend the sublease term until June 30, 2013; and, assuming it is not in default or the sublease is not terminated, TSCI has the right to exercise one additional 5-year option on its sublease that, if timely exercised (by September 30, 2012), would extend TSCI's sublease until June 30, 2018.

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12. Enforcement of Illegal Parking. Customers of the City (“Park and Ride Customers”) will be allowed to use the Subject Premises as a Park and Ride facility from January through September unless extended pursuant to Paragraphs 2 and 3(c). During the months of October, November and December, the City will provide suitable barriers to close the Southeast entrance to the Subject Premises to discourage use by Park and Ride Customers. In anticipation of the three-month exclusive use by TSCI’s employees, the City shall distribute notices on Park and Ride Customer’s vehicles indicating when the lot will be closed to Park and Ride Customer use and explaining unauthorized parking consequences. During the months of exclusive use by TSCI, its employees, agents and invitees, TSCI will issue parking decals/tags/cards (in a manner reasonably satisfactory to TSCI) that should be placed in a visible location inside the TSCI employees’, agents’ and invitees vehicles for use in the lot during that time. Such parking permits shall be obtained by TSCI with the reasonable costs thereof to be paid by the City. The City will post parking enforcement signs on the Subject Premises as recommended by the City of Madison Police Parking Enforcement officers (but which locations shall be approved in advance by TSCI). The signs will inform potential violators (cars or vehicles without decals/tags/cards) that unauthorized vehicles will be ticketed and towed. If violations occur, TSCI would contact the Parking Enforcement Unit of the City of Madison Police Department and Metro. Metro staff would be required to work cooperatively with TSCI and Madison Police Department Parking Enforcement staff in order to facilitate enforcement of the parking restrictions. In the event a ticketed car/vehicle is not removed in 48 hours, the car or other vehicle will be towed and removed by the City from the Subject Premises at the City’s expense, and the City shall be solely responsible for any damages or claims arising from the ticketing and/or towing of any such cars or vehicles.
13. Maintenance, Repair. The City shall, at its own expense, keep and maintain the Subject Premises in a sanitary condition. Maintenance responsibilities will include removal of garbage and debris, snow removal, landscape upkeep and similar activities, and with parking enforcement as described in Paragraph 12. At its sole expense, during the term of the proposed Sub-Sublease, the City shall repair or cause the repair of the Subject Premises to the original as-built (including the improvements) condition. TSCI shall be solely responsible for the maintenance and repair of the Access Drive.
14. Electricity Costs. The City shall pay the electrical costs for the lights within the Subject Premises during the term of the Sub-Sublease, including additional months as described in Paragraph 2 hereof.
15. Assignment. The City may assign the Sub-Sublease to a willing and able successor transit system to Metro, with Federal Transportation Administration (FTA) approval. Any such assignment also shall be subject to the approval of TSCI, which shall not be unreasonably withheld. TSCI shall be promptly notified in advance of any proposed assignment or any approval thereof by FTA and again be promptly notified of any actual assignment. All remaining rights and obligations under the Sub-Sublease will carry over to the assignee, except for those obligations unique to the City and not subject to undertaking by such assignee (such

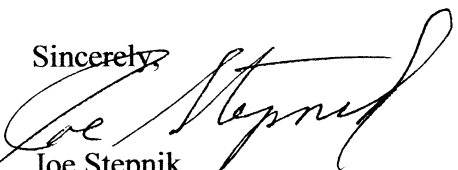
as parking lot enforcement), but the City shall not be relieved of any of its obligations under the Sub-Sublease in the event the assignee fails to fully perform.

- 16. Reservation of Rights. It is the intent of the City and TSCI to execute a Sub-Sublease as soon as possible, which Sub-Sublease must be acceptable to the City, TSCI, the Owner and Lessee/Sublessor. In order for the Sub-Sublease to run for a 10-year term and/or any potential extensions thereof by the City, it will be necessary for TSCI to exercise certain rights to extend its sublease with Lessee/Sublessor. While TSCI at present has every intention of exercising its rights to extend its sublease with Lessee/Sublessor, it reserves the right, in its business discretion, not to exercise such further extension options if it believes doing so would not be in the best business interests of TSCI. In such event, the terms of Paragraph 9 above shall apply. Notwithstanding the foregoing, in the event that TSCI opts not to exercise its rights and its sublease with Lessee/Sublessor is not extended to run the full 10-year term on or before the Commencement Date, the City's initial lump sum payment shall be prorated accordingly and restricted to the term of TSCI's sublease.

If the terms of the proposed non-binding Letter of Intent outlined above are satisfactory, please indicate so by having TSCI sign in the space provided below. This letter will then constitute a non-binding Letter of Intent indicating the willingness of the City and TSCI to proceed with the preparation of a formal Sub-Sublease incorporating the basic provisions provided above and such other terms and conditions deemed necessary by the parties hereto and in a form acceptable to the parties, Owner, Lessee/Sublessor and which comports with any City and Federal legal requirements.

The parties understand that the increased costs for the improvements are subject to approval by the Common Council for the City of Madison. While it is the intent of the City and TSCI that the proposed Sub-sublease be executed in a timely manner, it is recognized that no binding Sub-Sublease will exist between the City and TSCI unless and until a formal Sub-Sublease, acceptable to the parties hereto and Owner and Lessee/Sublessor, is executed by the parties and approved in writing by Owner and Lessee/Sublessor.

Sincerely,



Joe Stepnik  
Senior Real Estate Agent

The proposal outlined in this letter as a Letter of Intent only, and subject to the conditions set forth above, is acceptable to The Swiss Colony, Inc.

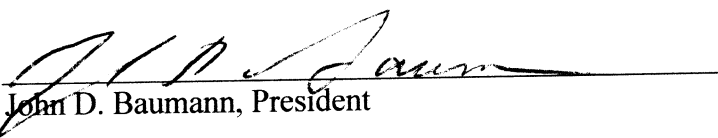
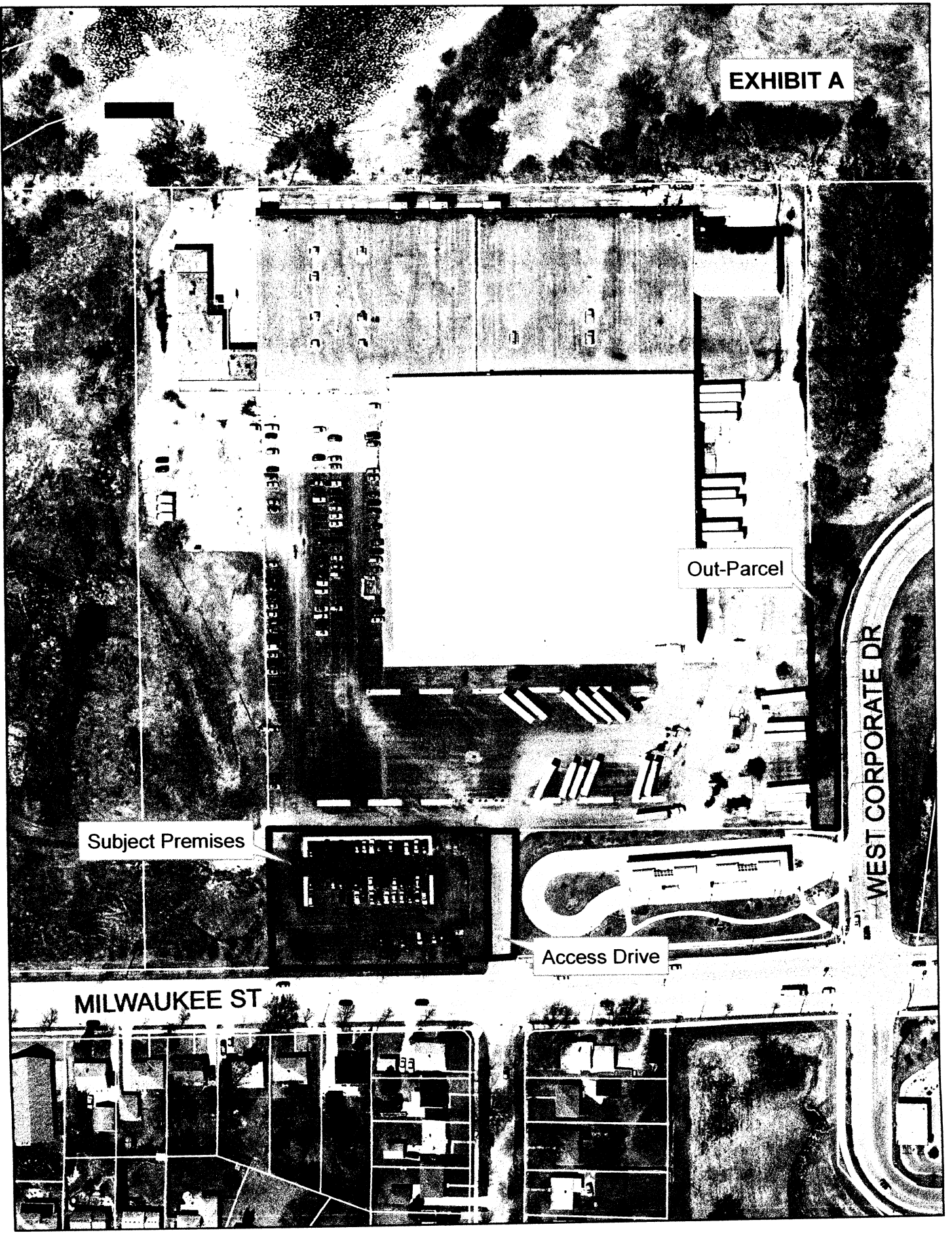
By:  Date: 4-17-08  
John D. Baumann, President

EXHIBIT A



Subject Premises

Out-Parcel

Access Drive

MILWAUKEE ST

WEST CORPORATE DR