

## **ADDENDUM TO COMMERCIAL OFFER TO PURCHASE**

**Buyer:** CommonBond Communities or its assigns

**Seller:** Community Development Authority of the City of Madison (CDA), a Wisconsin redevelopment authority

**Property:** As used herein, the term “Property” shall mean the land and building located at 7941 Tree Lane, Madison, Wisconsin. The precise legal description of the land comprising the Property shall be verified in the title commitment issued by the Title Company pursuant to paragraph 14 below and the parties shall amend this Offer to Purchase to reflect the actual description of the Property. The term “Offer to Purchase” as used herein shall mean this Addendum and the form Commercial Offer to Purchase to which this Addendum is attached. If there is any inconsistency between this Addendum and the form Commercial Offer to Purchase to which it is attached, the terms and conditions of this Addendum shall control.

### **1. OWNERSHIP OF THE PROPERTY.**

Seller represents and warrants that it owns all of the Property and is authorized to enter into this Offer to Purchase.

- 2. PURCHASE PRICE ADJUSTMENT.** Buyer and Seller acknowledge that certain portions of the Property will require environmental remediation. Within the period provided for the Testing Contingency pursuant to Section 3, below, Buyer shall determine the portions of the Property requiring environmental remediation and obtain quotes from Buyer’s contractor(s) to complete the environmental remediation, in Buyer’s sole determination, including, but not limited to soils removal, additional building expenses related to the necessary environmental remediation, and soil backfill (collectively, the “Remediation Work”). Buyer and Seller agree that the Purchase Price shall be reduced on a dollar-for-dollar basis by the cost of the Remediation Work. In the event that the Seller’s purchase price for the Property exceeds the Purchase Price herein, the final sale shall be contingent on approval of the CDA’s Board.

### **3. STRUCTURAL TESTS AND ENVIRONMENTAL TESTS**

Seller hereby grants to Buyer permission to perform inspections, surveys, soil tests, environmental tests and structural evaluations on the Property as may be required by Buyer (the “Testing Contingency”). In addition, Seller grants Buyer the right to enter upon the Property to undertake and complete environmental examinations and structural analysis as may be recommended by Buyer’s consultants or required by Buyer’s lenders or Buyer’s investors. Buyer’s obligations hereunder are subject to obtaining test results satisfactory to Buyer. The Testing Contingency contained in this paragraph 3 shall be deemed satisfied unless Buyer delivers written notice to Seller by [\_\_\_\_\_, 20\_\_]. If Buyer delivers such notice to Seller, then this Offer to Purchase shall terminate. Notwithstanding the foregoing, invasive testing for lead-based paint and asbestos, as may be required by Buyer’s tax credit investor or lender, is

expressly permitted. Following any testing or evaluations, Buyer shall return the Property to the condition it was in prior to such testing and evaluation. At Seller's request, Buyer shall provide copies of any tests or evaluations to the owner of the respective Property, to be used by Seller for any purpose whatsoever. The provisions of the last two sentences of this paragraph 3 shall survive any termination of this Agreement.

#### **4. SELLER'S INFORMATION**

Buyer shall be entitled to receive and utilize any information in Seller's possession or which Seller may be able to obtain from AH Oakbridge Office Limited Partnership ("Current Owner") that may be relevant to the rehabilitation/redevelopment of the Property, including but not limited to, all surveys and engineer's maps and drawings, structural inspections, capital needs assessments, computer file drawings and any environmental reports or tests pertaining to the Property. Seller shall deliver copies of the above-described information to Buyer within 90 days after the acceptance date of this Offer to Purchase.

#### **5. SECTION 42 HOUSING TAX CREDIT APPROVALS**

It is understood that the Buyer will be applying to the Wisconsin Housing and Economic Development Authority ("WHEDA") for approval of either (a) 9% competitive Section 42 Housing Tax Credits to renovate the Property; or (b) 4% non-competitive Section 42 Housing Tax Credits to renovate the Property (collectively, as selected by Buyer in its sole discretion, the "Tax Credits"). Buyer's obligation to purchase the Property is contingent upon:

- (a) Buyer submitting an application to WHEDA for Tax Credits on or before March 15, 2018; and
- (b) 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 15, 2018.

If Buyer has not provided Seller with evidence of the award of the tax credits by WHEDA as described in this paragraph 5(b) on or before July 31, 2018, or such later date that WHEDA announces such awards for 2018 to the public, then Buyer shall have the right to terminate this Offer to Purchase upon written notice to Seller given on or before August 31, 2018. If Buyer does not deliver to Seller evidence of a tax credit award as provided herein, this Offer to Purchase shall be deemed automatically terminated.

#### **6. FINANCING**

This Offer to Purchase is contingent on Buyer obtaining financing for the purchase of Property on terms acceptable to Buyer in Buyer's sole discretion. If such financing is not obtained by Buyer, Buyer shall have the right to terminate this Offer to Purchaser.

## **7. GOVERNMENTAL APPROVALS**

Buyer's obligations hereunder are subject to, and conditioned upon, Buyer successfully obtaining building or other approvals from the City of Madison and approvals from any other governmental or quasi-governmental entity as may be required to construct and development the Buyer's proposed apartment community to be located on the Property with a configuration and design satisfactory to Buyer, including, without limitation, Plan Commission, Urban Design Commission and Common Council. Seller agrees to permit staff to cooperate with Buyer in obtaining approval from said boards, commissions and councils. The contingency contained in this paragraph 7 shall be deemed satisfied unless Buyer delivers written notice to Seller by August 31, 2018, with respect to all approvals.

## **8. BROKERAGE**

Buyer shall pay any claim for a broker's, finder's, or similar fee, in connection with the transaction which is the subject of this Offer to Purchase, which Buyer has contracted for. Buyer represents and warrants to Seller that, in connection with the transaction which is the subject of this Offer to Purchase, no third party broker or finder has been engaged or consulted by Buyer or is entitled to compensation or commission in connection herewith. Buyer hereby indemnifies and holds Seller harmless from and against any and all liability, obligation, loss, cost and/or expense (including attorneys' fees) in connection with any claim from any agent, broker, finder or other person claiming to be owed a fee or commission based upon the actions or inactions of Buyer.

Seller shall pay any claim for a broker's, finder's, or similar fee, in connection with the transaction which is the subject of this Offer to Purchase, which Seller has contracted for. Seller represents and warrants to Buyer that, in connection with the transaction which is the subject of this Offer to Purchase, no third party broker or finder has been engaged or consulted by Seller or is entitled to compensation or commission in connection herewith. Seller hereby indemnifies and holds Buyer harmless from and against any and all liability, obligation, loss, cost and/or expense (including attorneys' fees) in connection with any claim from any agent, broker, finder or other person claiming to be owed a fee or commission based upon the actions or inactions of Seller.

## **9. LEASES AND SERVICE CONTRACTS**

Seller warrants and represents to Buyer that there are no service contracts or leases (other than with residential tenants) in place for the Property and that it will not enter into any such agreements prior to the Closing Date.

## **10. PRORATIONS AND CLOSING COSTS**

- (a) The following items will be prorated and through the closing date, with income and expenses through the closing date accruing to the benefit of Seller:
  - (i) Net general real estate taxes for the year of closing shall be prorated based upon the net general real estate taxes for the year of closing, if known, or

otherwise, on the net general real estate taxes for the year immediately preceding the year of closing.

- (ii) Water and sewer charges, and all other utility charges through the closing date shall be paid by Seller.
  - (iii) If any special assessment is currently being paid on an installment basis, Buyer shall pay the balance remaining unpaid on said assessment. All other special assessments shall be paid by Buyer.
  - (iv) Liabilities under all service, maintenance and similar contracts that will continue after closing, shall be paid by Seller through the closing date. Thereafter the liabilities under said contracts shall be paid by Buyer.
- (b) The closing costs shall be allocated as follows:
- (i) Seller shall pay at closing all transfer taxes due and owing with regard to transfer of the Property;
  - (ii) Seller shall pay at closing all title insurance policy premiums for the title policy in the amount of the Purchase Price and a gap endorsement;
  - (iii) Each party shall pay its own attorneys' fees; and
  - (iv) Buyer will pay all recording fees with regard to the warranty deed and Seller will pay all recording fees with regard to satisfaction of its existing liens and encumbrances.

## **11. CLOSING AND EARNEST MONEY**

- (a) The closing of the purchase of this Property shall occur not later than December 31, 2018; provided, however, Buyer shall have the right to extend the closing date for up to ninety (90) days after December 31, 2018, by paying an additional twenty five thousand dollars (\$25,000) of nonrefundable earnest money (the "Extension Deposit") to the Seller prior to November 30, 2018. The Extension Deposit shall be credited against the Purchase Price at Closing.
- (b) Buyer shall have the right and option at any time after June 30, 2017, to establish a closing date upon 30 days' written notice to Seller, and if all of Seller's conditions precedent to closing have been satisfied, the closing date shall bind Seller; provided, however, the closing date so established shall not be later than the closing date described in paragraph 11(a) above. However, Buyer reserves the right to close on the latest date permitted by this Offer to Purchase.
- (c) Except as otherwise set forth above, all earnest money and other deposits (including the Extension Deposit) shall be held by the Title Company. Earnest money shall be disbursed as provided herein. If the transaction which is the

subject of this Offer to Purchase closes, all earnest money shall be applied to the purchase price at closing.

## **12. SELLER'S COOPERATION**

Seller recognizes that Buyer shall require frequent access to the Property for the purpose of conducting its required due diligence proceedings. Seller agrees to cooperate in arranging access to any and all areas requested by Buyer, as often as may be required by Buyer.

## **13. DRAFTING OF OFFER**

This Offer to Purchase is the product of negotiation among the parties hereto and no term, covenant or provision herein or the failure to include a term, covenant or provision shall be construed against any party hereto solely on the basis that one party or the other drafted this Offer to Purchase or any term, covenant or condition contained herein.

## **14. TITLE EVIDENCE AND SURVEY**

As a further condition of Buyer's obligations hereunder, Seller shall deliver to Buyer on or before 45 days following the date of acceptance of this Offer to Purchase, a commitment (the "Title Commitment") from First American Title Insurance Company National Commercial Services, Madison, Wisconsin, Attn: Chris Zak ("Title Company"), to issue an ALTA owner's policy of title insurance ("Title Policy") in the amount of the Purchase Price for the Property, which policy shall guarantee Seller's title to be free and clear of liens and encumbrances except for those liens and encumbrances which acceptable to Buyer, determined in Buyer's sole discretion. In addition, Buyer may elect, at Buyer's sole cost and expense, to obtain an ALTA survey of the Property (the "Survey"), which Buyer shall obtain within 30 days following receipt of the Title Commitment. Within 30 days following receipt of the Title Commitment, Buyer may object in writing to any condition of title which is not acceptable to Buyer or to any condition of title shown by the Survey which is not acceptable to Buyer. Any matters of title and the Survey (if Buyer has timely obtained the Survey) which are not so objected to by Buyer before such time shall become permitted encumbrances (the "Permitted Encumbrances"). If any objection is made, Seller shall have until 20 days following the date the objection is made to correct the condition of title or the Survey. If Seller is unable or unwilling for any reason whatsoever to correct the condition of title or the Survey, Buyer may, at its option and in its sole discretion, elect (a) to terminate this Offer to Purchase and all earnest money and accrued interest thereon shall be returned immediately to Buyer, or (b) to accept such title as Seller is able to convey and proceed to closing. If Buyer does not elect either (a) or (b) on or before 30 days following notice from Seller that Seller is unwilling or unable to correct the condition of title and/or the Survey, then Buyer shall be deemed to have elected to accept such title as Seller is able to convey and the Survey, and Buyer shall be required to proceed to closing. Seller agrees and acknowledges that various easements exist that benefit and burden the Property. Seller shall obtain releases or terminations of several such easements in advance of the transfer of the Property to Buyer.

## **15. CONVEYANCE**

Seller shall, upon payment of the Purchase Price, convey the Property to Buyer by warranty deed, free and clear of all liens and encumbrances other than the Permitted Encumbrances.

## **16. CLOSING**

Closing of this transaction shall take place on or before December 31, 2018, as extended as set forth in paragraph 11(c) above. Closing shall take place at the offices of the Title Company, or at such other place and time as the parties may agree upon in writing. The parties shall furnish at the closing of this transaction, originals of the following documents:

- (a) From Seller, the warranty deed;
- (b) From Buyer and Seller, a closing statement setting forth a summary of the Purchase Price and credits to Buyer at the closing;
- (c) From Seller, an affidavit as to construction liens and possession sufficient to permit the Title Company to insure over the standard exceptions for construction liens, possession and easements not shown by the public records and a gap indemnity sufficient to permit the Title Company to insure title vested in the Buyer as of the date of recording of the deed, subject only to the Permitted Encumbrances. From Buyer and Seller, a broker's lien affidavit sufficient to permit the Title Company to delete from the Title Policy any exception with respect to potential brokers' lien rights;
- (d) From Seller, evidence of payment of all real estate taxes assessed or levied for the period through December 31 of the year immediately preceding the year of closing, special assessments, water bills, sewer bills, and any other municipal and governmental levies, and evidence that all utility charges and other expenses with regard to the Property are paid current or prorated through the date of closing;
- (e) From Buyer and Seller, a Wisconsin Real Estate Transfer Return;
- (f) From Seller, a payout letter for all mortgages, liens and judgments being satisfied as of the date of closing;
- (g) An Assignment and Assumption Agreement to be executed by Buyer and Seller with respect to any third party vendor, service, maintenance or similar contract which will continue in effect after closing. Seller shall indemnify Buyer with respect to said contracts for the period prior to closing and Buyer shall indemnify Seller with respect to said contracts for the period following closing;
- (h) An Assignment and Assumption Agreement to be executed by Buyer and Seller with respect to any leases of the Property which will continue in effect after closing. Seller shall indemnify Buyer with respect to said leases for the period

prior to closing and Buyer shall indemnify Seller with respect to said leases for the period following closing;

- (i) Such other documents or instruments as may be reasonably requested by either Buyer or Seller and/or the Title Company to effect and consummate the transactions contemplated hereby.

## **17. CONDEMNATION**

If after the date of this Agreement and prior to closing, all or any part of the Property is subject to a bona fide threat of condemnation by a body having power of eminent domain (as evidenced by a formal action or enabling resolution of said body) or is taken by eminent domain or condemnation, Buyer may terminate this Agreement by written notice delivered to Seller in which event all earnest money and the interest accrued thereon shall be returned to Buyer. Buyer's notice of termination shall be delivered on or before 10 days following the earliest of Buyer's receipt of written notice of the threat of condemnation, the taking, condemnation or formal action or enabling resolution, as the case may be. If Buyer does not timely terminate this Agreement, then the Property will be conveyed by Seller to Buyer in the condition it is in at closing and Seller shall assign to Buyer all of Seller's interest in any condemnation award.

## **18. SALE AS-IS**

Seller makes no representations or warranties of any kind whatsoever in connection with the Property being sold by Seller pursuant to this Agreement. Buyer understands and agrees that Buyer is purchasing the Property being sold by Seller pursuant to this Agreement **AS-IS, WHERE-IS**, without representations or warranties of any kind whatsoever by Seller. Any warranties or representations of any kind made either orally or in writing by Seller or any agent or representative of the Seller or anyone purporting to be an agent or representative of the Seller shall be of no force or effect unless specifically incorporated in writing in this Agreement. Buyer hereby acknowledges that it does not rely upon any representation or warranty made by Seller or by Seller's agents and that none have been made.

## **19. ASSIGNMENT BY BUYER**

Buyer shall have the right to assign its rights under this Agreement to another person or entity upon prior written notice to Seller. Notwithstanding any such assignment, Buyer shall remain liable for the performance of all terms, conditions and covenants set forth in this Offer to Purchase.

## **20. NOTICES**

Notices delivered by mail shall be deemed delivered on the second day following the date of deposit of the notice, postage or fees prepaid, in the U.S. Mail. Notices delivered by commercial delivery service shall be deemed delivered on the first day following the date of deposit with the commercial delivery service, fees prepaid. Notices delivered by fax

transmission shall be deemed delivered on the date the notice is sent by facsimile to the other party.

**21. CONTINGENCY SAVINGS PROVISION.**

The parties hereto acknowledge that Buyer will expend material sums of money in reliance on Seller's obligations under this Offer to Purchase, in connection with negotiating and executing the Offer to Purchase, conducting the inspections contemplated by this Offer to Purchase, and preparing for Closing, and that Buyer would not have entered into this Offer to Purchase without the availability of an inspection period. The parties therefore agree that adequate consideration exists to support Seller's obligations hereunder, even before expiration of the period during which contingencies run, and Seller and Buyer each waive any and all rights to challenge the enforceability of this Offer to Purchase on the basis that any of the conditions or contingencies set forth herein are at Seller's or Buyer's sole discretion or that any of the agreements contained herein are illusory. If either party challenges the enforceability of this Offer to Purchase in a manner that is inconsistent with the foregoing waiver, such party shall pay the other party's costs and expenses (including reasonable attorneys' fees) in enforcing this Offer to Purchase.

Approved and agreed to as of \_\_\_\_\_, 2017:

**BUYER:**

CommonBond Communities, or its assigns

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

**SELLER:**

City of Madison, Wisconsin, a municipal corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_