

**AGREEMENT OF SALE**

Sheboygan, WI – 636 Wisconsin Avenue (BE #100553)

**KEY PROVISIONS SUMMARY**

Effective Date:	The date this Agreement is executed by the last to sign of Buyer and Seller (as indicated by the date associated with such party’s signature) as shown on the signature page(s) attached hereto ( <u>Section 17.15</u> )	
Seller:	Wells Fargo Bank, N.A., a national banking association	
Buyer:	City of Sheboygan	
Property:	That certain real property containing approximately 1.49 acres located at 636 Wisconsin Avenue, Sheboygan, Wisconsin (all of Sheboygan County tax parcel numbers 59281110440 and 59281111451) as more particularly described by a legal description from a deed/title policy attached hereto as <u>Exhibit A</u> and as depicted on the site plan or survey attached hereto as <u>Exhibit B</u> , together with all appurtenances, rights, privileges, and easements benefiting, belonging, or pertaining thereto as well as any improvements and fixtures located thereon (except as otherwise provided in <u>Section 9</u> below)	
Escrow Agent:	_____ ( <u>Section 3</u> )	
Earnest Money:	\$10,000 ( <u>Section 3</u> )	
Purchase Price:	\$1,700,000 ( <u>Section 4</u> )	
Acceptance Date:	Thirty (30) days after the First Party Signature Date ( <u>Section 19</u> ) <i>NOTE: Agreement is void if signed/dated after the Acceptance Date per <u>Section 19</u>.</i>	
Title Period:	Sixty (60) days after the Effective Date ( <u>Section 7.1</u> )	
Inspection Period:	Sixty (60) days after the Effective Date ( <u>Section 7.2</u> )	
Closing Date:	Not later than thirty (30) days after expiration of the Inspection Period ( <u>Section 10.1</u> )	
Financial Services/ Signage Restrictions:	Two (2) years ( <u>Section 6.3</u> )	
Broker(s):	CJ Goldberg, representing Seller, as the sole broker in this transaction ( <u>Section 16</u> )	
Notices: ( <u>Section 15</u> )	<u>Seller:</u> Wells Fargo CPG Attn: Property Admin (BE #100553) MAC D1116-L10 1525 West W.T. Harris Blvd. Charlotte, NC 28262 E: PropertyAdmin@WellsFargo.com	<u>Buyer:</u> City of Sheboygan Attn: _____ _____ E: _____  With a copy to: _____ Attn: _____ _____ E: _____
Exhibits:	Exhibit A – Legal Description of Property Exhibit B – Site Plan or Survey of Property	

## AGREEMENT OF SALE

**THIS AGREEMENT OF SALE (“Agreement”)** is entered into as of the Effective Date by Seller and Buyer.

The parties agree as follows:

**1. Key Provisions Summary; Enumeration of Exhibits.** References in the body of this Agreement to a portion of the Key Provisions Summary (e.g., the defined terms in the left-hand column of the Key Provisions Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the Key Provisions Summary. References in the Key Provisions Summary to a portion of the body of this Agreement (e.g., Section references in the right-hand column of the Key Provisions Summary) shall be deemed and construed to incorporate all the terms provided under each such referenced portion of the body of this Agreement. Notwithstanding anything set forth above, if there is any inconsistency between the Key Provisions Summary and another portion of this Agreement, the terms of the Key Provisions Summary shall control. The Exhibits enumerated in the Key Provisions Summary and attached to this Agreement are incorporated in this Agreement by reference and are to be construed as a part of this Agreement. Each party shall perform any obligations on its part as set forth in any and all such Exhibits. **Except where otherwise expressly provided for in this Agreement, any consent or approval required under this Agreement shall not be unreasonably withheld, delayed, or conditioned.**

**2. Agreement of Sale and Purchase.** Subject to the terms and conditions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property.

**3. Earnest Money.**

**3.1.** On or before 5:00 p.m. on the tenth day after the Effective Date, Buyer shall deposit with the Escrow Agent (as set forth in the Key Provisions Summary) the Earnest Money (as set forth in the Key Provisions Summary). All sums paid by Buyer to Escrow Agent hereunder are included as part of the Earnest Money. Escrow Agent shall deposit the Earnest Money in a non-interest bearing account and shall hold, refund, disburse, and/or distribute, as the case may be, the Earnest Money in accordance with the terms hereof.

**3.2.** Within ten (10) days from the Effective Date, the parties agree to sign an earnest money escrow agreement in form and substance reasonably acceptable to the parties thereto. Seller and Buyer shall jointly and severally hold Escrow Agent harmless with respect to the performance of its duties as Escrow Agent, except to the extent caused by the gross negligence or willful or wanton misconduct of Escrow Agent.

**3.3.** The Earnest Money will be returned to Buyer if Buyer terminates this Agreement prior to the expiration of the Title Period or the Inspection Period. If Buyer fails to close on the purchase of the Property after the Inspection Period has expired and Buyer has not terminated this Agreement, Seller shall retain the Earnest Money as liquidated damages as Seller’s exclusive remedy. If Seller fails to close on the sale of the Property as required in this Agreement, the Earnest Money shall be returned to Buyer and Seller also shall pay Buyer an amount equal to all costs and expenses incurred by Buyer with regard to the transaction and all other remedies available to Buyer at law as a result of Seller’s breach of this Agreement (including, without limitation, all attorney’s fees). Otherwise, the Earnest money will be applied to the Purchase Price at Closing. The parties hereby waive the remedy of specific performance.

**3.4. Escrow Agent Terms.**

**3.4.1.** In the event of a default by Buyer under the terms of this Agreement leading to termination of this Agreement by Seller as provided in Section 11.1 below, or the termination of this Agreement by Seller in accordance with its terms, Escrow Agent is instructed to deliver the Earnest Money to Seller. In the event of a default by Seller under the terms of this Agreement as provided in Section 11.2 below, or the termination of this Agreement by Buyer in accordance with its terms, Escrow Agent is instructed to deliver the Earnest Money to Buyer. If the sale of the Property is closed, Escrow Agent is instructed to deliver the Earnest Money to Seller to be treated as a credit against the Purchase Price at Closing.

**3.4.2.** The duties of the Escrow Agent are only as herein specifically provided and purely ministerial in nature and the Escrow Agent incurs no liability whatever except for gross negligence or willful or wanton misconduct. Seller and Buyer each release the Escrow Agent from any act done or omitted to be done by the Escrow Agent in good faith in the performance of its duties hereunder. If Escrow Agent is also attorney for a party hereto, service by the Escrow Agent as Escrow Agent does not disqualify it from representing such party in connection with the transactions provided for in this Agreement.

**3.4.3.** Any request for disbursement of the Earnest Money must be signed by Buyer and Seller; provided, however, that: (1) if either party terminates this Agreement in accordance with its terms, the non-terminating party's joinder in a request for disbursement of the Earnest Money to the terminating party pursuant to such termination is not required and (2) if either party makes a written request for disbursement to Escrow Agent, with a copy to the other party, and the other party fails to object in writing within ten (10) business days, Escrow Agent is authorized to disburse the Earnest Money to the requesting party. In addition, Escrow Agent is authorized to disburse the Earnest Money in accordance with a court order.

**3.4.4.** In connection with this escrow, Buyer and Seller shall execute such additional agreements as Escrow Agent may reasonably request. If, at any time, there exists any dispute or contradiction among the parties hereto with respect to the holding or disposition of the Earnest Money or funds for Closing, or if at any time Escrow Agent is unable to determine to Escrow Agent's sole satisfaction the proper disposition of the Earnest Money or funds for Closing, or Escrow Agent's proper actions with respect to its obligations hereunder, then Escrow Agent may, in its sole discretion, resign as Escrow Agent hereunder by delivery of written notice to all parties hereto, and upon such resignation, Escrow Agent shall pay the Earnest Money or funds for Closing and all interest, if any, earned thereon to (i) any court of competent jurisdiction for holding and disposition in accordance with the instructions of such court, or (ii) any successor escrow agent designated mutually among the parties hereto for holding and disposition in accordance herewith or any successor escrow agreement. Upon such resignation, Escrow Agent has no further obligations under this Agreement. Escrow Agent has no liability to any party hereto or any other person with respect to any such suspension of performance or disbursement into court or successor escrow agent, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Earnest Money or funds for Closing, or any delay in or with respect to any other action required or requested of Escrow Agent. Buyer and Seller, jointly and severally, shall reimburse Escrow Agent for all costs and expenses of any legal action or proceeding in connection with the Earnest Money, funds for Closing, or Escrow Agent's obligations hereunder, including reasonable attorneys' fees and disbursements actually incurred, and shall indemnify, defend, and hold harmless Escrow Agent from any and all claims, actions, liabilities, judgments, and costs (including reasonable attorneys' fees actually incurred) incurred in connection with the escrow of the Earnest Money or funds for Closing. Escrow Agent is not liable for any loss of the Earnest Money or funds for Closing by (or as a result of failure of) the bank in which such funds are deposited. Escrow Agent may rely upon any instrument, not only as to its due execution, validity, and effectiveness, but also as to the truth and accuracy of any information contained therein, which appears to have been signed or presented by the person or party purporting

to sign the same. Escrow Agent is not liable for incidental, indirect, special, consequential, or punitive damages.

**4. Purchase Price.**

The Purchase Price for the Property (as adjusted by the terms of this Agreement) is payable as follows: (i) Escrow Agent will deliver the Earnest Money to Seller at Closing (as defined in Section 10) and (ii) Buyer shall pay the balance of the Purchase Price to Seller (or Escrow Agent) at Closing by wired funds. Seller shall provide wire instructions to the applicable closing attorney or title company at least five business days prior to Closing. The Purchase Price will not be adjusted if the number of acres contained in the boundaries of the Property or the square footage of any improvements at the Property is later shown to be more or less than the number of acres or square footage as set forth in the Key Provisions Summary.

**5. Costs and Pro-Rations at Closing.**

**5.1. Transfer Taxes, Recording Fees and Other Fees.** Seller shall pay any applicable grantor transfer taxes, the cost to prepare the deed from Seller, and the cost of recording all documents necessary to correct or remove defects in or encumbrances upon Seller's title to the Property (if applicable), the premium for an owner's policy of title insurance issued to the Buyer at Closing, a gap endorsement, and any other costs customarily paid by a seller of a commercial property in Wisconsin. Buyer shall pay any applicable grantee transfer taxes, the cost of any additional title insurance obtained by Buyer, the cost of a current survey of the Property (if desired by Buyer during the Inspection Period), the cost of recording the deed from Seller, and any other costs customarily paid by a buyer of a commercial property in Wisconsin. Each party shall pay its own attorney's fees.

**5.2. Taxes.** Ad valorem taxes and assessments ("**Taxes**") assessed against the Property for the year in which Closing occurs will be pro-rated on a calendar year or fiscal year basis, as applicable, as of the day of Closing. If the Property is in the tax records as a separate parcel on the date of Closing, the Taxes will be pro-rated on the basis of time and applied in adjustment of the Purchase Price due at Closing. If the Property is part of a larger parcel during the calendar year or tax year of the Closing, the Taxes will be pro-rated on the basis of acreage (and improvements on such acreage, if any) as well as time, and Buyer shall pay to Seller Buyer's resulting share of the Taxes at Closing and Seller shall pay the Taxes due and payable for the year of Closing on the entire larger parcel of which the Property is a part when the same become due, and Buyer shall, as soon as is practicable, cause the Property to be reflected as a separate parcel in the tax records. If tax bills/notices/assessments have not yet been issued for the current calendar or fiscal year as of Closing, such taxes shall be pro-rated at Closing based upon the most recent tax bill/notice/assessment available as of the Closing Date, which shall be deemed conclusive between Seller and Buyer for all purposes.

**5.3. Utilities.** If any utility services are presently being provided to the Property, Seller will pay for such services through the Closing Date, but thereafter any such services in the name of Seller will be terminated. Notwithstanding the foregoing, Buyer shall transfer all utility services at the Property to Buyer as of the Closing Date. If Buyer fails to so transfer the utility services, Buyer shall indemnify, hold harmless, pay, and reimburse Seller, its agents, employees, and contractors, from, for, and against any and all suits, actions, claims, costs, fees, sums, amounts, losses, causes of action, damages, liabilities, and expenses (including reasonable attorneys' fees, court costs, and alternative dispute resolution expenses) caused in whole or in part or arising directly or indirectly out of Buyer's failure to so transfer such utilities. The foregoing indemnification obligations of Buyer survive Closing.

**6. Conveyance of Title.**

**6.1. Deed.** Seller shall convey title to the Property to Buyer by special (or limited) warranty deed, subject to Taxes for the year of Closing which will be pro-rated between the parties at Closing as provided in Section 5.2 above and subject to matters of survey, easements, encumbrances, restrictions, and any other matters of record, other than defects and encumbrances to be removed, corrected and/or satisfied in accordance with Section 7 below. Seller shall not cause or permit any other defects in or liens, encumbrances, or limitations upon Seller's title to the Property to arise from and after the Effective Date; provided, however, that Seller has no obligation to remove "Fieri Facias" which are not specific to the Property and/or for which Seller is but a garnishee.

**6.2. Legal Description.** Seller shall convey the Property by a special (or limited) warranty deed using the historic legal description of the Property that is of record. If requested by Buyer, and at Buyer's expense, Seller also shall convey the Property by a quit-claim (non-warranty) deed using the legal description taken from a current and accurate survey of the Property obtained by Buyer at Buyer's expense from a registered land surveyor.

**6.3. Deed Restriction.** The Property will be conveyed by Seller and accepted by Buyer subject to the following use restriction, which will be set forth in the deed or deeds from Seller:

**"Affiliated Entity"** means any entity that controls, is controlled by, or is under common control with Grantor, including successors by merger, acquisition, or otherwise. **"Financial Services Business"** means a state or national bank; a savings bank; a credit union; a savings and loan institution; a finance company; an industrial bank; a mortgage company; a securities broker or dealer; a trust company; an investment advisor; a wealth manager; and any other business in the financial services industry that accepts deposits; originates loans; cashes checks; provides automated teller machine services; offers trust services; sells stocks, bonds, or mutual funds; provides investment advice; or offers wealth management services. No entity or person other than Grantor or an Affiliated Entity may conduct a Financial Services Business from the Property (the **"Financial Use Restriction"**). In addition, Grantee shall not permit, allow, or install at the Property any type of signage, whether pylon, monument, plaque, or otherwise, and whether or not interior or exterior, that includes the name or logo of any Financial Services Business other than Grantor (the **"Signage Restriction"**). The Financial Use Restriction and the Signage Restriction are binding upon Grantee and Grantee's successors and assigns; are deemed to be covenants that touch and concern the land and run with the land; are for the benefit of Grantor and its successors and assigns and its properties located within the same county and state in which the property is located (as well as the counties adjacent thereto); and expire two (2) years after the recording date of this Deed. Grantee acknowledges that a breach of the Financial Use Restriction or the Signage Restriction will cause irreparable damage to Grantor, the exact amount of which will be difficult or impossible to ascertain, and that remedies at law for such breach will be inadequate. Therefore, if Grantee breaches the Financial Use Restriction or the Signage Restriction, then in addition to any other remedy that might be available at law or in equity, (i) Grantor shall be entitled to specific performance and injunctive relief without the necessity of proving that actual

damages are not an adequate remedy and (ii) Grantee shall not raise the defense that there is an adequate remedy at law.

**7. Inspection Period.**

**7.1. Inspection of Seller's Title.** Buyer may during the Title Period examine Seller's title to the Property and notify Seller of any defects in or encumbrances upon Seller's title to the Property (the "**Objections**"). Seller may, but is not obligated to, remove, correct, and/or satisfy any Objections. If Buyer fails to notify Seller of any Objections prior to 5:00 p.m. on the last day of the Title Period (the "**Title Notice Deadline**"), then Buyer is deemed to have waived any Objections and to have accepted Seller's title to the Property. If Buyer notifies Seller of any Objections prior to the Title Notice Deadline ("**Buyer's Objections Notice**"), Seller shall notify Buyer within ten (10) business days after receipt of Buyer's Objections Notice ("**Seller's Response Period**") whether or not Seller will seek to remove, correct, and/or satisfy the Objections ("**Seller's Objections Response**"). If Seller fails to notify Buyer of Seller's Objections Response within Seller's Response Period, then Seller is deemed to have elected not to seek to remove, correct, and/or satisfy any Objections. If Seller's Objections Response indicates that Seller will not seek to remove, correct, and/or satisfy all Objections set forth in Buyer's Objections Notice, or if Seller fails to notify Buyer of Seller's Objections Response within Seller's Response Period, then Buyer may either (i) waive the Objections set forth in Buyer's Objections Notice and proceed with Closing or (ii) terminate this Agreement by giving written notice thereof to Seller not later than five (5) business days after the later of (A) Buyer's receipt of Seller's Objections Response if Seller sent a Seller's Objections Response or (B) Seller's Response Period if Seller failed to notify Buyer of Seller's Objections Response within Seller's Response Period. If Buyer fails to so terminate this Agreement, Buyer is deemed to have waived all Objections and to have accepted Seller's title to the Property. If there remain at Closing any Objections that Buyer included in Buyer's Objections Notice for which Seller affirmatively agreed to seek to remove, correct, and/or satisfy in Seller's Objections Response, then Buyer may elect to: (1) consummate the transaction contemplated hereby without regard to such Objections (in which event, the Purchase Price shall not be adjusted because of such Objections) or (2) terminate this Agreement at Closing (in which case the Earnest Money shall be refunded promptly to Buyer).

**7.2. Inspection of the Property.** Buyer may during the Inspection Period determine whether the Property is suitable for Buyer's intended development and/or use thereof. Subject to the limitations set forth in this Section and the requirements set forth in Section 7.3 below, Buyer, its agents, employees, and contractors, may access the Property for the purpose of making inspections, surveys, soil and drainage tests, and generally collecting information deemed necessary by Buyer to make its determination as to the suitability of the Property for Buyer's intended development and/or use, all at Buyer's sole cost and expense. Within five (5) business days after the Effective Date, Seller shall deliver copies of the following documents to Buyer (but only if such documents exist, are currently in Seller's possession and readily accessible, and relate to the Property): title insurance policy, survey, environmental reports, and building condition reports. If Buyer desires to enter upon the Property (or have a representative of or consultant for Buyer enter upon the Property), Buyer shall give Seller five (5) business days' prior notice of the time of such proposed entry and Seller (or its representative) is entitled to be present during such entry. Buyer shall furnish Seller a copy of any "Phase I" or other report concerning the Property obtained by Buyer during the course of its due diligence efforts. In addition, Buyer shall not conduct any invasive testing of the Property (e.g., a Phase II environmental assessment, geotechnical borings, etc.) without the prior written consent of Seller (which consent may be withheld in Seller's sole discretion without considering the interests of Buyer). In connection with any such request for consent, Buyer shall furnish to Seller a detailed description of the contemplated testing or sampling work, including a site map indicating the location of the proposed testing or sampling. The parties shall, prior to any invasive environmental/hazardous substance testing, enter into a separate access agreement governing such invasive testing. Buyer shall conduct such testing/sampling in such a way as to minimize interference with the business operations of Seller

and other occupants, if any, at the Property. Buyer shall furnish to Seller copies of all invasive testing/sampling reports and shall keep such reports confidential unless disclosure is required by applicable law. Notwithstanding anything set forth in this Section to the contrary, if Seller is still open for business at the Property Buyer may not access the vault, safe deposit area, behind the teller counter, or any other secured area of the Property without the prior written consent of Seller and in the company of a Seller representative (which consent may be withheld in Seller's sole discretion without considering the interests of Buyer or any third-party). If Buyer delivers written notice to Seller on or before 5:00 p.m. on the last day of the Inspection Period (the "**Inspection Period Deadline**") that the Property is not suitable for Buyer's intended development and/or use thereof, then the Earnest Money will be returned promptly to Buyer and this Agreement is deemed terminated. If Buyer does not deliver such written notice prior to the Inspection Period Deadline, or if Buyer notifies Seller prior to the Inspection Period Deadline that the Property is suitable for Buyer's intended development and/or use, then this Agreement continues to be effective and binding upon the parties, the conditions set forth in this Section 7.2 are be deemed to have been satisfied, and the Earnest Money is non-refundable to Buyer (except in the event of Seller's default hereunder (but such Earnest Money shall be applied against the Purchase Price)).

**7.3. Insurance Requirements.** Prior to entering the Property, Buyer shall deliver to Seller a certificate of insurance from Buyer (and from any contractor of Buyer entering the Property) naming Seller as an additional insured and evidencing not less than the following insurance coverage: (i) Commercial General Liability insurance with limits of liability not less than \$3,000,000 per occurrence; (ii) Commercial Auto Liability insurance with combined single limits of liability not less than \$1,000,000; and (iii) Workers' Compensation insurance in accordance with applicable statutory requirements.

**7.4. Indemnity.** Buyer shall indemnify, hold harmless, pay, and reimburse Seller, its agents, employees, and contractors, from, for, and against any and all suits, actions, claims, costs, fees, sums, amounts, losses, causes of action, damages, liabilities, and expenses (including reasonable attorneys' fees, court costs, and alternative dispute resolution expenses) caused in whole or in part or arising directly or indirectly out of Buyer or its agents, employees, and contractors entering upon the Property prior to Closing **INCLUDING, WITHOUT LIMITATION, WHETHER ARISING WHOLLY OR IN PART FROM THE NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AGENTS, EMPLOYEES, OR CONTRACTORS.** The foregoing indemnification obligations of Buyer survive the expiration or earlier termination of this Agreement as well as Closing.

**8. Risk of Condemnation or Casualty Pending Closing.** All risk of loss to the Property remains upon Seller until the conclusion of the Closing. If, prior to Closing, either (a) condemnation or eminent domain proceedings are commenced by any public authority against the Property, or any part thereof; or (b) the Property, or any part thereof, is damaged materially by fire or other casualty, then, in either such event, Seller shall give Buyer prompt written notice thereof. After Buyer's receipt of such notice, Buyer may: (i) accept the Property and proceed to Closing subject to the proceedings or casualty (as applicable), whereupon any awards or insurance proceeds (as applicable) will be paid to Buyer, and Seller hereby assigns to Buyer all of Seller's right, title, and interest in and to any such awards or insurance proceeds (as applicable) or (ii) terminate this Agreement, whereupon the parties have no rights, duties, or obligations hereunder, except those specifically stated herein to survive termination of this Agreement. If Buyer does not make the foregoing election prior to the earlier of (A) five (5) business days after receipt of Seller's notice or (B) the Closing Date, then Buyer is deemed to have elected option (i) set forth above.

**9. Condition of Property.** Buyer has the right and has ample opportunity to fully inspect the Property and if Buyer proceeds with the Closing Buyer purchases the Property wholly in "**AS IS**", "**WHERE IS**" condition, with all faults, and without warranty or representation by Seller whatsoever, express, implied, or statutory, pertaining to the Property including the condition thereof or the suitability or fitness thereof for any particular use or purpose, the merchantability thereof or of any improvement thereon,

the value or dimensions thereof, or any other matter with respect to the Property or the improvements thereon. Notwithstanding anything set forth herein to the contrary, to the extent Seller has not already done so, Seller may, prior to the Closing Date, remove from the Property all signs, signage structures, and signage panels; telephone equipment; security systems and equipment (including alarms and cameras); and all equipment and furnishings related to banking and financial services (including safe deposit boxes, automated teller machines, night deposit boxes, pneumatic tube systems, under counter steel, etc.). In addition, and notwithstanding anything set forth in this Agreement to the contrary, in no event shall any ATM (including any currency, checks, stamps, transaction records, or other contents located therein) or any proprietary or confidential items (e.g., signage, file cabinets, desks, disks, computers, hard drives, artwork, etc.) (collectively, “**Banking Equipment**”) be transferred to Buyer at Closing and all such Banking Equipment shall remain the property of Seller. If any Banking Equipment remains on the Property after Closing, Buyer shall notify Seller thereof and Seller shall have a period of not less than thirty (30) days after receipt of such notice to remove such Banking Equipment from the Property.

## **10. Closing.**

**10.1. Closing Date.** The Closing (the “**Closing**”) of the acquisition will occur, if at all, at the offices of Buyer’s attorney or at another place mutually agreed upon by the parties hereto (e.g., at the offices of the Escrow Agent). The date of Closing is the Closing Date set forth in the Key Provisions Summary.

**10.2. Possession.** Unless otherwise agreed, Seller shall deliver possession of the Property at Closing.

**10.3. Closing Documents.** Seller shall execute and deliver at Closing Seller’s deed, a customary owner’s affidavit with respect to the Property, and an affidavit evidencing Seller’s non-foreign status for federal tax purposes. At or prior to Closing, each party shall deliver to the other party documents reasonably required by the other party to establish the authority of such party to enter into and close the transactions contemplated hereby and to complete and evidence the acquisition of the Property contemplated hereby, including, without limitation, a closing statement and such other documents as are reasonably necessary or appropriate to satisfy applicable federal requirements for the reporting of real estate transactions.

## **11. Breach, Termination, and Expiration.**

**11.1. Breach by Buyer.** Notwithstanding anything to the contrary contained herein, if Buyer fails or refuses to close when required to do so, or is otherwise in breach of this Agreement, and fails to cure either of such breaches within ten (10) days of receipt of written notice of a breach from Seller, then the Earnest Money will be promptly paid over to Seller as full liquidated damages for Buyer’s failure or refusal to close in accordance with the terms of this Agreement, or for Buyer’s other breach, as the case may be. The parties acknowledge the difficulty of ascertaining Seller’s damages in such a circumstance and agree that the amount of the Earnest Money represents a reasonable and mutual attempt by Buyer and Seller to anticipate the consequence to Seller of Buyer’s breach. Upon the implementation of this Section 11.1, and except for obligations that survive the expiration or earlier termination of this Agreement, this Agreement is deemed terminated and neither party has any other remedy (e.g., specific performance or damages other than liquidated damages as provided in this Section 11.1) for Buyer’s failure or refusal to close, or for Buyer’s other breach of this Agreement, as the case may be

**11.2. Breach by Seller.** Notwithstanding anything to the contrary contained herein, if Seller fails or refuses to close when required to do so, or is otherwise in breach of this Agreement, and fails to cure either of such breaches within ten (10) days of receipt of written notice of a breach from Buyer, then



the Earnest Money, plus an amount equal to the amount of the Earnest Money (collectively, “**Seller’s Default Payment**”), will be promptly paid to Buyer as full liquidated damages for Seller’s failure or refusal to close in accordance with the terms of this Agreement or for Seller’s other breach, as the case may be. The parties acknowledge the difficulty of ascertaining Buyer’s damages in such a circumstance and agree that the amount of Seller’s Default Payment represents a reasonable and mutual attempt by Seller and Buyer to anticipate the consequence to Buyer of Seller’s breach. Upon the implementation of this Section 11.2, and except for obligations that survive the expiration or earlier termination of this Agreement, this Agreement is deemed terminated and neither party has any other remedy (e.g., specific performance or damages other than liquidated damages as provided in this Section 11.2) for Seller’s failure or refusal to close, or for Seller’s other breach, as the case may be.

**12. Cancellation of Record of Buyer’s Rights.** If this Agreement expires or is terminated prior to Closing, Buyer’s rights and interests in and to the Property are deemed void; provided, however, that Buyer shall, upon request of Seller, execute and deliver to Seller a quit-claim deed releasing the Property from any right or interest of Buyer.

**13. Confidentiality.** Except as otherwise provided for by law, all documents, records, and materials provided to or made available to Buyer hereunder (collectively, the “**Due Diligence Documents**”) are confidential and Buyer shall not distribute or disclose them to any person or entity other than to (i) Buyer’s directors, officers, employees, and partners, and (ii) those brokers, consultants, lenders, or other third parties working with Buyer in connection with this Agreement that need to know such information for the purpose of consummating Closing. If the transaction evidenced hereby fails to close, Buyer shall return to Seller all copies of the Due Diligence Documents that Seller or its agents delivered to Buyer. **THE FURNISHING OF ANY MATERIALS, DOCUMENTS, REPORTS, OR AGREEMENTS DESCRIBED ABOVE IS NOT TO BE INTERPRETED IN ANY MANNER AS A REPRESENTATION OR WARRANTY OF ANY TYPE OR KIND BY SELLER OR ANY SHAREHOLDER, PARTNER, AGENT, OFFICER, DIRECTOR, OR EMPLOYEE OF SELLER OR ANY OTHER PARTY RELATED IN ANY WAY TO ANY OF THE FOREGOING.** The confidentiality obligations of Buyer survive the expiration or earlier termination of this Agreement.

**14. Assignment.** Buyer shall not assign Buyer’s rights under this Agreement without Seller’s prior written consent, which may be withheld by Seller in its sole and absolute discretion (it being understood that Seller is entering into this transaction in part because of Buyer’s and/or Buyer’s principals’ specific experience and creditworthiness). Buyer may, however, upon prior written notice to Seller, which notice must be received by Seller at least five (5) business days prior to Closing, assign this Agreement to an entity that controls, is controlled by, or is under common control with Buyer if the assignee expressly assumes all of Buyer’s obligations hereunder. Such notice must contain the assignee’s full legal name, social security number or TIN (as applicable), full address, and any other information reasonably requested by Seller. Buyer shall not be released from its obligations herein in the event of any such assignment.

**15. Notices.**

**15.1. Written Notice; Delivery Methods.** Each party giving or making any notice, request, demand, consent, approval, or other communication (each, a “**Notice**” (but sometimes “**notice**”)) pursuant to this Agreement shall: (i) give the Notice in writing; (ii) cause the Notice to be signed by an authorized representative of the sending party (the sending party’s attorney is authorized to sign and send a Notice on behalf of the sending party); and (iii) use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: (a) personal delivery; (b) Certified Mail, return receipt requested, with postage paid; (c) nationally recognized overnight courier, with all fees paid; or (d) email (but only if a party’s email address is included in its notice address in the Key Provisions Summary or is otherwise provided to the other party by a Notice).

**15.2. Addresses.** Each party giving a Notice shall address the Notice to the appropriate person at the receiving party (the “Addressee”) at the address(es) listed in the Notice Addresses section of the Key Provisions Summary or to another Addressee or at another address as designated by a party in a Notice pursuant to this Section 15.

**15.3. Effectiveness of a Notice.** Except as provided elsewhere in this Agreement, a Notice is effective only if (i) the party giving the Notice has complied with the two subsections set forth above and (ii) the Notice is deemed to have been received by the Addressee. A Notice is deemed to have been received by the Addressee as follows: (a) if a Notice is delivered in person, sent by Certified Mail, or sent by nationally recognized overnight courier: on the earlier of the date of delivery or the date the Notice is available for pickup, all as evidenced by the records of the delivering person or entity; (b) if a Notice is sent by email: on the date the email Notice is sent to the Addressee’s email address; and (c) if the Addressee rejects or otherwise refuses to accept the Notice (e.g., if the Addressee does not pick up the Notice timely), or if the Notice cannot be delivered because of a change in address for which no Notice was given: upon the rejection, refusal, or inability to deliver the Notice, which shall be deemed to be the date of rejection, refusal, inability to deliver, or availability for pickup, all as evidenced by the records of the delivering person or entity. If a Notice is sent by email, the party sending the Notice also must send, unless such requirement is waived in a return email from the receiving party, a confirmation copy of the Notice by one of the other methods in the first subsection set forth above within three (3) business days after the send date of the email, but the lack of delivery of such other Notice does not negate the email Notice.

**15.4. Delivery Time of Notice.** Notwithstanding the foregoing, if any Notice is received after 5:00 p.m. on a Business Day where the Addressee is located, or on a day that is not a Business Day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located.

**16. Broker(s).** Each party represents to the other that it has had no dealings with any real estate broker, agent, or finder in connection with the negotiation of this Agreement other than the Broker(s) and that it knows of no real estate broker or agent entitled to any commission or finder’s fee in connection with this Agreement other than the Broker(s). Seller shall pay to the Broker(s) a commission fee pursuant to a separate written agreement with the Broker(s). Each party shall indemnify and hold harmless the other party from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs, and expenses (including attorneys’ fees and costs) with respect to any leasing commission, finder’s fee, or equivalent compensation alleged to be owing on account of the indemnifying party’s dealings with any real estate broker, agent, or finder. The provisions of this Section 16 survive Closing or the earlier termination of this Agreement.

**17. Additional Terms.**

**17.1. Successors or Assigns.** The terms, conditions, covenants, and agreements of this Agreement extend to and are binding upon Seller, Buyer, and their respective heirs, administrators, executors, legal representatives, and permitted successors and assigns, if any.

**17.2. Severability.** If any provision of this Agreement is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not). If an unenforceable provision is modified or disregarded in accordance with this Section 17.2, the rest of this Agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.

**17.3. Waiver.** The parties may waive any provision of this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Agreement, and no act, omission, or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person or entity.

**17.4. Amendment.** The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

**17.5. Headings & Interpretation.** The descriptive headings/captions of the sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation. Whenever used in this Agreement: (i) the words "herein", "hereof", and similar words refer to this Agreement in its entirety and not solely to any specific sentence, paragraph, or section; (ii) the words "include," "includes," and "including" mean considered as part of a larger group, incorporate "without limitation", and are not limited to the items recited; (iii) the word "shall" means "is obligated to"; (iv) the word "may" means "is permitted to, but is not obligated to"; and (v) unless otherwise noted reference to a specific Section or Exhibit is a reference to a Section or Exhibit in this Agreement.

**17.6. Choice of Law.** The laws of the state, commonwealth, or jurisdiction where the Property is located (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including its interpretation, construction, performance, and enforcement.

**17.7. Authority to Execute.** Each party represents to the other party that this Agreement: (i) resulted from an arm's-length negotiation; (ii) has been duly authorized, executed, and delivered by and on behalf of such party; and (iii) constitutes the valid, binding, and enforceable agreement of such party in accordance with the terms of this Agreement. In addition, Seller represents to Buyer that Seller has the full right, power, and authority to enter into this Agreement without the necessity of obtaining any third party approval (other than those already obtained by Seller) and that the terms of this Agreement do not violate any agreement, loan, condition, covenant, restriction, exclusive, or any other agreement or provisions which existed prior to the date of this Agreement.

**17.8. No Construction Against Drafting Party.** Seller and Buyer acknowledge that each of them and their respective counsel have had an opportunity to review this Agreement and that this Agreement will not be construed for or against either party merely because such party prepared or drafted this Agreement or any particular provision thereof.

**17.9. Counterparts & Digital Signatures.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart. This Agreement is valid, binding, and enforceable against a party only when executed by an authorized individual on behalf of a party by means of (i) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature has for all purposes the same validity, legal effect, and admissibility in evidence as an original manual signature. This Agreement is effective upon delivery of one executed counterpart from each party to the other party(ies) In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

**17.10. Damages.** Notwithstanding anything set forth in this Agreement to the contrary, neither party is liable to the other for any special, indirect, punitive, or consequential damages.

**17.11. Time of the Essence.** Time is of the essence in this Agreement.

**17.12. Business Days. “Business Day”** (or “**business day**”) means, as to any party, any day that is not a Saturday, Sunday, or other day on which national banks are authorized or required to close in the state, commonwealth, or jurisdiction where the Property is located (“**Bank Holiday**”). To compute a time period under this Agreement when the period is stated in days or a longer unit of time: (i) exclude the day of the event that triggers the period; (ii) count every day, including intermediate Saturdays, Sundays, and Bank Holidays; and (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or Bank Holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or Bank Holiday.

**17.13. Attorneys’ Fees.** In the event of any litigation related to this Agreement, whether to enforce its terms, recover for default, or otherwise, if either party receives a judgment, settlement, or award in its favor (the “**Receiving Party**”) against the other party (the “**Paying Party**”) in such litigation, the Paying Party will pay upon demand all of the Receiving Party’s costs, charges, and expenses (including reasonable attorneys’ fees, court costs, and expert witness fees) arising out of such litigation (including the costs of any appeal related thereto); provided, however, that if prior to commencement of a trial in the litigation the Paying Party offers to pay an amount equal to or in excess of such judgment, settlement, or award, the Receiving Party is not entitled to any such costs, charges, or expenses.

**17.14. Third-Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person or legal entity other than the signatories.

**17.15. Effective Date.** If Buyer or Seller signs this Agreement but fails to date its signature then the date that the second party to sign receives the other party’s undated signature will be deemed to be the date of the undated signature and the second party to sign may inscribe such date as the date associated with the undated signature; provided, however, that if only one of Buyer or Seller dates its signature below, then such date is deemed to be the Effective Date of this Agreement.

**17.16. Anti-Money Laundering, Sanctions, and Anti-Corruption.**

**17.16.1. “AML Laws”** means all U.S. anti-money laundering laws that criminalize money laundering or any predicate crimes to money laundering. “**Anti-Corruption Laws**” means the U.S. Foreign Corrupt Practices Act and any similar applicable statute, rule, or regulation relating to bribery or corruption. “**Sanctions**” means any economic, trade, or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes, or anti-terrorism laws imposed from time to time by the United States government including but not limited to those administered or enforced by the U.S. Department of Treasury’s Office of Foreign Assets Control. Each party represents to the other party that it is not a target of Sanctions and will not directly or indirectly transfer any of its interest in the Agreement to a target of Sanctions. At all times during the term of this Agreement each party shall not violate applicable Sanctions, AML Laws, or Anti-Corruption Laws to the extent that such violation results in it being unlawful for the non-violating party to transact business under the Agreement with the violating party. If a violation occurs that results in it being unlawful for the non-violating party to transact business under the Agreement with the violating party, the non-violating party may suspend, upon written notice thereof to the violating party, any monetary obligations under the Agreement until such time as the violating party is no longer in violation. In addition, if such violation is not cured promptly, the non-violating party may terminate the Agreement upon prior written notice thereof to the violating party.

**17.16.2. “Sanctions Info”** means (i) full legal name, (ii) TIN/SSN for an entity or individual, as applicable, that is a party to the Agreement, and (iii) full current business street address. **“Entity Signatory”** (collectively, **“Entity Signatories”**) means an entity that executes this Agreement directly or indirectly for an entity party. Buyer shall, prior to execution of this Agreement, deliver to Seller a notice setting forth Sanctions Info for all entities and individuals that are a party to the Agreement and for all Entity Signatories (e.g., if the entity executing this Agreement is John Smith LLC (the entity party) by Peter Jones LLC, its sole manager (the Entity Signatory), by Jack Miller, its sole manager, then the notice must include Sanctions Info for John Smith LLC and for Peter Jones LLC, but not for Jack Miller). Thereafter, each party shall, within five (5) business days after receipt of written notice thereof from the other party, deliver to the requesting party a notice setting forth the Sanctions Info (see example above) for all entities and individuals that are a party to the Agreement and for all Entity Signatories.

**18. Tax-Free Exchange.** Each party has informed the other that it may desire to have this transaction constitute a tax-free exchange of properties utilizing the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended. Each party agrees to cooperate with the other party to effectuate and facilitate such an exchange, provided that: (a) the exchange does not delay Closing under this Agreement, (b) the non-exchanging party does not incur any additional liability or expense (other than nominal legal fees for reviewing any exchange documentation) as a result of its cooperation, and (c) the non-exchanging party is not required to enter into any contract to purchase any other property, or take title to any property other than the Property. In particular, Buyer may, upon at least five (5) business days’ prior written notice thereof to Seller, assign its rights under this Agreement prior to Closing to a “Qualified Intermediary,” as that term is defined in applicable Treasury Regulations.

**19. Offer and Acceptance; Binding Effect.** This Agreement, as executed by the first party to execute this Agreement (the **“Offeror”**), constitutes an offer to the other party to execute this Agreement (the **“Offeree”**). **“First Party Signature Date”** means the date the Offeror signs this Agreement as shown on the signature page(s) attached hereto. The Offeree may accept the offer, if at all, by delivering to the Offeror one (1) fully executed original or counterpart of this Agreement on or before 5:00 p.m. on the Acceptance Date. Notwithstanding the notice provisions of this Agreement, acceptance of the offer will be effective only upon the actual receipt by the Offeror of the above executed original or counterpart. The above offer, if not timely accepted as provided above, is void as of the date and time set forth above.

**20. Merger/Prior Agreements.** **THIS AGREEMENT CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES. IT IS THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE PARTIES’ AGREEMENT ON THE MATTERS CONTAINED IN THIS AGREEMENT. ALL PRIOR AND CONTEMPORANEOUS NEGOTIATIONS AND AGREEMENTS BETWEEN THE PARTIES ON THE MATTERS CONTAINED IN THIS AGREEMENT ARE EXPRESSLY MERGED INTO AND SUPERSEDED BY THIS AGREEMENT. THE PROVISIONS OF THIS AGREEMENT MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS. IN ENTERING INTO THIS AGREEMENT, THE PARTIES HAVE NOT RELIED UPON ANY STATEMENT, REPRESENTATION, OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS AGREEMENT. THERE IS NO CONDITION PRECEDENT TO THE EFFECTIVENESS OF THIS AGREEMENT OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT.**

**21. Waiver of Jury Trial.** **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER**

**SOUNDING IN CONTRACT, TORT, OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL.**

[Remainder of Page Left Blank Intentionally –  
Signatures on Following Page(s)]

The parties hereby execute this Agreement as of the dates set forth below.

Seller:

**WELLS FARGO BANK, N.A.**

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

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

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

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

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

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

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

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

Buyer:

**CITY OF SHEBOYGAN**

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

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

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

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

Escrow Agent:

**<ESCROW AGENT NAME>**

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

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

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

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

**EXHIBIT A**

LEGAL DESCRIPTION

Parcel #: 59281110440

Abbreviated Legal Description:

ORIGINAL PLAT LOT 2 CSM REC IN VOL 20 P 183 AS DOC #1726875 ROD

Parcel #: 5928111451

Abbreviated Legal Description:

ELLIS ADDN N 20' OF LOT 133 & ALL OF LOT 134, ALL OF LOTS 144, 145, THE E ½ OF LOT 146  
& W ½ OF N 70' OF LOT 146 ALSO THE N 70' OF LOT 147



**EXHIBIT B**

**SITE PLAN OR SURVEY**

Parcel #: 59281110440



Parcel #: 5928111451

