

## SIMULTANEOUS PROPERTY SWAP AGREEMENT

This SIMULTANEOUS SWAP AGREEMENT (this “Agreement”) effective as of the Effective Date (as defined below in Section 6.17), is made and entered into by and between the City of Whitewater, a Wisconsin municipal corporation (“City”), and Tanis Properties, LLC a Wisconsin limited liability company or its assigns (“Tanis”, each a “Party”, and City together with Tanis, the “Parties”).

### RECITALS

WHEREAS, City owns fee simple title to certain real estate and related property located in Whitewater, Wisconsin as described herein;

WHEREAS, Tanis owns fee simple title to certain real estate and related property located in Whitewater, Wisconsin as described herein; and

WHEREAS, City and Tanis desire to and agree to exchange such real estate and related property in accordance with the terms and conditions hereinafter set forth.

WHEREAS, Tanis intends to acquire the City property for use as business condominiums that include a gravel parking lot.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Tanis hereby agree as follows:

### ARTICLE I SIMULTANEOUS EXCHANGE OF PROPERTY

1.1 Simultaneous Exchange. Subject to the terms and conditions of this Agreement, City and Tanis agree to simultaneously exchange the parcels of real property and improvements thereon described as follows:

(a) “Property One” is the parcel of real property and improvements located in Walworth County, Wisconsin, which up to the Effective Date has been owned by City, the legal description of which is more fully set forth on the attached Exhibit A, and having a fair market value of \$220,000.

(b) “Property Two” is the parcel of real property and improvements located in Walworth County, Wisconsin, which up to the Effective Date has been owned by Tanis, the legal description of which is more fully set forth on the attached Exhibit B, having a fair market value of \$192,000 (which Property Two, together with Property One, are referred to herein as the “Properties”).

City shall be the grantor and Tanis shall be the grantee as to Property One, and Tanis shall be the grantor and City shall be the grantee as to Property Two.

1.2 Conveyance and Title. At the Closing (as defined in Section 3.1 hereof): (a) City shall convey by warranty deed, subject to the Permitted Exceptions identified and defined in Section 2.1 hereof, and Tanis shall accept good and marketable title to, Property One, free and clear of all liens, claims, encumbrances and defects whatsoever (except liens for current taxes and installments of special assessments not yet delinquent) in accordance with the terms of this Agreement; and (b) Tanis shall convey by warranty deed, subject to the Permitted Exceptions identified and defined in Section 2.1 hereof, and City shall accept good and marketable title to Property Two, free and clear of all liens, claims, encumbrances and defects whatsoever (except liens for current taxes and installments of special assessments not yet delinquent) in accordance with the terms of this Agreement.

## ARTICLE II EXAMINATION OF TITLE; CONTINGENCIES

2.1 Examination of Title. City shall obtain and provide to Tanis for examination within fifteen (15) days after the Effective Date of this Agreement, an ALTA commitment for title insurance for each of the Properties issued by First American Title Insurance Company, National Commercial Services, Madison, Wisconsin (the "Title Company") committing said Title Company to insure title to the Properties by an owners' standard form ALTA policy in the amount of the full value of each of the Properties, showing all Uniform Commercial Code Financing Statements, liens, encumbrances and other matters of record, together with legible copies of all documents that appear as exceptions to title. Each Party shall have until ten (10) days prior to the Closing Date (as defined in Section 3.1) to deliver to the other Party written notice of any objections to the condition of title (the "Title Objection Letter"). If either of the Parties fails to deliver a Title Objection Letter ten (10) days prior to the Closing Date, then the Party failing to deliver a Title Objection Letter shall be deemed to have approved of the condition of title as shown by such commitment. Exceptions to title approved by the Parties hereunder shall be deemed to be "Permitted Exceptions."

If either of the Parties do not give timely notice to the other Party to waive any uncured defects of title, then the uncured defects shall become Permitted Exceptions. Notwithstanding anything to the contrary set forth herein, the Parties shall have an absolute obligation to satisfy or discharge any mortgages, money judgments or other liens disclosed in the commitment capable of discharge upon payment of an ascertainable amount. The costs and expenses of providing such title commitments, and of issuing the title policies pursuant to such commitments, shall be split equally between the Parties. After the Effective Date, the Parties shall not (without first obtaining the written consent of the other Party): (i) permit any additional liens or encumbrances to be recorded against the Properties, or (ii) enter into or modify any agreement with respect to the Properties. Each Party shall have the right to order a gap endorsement, which costs shall be split between the Parties. The Parties agree to execute any affidavit reasonably required by the title insurer to provide gap coverage and to remove any standard exceptions to title.

2.2 City's Contingencies. City's obligations under the Agreement are contingent upon the satisfaction or waiver by City, in the exercise of City's sole discretion of the contingencies described in this Agreement within ninety (90) days after the Effective Date (the "Due Diligence Period").

2.3 Access. At any time after the Effective Date, upon at least twenty-four (24) hours advance notice from each respective Party, the Parties and their agents shall have unlimited access to the Properties and may enter upon the Properties to make architectural and engineering studies, soil and environmental tests and surveys and any other studies, audits, tests, investigations, or analyses required by the Parties in their sole discretion (including the taking of samples). Upon completion of the conduct of the activities described above, the Parties shall restore the Properties to substantially the condition in which it existed prior to the conduct of such activities. The Parties shall reasonably cooperate with each of their respective and agents' inspection activities described above.

2.4 Acknowledgment. The Parties acknowledge that they will expend material sums of money in reliance on each other's obligations under this Agreement, in connection with negotiating and executing this Agreement, conducting the due diligence inspections contemplated by this Agreement and preparing for Closing, and that the Parties would not execute this Agreement without the availability of such due diligence inspections described herein. The Parties therefore agree that adequate consideration exists to support each of the Party's obligations under this Agreement, and the Parties each waive any and all rights to challenge the enforceability of this Agreement on the basis that any of the conditions or contingencies set forth herein are at the Parties' sole discretion or that any of the agreements contained herein are illusory.

### ARTICLE III CLOSING

3.1 Closing Date. Except as otherwise set forth herein, the closing (the "Closing") of the simultaneous exchange of the Properties shall take place on or about 10:00 a.m., local time, on a date that is a Tuesday, Wednesday or Thursday selected by City that is within ten (10) days after the expiration of the Due Diligence Period (the "Closing Date"), at the Title Company's office by means of a remote closing, or at a mutually agreed location or locations and by means mutually agreed to by the parties. City shall have a one-time right to adjourn the Closing for a period of up to thirty (30) days from the Closing Date upon notice to Tanis, provided such notice is provided to Tanis on or before the Closing Date. Notwithstanding the foregoing, City may waive all remaining conditions precedent, and accelerate Closing by specifying a date for Closing, which date shall not be sooner than ten (10) days after the date of Tanis's receipt of such notice. The Parties mutually agree to dedicate sufficient time to accomplish the Closing on this date and said Closing Date shall be extended upon the mutual agreement of the parties.

3.2 Closing Documents. On or prior to the Closing Date, the Parties shall execute the following documents:

(a) City will execute and deliver to Tanis a Warranty Deed conveying Property One to Tanis subject only to the Permitted Exceptions (the "Property One Deed"), and Tanis will execute and deliver to City a Warranty Deed conveying Property Two to City subject only to the Permitted Exceptions (the "Property Two Deed", and together with Property One Deed, the "Deeds");

(b) Both Parties will execute any real estate transfer forms that may be required by state law in order to record the Deeds;

(c) Both Parties will execute and deliver a closing statement setting forth the fair market value of the properties being transferred and any adjustments there to as provided for in this Agreement;

(d) City will execute and deliver to Tanis a Non-Foreign Person Affidavit confirming that City is not a foreign person subject to certain federal withholding requirements in the form attached as Exhibit D;

(e) Tanis will execute and deliver to City a Non-Foreign Person Affidavit confirming that Tanis is not a foreign person subject to certain federal withholding requirements in the form attached as Exhibit D;

(f) The Parties shall execute and record an option agreement against Property One in a form substantially similar to Exhibit C obligating Tanis to construct commercial condominiums on Property One within five years of Closing and allowing the City to repurchase the Property if Tanis fails to do so.

(g) Both Parties will execute and deliver any other documents that are necessary to consummate the transaction contemplated by this Agreement, including such documents as are necessary to cause title to be conveyed to each Party in the form approved by the Parties pursuant to the terms of this Agreement.

3.3 Real Estate Taxes. City shall pay all real estate taxes for 2023 and prior years related to Property One. Real estate taxes levied for 2024 shall be prorated on a daily basis to the Closing Date based on the real estate taxes levied for the 2023 tax year, if available, and based on the real estate taxes levied for the 2022 tax year if the 2023 tax year levy for the year of the Closing is not available based on the square footage of Property One as compared to the square footage of the land value of the larger parcel of which it is part. The proration shall be calculated on the basis of the number days of the 2024 calendar year that have elapsed up to and including the Closing Date. Tanis shall pay all real estate taxes for 2023 and prior years for Property Two. Real estate taxes levied for 2024 shall be prorated on a daily basis to the Closing Date based on the real estate taxes levied for the 2023 tax year, if available, and based on the real estate taxes levied for the 2022 tax year if the 2023 tax year levy for the year of the Closing is not available based on the square footage of Property Two as compared to the square footage of the land value of the larger parcel of which it is a part. The proration shall be calculated on the basis of the number days of the 2024 calendar year that have elapsed up to and including the Closing Date.

3.4 Utilities. The Parties shall pay all utility charges at their respective Properties, if any, to the time of Closing.

3.5 Costs and Expenses. The Parties shall equally split the cost of providing title insurance (including a gap endorsement) and any recording fees related to satisfying any existing mortgages against Property One. The Parties shall also equally split the cost of providing title insurance (including a gap endorsement) any recording fees related to satisfying any existing mortgages against Property Two. The Parties will equally split the cost of the respective real estate transfer tax or similar fee, if any, required to transfer the Properties, the fees to record the Deed and any mortgage the Parties may grant, and any cost of the Title Company (as defined

above) to act as the closing agent. Each Party will be solely responsible for paying its respective attorney's fees.

3.6 Special and Area Assessments. Tanis shall pay all special and area assessments for work actually commenced, completed or levied prior to the date of Closing on Property Two. All special and area assessments against Property Two that are payable in annual installments, including installments falling due after Closing, shall be charged to Tanis, and shall be paid at Closing. If any installment is not payable at Closing because bonded or for any other cause, the amount thereof, including interest to be paid thereon at due date, shall be charged to the account of Tanis and credited to City.

3.7 Corrections. If any errors or omissions are made regarding adjustments and prorations, the parties shall make the appropriate corrections promptly upon the discovery thereof. If any estimations are made at the Closing regarding adjustments or prorations, the parties shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled to the adjustment. Notwithstanding anything to the contrary above, the right to adjustment in this Section 3.7 shall terminate twelve (12) months after the Closing, provided that if either party has delivered notice to the other of a valid adjustment prior to such twelve (12) month termination date, then such adjustment shall be made regardless of the expiration of such twelve (12) month period. The parties agree that the terms of this Section 3.7 shall survive the Closing.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF TANIS

In order to induce City to enter into this Agreement, Tanis makes the following representations and warranties set forth in this Article IV to City as of the Effective Date, each of which shall be deemed to be independently material with the intention that City shall rely upon the same and acknowledge that the same shall be true as of the Effective Date and shall survive the Closing of this transaction.

4.1 Organization; Authorization. Tanis is a limited liability company duly organized and validly existing under the laws of the State of Wisconsin. Tanis has all necessary power and authority to enter into and perform the transactions contemplated herein in accordance with the terms and conditions hereof. The execution and delivery of this Agreement, and the performance by Tanis of its obligations contained herein, have been duly authorized by all limited liability company actions.

4.2 Enforceability. This Agreement and all other agreements of Tanis contemplated hereby are, or upon the execution and delivery thereof will be, the valid and binding obligations of Tanis, enforceable against Tanis in accordance with their terms.

4.3 Good Title. Tanis has, and will have, as of the Closing Date, good and marketable title to Property Two. Property Two shall be, on the Closing Date, subject to no easements, security interests, defects of title, mortgages, pledges, leases, rights of way, liens or other encumbrances of any nature whatsoever excepting municipal and zoning ordinances approved by

City and general taxes for the year of Closing, excepting those specific matters accepted as Permitted Exceptions.

ARTICLE V  
REPRESENTATIONS, WARRANTIES AND COVENANT OF CITY

In order to induce Tanis to enter into this Agreement, City makes the following representations, warranties and covenant set forth in this Article V to Tanis, each of which shall be deemed to be independently material with the intention that Tanis shall rely upon the same and acknowledge that the same shall be true on the Effective Date and shall survive the Closing of this transaction.

5.1 Organization; Authorization. City is a municipal corporation organized and validly existing under the laws of the State of Wisconsin. City has all necessary power and authority to enter into and perform the transactions contemplated herein in accordance with the terms and conditions hereof. The execution and delivery of this Agreement, and the performance by City of its obligations contained herein, have been duly authorized by all limited liability company actions.

5.2 Enforceability. This Agreement and all other agreements of City contemplated hereby are or, upon the execution thereof, will be the valid and binding obligations of City enforceable against City in accordance with their terms.

5.3 Good Title. City has, and will have, as of the Closing Date, good and marketable title to Property One. Property One shall be, on the Closing Date, subject to no easements, security interests, defects of title, mortgages, pledges, leases, rights of way, liens or other encumbrances of any nature whatsoever excepting municipal and zoning ordinances approved by City and general taxes for the year of Closing, excepting those specific matters accepted as Permitted Exceptions.

ARTICLE VI  
MISCELLANEOUS

6.1 Brokers. The Parties represent and warrant that neither of the Parties have retained the services of any real estate broker or agent in connection with the purchase and sale under this Agreement, and each agrees to indemnify and hold the other harmless from and against any and all liability or damages, including costs and attorney's fees, resulting from any claim brought by any real estate broker or agent for any real estate commission or finder's fee due, or alleged to be due, as the result of the actions of such person.

6.2 City's Remedies. If Tanis fails to perform in accordance with the terms of this Agreement, and such failure continues for ten (10) days following City's written notice thereof to Tanis, City may, in addition to all remedies contained elsewhere in this Agreement, enforce specific performance of this Agreement to obtain a warranty deed to Property Two.

6.3 Tanis's Remedies. If City fails to perform in accordance with the terms of this Agreement, and such failure continues for ten (10) days following Tanis's written notice thereof to City, Tanis may, in addition to all remedies contained elsewhere in this Agreement, enforce specific performance of this Agreement to obtain a warranty deed to Property One.

6.4 Benefit and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, assignees, and beneficiaries in interest. Except as set forth herein, neither of the Parties may assign this Agreement to any third party without written notice to the other party.

6.5 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin (regardless of such State's conflict of laws principles), and without reference to any rules of construction regarding the party responsible for the drafting hereof.

6.6 Expenses. Except as otherwise herein provided, all expenses incurred in connection with this Agreement or the transactions herein provided for shall be paid by the Party incurring such expenses and costs.

6.7 Notices. Any and all notices, demands, and communications provided for herein or made hereunder shall be given in writing and shall be deemed given to a party when sent by overnight courier, confirmed by receipt, and addressed to such party at the address designated below for such party (or to such other address for such party as such party may have substituted by notice pursuant to this Section):

- (a) If to City: City Clerk  
312 W. Whitewater Street  
Whitewater, WI 53190
- (b) If to Tanis: Jonathan Tanis  
Tanis Properties LLC  
P.O. Box 538  
Whitewater, WI 53190

6.8 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, including by electronic image (e.g., .pdf), emailed or by facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all parties hereto. To the fullest extent permitted by law, this Agreement may be signed and transmitted electronically (such as by DocuSign or other digital signature) and each document signed electronically shall be treated as an original and shall have the same binding effect as an original signature on an original document.

6.9 Headings; Days. All section headings herein are inserted for convenience only and shall not modify or affect the construction or interpretation of any provision of this Agreement. Unless otherwise specified herein, references to days shall mean calendar days and any references to "business days" shall mean any days other than Saturday, Sunday or any days on which commercial banks in Wisconsin are obligated or permitted to close.

6.10 Amendment, Modification and Waiver. This Agreement may not be modified, amended or supplemented except by mutual written agreement of all the parties hereto. Any party may waive in writing any term or condition contained in this Agreement and intended to be for its

benefit; provided, however, that no waiver by any party, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term or condition. Each amendment, modification, supplement or waiver shall be in writing signed by the party or the parties to be charged.

6.11 Entire Agreement. This Agreement represents the full and complete agreement of the parties with respect to the subject matter hereof and supersedes and replaces any prior understandings and agreements among the parties with respect to the subject matter hereof and no provision or document of any kind shall be included in or form a part of such agreement unless signed and delivered to the other party by the parties to be charged.

6.12 Severability. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision hereof and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

6.13 Third-Party Beneficiaries. No third parties are intended to benefit from this Agreement, and no third-party beneficiary rights shall be implied from anything contained in this Agreement.

6.14 Time of the Essence. Time is of the essence with respect to all dates and deadlines contemplated by this Agreement.

6.15 Legal Representation. Each party hereto has been represented by legal counsel in connection with the negotiation of the transactions herein contemplated and the drafting and negotiation of this Agreement or has had the opportunity to have this Agreement reviewed by legal counsel and declined to do so. Accordingly, no provision of this Agreement shall be construed for or against or interpreted to the benefit or disadvantage of any party by reason of any party having or being deemed to have structured or drafted such provision.

6.16 Costs of Enforcement. If either of the Parties files suit to enforce the obligations of the other party under this Agreement, the prevailing party shall be entitled to recover the reasonable fees and expenses of its attorneys from the non-prevailing party.

6.17 Effective Date. The “Effective Date” of this Agreement, as used herein, shall be the calendar day when the last of the Parties sign this Agreement.

6.18 Condition Precedent. This Agreement is conditioned upon Tanis obtaining zoning approval from the City of Whitewater Planning and Architectural Review Commission for parking of outdoor vehicles and machinery on Property One. If Tanis does not obtain the necessary zoning approvals within 90 days of the date of the last signature of the Agreement, this Agreement shall be null and void and have no further effect.

(Signature Page Follows)



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**CITY OF WHITEWATER**

By \_\_\_\_\_  
Patrick Singer, Council President

ATTEST:

By \_\_\_\_\_  
Heather Boehm, City Clerk

STATE OF WISCONSIN

COUNTY OF WALWORTH

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the above-named Patrick Singer, Council President, and Heather Boehm, City Clerk, of the City of Whitewater, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the City's authority.

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
Print Name: \_\_\_\_\_  
My Commission: \_\_\_\_\_

**TANIS PROPERTIES, LLC:**

By \_\_\_\_\_  
Jonathan Tanis

STATE OF WISCONSIN

COUNTY OF WALWORTH

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ the above named Jonathan Tanis to me known to be the person who executed the foregoing instrument and acknowledged the same.

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Wisconsin

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

My Commission: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY ONE LEGAL DESCRIPTION**

Lot 3, Certified Survey Map No. 4442, recorded in the office of the Register of Deeds for Walworth County, Wisconsin on October 5, 2012, in Volume 29 of Certified Survey Maps, Pages 30-33, as Document Number 848249, in the City of Whitewater, Walworth County, Wisconsin.

Parcel Number: A444200003

DRAFT

**EXHIBIT B**

**PROPERTY TWO LEGAL DESCRIPTION**

Lots 1, 2, 3 of William Birge's Addition to the Village now City of Whitewater, Walworth County, Wisconsin and also a strip of land two feet wide, of even width throughout, off from and across the entire East side of Lot 4 of William Birge's Addition to the Village now City of Whitewater, Walworth County, Wisconsin.

EXCEPTING THEREFROM land conveyed in Award of Compensation recorded on 12/11/1978 in Vol. 224 on Page 837 as Document No. 41872.

FURTHER EXCEPTING THEREFROM land conveyed in Warranty Deed recorded on 04/25/2014 as Document No. 883809.

Parcel Number: BIRW 00001

**EXHIBIT C**

**OPTION AGREEMENT**

DRAFT

**EXHIBIT D**

**CERTIFICATE OF NON-FOREIGN STATUS BY TRANSFEROR**

1. Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person.
2. In order to inform each transferee that withholding of tax is not required upon disposition of a U.S. real property interest by Tanis Properties, LLC (hereinafter referred to as the "Transferor"), the undersigned hereby certifies, and declares by means of this certificate, the following on behalf of the Transferor:
  - A. The Transferor is not a foreign non-resident alien for purposes of United States income taxation.
  - B. The Transferor's Federal Employer Identification Number is \_\_\_\_\_
  - C. The Transferor's address is \_\_\_\_\_.
3. The Transferor understands that this certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained in this certificate may be punished by fine, imprisonment (or both).
4. The Transferor understands that each transferee is relying on this certificate in determining whether withholding is required, and each transferee may face liability if any statement in this certificate is false.
5. The Transferor hereby indemnifies each transferee, and agrees to hold each transferee harmless, from any liability or cost which such transferee may incur as a result of: (i) the Transferor's failure to pay any U.S. Federal income tax which the Transferor is required to pay under applicable U.S. law, or (ii) any false or misleading statement contained herein.

Under penalties of perjury, Transferor declares that Transferor has examined this certificate and to the best of his or her knowledge and belief it is true, correct and complete. If the Transferor is an entity, the undersigned further declares that he or she has authority to sign this document on behalf of the Transferor.

EXECUTED as of \_\_\_\_\_, 2024.

\_\_\_\_\_

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