

February 20, 2018

Ms. Pamela Mylotta  
Wisconsin Department of Natural Resources  
2300 N. Dr. Martin Luther King Jr. Drive  
Milwaukee, WI 53212

Re: LGU Exemption for the City of Kenosha (City) Regarding its Ownership of the Former Kenosha Iron and Metals Site; BRRTS #02-30-000673

Dear Ms. Mylotta:

As you may know, the City is the current owner of the above referenced property. On December 7, 2017, Attorney Edward Witte from Godfrey & Kahn, on behalf of the City, contacted Doug Cieslak (Project Manager) to discuss the City's current plans for this site and covered three topics: (1) notified the DNR of the City's legal position about its investigative/remediation liability exemption for hazardous substance contamination that exists on this site; (2) informed DNR of a prospective lease for the development of a driveway over a portion of the site (the lease has subsequently been executed); and (3) advised DNR of the City's intention to conduct some voluntary sampling at the three monitoring wells located on the northern boundary of the property.

Attorney Witte followed up their discussion with an e-mail on December 8, 2017. On December 13, 2017, Mr. Barry Ashenfelter from DNR contacted Attorney Witte via telephone to follow up on the e-mail of December 8<sup>th</sup>. The discussions with Mr. Cieslak and Mr. Ashenfelter were productive and positive. The purpose of this letter is to further update your office.

### **Local Government Unit Exemption**

The BRRTS file referenced above was opened long prior to the ownership of the property by the City. Due to failed compliance of the prior owner/operator with regard to the City's scrapyards permit, the City ordered a Site Investigation report and forwarded the findings to the DNR in August of 1988. Due to the continued decay of the buildings on the property, the City issued a raze order to that prior owner/operator in 1990 to raze the three buildings existing on site. Following receipt of the Site Investigation report, the DNR issued a Responsible Party letter to the prior owner/operator in November of 1991. Sometime before 1994, the prior owner/operator ceased operations and abandoned the property.

During late summer of 1994, while the property was still owned by the prior owner/operator, the EPA conducted a removal action at the property under 42 U.S.C. § 9106. This action involved a removal of approximately 4 feet of contaminated soil and replacement with clean in the removal area (the "EPA Removal Area").

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Following a long history of non-payment by the prior owner/operator of real estate taxes which caused a tax delinquency on the property, the County obtained the property by tax deed on August 10, 1999. The County transferred the property to the City by quit claim deed on July 6, 2000.

Based upon the foregoing facts, the City qualifies for the local governmental unit (LGU) liability exemption under the Wisconsin Spill Statute. *See* Wis. Stat. § 292.11(9)(e)1m.a. In addition, the City did not cause or contribute to any of the environmental conditions that exist on the property. As such, the City had/has no legal responsibility to conduct any further investigation or remediation on the site in connection with the open BRRTS matter covering this property. However, the City has voluntarily complied with all previous semi-annual reporting requirements as requested by the DNR. We believe the BRRTS database should be updated to reflect the City's LGU liability exemption.

#### **Land Lease Agreement Authorizing Limited Development of the Property**

The City has entered into a lease with VMC Lofts, LLC to provide an access driveway from a city street, over a portion of the property, to the adjacent parcel. The lease covers the construction and maintenance of the driveway. In addition, the lease includes an obligation for VMC Lofts, LLC to plant and maintain trees and grass on the balance of the property (the "Landscaping"). A copy of the landscape plan, with the property identified, is attached to this letter.

Under the lease, the City will continue to have ownership of the entire site. The lease also ensures that the proposed development of the driveway and Landscaping will be confined to the EPA Removal Area. As such, these limited development activities will not aggravate any pre-existing hazardous substance conditions that may exist on the property. A copy of the lease is attached to this letter.

#### **Proposed Voluntary Sampling of Monitoring Wells**

As a result of earlier investigation required on the site prior to the City's ownership, a number of groundwater monitoring wells exist on the site. Given the close proximity of the northern boundary to residences, the City believes that it is prudent to voluntarily conduct some groundwater sampling at the three existing wells that are located on the northern property boundary. The purpose of this proposed sampling will be to assess whether concentrations of VOC in the groundwater could create a threat for vapor intrusion on these properties. A copy of the map depicting the wells to be sampled as well as the proposed sampling plan is attached to this letter.

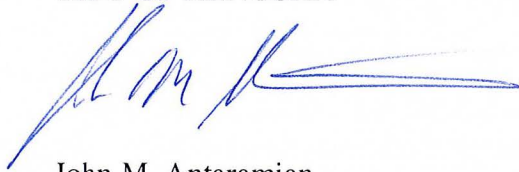
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While the City is not legally required to conduct the proposed sampling, the City believes it is prudent to assess such conditions to ensure that the environmental conditions on the property do not create an unreasonable risk to these residents.

**Follow-up**

The City will share the results of the well samplings as referenced above with the DNR. If the DNR should request future semi-annual reports regarding the property, the City will endeavor to provide them. Finally, should you have any questions or wish to continue discussions on the topics that are the subject of this letter with the City, we are available at your convenience.

Sincerely,  
CITY OF KENOSHA



John M. Antaramian,  
Mayor

Enclosures

Cc: Frank Pacetti, City Administrator  
Ed Antaramian, City Attorney  
Shelly Billingsley, Public Works Director  
Christine Haag, WDNR  
Doug Cieslak, WDNR  
Lanette Altenbach, AECOM  
Attorney Arthur Harrington, Godfrey & Kahn

# Vincent McCall Lofts Landscape Plan

Kenosha Iron & Metal site



0 100  
Feet

56TH STREET  
(FORMALLY KNOWN  
AS MARKET STREET)  
(REF. R.O.W.)

56TH STREET  
(FORMALLY KNOWN  
AS MARKET STREET)  
(REF. R.O.W.)

MATCH LINE - SHEET 3

MATCH LINE - SHEET 3

22ND AVENUE  
(VARIABLE R.O.W.)  
(FORMALLY KNOWN AS  
HOWLAND AVENUE)

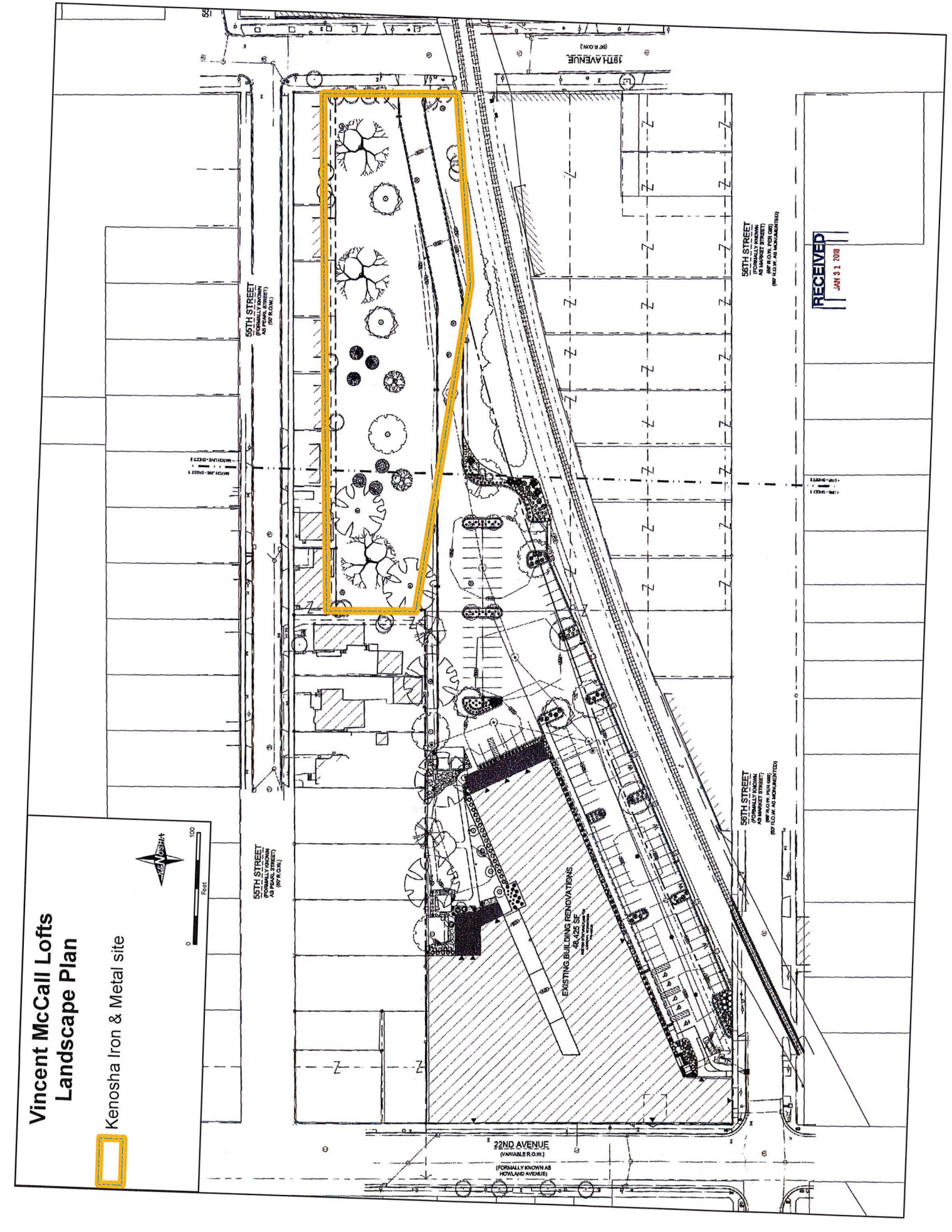
EXISTING BUILDING RENOVATIONS  
BY JCS INC.  
1000 HOWLAND AVENUE  
KENOSHA, WI 53142

56TH STREET  
(FORMALLY KNOWN  
AS MARKET STREET)  
(REF. R.O.W. AS INDICATED)

56TH STREET  
(FORMALLY KNOWN  
AS MARKET STREET)  
(REF. R.O.W. AS INDICATED)

RECEIVED  
JAN 31 2018

100 - SHEET 1



**LAND LEASE AGREEMENT**  
**VACANT LAND**

THIS LAND LEASE ("Lease") is made and entered into as of the date of last execution, by and between the City of Kenosha, Wisconsin, a municipal corporation ("**LESSOR**") and VMC Lofts LLC, a Wisconsin limited liability company ("**LESSEE**").

**LESSOR** and **LESSEE** hereby agree as follows:

**1. DEFINED TERMS.**

In addition to the terms "Lease", "**LESSOR**", and "**LESSEE**" that are defined elsewhere in this Lease, the following terms shall have the following meanings:

"Access Drive" means Access Drive from 19<sup>th</sup> Avenue to the property owned by **LESSEE** adjacent to the **PREMISES**. The location of the Access Drive is depicted in Exhibit A, which Exhibit A is attached hereto and incorporated herein by reference.

Effective Date means the date of last execution of this Lease.

"Landscaping" means the **IMPROVEMENTS**, excluding the Access Drive, which are depicted in Exhibit A and described in Section 16, or as may be approved by the **LESSOR**, from time to time.

**PREMISES**: Subject to diminishment pursuant to Section 4 herein, at the time of entry into this Lease, the **PREMISES** are approximately 1.20 acres of land with an address of 5512 19<sup>th</sup> Avenue and with a Kenosha County tax parcel number of 12-223-31-334-021, which **PREMISES** as of the date of entry into this Lease are more particularly described in Exhibit B, which Exhibit B is attached hereto and incorporated herein by reference.

**PERMITTED USE** means the construction, maintenance, and use of the Access Drive, and the installation and maintenance of the **IMPROVEMENTS**.

**IMPROVEMENTS** includes, but is not be limited to, construction, reconstruction, modification, and replacement of the Access Drive,, landscaping, fencing, lighting, paving, sidewalks, and other site modifications.

**2. PURPOSE.**

The stated purposes of this Lease are:

(A) to provide access to the **LESSEE**'s adjacent parcel of land upon which **LESSEE** is constructing and maintaining a residential development, by means of an Access Drive across **LESSOR**'s **PREMISES**;

(B) to provide for installation of Landscaping by LESSEE on the PREMISES, and to provide for LESSEE's maintenance of the Landscaping and LESSEE's general maintenance of the PREMISES, and

(C) through potential land division, to allow LESSOR during the term of this Lease to further develop a portion of the land constituting the initial description of the PREMISES, provided LESSEE retains rights during the term of this Lease to continue to maintain its Access Drive.

**3. TENANCY CREATED.**

The LESSOR leases and LESSEE does rent and hire from the LESSOR, the PREMISES.

**4. PREMISES LAND DIVISION.**

The LESSEE only requires the southern portion of the PREMISES for maintenance of its Access Drive from 19<sup>th</sup> Avenue. It is agreed that at any time during the term of this Lease, LESSOR may conduct a land division pursuant to applicable law, thereby creating two or more parcels, provided that one of the parcels created contains the Access Drive. In the event that the land division is accomplished, the definition herein for "PREMISES" is adjusted to then mean the resultant parcel created that contains the Access Drive. The resultant parcel or parcels not containing the Access Drive are removed from this Lease. For the avoidance of doubt, in the event of a land division, the rent remains the same, but the obligations of LESSEE for maintenance of IMPROVEMENTS on the "PREMISES" will inure only to the resultant parcel created that contains the Access Drive.

**5. TERM.**

The term of this Lease is ninety-nine (99) years commencing on January 1, 2018, and ending at midnight, December 31, 2117. Should the LESSEE hold over beyond the term, then the LESSEE shall become a month to month lease in accordance with law and upon the terms and conditions of this Lease.

**6. RENT.**

The annual rent is one dollar (\$1.00) per year, extrapolated out to be ninety-nine dollars (\$99.00) for the term of this Lease. The extrapolated rent shall be paid by LESSEE to LESSOR on or before January 1 of 2018. The rent shall be hand delivered or delivered by U.S. mail, to City of Kenosha, Office of the City Clerk/Treasurer, 625 - 52<sup>nd</sup> Street Kenosha, Wisconsin 53140, or any future principal office of the City Clerk/Treasurer, during regular business hours, and shall be considered paid upon receipt by LESSOR. All other payments required to be made by LESSEE to LESSOR pursuant to the Lease shall be deemed additional rent. In the event of a holdover tenancy, the monthly rent shall be ten thousand dollars (\$10,000.00) payable upon the first day of each month until such time as the parties to this Lease enters into a new lease, the LESSEE vacates the PREMISES, or the LESSEE is evicted. In the event that the Lease is terminated before the conclusion of the term, no amounts paid to LESSOR will be refunded.

**7. OBLIGATION TO IMPROVEMENTS.**

- (A) Within one (1) year from the Effective Date, the **LESSEE**, at its expense, shall design and construct the Access Drive and any other **IMPROVEMENTS** necessary or appropriate for the **LESSEE's** use of the **PREMISES** contemplated by this Lease.
- (B) Within one (1) year from the Effective Date, the **LESSEE**, at its expense, shall install the Landscaping **IMPROVEMENTS** depicted on Exhibit A.
- (C) Site plan review application, including plans and specifications for the construction of any **IMPROVEMENTS**, shall be submitted by **LESSEE** to the Department of Community Development and Inspections for consideration, recommendation and approval by the City Plan Commission and Common Council. No work may commence until written site plan approval from the Department of City Development is received and appropriate permits from the appropriate departments of the City of Kenosha are obtained. All **IMPROVEMENTS** must comply the City Zoning Ordinance, Code of General Ordinances and applicable state and federal laws, rules, and regulations.
- (D) Within one (1) year from the Effective Date, **LESSEE** will remove all existing fencing on the **PREMISES** at **LESSEE's** expense. Any future fencing to be installed by **LESSEE** will be subject to review and approval by **LESSOR**.

**8. OBLIGATION TO PAY FOR TESTING.**

Existing on the **PREMISES** are environmental groundwater monitoring wells. The locations of these environmental groundwater monitoring wells are identified in Exhibit D, which is attached hereto and incorporated by reference. **LESSOR** and **LESSEE** agree that **LESSOR** may sample three of these wells within ninety (90) days of the Effective Date and submit the samples for laboratory analysis. **LESSEE** will reimburse **LESSOR** for the cost of the sampling and laboratory testing in an amount not to exceed five thousand dollars (\$5,000.00). **LESSEE** shall reimburse **LESSOR** for the sampling and laboratory testing done pursuant to this Section 8 within thirty (30) days of a request for reimbursement sent by **LESSOR**.

**9. USES ALLOWED AND PROHIBITED:**

(A) **ZONING.** The **LESSEE** acknowledges and understands that the **PREMISES** are currently zoned M-1 Light Manufacturing.

(B) **PERMITTED USE.** **LESSEE** shall use the **PREMISES** only for the **PERMITTED USE** as defined in Section 1.

(C) **PROHIBITED USES.** The **LESSEE** shall not use or permit the **PREMISES** or any part of the **PREMISES** to be used for any unauthorized or unlawful purpose, or for any purpose other than the **PERMITTED USE**. **LESSEE** shall not allow the **PREMISES** to be used for any unlawful purposes. **LESSEE** will not commit waste and will not create any nuisance or interfere with, annoy or disturb the public **LESSEE** will keep and maintain the **IMPROVEMENTS** including Landscaping in good condition and repair. **LESSEE** will keep the **PREMISES** free from all trash, debris, and waste. The

**LESSEE** further covenants that the said **PREMISES** shall not be used for any purpose which might cause forfeiture of the **LESSOR's** title to the said **PREMISES**.

**10. COMPLIANCE WITH LAWS.**

During the term of this Lease, the **LESSEE** shall comply with all ordinances, statutes, laws, rules and regulations of the City of Kenosha, State of Wisconsin and the U.S. Government, breach of which shall be cause for cancellation of this Lease. The **LESSEE** shall abide by all applicable regulations as set forth in Chapter 16 of the City Code of Ordinances, together with any future amendments to said ordinance. The **LESSEE** shall at all times maintain all required licensing and permits. The violation of any provision of the said ordinance shall be deemed a default under this Lease and shall be subject to the notice requirements or cure provisions set forth in the default section of this Lease. **LESSOR** may cooperate with **LESSEE** to obtain all necessary governmental approvals, provided; however, **LESSOR** shall not be required to expend any money in such cooperation. **LESSEE** understands and agrees that **LESSEE's** right to use the **PREMISES** is contingent upon **LESSEE** obtaining and continually maintaining in full force and effect all governmental approvals.

**11. SIGNS.**

The **LESSEE**, at no charge, shall permit the **LESSOR** to place such signs on the **PREMISES** as the **LESSOR** deems appropriate, at the **LESSOR's** cost and expense. Except with the prior written approval of **LESSOR**, **LESSEE** shall not erect, maintain or display any signs at or on the exterior of the demised **PREMISES** or within the demised **PREMISES** that are visible from outside such **PREMISES**. All signs that are approved will be installed and maintained in compliance with all applicable laws.

**12. PREMISES IMPROVEMENTS UPON TERMINATION.**

**LESSEE** may, at its own expense and only upon written approval by **LESSOR**, make alterations and improvements to the **PREMISES** consistent with the Permitted Uses. **LESSEE** specifically agrees that subject to election of **LESSOR** pursuant to Section 17, herein, to have **IMPROVEMENTS** removed at the expense of the **LESSEE**, any and all **IMPROVEMENTS**, located upon the said **PREMISES** shall become the property of the **LESSOR** upon termination of this lease.

**13. SUBSURFACE WORK.**

**LESSEE** acknowledges that the **PREMISES** are part of a larger parcel of property that is the subject of certain environmental remediation work and regulatory closure, as described further in the Wisconsin Department of Natural Resources Bureau of Remediation and Redevelopment Tracking System (BRRTS) online database (DWRN BRRTS No. 02-30-000673). Consistent with the terms of that WDRN regulatory closure, prior to **LESSEE** excavating to a depth exceeding forty-two inches (42") below the grade that was existing on the Effective Date, **LESSEE** shall first:

(A) obtain all necessary approvals from the Wisconsin Department of Natural Resources ("WDRN") prior to construction; and

(B) adhere to any and all requirements regarding site preparation, remediation, monitoring, and other



restrictions, institutional or engineering controls, or prohibitions imposed by the WDNR in connection with such excavation.

Except as provided herein, **LESSEE** agrees that it shall not take any actions to exacerbate or to otherwise disturb the surface/cap of the **PREMISES**.

**14. LESSOR'S RIGHT OF ENTRY.**

The **LESSEE** at all times shall permit **LESSOR** or its agents to enter into and upon the **PREMISES**, **IMPROVEMENTS**, and buildings for the purpose of inspecting the same. Any entry onto or inspection of the **PREMISES** shall not constitute eviction of **LESSEE** in whole or in part.

**15. OTHER RIGHTS RESERVED BY LESSOR.**

**LESSOR** reserves unto itself, its successors and assigns, for the use and benefit of the public, the airspace above the surface of the real property hereinafter described.

In addition to all other rights reserved by **LESSOR** in and to the demised **PREMISES**, **LESSOR** expressly reserves the right to further develop or improve any parcel or parcels resulting from a land division identified in Section 4.

**16. REPAIRS AND MAINTENANCE.**

**LESSEE** agrees to make, at its own cost and expense, any or all repairs or work necessary to maintain the **PREMISES** and **IMPROVEMENTS** located on the **PREMISES**. Areas of Landscaping comprising grass, must be maintained to a height of no more than three and one-half inches (3.5") and not less than two and one-half inches (2.5") in compliance with City ordinances. Trees shall be installed and maintained as directed by the City Forester or a successor to that position as may be identified by the **LESSOR**. In the event that a tree dies, **LESSEE** shall replace the tree with one of the same species.

**LESSEE** shall at all times keep the leased **PREMISES** in a reasonably neat and orderly condition. The **LESSEE** shall not permit any unattractive or unsanitary accumulation of trash, unsightly materials, garbage, refuse, debris or litter on the **PREMISES**. **LESSEE** will not commit or suffer waste of the said demised **PREMISES** or maintain any nuisance thereon. The **LESSEE** is responsible, at its expense, for contracting for domestic garbage pickup and disposal services.

The **LESSEE** at its expense shall be responsible for removal of snow from the sidewalk adjacent with the **PREMISES** in accordance all applicable laws.

Notwithstanding anything to the contrary contained in this Lease, if, in the exercise of any rights hereunder, **LESSEE**, its licensee, or agents causes damage to the **LESSOR's** property, **LESSEE** shall, within ten (10) days after receipt of a statement from **LESSOR** evidencing the amount of such damage, pay **LESSOR** the costs to repair such damage. The cost of repair shall include a reasonable sum to compensate **LESSOR** for its direct and indirect staff time in obtaining quotes for the repair work and preparing the statement to **LESSEE**. **LESSEE** shall permit **LESSOR** or its agents to enter the **PREMISES** to effectuate the repair.

**17. UNAUTHORIZED IMPROVEMENTS.**

Should the **LESSEE** make any **IMPROVEMENTS** other than those specifically authorized under the terms of this **LEASE** without prior approval of **LESSOR**, which are not satisfactory to the **LESSOR**, then, upon written notice to do so, the **LESSEE** shall remove the same, or if agreed upon by the **LESSOR**, cause the same to be changed, modified or reconstructed to the satisfaction of the **LESSOR**. Should the **LESSEE** fail to comply with such notice within sixty (60) days of receipt thereof, or should the **LESSEE** commence to comply therewith and fail to pursue such work diligently to completion, the **LESSOR** may effect the removal, change, modification or reconstruction thereof, and the **LESSEE** shall pay the cost thereof to the **LESSOR**, upon written demand.

**18. UTILITIES.**

**LESSEE** shall, at its sole cost and expense, arrange for electricity and water, necessary for **LESSEE's** obligation to maintain the **PREMISES**. **LESSEE** shall be billed directly for the use of such services, and shall promptly pay the same when due. The **LESSOR** requires all utility pipes, wires and conduits to be underground. The **LESSEE** will obtain all necessary permits for any utility services, will pay any required connection fees, and will pay the cost and expense of bringing utility services to and within the **PREMISES**.

**19. REPRESENTATIONS.**

As noted previously, **LESSEE** acknowledges that the **PREMISES** are part of a larger parcel of property that is the subject of certain environmental remediation work and regulatory closure, as described further in the Wisconsin Department of Natural Resources Bureau of Remediation and Redevelopment Tracking System (BRRTS) online database (WDNR BRRTS No. 02-30-000673). Certain residual Hazardous Materials in the soil and groundwater remain at the **PREMISES** as authorized by the WDNR. Prior to entering into the Lease, **LESSEE** has been given the opportunity to evaluate the environmental condition of the **PREMISES**, including by way of environmental due diligence, subject to the reasonable consent of **LESSOR**.

**LESSOR** makes no warranties or representations to the **LESSEE**, and the **LESSEE** agrees the **LESSOR** has made no warranty or representation respecting the condition of the **PREMISES**, suitability or fitness of the **PREMISES** for the conduct of **LESSEE's** proposed use of **PREMISES** or **LESSEE's** property, applicable zoning laws and regulations, applicability of the uses contemplated by the **LESSEE**, environmental conditions, or any matters which a current survey would disclose, or the applicability of any covenants or restrictions of public record, except as otherwise expressly provided herein. **LESSEE** acknowledges that there is no agreement that **LESSOR** or its agents or employees agree to undertake any alterations or construct any improvements to the **PREMISES**.

**LESSOR** will deliver possession of the **PREMISES** to **LESSEE** on the Effective Date, "AS IS" in its present condition. It is the responsibility of the **LESSEE**, at the **LESSEE's** sole expense, to satisfy itself, prior to the execution of this Lease, as to the title and condition of the **PREMISES** including, without limitation, title to the **PREMISES**, matters of record in the official records, of Kenosha County, permitted land uses, zoning codes, building regulations, height limitations, setbacks, applicable building codes, permits, soil conditions, and environmental conditions. **LESSEE** acknowledges it has

had adequate opportunity to inspect the **PREMISES** hereunder prior to entering into this Lease or has made adequate provision herein.

Accordingly, the taking of possession of the **PREMISES** by the **LESSEE** is conclusive evidence that the **PREMISES** were in good and satisfactory condition when possession was taken by **LESSEE**.

## **20. INSURANCE.**

(A) At all times during the term of this Lease, **LESSEE** will carry and maintain, at **LESSEE's** expense, the following insurance in the amounts specified below or such other amounts as **LESSOR** may from time to time reasonably request:

- (1) bodily injury and property damage liability insurance, with a combined single occurrence limit of not less than \$2,000,000. All such insurance will be equivalent to coverage offered by a Commercial General Liability form including, without limitation, personal injury, death of persons or damage to property occurring in, on, or about the **PREMISES**, and contractual liability coverage for the performance by **LESSEE** of the indemnity agreements set forth in this Lease;
- (2) insurance covering the **IMPROVEMENTS**, and any other personal property owned by **LESSEE** or any licensee located on or about the **PREMISES**, and any leasehold **IMPROVEMENTS** to the **PREMISES**, in an amount not less than the full replacement cost. Property forms will provide coverage on a broad form basis insuring against "all risks of direct physical loss."
- (3) worker's compensation insurance insuring against and satisfying **LESSEE's** and any licensee's obligations and liabilities under the worker's compensation laws of Wisconsin, including employer's liability insurance in the limits required by the laws of the state where the **PREMISES** is located;
- (4) additional insurance reasonably requested by **LESSOR**.

(B) At any time after occupancy of the **PREMISES** by the **LESSEE**, the **LESSEE** agrees to allow an inspection by the **LESSOR**, the Wisconsin Department of Natural Resources, the United States Environmental Protection Agency, or any other regulatory body with authority, to determine the extent of storage or use of hazardous materials and to determine if pollution insurance will be reasonably necessary. In the event that pollution insurance is deemed by the **LESSOR** due to an act or omission by **LESSEE** to be reasonably necessary, the **LESSEE** agrees to obtain pollution insurance, with the **LESSOR** listed as an additional insured party, in an amount as reasonably required by the **LESSOR** within fifteen (15) days of written notice.

(C) Forms of the Policies. All such insurance required by this Lease must be placed with insurers having an A.M. Best's rating of B+XIII and under such form of policies acceptable to **LESSOR**. Certificates of Insurance, together with copies of endorsements, when applicable, listing **LESSOR** and any others specified by **LESSOR** as additional insureds, will be delivered to **LESSOR** prior to **LESSEE's** occupancy of the **PREMISES** and from time to time at least ten (10) days prior to the expiration of the term of each such policy. All Commercial General Liability or comparable policies maintained by **LESSEE** will list **LESSOR** and such other persons or entities as **LESSOR** specifies from time to time as additional insured parties, entitling them to recover under such policies for any loss sustained by them, their agents and employees. All such policies maintained by **LESSEE** will provide by endorsement that they may not be terminated nor may coverage be reduced except after thirty (30) days' prior written notice to **LESSOR**. All Commercial General

Liability and property policies maintained by **LESSEE** will be written as primary policies, not contributing with and not supplemental to the coverage that **LESSOR** may carry.

**(D)** **LESSEE** agrees that any insurance coverage for property owned by **LESSEE** is solely the responsibility of **LESSEE**.

**(E)** On the tenth anniversary of this Lease, and on each decennial anniversary thereafter, the Commercial General Liability insurance combined single limit in the minimum amount shall be increased by an additional \$1,000,000. On such decennial anniversary of this Lease, any other insurance limit required shall be increased by fifty percent (50%) over the then-existing limits.

## **21. INDEMNIFICATION OF LESSOR:**

From and after execution of this Lease, **LESSEE** assumes all risks of its own operations, and those of its agents, independent contractors, and any licensees. **LESSEE** and its agents, independent contractors, and any licensees, shall protect, defend, reimburse, indemnify, and hold the **LESSOR**, its agents, employees and officers and each of them forever, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including reasonable attorney fees) and causes of action of every kind and character (this is to the extent allowed by law, and except to the extent caused by the **LESSOR's** gross negligence or intentional misconduct) by reason of any damage to property, or related to the environment but only to the extent such environmental damage was caused by **LESSEE's** act or omission (including, without limitation, any contamination of City's property, such as the soil or storm water, or by fuel, gas, chemicals or any Hazardous Materials), or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, or any other person whomsoever, or any governmental agency, arising out of or incident to or in connection with the **LESSEE's** performance under this Lease, the **LESSEE's** use or occupancy of the **PREMISES**, the **LESSEE's** acts, omissions or operations hereunder or the performance, non-performance or purported performance of this Lease or any breach of the terms of this Lease, including without limitation, (1) the use or occupancy or manner of use or occupancy of the **PREMISES** by **LESSEE** or any person claiming under **LESSEE**; (2) any activity, work, or thing done or permitted by **LESSEE** in or about the **PREMISES**; (3) any breach by **LESSEE** or its employees, agents, contractors or invitees of this Lease; and (4) any injury, loss or damage to the person, property or business of **LESSEE**, its employees, agents, or contractors or any invitees entering upon the **PREMISES** under the express or implied invitation of **LESSEE**. If any action or proceeding is brought against **LESSOR** or its employees, directors, officers or agents by reason of any such claim for which **LESSEE** has indemnified **LESSOR**, **LESSEE**, upon written notice from **LESSOR**, will defend the same at **LESSEE's** expense with counsel reasonably satisfactory to **LESSOR**. **LESSEE** recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the **LESSOR** in support of this indemnification in accordance with the laws of the State of Wisconsin. This clause shall survive the termination of this Lease. Compliance with the insurance requirements herein shall not relieve the **LESSEE** of its liability or obligation to indemnify the **LESSOR** as set forth in this Article. Notwithstanding anything to the contrary in the foregoing or within this Lease, the **LESSOR** shall not relinquish or waive any of its rights as a sovereign local government and the **LESSOR** reserves all rights and defenses under applicable sovereign immunity law.

**22. SUBORDINATION.**

This lease and all rights of **LESSEE** under it are and shall be subject to and subordinate to the rights of any mortgage holder now or hereafter having a security interest in the leased **PREMISES** or any other encumbrances **LESSOR** desires to place on the property.

**23. TAXES.**

All taxes, assessments, fees, and charges on lands or improvements and all obligations upon the demised **PREMISES** shall be promptly paid by the **LESSEE** when due. The **LESSEE** shall have the right from time to time to contest or protest or review by legal proceedings any such other manner as may be provided by law such taxes or assessments imposed by governmental authorities and to institute such proceedings in the name of itself as it may deem necessary. Any expense incurred by reasons thereof shall be borne by the **LESSEE** and such proceedings shall be conducted free of any expense to the **LESSOR**.

**24. ASSIGNMENT AND SUBLETTING.**

The **LESSEE** may not assign or sublet its right, title or interest in or to all or any portion of the **PREMISES** or the leasehold improvements without first obtaining the prior written consent of the **LESSOR**, which **LESSOR** may withhold without reason. In the event that **LESSOR** approves the assignment or subletting, the **LESSEE** shall remain directly and primarily liable for the performance of the terms and conditions of this Lease. Notwithstanding the foregoing, this Lease may be assigned by **LESSEE**, for collateral purposes to a mortgage holder.

**25. DEFAULT; REMEDIES.**

The occurrence of anyone or more of the following events shall constitute a default on the part of the **LESSEE**:

(A) the **LESSEE** fails to pay when due any rental or any other sum of money payable hereunder on the date due;

(B) the conduct of any business or performance of any acts not specifically authorized in the Lease;

(C) the **LESSEE** abandons, deserts or vacates the **PREMISES**;

(D) the **LESSEE** breaches or fails to comply with any other term, provision, covenant or condition of this Lease;

(E) the **LESSEE** breaches or fails to comply with any other term, provision, covenant or condition of any other agreement, contract or obligation with or to **LESSOR**;

(F) This Lease or the **PREMISES** or any part of the **PREMISES** are taken upon execution or by other process of law directed against **LESSEE**, or are taken upon or subject to any attachment by any creditor of **LESSEE** or claimant against **LESSEE**, and said attachment is not discharged or disposed of within fifteen (15) days after its levy.

Any or all of the foregoing shall hereinafter be referred to as "Events of Default".

Upon the occurrence of any of the above Events of Default, the LESSOR shall give written notice of such default to LESSEE and LESSEE's Investment Member, Central States Affordable Housing Fund II, A Limited Partnership, hereinafter "INVESTMENT MEMBER", at the addresses set forth under Section 38, below. The effective date of notices shall be the date that the notices are placed in the U.S. Mail. If the default is for failure to pay rent or any other sum of money when due, then the LESSEE and INVESTMENT MEMBER shall have three (3) days after the effective date of notice to cure. If the default is for any other Event of Default then the LESSEE and INVESTMENT MEMBER shall have fifteen (15) days after the effective date of notice to cure, except that LESSEE shall not be allowed an opportunity to cure a re-occurring Event of Default of the same type which has been previously notice by the LESSOR and cured by the LESSEE or INVESTMENT MEMBER.

If the LESSEE or INVESTMENT MEMBER fail to cure the default within the time allowed, LESSOR shall thereafter have the option to exercise any remedy or right permitted by law or in equity. The LESSEE shall fully reimburse and compensate the LESSOR upon demand for any costs and expenses incurred in connection with any cure, correction or repair undertaken by LESSOR, which sums shall be deemed to be additional rent hereunder. In the event the LESSOR relets the PREMISES, the LESSEE shall pay the LESSOR any deficiency between the amount received, if any, from such reletting, and the amount of rent and other fees payable by the LESSEE hereunder, including LESSOR's expenses in connection with re-entry, taking possession, repairing and reletting.

In the event that LESSOR opts to terminate this Lease, LESSEE's right to possession of the PREMISES will cease and this Lease will be terminated as if the expiration of the Term fixed in such notice were the end of the Term. If this Lease is terminated, LESSOR will be entitled to recover from LESSEE: (i) the unpaid rent that had been earned at the date of the judgment awarding damages to LESSOR and (ii) any other amount necessary to compensate LESSOR for all the detriment proximately caused by LESSEE's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result from that failure. In addition, the LESSOR may reenter and take possession of the PREMISES, expel LESSEE and remove the effects of LESSEE, using such force for such purposes as may be necessary, without being liable for prosecution, and without prejudice to any remedies for arrears of Annual Rent or other amounts payable under this Lease.

Notwithstanding the occurrence of any Event of Default, the LESSEE shall remain liable to the LESSOR for all payments payable hereunder and for all preceding breaches of any covenant of this Lease. Furthermore, unless the LESSOR elects to cancel this Lease, the LESSEE shall remain liable for and promptly pay any and all payments accruing hereunder until such time as this Lease has been duly canceled. No retaking of possession of the PREMISES by the LESSOR shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention be given to the LESSEE. No pursuit of any remedy by LESSOR shall constitute a forfeiture or waiver of any payments or other moneys due to the LESSOR hereunder, or of any damages accruing to the LESSOR by reason of the violations of any of the terms, provisions, and covenants herein contained. LESSOR's acceptance of payments or other moneys following any event of default hereunder shall not be construed as the LESSOR's waiver of such event of default unless the event of default is the delinquency in the payment of the amount accepted. No forbearance by the LESSOR of action upon any violation or breach of any of the terms, provision and covenants herein contained shall be deemed

or construed to constitute a waiver of the terms, provisions and covenants herein contained. Forbearance by the LESSOR to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any such remedy.

LESSOR's rights hereunder shall be in addition to, and not in lieu of, every other right or remedy provided for herein or now or hereafter existing at law or in equity by statute or otherwise, including, but not limited to injunctive relief, specific performance and damages. The exercise or beginning of exercise by LESSOR of any one or more rights or remedies, provided herein or now or hereafter existing at law or in equity by statute or otherwise, shall not preclude the simultaneous or later exercise by LESSOR of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. All such rights and remedies shall be considered cumulative and nonexclusive.

**26. EARLY TERMINATION.**

- (A) Either party may terminate this Lease should there be a material breach thereof by the other party that is not cured within sixty (60) days following the receipt of written notice describing the material breach and demand for curative action.
- (B) This Lease shall terminate if the LESSEE has not completed construction of the IMPROVEMENTS and obtained all required permits and approvals for use of the IMPROVEMENTS and the PREMISES within one (1) year from the Effective Date.
- (C) This Lease shall terminate if the LESSEE ceases to exist or terminates its operations in Kenosha, Wisconsin.
- (D) This Lease terminates if the LESSEE discontinues use of any portion of the PREMISES for one (1) year, excluding the initial period of construction of the IMPROVEMENTS.
- (E) The Lease shall expire within ninety (90) days of written notice from LESSOR to LESSEE, if LESSOR determines that the property is not being used according to the PERMITTED USES by LESSEE or LESSEE's agents or assigns.
- (F) This Lease terminates if voluntary or involuntary proceedings under any bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or insolvency act of any state or for the dissolution of LESSEE are instituted against LESSEE, or a receiver or trustee is appointed for all or substantially all of the property of LESSEE, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.
- (G) In the event any governmental approvals issued to LESSEE pursuant to Section 10 are canceled, expire, lapse, or are otherwise withdrawn or terminated by any governmental authority so that LESSEE will be unable to use the PREMISES for its intended purposes, this Lease shall automatically terminate.
- (H) LESSEE purports to assign this Lease, or sublet all or a portion of the PREMISES, in violation of the terms hereof.

**27. DESTRUCTION OF IMPROVEMENTS.**

In the event of damage to or destruction of any **IMPROVEMENTS** that are to be installed on said real property pursuant to the terms of this Lease, during the term of said Lease, from any cause, **LESSEE** shall forthwith repair or rehabilitate the same. Such damage or destruction shall in no wise annul or void this Lease. The **LESSEE's** obligations during the term of the Lease shall neither abate nor be suspended by virtue of any damage to the **PREMISES** or the **IMPROVEMENTS** resulting from any natural disaster.

**28. LATE PAYMENT PENALTY.**

All lease payments that are not paid by the due date are considered delinquent and shall be assessed a ten percent (10%) penalty which shall be considered a part of the rent and shall be due and payable with the rent payment. Such penalty shall compound if not paid in the ensuing year.

**29. NO OPTION TO EXTEND TERM OF LEASE.**

This lease may not be renewed. This provision does not preclude the parties from entering into a new lease for the **PREMISES** at the expiration of this Lease.

**30. END OF TENANCY.**

The **LESSEE** will yield up the **PREMISES** and all additions thereto (except signs, equipment and trade fixtures installed) in as good and tenantable condition as the same are at the beginning of **LESSEE's** occupancy, reasonable wear and tear, damage by fire and other casualties and condemnation appropriate by eminent domain excepted.

**31. SURRENDER.**

Upon expiration or earlier termination of this Lease, **LESSEE** shall surrender the **PREMISES** to **LESSOR**. Within sixty (60) days following the expiration or termination of this Lease, **LESSEE** shall remove all of its equipment or trade fixtures constructed or installed pursuant to this Lease. **LESSEE** will also restore the **PREMISES** to its original condition as of the Effective Date, reasonable wear and tear excepted. **LESSEE** shall also restore the surface of the **PREMISES** to its original contour as nearly as practicable. If within sixty (60) days after the expiration or termination of this Lease **LESSEE** has not removed its **IMPROVEMENTS** or property and not restored the **PREMISES** as required herein, **LESSOR** may do so and **LESSEE** shall reimburse **LESSOR** for all expenses or costs for removal and restoration. **LESSEE's** obligations under this Section shall survive the expiration or other termination of this Lease.

**32. NONDISCRIMINATION.**

The **LESSEE** for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of gender, sexual orientation, physical ability, race, color, or national origin may be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) and that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of gender, sexual orientation, physical ability, race, color,



or national origin may be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination. In the event of breach of any of the above nondiscrimination covenants, **LESSOR** shall have the right to terminate the Lease and to re-enter and as if said Lease had never been made or issued.

### **33. HAZARDOUS MATERIALS.**

The **LESSEE** shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated, released into the environment or disposed of on, in, under or about the **PREMISES**, without the prior written consent of the **LESSOR**. To the fullest extent permitted by law, **LESSEE** hereby agrees to indemnify, defend, protect and hold harmless **LESSOR** and **LESSOR's** agents, and their respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, loss or restriction on use of rentable space or of any amenity of the **PREMISES** and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the lease term directly or indirectly from the presence of Hazardous Materials on, in or about the **PREMISES** which is caused or permitted by **LESSEE** or **LESSEE's** agents. This indemnification includes, without limitation, any and all costs incurred in connection with any investigation of site conditions or any clean up remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of such Hazardous Material in, on or about the **PREMISES** or the soil or ground water on or under any building or any portion thereof. The **LESSEE** shall promptly notify the **LESSOR** of any release of Hazardous Materials at the **PREMISES**, whether caused by the **LESSEE** or any other persons or entities.

The **LESSEE** shall promptly notify the **LESSOR** of, and shall promptly provide true, correct, complete and legible copies of, all of the following environmental items relating to any property at the **PREMISES** which may be filed or prepared by or on behalf of, or delivered to or served upon, the **LESSEE**: reports filed pursuant to any self-reporting requirements, reports filed pursuant to any applicable laws, all permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans, manifests or documents (even those which may be characterized as confidential) relating to water discharges, air pollution, wastewater generation or disposal, underground storage tanks or any release or discharge of Hazardous Materials.

The **LESSOR** shall have the right, but not the obligation, to inspect, investigate, sample and/or monitor any property at the **PREMISES**, including any soil, water, groundwater or other sampling, and any other testing, digging, drilling or analyses, at any time, to determine whether the **LESSEE** is complying with the requirements of this section, or of any other law, and in connection therewith, the **LESSEE** shall provide the **LESSOR** with full access to all relevant facilities, records and personnel.

As used in this section, the term "Hazardous Materials" shall mean and include any hazardous or toxic materials, substances or wastes including:

- (A) any materials, substances or wastes which are toxic, ignitable, corrosive or reactive and which are regulated by any local governmental authority, any agency of the State of Wisconsin or any agency of the United States Government,

- (B) asbestos,
- (C) petroleum and petroleum-based products,
- (D) urea formaldehyde foam insulation,
- (E) polychlorinated byphenyls ("PCBs"), and
- (F) freon and other chlorofluorocarbons.

If the **LESSEE** or any environmental inspection discloses the existence of Hazardous Materials in, on, under or about the **PREMISES**, which either did not exist as of the Effective Date or were preexisting on the **PREMISES** as of the Effective Date but were released by an act or omission of **LESSEE**, the **LESSEE** shall, at **LESSOR's** request, immediately prepare and submit to **LESSOR** within thirty (30) days after such request a comprehensive plan, subject to **LESSOR's** approval, specifying the actions to be taken by **LESSEE** to return the **PREMISES** to the condition existing prior to the introduction of such Hazardous Materials. Upon **LESSOR's** approval of such clean-up plan, **LESSEE** shall, at **LESSEE's** sole cost and expense, without limitation on any rights and remedies of **LESSOR** under this lease, or applicable law, immediately implement such plan and proceed to clean up the Hazardous Materials in accordance with all applicable laws and as required by such plan and this lease.

The provisions of this section, including, without limitation, the indemnification provisions set forth herein, shall survive any termination of this lease.

**34. STORMWATER POLLUTION.**

**LESSEE** agrees to prepare and adhere to a Stormwater run-off and pollution prevention plan that meets the requirements of federal, state, and municipal law and that is approved by **LESSOR**. **LESSEE** agrees to provide a copy of said plan to **LESSOR**.

**35. LITIGATION VENUE.**

The **LESSOR** and **LESSEE** waive the privilege of venue and agree that all litigation between them in the State Courts shall take place in Kenosha County, Wisconsin, and that all litigation between them in the Federal Courts shall take place in the United States District Court for the Eastern District of Wisconsin.

**36. BENEFIT.**

This Lease and all of the covenants and provisions thereof shall inure to the benefit of and be binding upon the legal representative successors and assigns of the parties hereto.

**37. LIENS.**

**LESSEE** will keep the **PREMISES** free and clear of all mechanics' liens and other liens on account of work done for **LESSEE** or persons claiming under **LESSEE**.

**38. NOTICES.**

All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served by certified mail to the following address or to such other address as **LESSEE** or **LESSOR** may by writing to the other so designate, return receipt requested, to:

**LESSOR:** City of Kenosha  
Attn: City Clerk/Treasurer  
625 – 56<sup>th</sup> Street, Room 105  
Kenosha, WI 53140

**LESSEE:** VMC Lofts, LLC  
c/o S. R. Mills  
4011 – 80<sup>th</sup> Street  
Kenosha, WI 53142

**TENANT'S INVESTMENT MEMBER:** Central States Affordable Housing Fund II  
A Limited partnership  
c/o Boston Capital Partners  
One Boston Place, 21<sup>st</sup> Floor  
Boston, MA 02108  
Attn: Asset Management (VMC Lofts)

With a copy to: Holland & Knight, LLP  
10 St. James Avenue, 11<sup>th</sup> Floor  
Boston, MA 02116  
Attn: Jennifer C. Whalen, Esq.

Notice to **LESSEE** may alternatively be served by personal delivery.

**39. WARRANTIES OF TITLE AND QUIET POSSESSION.**

The **LESSOR** covenants that **LESSOR** is seized of the demised **PREMISES** and owner in fee simple thereof with the full right to make this Lease, subject to all matters of record, and covenants that the **LESSEE** upon making payments of the rents and the keeping of the other covenants herein contained therefor shall have quiet and peaceful possession of the demised **PREMISES** during the term hereof.

**40. ENTIRE AGREEMENT; APPLICATIONS INCORPORATED.**

This Lease represents the complete understanding between the Parties, and any prior agreements or representations, whether written or verbal, are hereby superseded. No agreement to modify this lease will be effective unless in writing and executed by the party against whom the modification is sought to be enforced. Any such modification on the part of the **LESSOR** shall not be effective unless considered at a public meeting and approved by majority vote of the City of Kenosha Common Council. All information provided by **LESSEE** in the lease application process is incorporated herein by reference.

**41. MEMORANDUM OF LAND LEASE AGREEMENT.**

The parties hereto agree to execute the memorandum of this Lease to be recorded with the Register of Deeds of Kenosha County, Wisconsin on or before sixty (60) days after the date hereof, which memorandum is attached hereto as Exhibit D and incorporated herein by reference.

**42. NO WAIVER.**

The waiver by either **LESSOR** or **LESSEE** of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease.

*Signature pages follow*

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in duplicate this 22nd day of December, 2017.

**LESSOR:**  
CITY OF KENOSHA, WISCONSIN  
A Wisconsin Municipal Corporation

BY: [Signature]  
JOHN M. ANTARAMIAN, Mayor

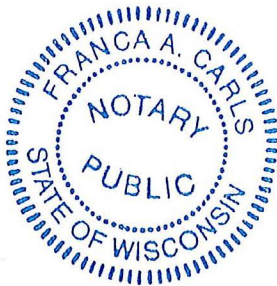
Date: 12/22/17

BY: [Signature]  
DEBRA L. SALAS, City Clerk/Treasurer

Date: 12/22/17

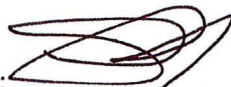
STATE OF WISCONSIN)  
: SS.  
COUNTY OF KENOSHA)

Personally came before me this 22<sup>nd</sup> day of December, 2017, John M. Antaramian, Mayor, and Debra Salas, City Clerk/Treasurer of the City of Kenosha, Wisconsin, a municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.



[Signature]  
Print Name: Franca A. Carls  
Notary Public, Kenosha County, WI.  
My Commission expires/is: 5/21/21

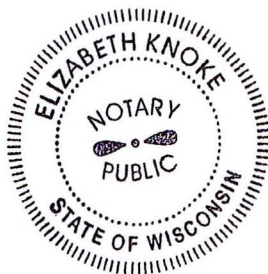
**LESSEE:**  
VMC LOFTS LLC  
A Wisconsin Limited Liability Company

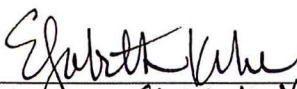
By:   
STEPHEN R. MILLS, Manager

Date: 12-22-17

STATE OF WISCONSIN)  
: SS.  
COUNTY OF KENOSHA)

Personally came before me this 22<sup>nd</sup> day of December, 2017, Stephen R. Mills, as Manager of VMC Lofts, LLC, a Wisconsin limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.



  
Print Name: Elizabeth Knoke  
Notary Public, Kenosha County, WI.  
My Commission expires/is: May 3, 2019

DRAFTED BY:  
Edward R. Antaramian  
City Attorney  
625 52<sup>nd</sup> Street, RM 201  
Kenosha, Wisconsin 53140  
Phone: 262-653-4170  
Fax: 262-925-5933  
[eantaramian@kenosha.org](mailto:eantaramian@kenosha.org)

Project:  
**VINCENT MCCALL  
LOFTS**  
22nd Avenue  
Rensselaer, VT

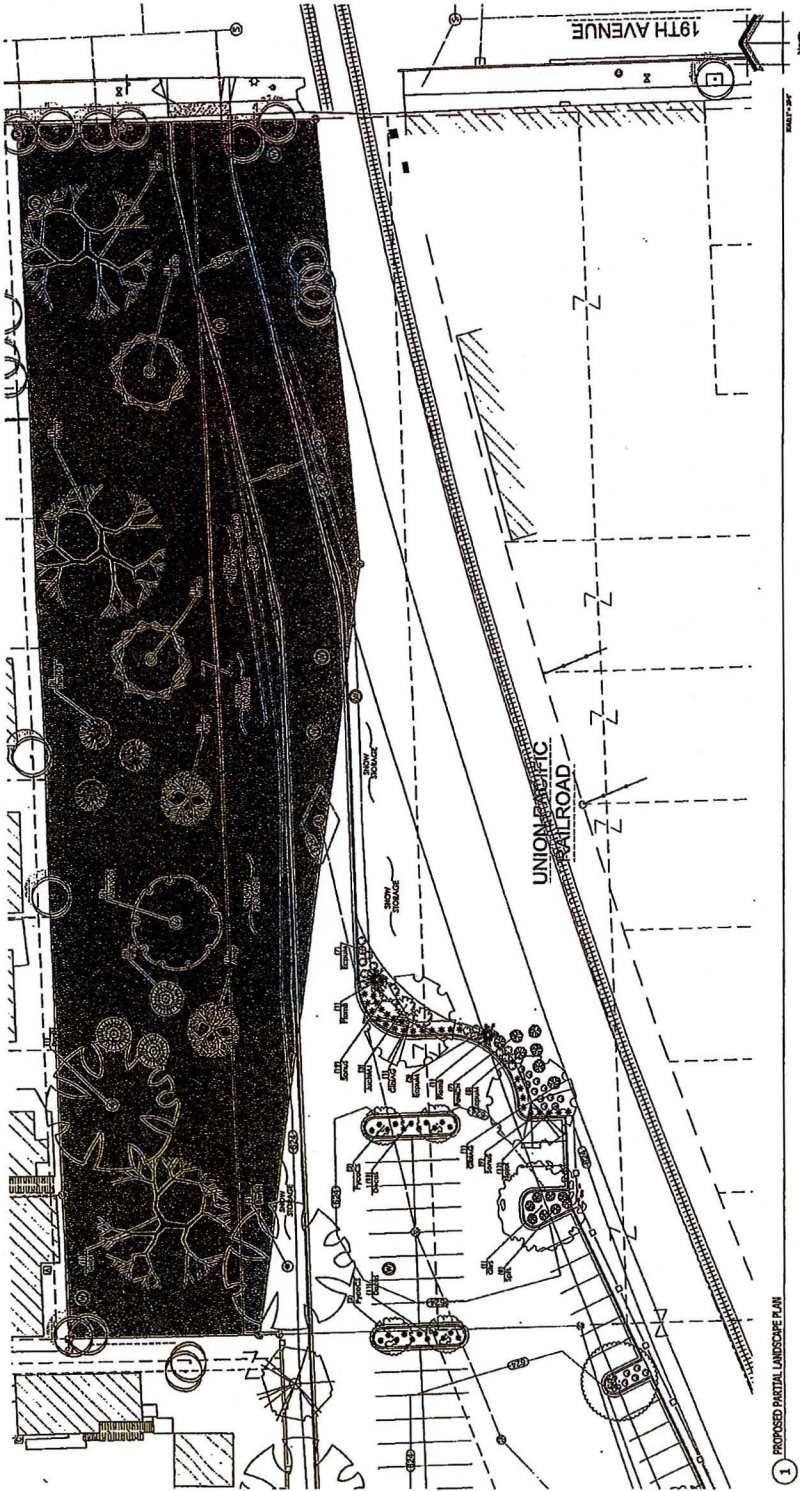
Date	Number	Description
06/20/17		Conditional Use Submittal
08/21/17		Conditional Use Submittal
09/11/17		Conditional Use Submittal
10/20/17		Conditional Use Submittal
11/06/17		Conditional Use Submittal

Comments: Site Address: 22nd Avenue  
All work to be done in accordance with the conditions of the Conditional Use Submittal. The applicant is responsible for obtaining all necessary permits and approvals from the appropriate agencies. The applicant is also responsible for providing all necessary information to the appropriate agencies. The applicant is also responsible for providing all necessary information to the appropriate agencies.

Sheet Title:  
**PROPOSED PARTIAL  
AND LANDSCAPE TABLE**

Date of Drawing: 1/20/13  
Scale: 1" = 20'-0"  
Drawn By: NCD  
Job Number: L3-009  
Sheet Number:

**LSP1.3**



1 PROPOSED PARTIAL LANDSCAPE PLAN

Quantity	Code Name	Symbol	Location	Comments
11	Tree	Symbol	Location	Comments
12	Tree	Symbol	Location	Comments
13	Tree	Symbol	Location	Comments
14	Tree	Symbol	Location	Comments
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100	Tree	Symbol	Location	Comments

Exhibit "A"

## **EXHIBIT B**

### **Legal Description-City Parcel**

A tract or parcel of land including within its boundaries, Lot 2 (except the North 4.40 feet thereof) and a part of Lot 3 all in Block 4 of FISK'S ADDITION to the City of Kenosha, according to the recorded plat thereof, which said tract or parcel of land is more particularly bounded and described as follows, to-wit: Beginning at a rail monument, in the West line of 19th Avenue, 27.80 feet South of its point of intersection with the South line of 55th Street, which point is also the Southeast corner of the land conveyed by the Chicago and North Western Railway Company to Charles C. Brown by Quit Claim Deed dated February 27, 1896; thence South along the West line of 19th Avenue, 120.80 feet; thence Southwesterly along a line forming an angle of 85°55' (in the Southwest quadrant) with said West line of 19th Avenue a distance of 169.16 feet; thence Northwesterly along a line forming an angle of 14°13' with an extension of the last described course a distance of 296 feet, more or less, to the West line of Lot 3 in said Block 4; thence North along the West line of Lots 2 and 3 in said Block 4 a distance of 80.00 feet, more or less, to a rail monument at the Southwest corner of the land so conveyed by said deed of February 27, 1896; thence East along the South line of the land so conveyed by said deed of February 27, 1896, a distance of 459.42 feet, more or less, to the point of beginning; being a part of the Southwest 1/4 of Section 31, Town 2 North, Range 23 East; TOGETHER with that portion of vacated alley as set forth in Resolution No. 166-96, recorded on December 11, 1996 as Document No. 1044151, said lands lying and being in the City of Kenosha, County of Kenosha and State of Wisconsin.

FOR REFERENCE PURPOSES ONLY  
ADDRESS: 5512 19TH AVENUE  
TAX PARCEL ID NO.: 12-223-31-334-021



**EXHIBIT C**

**MEMORANDUM OF LAND LEASE**

**THIS MEMORANDUM OF LEASE** entered into this 22nd day of December, 2017, by and between the City of Kenosha, Wisconsin, (the "LESSOR"), and VMC Lofts LLC, (the "LESSEE"),

**WITNESSETH:**

WHEREAS, the Lessor and the LESSEE have entered into a PREMISES Lease Agreement dated December 22, 2017, (the "Lease"), pursuant to which the Lessor leases to the LESSEE that certain real property herein described; and

WHEREAS, the LESSOR and the LESSEE desire to record certain basic terms of the Lease in the public records of Kenosha County, Wisconsin;

NOW THEREFORE, in consideration of the PREMISES and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties do hereby confirm and set forth the following terms of the Lease, it being acknowledged by the parties that the Lease contains additional terms not set forth below and that the enforceability of such additional terms shall not be affected by their omission from this Memorandum of Land Lease:

1. The Lessor has leased to the LESSEE pursuant to the Lease the real property described with all rights, privileges and easements appurtenant thereto (collectively, the "PREMISES"), to wit:
2. Unless sooner terminated as provided in the Lease, the initial term of the Lease is for ninety-nine years, beginning on January 1, 2018 and ending on December 31, 2017.
3. The Lease allows the LESSEE to construct or place an Access Drive upon the PREMISES, however the LESSOR's underlying fee interest shall not be subject to any construction lien related to such improvement.

*Signature pages follow*

IN WITNESS WHEREOF, the parties have executed this Memorandum of Land Lease this 22<sup>nd</sup> day of December, 2017.

**LESSOR:**  
CITY OF KENOSHA, WISCONSIN  
A Wisconsin Municipal Corporation

BY: [Signature]  
JOHN M. ANTARAMIAN, Mayor

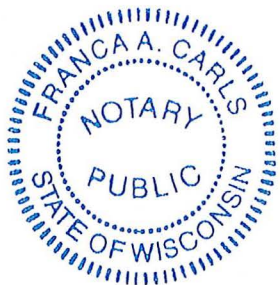
Date: 12/22/17

BY: [Signature]  
DEBRA L. SALAS, City Clerk/Treasurer

Date: 12/22/17

STATE OF WISCONSIN)  
: SS.  
COUNTY OF KENOSHA)

Personally came before me this 22<sup>nd</sup> day of December, 2017, John M. Antaramian, Mayor, and Debra Salas, City Clerk/Treasurer of the City of Kenosha, Wisconsin, a municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.



[Signature]  
Print Name: Franca A. Carls  
Notary Public, Kenosha County, WI.  
My Commission expires/is: 5/21/21







AECOM  
1555 N. RiverCenter Drive  
Suite 214  
Milwaukee, WI 53212

T: +1-414-944-6080  
aecom.com

Project name:  
**Former Kenosha Iron & Metal Site**

Project: **60482707**

From:  
Lanette Altenbach, PG

Date:  
January 25, 2018

To:  
Mr. Frank Pacetti  
City Administrator  
City of Kenosha  
625 52nd Street  
Kenosha, WI 53140

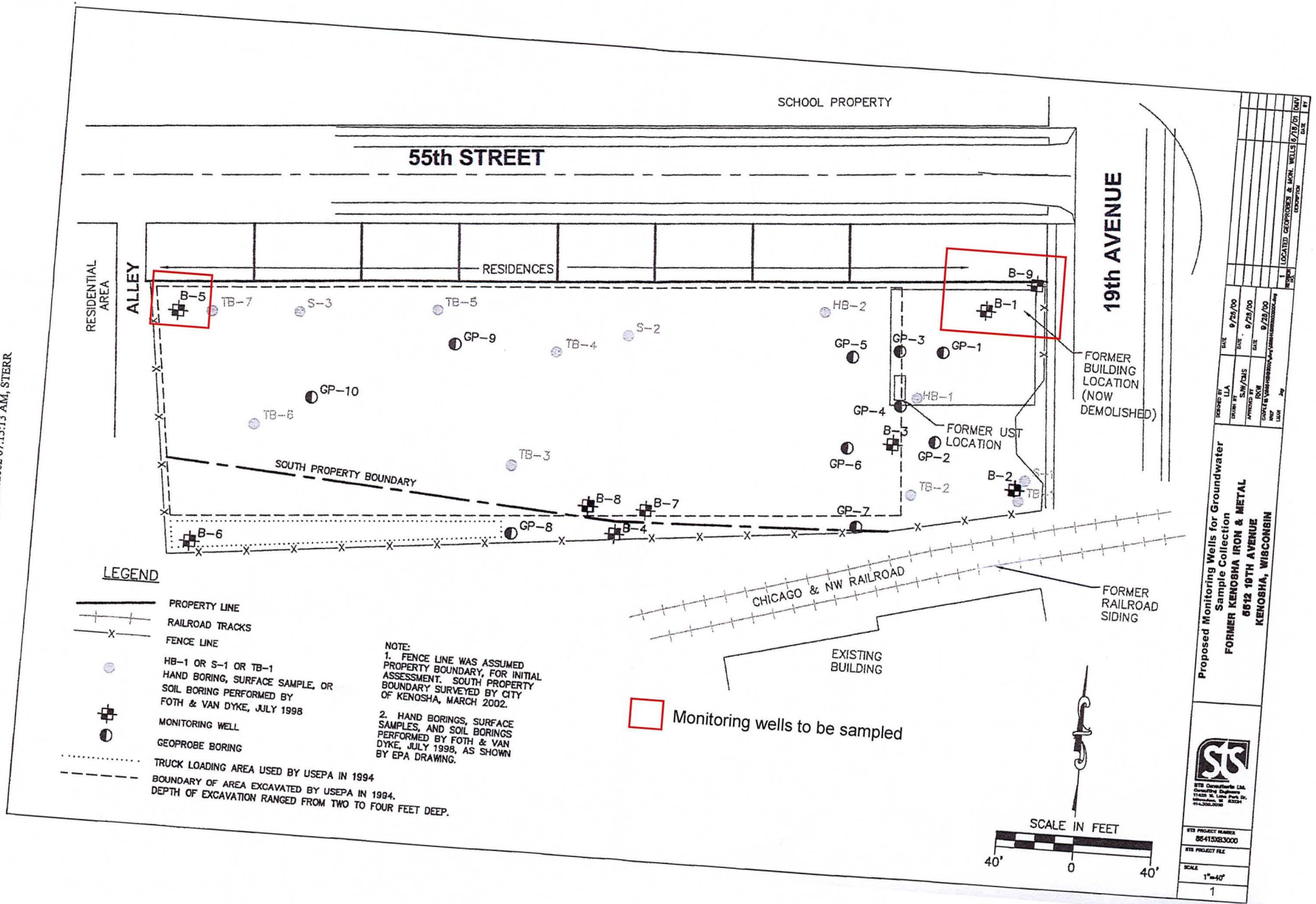
## **Groundwater Sampling and Analysis Plan – Former Kenosha Iron & Metal**

Groundwater samples will be collected from three existing monitoring wells, B-1, B-5, and B-9 assuming that the wells are intact and suitable for the collection of a representative groundwater sample. The following procedures will be used to collect the groundwater samples.

- Evaluate the integrity of each of the three monitoring wells by opening the well, measuring the depth to water and measuring the depth to the bottom of each well. The data collected will be compared (in the field) to the data collected in the 2001-2002 environmental site assessments (ESAs). If the wells appear to be intact, proceed with the collection of a groundwater sample from each of the wells. The wells are shown on the attached Figure 1.
- Collect groundwater samples using new tubing in each well and a peristaltic pump at a flow rate that does not cause water level drawdown (low flow sampling). The wells will be purged at the low flow rate until the field parameters have stabilized to within 10% of the prior reading. Once the parameters have stabilized, a groundwater sample for volatile organic compounds will be collected. Monitoring wells B-5 and B-9 could be bailed dry during well development, and if a well pumps dry during sampling activities, then the well will be permitted to recover to 90% of its initial level and then sampled for VOCs.
- Submit three groundwater samples for laboratory analysis of volatile organic compounds by SW-846 Method 8260.

The results of the groundwater sampling event will be provided in a brief letter report that will include a description of the procedures used to collect the groundwater samples and tabulated groundwater sample results compared to Wisconsin Administrative Code NR 140 Groundwater Quality Standards. A copy of the laboratory analytical report and a site map will be included with the results letter.

W:\0586415XB3000.dwg 05/10/2002 07:15:13 AM, STERR

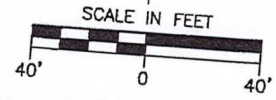


**LEGEND**

- PROPERTY LINE
- +—+— RAILROAD TRACKS
- X-X- FENCE LINE
- HB-1 OR S-1 OR TB-1  
HAND BORING, SURFACE SAMPLE, OR SOIL BORING PERFORMED BY FOTH & VAN DYKE, JULY 1998
- ⊕ MONITORING WELL
- ⊙ GEOPROBE BORING
- ..... TRUCK LOADING AREA USED BY USEPA IN 1994
- - - - - BOUNDARY OF AREA EXCAVATED BY USEPA IN 1994. DEPTH OF EXCAVATION RANGED FROM TWO TO FOUR FEET DEEP.

**NOTE:**  
 1. FENCE LINE WAS ASSUMED PROPERTY BOUNDARY, FOR INITIAL ASSESSMENT. SOUTH PROPERTY BOUNDARY SURVEYED BY CITY OF KENOSHA, MARCH 2002.  
 2. HAND BORINGS, SURFACE SAMPLES, AND SOIL BORINGS PERFORMED BY FOTH & VAN DYKE, JULY 1998, AS SHOWN BY EPA DRAWING.

Monitoring wells to be sampled



**Proposed Monitoring Wells for Groundwater Sample Collection**  
**FORMER KENOSHA IRON & METAL**  
**6612 19TH AVENUE**  
**KENOSHA, WISCONSIN**

DATE	DESCRIPTION	DATE	DESCRIPTION	DATE	DESCRIPTION
9/25/00	LOCATED GEOPROBES & HAND BORELS	9/25/00		9/25/00	
9/29/00		9/29/00		9/29/00	

DRAWN BY: LJA  
 CHECKED BY: S.M./Z.S.L.  
 APPROVED BY: S.M./Z.S.L.  
 DATE: 9/29/00  
 SCALE: 1"=40'  
 PROJECT NO: 86-415XB3000