

Vacant Land Sale Contract

The Buyer, **City of Waukesha, Wisconsin**, a Wisconsin municipal corporation, and the Seller, **St. John Neumann Congregation**, hereby contract for the sale and purchase of the vacant parcel of real property described as:

Lot 2 of Certified Survey Map No. 5080, recorded at Volume 41 of Certified Survey Maps, page 239, by the Register of Deeds for Waukesha County, Wisconsin; being a part of the SE ¼ and SW ¼ of the NE ¼ of Section 17; and the NE ¼ and NW ¼ of the SE ¼ of Section 17; Township 6 North, Range 19 East, Waukesha County, Wisconsin.

Also, a permanent ingress and egress easement across Lot 1 of Certified Survey Map No. 5080, recorded at Volume 41 of Certified Survey Maps, page 239, by the Register of Deeds for Waukesha County, Wisconsin, being a part of the NE ¼ of the SE ¼ of Section 17, Township 6 North, Range 19 East, Waukesha County, Wisconsin, more particularly described as follows:

Beginning at the Southwesterly corner of said Lot 1, also being on the Northeast Right-of-Way line of STH 59; thence North 40°32'47" East along the Northwesterly line of said Lot 1, 43.01 feet; thence South 42°53'31" East, 160.39 feet; thence South 49°48'34" East, 300.92 feet to the southeasterly edge of an existing driveway; thence South 41°14'04" West along said driveway edge, 26.55 feet to the Southwesterly line of Lot 1, and the Northeasterly line of STH 59; thence North 49°27'13" West along said line, 459.84 feet to the place of beginning. This easement shall be for the exclusive use of the owners, invitees and permittees of Lot 2 of Certified Survey Map No. 5080, except the northwesterly 40 feet and the southeasterly 50 feet thereof, over which the owners, invitees and permittees of Lot 1 of Certified Survey Map No. 5080 shall have rights of ingress and egress to said Lot 1.

EXCEPTING from said Lot 2 approximately one-half of an acre, which shall be retained by Seller and attached to and made part of Lot 1 of Certified Survey Map 5080, as shown on the attached Waukesha County GIS map, with an exact legal description thereof to be determined by R.A. Smith National, Inc., at Seller's expense, within 15 days of the execution of this Contract.

This real property, along with all fixtures, improvements and appurtenances thereto, is referred to herein as the Property. Legal descriptions are subject to change to conform to title evidence.

This Contract is subject to the following terms, conditions, representations, warranties and covenants:

1. **Purchase Price.** The Purchase Price will be **Four Hundred Twenty Thousand Dollars (\$420,000.00)**, payable in cash or cash equivalent at closing. The parties acknowledge and agree that the Purchase Price is the result of free and voluntary arms-length negotiation between them, with representation by counsel of their choice, and is not the product of duress or undue influence.
2. **Chapter 32 Eminent Domain Matters.** Seller acknowledges and agrees to the following:
 - 2.a. The Buyer is a government entity with the power of eminent domain under Chapter 32 of the Wisconsin Statutes, and that Buyer has determined the necessity of taking the Property by a resolution of the Common Council pursuant to Wis. Stat. §32.07.
 - 2.b. This Contract is the result of good-faith negotiations required by Wis. Stat. §32.06(2a), with the intent being to arrive at mutually-agreed-upon consensual terms of sale.
 - 2.c. This Contract is not a jurisdictional offer.
 - 2.d. Seller acknowledges receipt of the pamphlet required by Wis. Stat. §32.26(6).
 - 2.e. Buyer has previously delivered a copy of Buyer's appraisal report to Seller.
 - 2.f. Seller has previously obtained its own appraisal of the Property.

2.g. Seller has had the advice of independent legal counsel of its choice throughout all preliminary discussions with the Buyer, and will continue to have legal counsel during negotiations.

2.h. Buyer warrants and represents that there are no neighboring landowners to which offers are being made by the Buyer, and no other properties will be taken for the Buyer's project.

3. **Personal Property.** No personal property is subject to this Contract, and Seller will remove all personal property from the Property before Closing.

4. **Conveyance of Title.** Upon payment by Buyer of the Purchase Price at closing, Seller will deliver to Buyer a warranty deed, conveying fee simple title to the Property to Buyer, free and clear of all liens and encumbrances, with the exception of municipal ordinances, zoning ordinances, agreements entered into under municipal or zoning ordinances, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, recorded highway access restrictions, general taxes levied in the year of closing, and no further exceptions. Sellers agree to execute all documents necessary to record the conveyance.

5. **Closing.** The transaction contemplated by this Contract will close no later than **August 31, 2016**, or at such other time and place as mutually designated by the Parties in writing. At Closing, Sellers will deliver to Buyer the fully-executed warranty deed as described herein, the documents required by section 14, and all other documents reasonably requested by Buyer or required in satisfaction of the terms and conditions of this Contract. Full possession of the Property will be delivered to Buyer at closing. Buyer will deliver the balance of the full purchase price in cash or equivalent at Closing.

6. **Seller's Representations.** Seller represents to the Buyer that Seller has no knowledge or notice of the following, with respect to the Property, as of the date of acceptance:

6.a. Underground storage tanks currently or previously existing on the Property.

6.b. Violations of environmental rules or other agreements regulating the use of the Property.

6.c. Electric transmission lines of 100kV or greater or steel gas transmission lines on, but not serving, the Property.

7. **Seller's Warranties.** Based upon notice or knowledge, Seller warrants to Buyer the following, as of the date of acceptance:

7.a. The Property is vacant and unoccupied, there are no business concerns or farm operations on the Property, and there are no tenants or others residing on the Property.

7.b. The Seller has obtained a Waiver and Proxy dated October 12, 2015, authorizing the Very Reverend Curt Frederick to enter into negotiations with the City of Waukesha for the purpose of selling the Property. A copy of the Waiver and Proxy is attached hereto. The Seller will require an additional Proxy to sell the Property to the City of Waukesha after the sale price has been determined.

7.c. There are no pending or threatened suits, causes of action, claims, or other liabilities or obligations, on the part of any entity, which involve the Property directly or indirectly, or which may result in a lien upon or a seizure of any portion of the Property, other than a letter dated May 12, 2016 from Waukesha County to Seller, a copy of which is attached hereto.

8. **Seller's Disclaimer of Warranties, Buyer Accepts As-Is.** Except for the express warranties and representations contained in this Contract, Seller makes no warranties or representations regarding the condition of the Property, and expressly disclaims all warranties of condition of the Property, whether expressed or implied. Buyer agrees that prior to entering into this Contract, Buyer has had adequate and sufficient access to the Property and all improvements thereon to conduct inspections and testing by qualified independent inspectors of the Buyer's choice, including but not limited to soils, geology, lot size, suitability of the Property and improvements for particular purposes, and whether the Property is in compliance with any municipal, state, and federal codes, statutes or ordinances. In entering into this Contract and closing this transaction, Buyer has relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of the Seller, or Seller's agents or employees, and Buyer accepts the Property as-is and where-is with all present and future faults and defects.

- 9. Buyer Reliance on Survey and Wetlands Delineation.** Buyer acknowledges that Seller provided it with a survey and wetlands delineation of the Property, and that Seller makes no warranties or representations concerning the accuracy of either. Buyer's reliance upon the survey or wetlands delineation is at the Buyer's sole risk.
- 10. Buyer Conditions.** The enforceability of this Contract against the Buyer is conditioned on the following. If any of these conditions fail, then this Contract is voidable at the Buyer's option.
- 10.a. Plan Commission Approval.** Buyer obtaining approvals from the City of Waukesha Plan Commission for the purchase of the Property, the site plan, the CSM of the Property, and all other Plan Commission approvals required by law, no later than 7 days before the date of Closing.
- 10.b. Common Council Approval.** The City of Waukesha Common Council approving the final terms of this Contract, and the Buyer obtaining approvals from the City of Waukesha Common Council for the purchase of the Property and all other Common Council approvals required by law, no later than 7 days before the date of Closing.
- 10.c. Execution of Contract.** The execution of this Contract by both parties no later than June 30, 2016.
- 11. Seller Conditions.** The enforceability of this Contract against the Seller is conditioned on the following. If any of these conditions fail, then this Contract is voidable at the Seller's option.
- 11.a. Member, Director and Trustee Approval.** The Seller's Members, Directors and Trustees approving the final terms of this Contract, and the Seller's Members, Directors and Trustees approving the sale of the Property, no later than 7 days before the date of Closing.
- 11.b. Obtaining Proxy.** Seller obtaining a Waiver and Proxy from the Archdiocese of Milwaukee authorizing a vote on its behalf in favor of approving the sale of the Property according to the terms of this Contract, no later than 7 days before the date of Closing.
- 12. Pro-Ration of Items.** The following items will be prorated as of the date of Closing, and appropriate deductions or credits will be made to the purchase price to account for them, if applicable: Real and personal property taxes. Any income, taxes or expenses through the day of Closing accrue to Seller. Property taxes will be prorated on the basis of 100% of the 2015 taxes, unless actual taxes for the current year are known. Special assessments already levied or for work which has already begun as of the date of Closing will be paid by Seller.
- 13. Title Insurance.** Seller will provide to Buyer, at Seller's sole expense and no later than 7 days before the date of Closing, a written commitment from a title insurance company licensed to issue title insurance in Wisconsin to issue a policy in the amount of the total purchase price, naming the Buyer as the beneficiary thereof, and with an endorsement providing gap coverage to the actual date of issue of the policy. The title insurance must show the title to the Property to be in the condition required in section 4, above, showing exceptions only for those liens to be paid from the proceeds of the closing, and the standard ALTA exceptions contained in the title insurance policy. If Buyer requires removal of exceptions from the title insurance commitment that requires a survey for such removal, then Buyer shall obtain such survey and provide it to the title insurance company at Buyer's sole expense. Buyer will notify Seller of any objection to title on or before the date of Closing. Seller will then have 30 days within which to correct the objected-to conditions, and the date of Closing will be changed to allow such corrections to take place. If such corrections are not made, then this Contract is void, and all funds already paid to Seller will be returned to Buyer.
- 14. Documents to Be Provided by Seller for Closing.** No later than 7 days before closing, the Seller shall provide to Buyer drafts of the following: A warranty deed conveying the Property to the Buyer and warranting title as required by this Contract; a proposed closing statement showing all pro-rations as required by this Contract; and all other documents required by this Contract, any counteroffers or any amendments. Seller shall provide Buyer with a Wisconsin transfer tax receipt or all information necessary for Buyer to prepare one. Buyer shall be responsible for fees for recording the deed.
- 15. Terms of Easement.** The ingress and egress easement required by this Contract shall be appurtenant to Lot 2 of CSM No. 5080, shall burden Lot 1 of CSM No. 5080, and shall run with the land and inure to the benefit of the Buyer and Buyer's successors in interest. Buyer shall construct an asphalt or concrete roadway and other necessary improvements within the easement, at Buyer's sole expense, sufficient for Buyer's use of the easement for ingress and egress by fire,

police, and other city vehicles, and for Buyer's and Buyer's employees, agents, invitees and permittees, to Lot 2 of CSM 5080; and Buyer shall also improve and maintain those portions of Seller's driveways within the northwesterly 40 feet and southeasterly 50 feet of the easement, sufficient for the use of those areas for ingress and egress jointly with Buyer by Seller's employees, agents, invitees and permittees for ingress and egress to said Lot 1. The easement shall be exclusively for the Buyer's use, and the Seller shall not occupy or use the easement area, except for the northwesterly 40 feet and southeasterly 50 feet of the easement, which shall be used by Seller and Seller's employees, agent, invitees and permittees for ingress and egress to said Lot 1. Neither Buyer nor Seller shall take any action that would hinder the other party's use of the easement for ingress or egress. Buyer may erect informational signs within the easement area. Buyer shall be solely responsible, at Buyer's expense, for improving, maintaining and replacing its improvements and Seller's existing driveways in the easement area and between the easement area and Highway 59, and for general maintenance of the easement area and between the easement area and Highway 59, for the benefit of both Buyer and Seller. The construction and maintenance of roads within the easement area and the driveways shared by Buyer and Seller shall be commensurate with that found in first-class commercial developments in Waukesha. All of Buyer's construction, improvements and maintenance shall be performed by Buyer in a manner that does not unreasonably interfere with Seller's access to Highway 59 via the existing driveways. Buyer shall indemnify and hold Seller harmless from any and all liabilities that arise in connection with Buyer's occupation and use of the easement area, except for liabilities that arise from the acts or omissions of Seller or Seller's agents or employees. The parties may execute a separate, recordable instrument containing the grant, terms and conditions of the easement.

16. Construction Traffic. Unless specifically agreed otherwise mutually by the Parties, all construction traffic to and from Lot 2 of CSM 5080 shall travel within the easement area described in the preamble of this Contract, and shall not travel across Seller's parking lots. Buyer shall improve and maintain a roadway across the easement area sufficient to accommodate all construction traffic prior to commencement of construction, which may temporarily be crushed rock prior to construction of the final paved roadway. Construction traffic shall not unreasonably interfere with access to Lot 1 of CSM 5080, and Buyer shall ensure that the driveways shared with Seller are kept free of construction material, debris and equipment. Buyer shall not disturb the existing pavement of Seller's driveways and shall maintain paved surfaces on the driveways at all times, except as reasonably necessary for the final construction of ingress and egress roads within the easement area.

17. Easement for Lot Encroachment. The Parties acknowledge that Seller's existing parking lot encroaches onto Lot 2 at the northwesterly boundary with Lot 2, adjacent to the easement area. Buyer grants Seller an easement for the encroachment, limited strictly to the area in which the encroachment occurs, for automobile parking only.

18. Requirement of Writing. This Contract may be accepted, modified or countered only in writing, personally delivered to Buyer or as otherwise specified herein. Photocopies and fax copies are acceptable. Any oral acceptances, modifications or counteroffers are void and unenforceable.

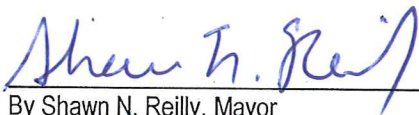
19. Time Is of the Essence. Time is of essence as to earnest money payment; binding acceptance; occupancy; date of Closing; contingency deadlines and all other dates and deadlines in this Contract.

20. Binding Effect. This Contract binds and inures to the benefit of the Parties and their successors in interest.

21. Survival of Warranties and Representations. The warranties and representations contained in this Contract survive the closing of this transaction.

This Contract is executed as of the last date of execution shown below.

City of Waukesha



By Shawn N. Reilly, Mayor

Date: 6/30/16

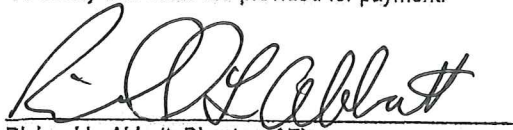


Gina L. Kozlik, City Clerk

Date: 6/30/16


Deputy Clerk/Treasurer

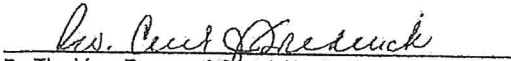
To certify that funds are provided for payment:



Richard L. Abbott, Director of Finance

Date: 6/30/16

St. John Neumann Congregation


By The Very Reverend Curt J. Frederick

Date: June 27, 2016



LAND INFORMATION SYSTEMS DIVISION

Waukesha County GIS Map



- Legend**
- Simultaneous Conveyance**
- Assessor Plat
 - CSM
 - Condo Plat
 - Subdivision Plat

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0 166.67 Feet

Notes:

Printed: 5/16/2015