

## LAND PURCHASE AGREEMENT

THIS LAND PURCHASE AGREEMENT (the "Agreement"), is made and entered into by and between BLACK CAP HALCYON, LLC, a Wisconsin limited liability company, or its permitted assigns ("Buyer"), and the CITY OF PORT WASHINGTON, WISCONSIN ("Seller") as of the date this Agreement has been signed by both Buyer and Seller (the "Effective Date"). Buyer and Seller are sometimes hereinafter individually referred to as "Party" and, collectively, as the "Parties".

### RECITALS

- A. Seller is the owner of the Property (as defined below).
- B. Buyer desires to purchase from Seller and Seller desires to sell to Buyer all of the Property on the terms and conditions set forth below and in accordance with the Promissory Note (as defined below).

### AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and the mutual warranties, representations, covenants and agreements herein contained, the Parties hereby agree as follows:

1. Purchase and Sale. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller on the terms hereinafter stated all of Seller's right, title and interest in and to that certain real property located in the City of Port Washington, Ozaukee County, Wisconsin, consisting of approximately 35.19 acres located along the east side of CTH C and the intersection of Sunset Road and as described on Exhibit A and made a part hereof, together with all easements, rights-of-way, and rights appurtenant thereto (the "Property"). Buyer intends to improve the Property via development of a mixed-use community (the "Improvements"), substantially as set forth in Buyer's proposed plan attached hereto as Exhibit B ("Development Plan Concept"). Collectively, the Property and the Improvements comprise the mixed-use community to be known as "Prairie's Edge" (the "Project").

2. Purchase Price, Earnest Money, Acceptance Date and Payment Terms.

(a) Purchase Price. Subject to the adjustments and prorations described in Section 3, the total purchase price to be paid by Buyer to Seller for the Property is the amount of Two Million Two Hundred Fifty-Seven Thousand Eighty-Six and 00/100 Dollars (\$2,257,086.00) (the "Purchase Price"). Buyer shall pay Two Hundred and Twenty-Five Thousand Seven Hundred Eight and 00/100/s Dollars (\$225,708.00), less the Earnest Money payment at Closing.).

(b) Earnest Money. The amount of Twenty-Two Thousand Five Hundred Seventy and 00/100 Dollars (\$22,570.00), in the form of a check, shall be deposited as earnest money (the "Earnest Money") with the Waukesha, Wisconsin office of Chicago Title Insurance Company (the "Title Insurer"), attention Joe Stamborski, as escrow holder, to be applied against

the total Purchase Price on the Closing Date (as defined below) no later than the third business day following acceptance of this Agreement. If the purchase and sale under this Agreement fails to close pursuant to any contingency under Section 7 to be either satisfied or waived within the time allotted therefor, or, following the satisfaction or waiver of all such contingencies, due to: (i) Seller's default; or (ii) Seller's failure to issue all necessary and required permits and approvals allowing for construction commencement of the Project, then Buyer shall be entitled to a refund of all Earnest Money. If, however, such purchase and sale fails to close after all of the contingencies set forth in Section 7 have been removed or waived, due to Buyer's default, then Seller shall be entitled to terminate this Agreement, retain all Earnest Money and sue for actual damages.

(c) Acceptance Date. This Agreement is binding upon the parties only if an accepted copy of the Agreement is delivered to Buyer on or before August 2, 2017. This Agreement may be withdrawn by Buyer at any time prior to acceptance by Seller.

(d) Project Approvals, Land Financing; Security Instrument. At Closing (as defined below), Buyer shall provide Seller with a promissory note in the form attached hereto and incorporated herein by reference (the "Promissory Note") in the amount of the Purchase Price less the Earnest Money and any additional funds deposited as payments against the Purchase Price. The Promissory Note shall be repaid by Buyer to Seller as set forth herein and shall bear an annual interest at a rate of 2.08%. On the first day of each month, Buyer shall make 360 equal monthly principal and interest payments (the "Financing Payments") to Seller in the amount of Eight Thousand Four Hundred Thirty-Three and 21/100 Dollars (\$8,433.21) and other such payments due as required pursuant to Section 2(d)(ii) and the terms of the Promissory Note. Buyer shall deliver to Seller at Closing a recordable first mortgage on the Property, duly executed by Buyer, as mortgagor, in favor of Seller, as mortgagee, dated as of \_\_\_\_\_, as the same may be amended from time to time (the "Security Instrument"). The Security Instrument shall be in form and substance acceptable to the City Attorney, and shall secure to Seller the payment, repayment and performance of Buyer's obligations under the Promissory Note, and all renewals, extensions and modifications thereof, if any. For this purpose, the Security Instrument shall mortgage, grant and convey the Property to Seller, together with all improvements, replacements and additions to the Property, and all easements, appurtenances and fixtures which are or may hereafter be a part of the Property. Provided that Buyer is current in all of its financial and other obligations under the Promissory Note at the time of Buyer's request for a partial release and at the time of issuance of building permits for each Project Phase, as defined in Section 2(d)(i) of this Agreement, Seller shall release from the lien of said Security Instrument that portion of the Property which corresponds with each Project Phase, and Seller shall retain a first mortgage lien under the Security Instrument on the balance of the Property not so released.

(i) Project Phasing. Buyer intends to develop the Project in three phases (each a "Phase") as follows: [a] construction of Phase I is anticipated to commence on or about March 1, 2018; [b] construction of Phase II is anticipated to commence on or about July 1, 2019; and [c] construction of Phase III is anticipated to commence on or about July 1, 2020. Buyer intends that the Project shall be substantially completed on or before July 1, 2023.

(ii) Land Financing Additional Payments. In addition to Buyer's obligation to make monthly Financing Payments, Buyer shall make lump sum payments of additional principal amounts, in cash, as follows (the "Additional Payments"):

[a] Upon issuance of building permits and any other required and necessary permits or approvals (collectively, "Building Permits") enabling Buyer to proceed with construction commencement of Phase I, One Million and 00/100's Dollars (\$1,000,000.00), less all monthly Financing Payments previously made by Buyer.

[b] Upon issuance of all occupancy permits and other municipal approvals for Improvements constructed during Phase I and Building Permits enabling Buyer to proceed with construction commencement of Phase II, Five Hundred Fifteen Thousand Eight Hundred Sixty-Nine and 00/100 Dollars (\$515,869.00), less all monthly Financing Payments previously made by Buyer and not included in any reduction resulting from the payment of any Additional Payments required in Section 2(d)(ii)[a].

[c] Upon issuance of all occupancy permits and other municipal approvals for Improvements constructed during Phase II and Building Permits enabling Buyer to proceed with construction commencement of Phase III, Five Hundred Fifteen Thousand Eight Hundred Sixty-Nine and 00/100 Dollars (\$515,869.00), less all monthly Financing Payments previously made by Buyer and not included in any reduction resulting from the payment of any Additional Payments required in Sections 2(d)(ii)[a] and [b].

Notwithstanding anything contained herein to the contrary, including but not limited to those conditions set forth in Sections 2(d)(ii)[a] through [c], Buyer shall pay to Seller all amounts due and owing under the Promissory Note (including any accrued interest), less any amount paid as Earnest Money, any additional amounts paid at Closing, Financing Payments, Additional Payments or any other remittance paid from Buyer to Seller with the purpose of reducing the amount owed under the Promissory Note, on or before July 1, 2023. Buyer's obligations to make Financing Payments and Additional Payments shall survive Closing.

(iii) Payment of Additional Payments. Provided [a] Buyer has complied with all the customary and reasonably required information or other materials requested, in writing, by Seller as reasonably necessary for Seller to issue Building Permits; and [b] if Seller does not issue to Buyer the necessary Building Permits enabling Buyer to proceed with construction commencement of any of Phase I, II or III, then Buyer may [i] make the Additional Payments as required herein; or [ii] at Buyer's option and contingent upon Buyer having submitted payment for all required Building Permits, defer the Additional Payments until such time that Seller issues Building Permits enabling Buyer to proceed with construction commencement of the applicable Phase.

(iv) Buyer's Noncompliance. Subject to Buyer's right to cure within the twenty (20) days of written notice by Seller of Buyer's noncompliance, if Buyer has not complied with all the customary and reasonably required information or other materials requested, in writing, by Seller as reasonably necessary for Seller to issue Building Permits, then Buyer's

monthly Financing Payments shall thereafter be increased to an interest rate equal to 6% per annum.

3. Adjustments and Prorations. The Purchase Price shall be adjusted at Closing on the following basis:

(a) Recording Fees. Buyer shall pay all recording fees except that Seller shall pay the recording fees for such documents as required to cause title to the Property to be in the condition pursuant to this Agreement.

4. Access to Documents and Information. Within ten (10) business days after the Effective Date, Seller shall deliver to Buyer true, correct and complete copies of all books, records, legal documents and other information concerning the Property, including, but not limited to, plans, subdivision plats, ecological studies, Phase I and Phase II Environmental Site Assessments, geotechnical investigations, communications by and between governmental agencies involving the use and future use of the Property, surveys, title insurance policies, permits, plans and specifications, border agreements, covenants, conditions and restrictions, soil tests, all other environmental assessment reports and testing data, documents concerning pending or threatened legal actions, notices of violations of laws and all other materials or information relating to the Property that would be reasonably beneficial to Buyer that is reasonably available to Seller or in Seller's possession (the "Disclosure Information"). Seller shall provide any additional or supplemental documents or information relating to the Property or the Disclosure Information to Buyer within three (3) business days of such documents or information becoming available to Seller.

5. Representations and Warranties. To Seller's knowledge, Seller hereby represents and warrants to Buyer that the following are true and correct:

(a) Authority. Seller has complete power and authority to sell, transfer and convey the Property to Buyer, and that person (or those persons) signing below on behalf of Seller personally warrant that they have the authority to act as Seller's agent or agents in the sale, transfer and conveyance of the Property to Buyer.

(b) Good Title. The Property shall be, on the Closing Date, subject to no easements, rights-of-way, liens or other encumbrances of any nature excepting the exceptions set forth on the Property CSM to be provided pursuant to Section 7(k) and subject to those recorded easements and encumbrances, if any, that are appurtenant to the Property, running with the land, that are specifically intended to limit or prevent any owner or future owner of the Property from bringing forth any complaint or cause of action against Wisconsin Energy Corporation, Wisconsin Electric Power Company, W.E. Power, LLC and/or Wisconsin Gas Company, due to the location, existence, use, construction and operation of the Port Washington Generating Station and gas pipeline, and their proximity to the Property. All other liens and encumbrances (except for those that may be waived by Buyer pursuant to Section 9) shall be discharged by Seller, at Seller's expense, at or prior to the Closing.

(c) Litigation, Court Orders. There are no legal actions, condemnation proceedings, suits or other legal administrative proceedings, pending or threatened against the Property, and there are no governmental agency or court orders requiring repairs, alterations or corrections of any existing conditions on the Property.

(d) Special Assessments and Deferred Charges. There are no existing special assessments, deferred water or sewer charges nor any deferred special assessments or special charges pertaining to the Property, nor any planned, contemplated or commenced public improvements which may result in special assessments or special charges pertaining to the Property.

(e) No Prior Right to Purchase. No person has any option, right of first refusal or similar right to purchase all or any portion of the Property.

(f) No Adverse Possessors. There are no parties in possession of any portion of the Property as tenants at sufferance or trespassers.

(g) Flood Plain. The Property is not located in a flood plain or erosion hazard area and there are no wetlands on the Property.

(h) Environmental Laws. During the period of Seller's ownership: (i) The Property has at all times been and is currently being operated in accordance with all "Environmental Laws;" (ii) no Hazardous Substances (as defined in any Environmental Laws) have been treated, recycled or disposed of (intentionally or unintentionally) by Seller on, under or at the Property; (iii) there has been no release or threatened release of any Hazardous Substance by Seller from, at or to the Property in a manner that could reasonably be believed to have migrated to, on, under or within the Property; (iv) there have not been nor are there now any Hazardous Substances deposited on the Property by Seller in a manner that could reasonably be believed to have migrated to, on, under or within the Property; and (v) there have been no activities conducted on the Property by Seller which would subject Buyer to damages, penalties, injunctive relief or cleanup costs under any Environmental Laws or common law theory of liability. The term "Environmental Laws" shall mean all federal, state and local laws including statutes, rules, regulations, common law doctrines and remedies and other governmental restrictions, codes, standards and requirements relating to the disposal, release, emission, dispersal, spilling, leaking, burial, migration, seeping, movement or discharge of air pollutants, chemicals, gases, vapors, water pollutants, groundwater, effluents, stormwater or surface water runoff, process wastewater, solid wastes or hazardous wastes or otherwise relating to the protection of the environment, management, investigation or remediation of Hazardous Substances or protection of employee health and safety or safeguarding public welfare. The term "Hazardous Substances" means all hazardous and toxic substances, wastes and materials; any pollutants or contaminants (including, without limitation, petroleum products, asbestos and raw materials which include hazardous constituents), and any other similar substances or materials which are regulated under Environmental Laws.

(i) Government Farm Programs. No portion of the Property is enrolled in the Agricultural Market Transition Act Program, the Conservation Reserve Program, the Wetland

Reserve Program or any other programs of the United States Department of Agriculture. No portion of the Property is subject to any cost-share contracts, farmland preservation agreements or transition agreements under Chapter 91 of the Wisconsin Statutes or any other agreements with any governmental authority which restrict either the use of the Property or the modification of any improvements thereon.

(j) Eminent Domain or Rezoning. There are no proposed, pending or threatened (i) condemnation or eminent domain proceedings affecting the Property or any portion thereof; (ii) agreements with, or proposed actions by, any governmental agencies or authorities which has or may create a lien upon the Property or any portion thereof which will not be cleared by Seller at or prior to Closing; (iii) proceedings to change or redefine the zoning classification of all or any portion of the Property; (iv) changes in road patterns or grades which may adversely affect access to the roads providing a means of ingress to or egress from the Property; or (v) historic, endangered species or cultural designation proceedings affecting the Property or any portion thereof.

(k) Leases. There are no leases or other occupancy agreements affecting the Property.

(l) Compliance. The Property has been operated in compliance with all federal, state, county, municipal or other government standards, laws, ordinances, statutes, regulations and requirements. The Property has been operated in compliance with all applicable private restrictions, covenants, rules, standards and requirements. No approvals from, or filings or recordings with, any person or entity are required to create, subdivide or separate the Property from any other parcel of land.

(m) Other Conditions. Seller has no notice or knowledge of any other conditions or occurrences which would significantly reduce the value of the Property to a reasonable person with knowledge of the nature and scope of the condition or occurrence.

If prior to Closing, Buyer discovers that Seller knowingly was in breach of any warranty or representation made as of the date of this Agreement, Buyer shall have the option of (i) terminating this Agreement, whereupon the Earnest Money shall be immediately returned to Buyer, and commencing a lawsuit for damages or (ii) proceeding to close on the transaction, whereupon Buyer shall receive a credit against the Purchase Price in an amount agreed to by Buyer and Seller in full settlement of the damages incurred or to be incurred by Buyer as a result of such breach, or if the Parties cannot agree on the amount of the credit, the Parties shall proceed to Closing and Buyer shall retain a cause of action against Seller for damages due to such breach. If after Closing, Buyer discovers that Seller knowingly was in breach of any warranty or representation hereunder, Buyer shall have any and all remedies available to it at law or in equity.

6. "AS IS" and "WHERE IS". Buyer acknowledges and agrees that, except as expressly set forth herein, Seller has not made any warranties or representations, written or oral, express or implied, in any way relating to the Property, including, without limitation, the condition of the Property, the presence or absence of any Hazardous Substances in, at, under or



migrating to or from the Property, the Property's compliance or noncompliance with any codes, laws, ordinances, regulations or rules including, without limitation, Environmental Laws or building codes, or the suitability or fitness of the Property for any particular purpose or the actual verified acreage of the Property.

BUYER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, BUYER IS RELYING SOLELY ON BUYER'S OWN INSPECTIONS, ASSESSMENTS, OR INVESTIGATIONS RELATING TO THE PROPERTY (COLLECTIVELY, "INSPECTIONS") TO DETERMINE WHETHER OR NOT TO PURCHASE THE PROPERTY AND BUYER AGREES TO ACCEPT THE PROPERTY, "AS IS" "WHERE IS" AND "WITH ALL FAULTS" AT CLOSING, WITHOUT ANY RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE. BUYER FURTHER AGREES TO ACCEPT THE PROPERTY WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXCEPT AS EXPRESSLY SET FORTH HEREIN, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION AS TO THE: (A) VALUE, NATURE, QUALITY OR PHYSICAL CONDITION OF THE PROPERTY; (B) INCOME DERIVED FROM THE PROPERTY; (C) MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE; (D) COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY; (E) THE ENVIRONMENTAL CONDITION OF THE PROPERTY; OR (F) ANY OTHER MATTER REGARDING THE PROPERTY, AND SELLER EXPRESSLY DISCLAIMS EACH AND EVERY SUCH REPRESENTATION AND WARRANTY. BUYER ACKNOWLEDGES THAT THE DISCLOSURE INFORMATION IS BEING PROVIDED OR MADE AVAILABLE FOR INSPECTION WITH NO REPRESENTATIONS OR WARRANTIES AS TO THE TRUTH, ACCURACY, COMPLETENESS, METHODOLOGY OF PREPARATION OF THE DISCLOSURE INFORMATION, OR OTHERWISE, OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY REPORTS OR AUDITS OR ANY OTHER MATERIALS, DATA OR OTHER INFORMATION SUPPLIED TO BUYER IN CONNECTION WITH BUYER'S INSPECTION OF THE PROPERTY. SELLER EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY.

7. Conditions to Buyer's Obligation to Close. For purposes of this Agreement, the term "Contingency Date" shall mean the date which is 150 days after the execution of a Master Development Agreement between the Parties (the "Development Agreement"). Buyer's obligation to close this transaction is conditioned upon either the consummation of all of the following on or before the Contingency Date or a written waiver by Buyer of any or all contingency on or before the Contingency Date:

(a) Review of Encumbrances. Buyer reviewing and approving all encumbrances against the Property shown in the title insurance commitment described in Section 9.

(b) Review of the Disclosure Information. Buyer reviewing and approving the Disclosure Information.

(c) Survey. Buyer obtaining, at Buyer's expense, a survey of the Property prepared in accordance with the current Standards for Land Title Surveys of the American Land Title Association, along with any Table A items deemed appropriate by Buyer, certified to Buyer and the Title Insurer (the "Survey") and Buyer subsequently reviewing and approving the Survey. The Survey must be sufficient to allow the Title Insurer to issue all endorsements required by Buyer and to remove the standard survey exception from the title policy without adding any exceptions.

(d) Environmental. Buyer obtaining, at Buyer's expense, written environmental assessments and/or evaluations of the Property (including "Phase I" and, if Buyer deems necessary, "Phase II" investigation ) from environmental consultants of Buyer's choice, confirming that (i) the Property complies with all Environmental Laws; (ii) there are no liabilities (contingent or otherwise) affecting the Property arising under any Environmental Laws; (iii) there are no underground or aboveground storage tanks, associated pipes or equipment located on or at the Property; (iv) there are no Hazardous Substances on, under, at, in or migrating to or from the Property; (v) no portion of the Property has been designated as wetland, shoreland, flood plain or conservancy land; and (vi) no portion of the Property has been operated as a landfill, dump or otherwise filled. It is expressly understood and agreed that Buyer shall have the right to conduct actual physical sampling and testing of the air, water, groundwater, soil, soil gas, vapor, and/or building materials or other materials of the Property. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, demands or causes of action including but not limited to: (i) any release or migration of Hazardous Substances present on the Property to, on, in or under an adjoining property or water body caused in whole or in part by Buyer or its contractors, subcontractors, employees, shareholders, members, agents, guests, invitees, permittees, or licensees (collectively "Buyer Parties"); (ii) any violation of an existing Environmental Law by Buyer Parties; and (iii) exacerbation of a known or suspected condition involving a Hazardous Substance by Buyer Parties ((i) through (iii) collectively referred to as "Environmental Contamination") but only to the extent that Environmental Contamination occurs directly as a result of the negligent acts or willful misconduct of Buyer Parties while performing the Phase I and Phase II work. Following the Phase II investigation, Buyer shall be responsible for restoring those areas of the Property disturbed during the Phase II investigation to the same or similar condition as that which existing immediately prior to the Phase II investigation being initiated.

(e) Zoning. Buyer: (i) obtaining any and all required municipal/governmental approvals for Buyer's proposed use including, without limitation, zoning, site plan, signage, traffic, access, annexation and subdivision approvals; and (ii) approving to Buyer's reasonable satisfaction the requirements of any border agreement between applicable governmental authorities.

(f) Soil Conditions. Buyer obtaining, at Buyer's expense, the written certification by a geotechnical engineering firm acceptable to Buyer that the soil and subsurface soil conditions of the Property are sufficient and suitable for the Project and consistent with Buyer's intended use free from any unusual groundwater, soil, subsoil, organic or rock condition that would increase the Project's construction costs.



(g) Utilities. Buyer verifying to Buyer's reasonable satisfaction that utility connections for electricity, gas, municipal sewer and storm sewer, municipal water and telephone can be brought to the boundaries of the Property upon terms acceptable to Buyer in sufficient quality and quantity to adequately serve the Project consistent with Buyer's intended use of the Property and that the location of any existing utilities do not inhibit the Project.

(h) Feasibility of Project. Buyer determining, in its sole discretion, that the Project is economically feasible.

(i) Buyer's Purchase, "AS IS, WHERE IS". In consideration of Buyer's contemplated purchase of the Property in "AS IS, WHERE IS" condition, Buyer shall have until the expiration of the Contingency Date to satisfy itself as to the status of the Property and the Disclosure Information. Buyer shall have the right to terminate this Agreement for any reason whatsoever, as determined in Buyer's sole and absolute discretion, by giving written notice thereof to Seller prior to the expiration of the Contingency Date. Unless Buyer gives written notice of termination prior to the expiration of the Contingency Date, Buyer shall be deemed to have elected not to terminate the Agreement under this provision.

(j) Access. Buyer verifying to Buyer's reasonable satisfaction that there shall be full and free vehicular and pedestrian access to and from public highways, roads or streets to and from the Property and all portions thereof, that such access will adequately serve the Project consistent with Buyer's intended use on the Property and that any permits, consents and approvals necessary to obtain curb cuts and direct access onto such public highways, roads or streets from the Property will be available without significant cost or delay.

(k) Certified Survey Map of Property. Buyer obtaining at Seller's sole cost and expense a certified survey map of the entire Property (the "Property CSM") prepared by a qualified firm or individual selected by Buyer in a form that will be approved for use and recording by all governing agencies. Buyer and Seller shall cooperate in determining the dimensions of the final Property CSM such that the Property CSM is consistent with Buyer's intended use of the Property. Buyer will obtain final governmental approval for and record, prior to Closing, the Property CSM and Seller agrees to cooperate with Buyer in connection with the Property CSM approval process. Buyer shall be required to obtain Seller's prior written consent to the Property CSM before it is finally approved and recorded whose consent will not be unreasonably withheld. Upon the approval and recording of the Property CSM, the legal description of the Property shall be changed in accordance with such approved, recorded Property CSM. Following issuance of the Property CSM, Buyer shall be responsible for obtaining at its sole cost and expense any additional certified survey maps and other maps that may be required pursuant to completion of Phase I, Phase II and/or Phase III of the Project.

(l) Master Development Agreement. Simultaneously with the Effective Date, Buyer and Seller shall have agreed upon the terms and conditions of the Master Development Agreement.

(m) Contingency Savings Provision. Buyer and Seller acknowledge that Buyer will expend material sums of money in reliance on Seller's obligations under this Agreement,

conducting the inspections contemplated by this Agreement and preparing for Closing, and that Buyer would not have entered into this Agreement without the availability of an inspection period. In consideration of the foregoing and the provision of a One Hundred and 00/100's Dollars (\$100.00) nonrefundable deposit (the "Independent Consideration"), the Parties agree that adequate consideration exists so that Buyer's rights to terminate this Agreement do not render this Agreement illusory. Seller and Buyer 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 Seller's or Buyer's sole discretion or that any of the agreements contained herein are illusory. If either Buyer or Seller challenges the enforceability of this Agreement in a manner that is inconsistent with the foregoing waiver, such Party shall pay the other Party's costs and expenses (including reasonable attorneys' fees) in enforcing this Agreement. The Independent Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement and shall be retained by Seller notwithstanding: (a) the exercise of Buyer's rights to terminate the Agreement, and/or (b) any other provision of this Agreement. The Earnest Money and the Independent Consideration shall be applied to the Purchase Price if this transaction closes.

8. Satisfaction/Extension of Conditions. If any of the conditions in Section 7 are not satisfied prior to the Contingency Date (as may be extended), Buyer may terminate this Agreement by giving written notice to Seller at any time prior to the Contingency Date (as may be extended). Upon such termination, this Agreement shall be null and void and the Earnest Money payment and all accrued interest shall be returned immediately to Buyer. If Buyer fails to give written notice to Seller terminating this Agreement prior to the Contingency Date (as may be extended), the conditions to Closing described in Section 7 shall be deemed waived.

9. Title. Seller shall obtain and provide to Buyer within twenty (20) days after the Effective Date, an ALTA form of owner's title insurance commitment issued by the Title Insurer, agreeing to issue, upon recording of the deed, an owner's policy to Buyer in the amount of the Purchase Price insuring title to the Property subject only to those exceptions and encumbrances acceptable to Buyer. In addition, Seller shall deliver to Buyer, within twenty (20) days after the Effective Date, copies of all documents referred to in such title commitment. The premium for the title insurance and gap endorsement shall be paid by Seller. Seller shall deliver the title policy free from the standard exceptions and shall deliver to the Title Insurer any and all documents, affidavits and information necessary to delete the standard exceptions from the title policy. Seller shall cause to be released on or before Closing all liens, mortgages, deeds of trust and other security documents and any other encumbrances of a specific dollar amount. If, prior to the Contingency Date, Buyer discovers any condition of title not acceptable to Buyer (hereinafter referred to as a "Title Defect"), Buyer shall notify Seller in writing of same and Seller shall exercise its reasonable efforts to correct such Title Defect. If the Title Defect cannot be corrected to Buyer's satisfaction within thirty (30) days after the date of notice from Buyer (with the Closing Date being extended accordingly if necessary) despite Seller's reasonable efforts, Buyer may, at its option: (i) declare this Agreement null and void and the Earnest Money and accrued interest shall be paid forthwith to Buyer and the Parties shall have no further liability or obligation under this Agreement; or (ii) waive such Title Defect and proceed to Closing with the right to deduct from the Purchase Price liens or encumbrances of a definite or ascertainable amount. Notwithstanding anything contained herein to the contrary, Seller shall be under no

obligation to clear, delete or satisfy liens or other encumbrances against the Property resulting from work performed or materials furnished to the Property by Buyer or at the direction of Buyer prior to Closing.

10. Closing. The closing of the purchase and sale of the Property (the "Closing") shall be as follows:

(a) Time and Place. The Closing shall take place at the Port Washington City Hall located at 100 West Grand Avenue, Port Washington, Wisconsin 53074 on or before thirty (30) days following expiration of the Contingency Date or upon such other date agreed to in writing by Buyer and Seller (the "Closing Date").

(b) Occupancy. Occupancy of the entire Property shall be given to Buyer at Closing and Buyer shall accept same from Seller.

(c) Warranty Deed. At Closing, Seller shall convey the Property by good and sufficient warranty deed free and clear of all liens and encumbrances excepting those arising under or pursuant to work performed by Buyer, except municipal and zoning ordinances, all easements and restrictions of record, real estate taxes for the year of Closing not yet due and payable, the Security Instrument under Section 2(d) of this Agreement, and any encumbrances approved by Buyer in writing.

(d) Assignment of Permits, Licenses, Approvals and Warranties. At Closing, Seller shall deliver to Buyer an assignment of all Seller's right, title and interest in any assignable certificates, licenses, permits, authorizations, approvals and warranties related to the Property, if any, and Seller shall deliver to Buyer copies or originals of all such certificates, licenses, permits, authorizations, approvals and warranties whether or not assignable.

(e) Non-Foreign Status. Seller shall provide Buyer, on or before Closing, with a sworn affidavit stating Seller's FEIN or Social Security Number and that Seller is not a "foreign person" for purposes of the Foreign Investors Real Property Tax Act of 1980, as amended, and as described in section 1445 of the Internal Revenue Code and Treasury Regulation section 1.1445-2T ("FIRPTA"), failing which Buyer shall be entitled to withhold 10% of the Purchase Price, as required by the Internal Revenue Code as potential FIRPTA tax owed by Seller, for so long as Seller shall continue to fail to provide such affidavit.

(f) Authority. At Closing, Seller shall provide Buyer with evidence satisfactory to Buyer and the Title Insurer evidencing Seller's authority to execute this Agreement and sell the Property to Buyer pursuant to the terms hereof.

(g) Lien Waivers. Seller shall deliver an affidavit to the Title Insurer at Closing stating that all work performed or materials furnished for the Property by Seller have been fully paid for and Seller shall provide Buyer and the Title Insurer with appropriate lien waivers from any and all contractors, sub-contractors, laborers or materialmen furnishing labor or material for the improvement of the Property prior to Closing. Notwithstanding anything contained herein to the contrary, Buyer shall not allow any liens to be placed on the Property and

Seller shall be under no obligation to obtain or provide lien waivers for work performed or materials furnished to the Property by Buyer or at the direction of Buyer prior to Closing.

(h) Transfer Return. Buyer and Seller shall complete an electronic Wisconsin Real Estate Transfer Return.

(i) Certification. At Closing, Seller shall provide Buyer with a certificate reaffirming that all the representations and warranties set forth in Section 5 hereof are true and correct to Seller's knowledge as of the Closing Date.

(j) Documents. All documentation delivered by Seller at Closing pursuant to this Agreement is true, correct and complete in all material respects.

(k) Other Documents. On or before Closing, the Parties shall deliver to each other a closing statement and any and all other documents, certifications, affidavits, etc. that are customarily delivered by a seller and/or a buyer in a transaction of this nature.

#### 11. General Provisions.

(a) Entire Agreement. This document contains the entire agreement between Buyer and Seller and it shall inure to the benefit of and shall bind the Parties hereto and their respective successors or assigns.

(b) Assignment. Buyer shall have the right to assign its rights, duties and obligations under this Agreement and the Master Development Agreement (this Agreement and the Master Development Agreement together referred to as the "Documents") to a business or entity that is controlling, controlled by, or under common control of Buyer provided that Buyer first provides Seller with written evidence of such control in a form and substance reasonably acceptable to Seller. Buyer shall not assign its rights, duties and obligations in and to the Documents to any other assignee (the "Assignee") without first receiving the prior written consent of Seller which may not be unreasonably withheld. Any assignment shall be made only if, and shall not be effective until, the Assignee executes, acknowledges and delivers to Seller an agreement in form and substance reasonably satisfactory to Seller whereby (i) the Assignee shall agree to be bound by and assume the obligations of the Promissory Note and the Documents, (ii) the terms, covenants and conditions of the Promissory Note and the Documents shall in no way be deemed to have been waived or modified by Seller, and (iii) such consent alone shall not be deemed consent to any further assignment by Assignee.

(c) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

(d) Survival of Warranties and Representations, Indemnification. Any warranty, representation or agreement herein contained shall survive the Closing, and Seller shall indemnify Buyer from and against any and all costs, expenses, liabilities and damages, including reasonable attorney's fees, arising out of Seller's knowing breach of any such warranty, representation or agreement.

(e) Modifications. This Agreement may be amended or modified only by written instrument duly executed by both of the Parties hereto.

(f) Notices. Any notice required hereunder shall be given in writing, signed by the Party giving notice, personally delivered, telecopied, or mailed by certified or registered mail, return receipt requested, to the Parties' respective addresses as set forth below:

To Seller: City of Port Washington  
Attn: City Administrator  
100 W. Grand Avenue  
Port Washington, WI 53074

Copy to: Antoine, Hoeft & Eberhardt S.C.  
Attn: Eric E. Eberhardt, Esq.  
2560 State Road 32  
Port Washington, WI 53074

with an electronic copy to:  
eberhardt@wislawfirm.com

To Buyer: Black Cap Halcyon, LLC  
Attn: Mr. Anthony Polston  
342 N. Water Street, Suite 600  
Milwaukee WI 53202

with an electronic copy to:  
Anthony@blackcaphalcyon.com

Copy to: Brian G. Carroll, Esq.  
Reinhart Boerner Van Deuren s.c.  
N16 W23250 Stone Ridge Drive, Suite 1  
Waukesha, WI 53188

with an electronic copy to:  
bcarroll@reinhartlaw.com

Notice shall be deemed delivered (i) in the case of personal delivery, on the date when personally delivered; or (ii) in the case of certified or registered mail, on the date when deposited in the United States mail with sufficient postage to effect such delivery; or (iii) in the case of telecopied notice, when received by the addressee. Either Party may change the address to which notice must be given by delivery of written notice to the other Party in accordance with this Section 11(f).

(g) Severability of Provisions. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision

hereof, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

(h) Time of Essence. Time is of the essence.

(i) Cooperation. Seller and Buyer agree to cooperate in the processing of applications made by either Party for any governmental certificates or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use and occupancy of the Property. Seller and Buyer each agree at any time or from time to time at the written request of the other to sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

(j) Maintenance of Property Until Closing. From the Effective Date until the Closing Date, Seller shall maintain the Property in the same condition as on the Effective Date.

(k) Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and any Party hereto may execute this Agreement by signing any such counterpart.

*[Signature Page Follows]*



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

BUYER:

BLACK CAP HALCYON, LLC

By: BCH Management, LLC  
Its: Manager

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

By: \_\_\_\_\_  
Anthony D. Polston  
Its: Founder and Principal

SELLER:

CITY OF PORT WASHINGTON

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF PORT WASHINGTON

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

DEVELOPMENT PLAN CONCEPT