

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is dated as of NOVEMBER 18, 2021 (the "Effective Date"), by and between the CITY OF MANITOWOC, WISCONSIN ("Seller"), and GMX Real Estate Group Acquisitions, L.L.C, an Illinois limited liability company, or its nominee or assignee ("Purchaser").

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, all of the following described property (collectively, the "Property");

(a) Real Property. That certain real property consisting of approximately 4.82 acres of land and located at 4221 Calumet Avenue, Manitowoc, Wisconsin, as legally described on Exhibit A attached hereto and made a part hereof, together with all tenements, hereditaments, easements, rights-of-way, appurtenances, air rights, oils, minerals, gas, and hydrocarbons belonging or in any way pertaining to the same (collectively, the "Real Property");

(b) Improvements. The building(s) located thereon together with all other structures, parking areas, fixtures, and other improvements, if any, located on the Real Property (collectively, the "Improvements");

(c) Personal Property. All equipment, mechanical systems, leasehold improvements, appliances, tools, machinery, supplies, building materials, office equipment, and other personal property of every kind and character owned by Seller and attached to, appurtenant to, located in, and used exclusively in connection with the operation of, the Improvements or Real Property, if any (collectively, the "Personal Property"), provided, however, any movable equipment or personal property owned by Manitowoc Area Visit & Convention Bureau shall not be included with the Personal Property and shall be removed by Seller prior to Closing;

(d) Licenses and Other Rights. All transferable licenses and other rights (not specifically covered in another subsection of this Section 1) related to the Property or any part thereof, if any (collectively, the "Licenses and Other Rights");

(e) Permits. All transferable certificates of occupancy, permits, licenses, orders, approvals, exemptions, certificates, registrations, variances or other authorizations (collectively, the "Permits") from all federal, state and local governmental departments, offices, agencies and authorities (collectively, "Governmental Authority") which have been obtained by Seller in connection with its construction, renovation, use or occupancy of the Property, if any;

(f) Warranties. All transferable warranties and guaranties covering the Property or any part thereof, if any (collectively, "Warranties");

(g) Service Contracts. All service, utility, and management contracts, equipment leases, and other contracts (collectively, the "Service Contracts") pertaining to the Property, to the extent elected to be assumed by Purchaser in accordance with the terms hereof, if any;

(h) Plans and Specifications. All plans and specifications, including utilities, mechanical, electrical, and plumbing, and any and all other drawings and plans relating to the Improvements, if any (collectively, the "Plans and Specifications"); and

(i) Other Information. To the extent owned by Seller, all other information and documentation in Seller's possession or control related to the Property and all of Seller's intangible property used or useful in connection with the Property, including, without limitation, any and all: (i) trade names used in connection therewith; (ii) goodwill associated therewith; and (iii) marketing and advertising materials (collectively, "Other Information").

2. Purchase Price. Subject to the prorations and credits hereinafter provided, the purchase price for the Property (the "Purchase Price") shall be \$1,600,000.00, which shall be payable and allocated as follows:

(a) Earnest Money. Within 3 business days following the date the Earnest Money Escrow (as defined herein) has been established, Purchaser shall deliver to First American Title Insurance Company ("Title Insurer"), as escrowee, a deposit in the amount of \$5,000.00 ("Earnest Money") into escrow ("Earnest Money Escrow") pursuant to the Title Insurer's standard joint order escrow agreement in the form attached hereto as Exhibit B. The Earnest Money shall be transferred from the Earnest Money Escrow to the Closing Escrow (as defined in Section 5) upon establishment of the Closing Escrow. The Earnest Money shall be invested only upon the sole direction and cost of Purchaser, and, except as specifically set forth herein to the contrary, all interest earned hereon shall be credited to Purchaser at Closing or transferred to either Purchaser or Seller, as the case may be, if the Earnest Money is returned to either of them.

(b) Cash Balance. Provided Purchaser has not terminated this Agreement in accordance with its terms, Purchaser shall on the Closing Date (as defined in Section 5), deposit with Title Insurer the Purchase Price less the Earnest Money by federal wire transfer, together with such additional funds for Purchaser's share of closing costs and prorations as may be required pursuant to this Agreement.

### 3. Title and Survey.

(a) Conditions of Title. Title to the Real Property shall be conveyed by Seller to Purchaser by general warranty deed (the "Deed"), subject only to general real estate taxes not yet due and payable as of the Closing Date and to all existing matters of record, if any, that do not constitute "Unpermitted Exceptions" within the meaning of Section 3(b) (collectively, the "Permitted Exceptions").

(b) Title Insurance Commitment. Purchaser shall order: (i) a commitment for an ALTA 2006 Owner's Policy of Title Insurance for the Real Property issued by Title Insurer in the full amount of the Purchase Price ("Commitment"); and (ii) legible copies of all documents cited, raised as exceptions or noted in the Commitment, as made available by Title Insurer (collectively, the "Title Documents"). In the event the Commitment discloses exceptions to title other than the so-called "standard" or "general" exceptions, or the lien of current real estate taxes, the payment of which is not yet due, Purchaser shall have until the expiration of the Inspection Period (as hereinafter defined) to notify Seller in writing (the "Title and Survey Objection") of any such exceptions or Survey (as hereinafter defined) matters that Purchaser finds objectionable (the "Unpermitted Exceptions"). Purchaser shall be deemed to have accepted all exceptions to the Title Commitment and the form and substance of the Survey not objected to in the Title and Survey Objection which exceptions shall be deemed Permitted Exceptions hereunder. Upon receipt of a notice of the Title and Survey Objection from Purchaser, Seller shall have 30 days ("Seller's Response Period") in which to advise Purchaser in writing ("Seller's Response") which Unpermitted Exceptions Seller shall cause to be removed from the Commitment as of Closing, or which Unpermitted Exceptions Seller shall cause Title Insurer to insure against loss or damage occasioned thereby (with Purchaser's reasonable agreement). In the event Seller does not deliver

the Seller's Response to Purchaser prior to the expiration of the Seller's Response Period, Seller shall be deemed to have elected to not cause the removal of all Unpermitted Exceptions. If Seller elects, or is deemed to have elected not to remove or otherwise cure all Unpermitted Exceptions, Purchaser shall then have until 10 days following the Seller's Response Period to either (X) terminate this Agreement, in which event all Earnest Money, plus interest accrued thereon, shall be immediately returned to Purchaser, upon the sole direction of the Purchaser, and neither party shall have any further liability hereunder other than those provisions which expressly survive the termination of this Agreement; or (Y) proceed with the transaction contemplated herein, and take title to the Real Property and Improvements subject to the Unpermitted Exceptions, with the right to deduct from the Purchase Price the amount needed to pay off any liens securing the payment of a definite or ascertainable amount. In the event Seller elects to remove or otherwise cure all Unpermitted Exceptions but Seller fails to have the Unpermitted Exceptions so removed or insured over prior to Closing, Purchaser may elect options (X) or (Y) described in the immediately preceding sentence. The foregoing notwithstanding, Seller shall be obligated to cure, at or prior to Closing, and irrespective of whether Purchaser provides notice of Title and Survey Objections with respect thereto as aforesaid, the following: (i) all mortgages and similar financing liens; (ii) past due real estate taxes and assessments; (iii) judgments and other liens of a definitive and ascertainable amount; (iv) all mechanics' and materialmen's liens affecting the Property; and (v) to the extent caused by Seller, any matter first appearing of public record after the Effective Date to the extent that Purchaser's consent was not obtained therefor.

(c) Policy. As a condition to Closing, the Title Insurer shall issue to Purchaser, as of the Closing Date, Title Insurer's ALTA 2006 Owner's Policy of Title Insurance with GAP coverage for the Real Property and Improvements (the "Policy") in the full amount of the Purchase Price, based on the Commitment, showing fee simple title to the Real Property and Improvements vested in Purchaser, subject only to the Permitted Exceptions, with extended coverage over all general exceptions and containing such endorsements as reasonably requested by Purchaser.

(d) Survey. Within 5 business days of the Effective Date, Seller shall deliver to Purchaser its most current existing survey of the Real Property in Seller's possession ("Existing Survey"). Purchaser shall order any updates to the Existing Survey desired by Purchaser from a land surveyor licensed in the State of Wisconsin and certified to have been prepared in accordance with current ALTA/NSPS Land Title Survey Standards (the "Survey"). In the event the Survey reveals there are any title defects or there is any other matter reasonably unacceptable to Purchaser, then Purchaser shall have until the expiration of the Inspection Period to provide written notice of its objection to any such defects or matters, which shall constitute Unpermitted Exceptions, and the process provided for in Section 3(b) above shall control. To the extent Purchaser or Purchaser's lender requires the Survey to contain disclosures or certifications in addition to those required to be included in the Survey hereunder, Seller shall reasonably cooperate with Purchaser to have such disclosures or certifications included in the Survey.

#### 4. Inspection Contingency.

(a) Purchaser and its Consultants (as defined in Section 4(b)) shall have until the date that is 240 days after the later of: (a) the Effective Date; and (b) the date Purchaser receives the Due Diligence Materials (as hereinafter defined) (the "Inspection Period") to inspect the Property and to examine any information or documentation relating to the Property, including, without limitation, the Commitment, the Title Documents, the Survey, the Exhibits attached, the books and records of Seller, and the information and documentation provided pursuant to Section 4(c), and to satisfy itself, in its sole discretion, that this transaction conforms to Purchaser's objectives. If Purchaser determines for any or no reason at all, in its sole discretion, that this transaction does not

conform to its objectives, Purchaser may upon written notice to Seller prior to the expiration of the Inspection Period, terminate this Agreement, in which event this Agreement shall be terminated, the Earnest Money together with all interest earned thereon shall be immediately returned to Purchaser upon Purchaser's sole written direction to Title Insurer, and neither party shall have any further liability hereunder other than for those provisions which expressly survive the termination of this Agreement. If Purchaser does not give written notice to Seller to terminate this Agreement prior to the expiration of the Inspection Period, the Earnest Money shall become non-refundable to Purchaser, but credited to Purchaser at Closing; provided, however, in the event Purchaser terminates this Agreement pursuant to a Seller default or Seller's failure to meet a closing condition, the Earnest Money together with all interest earned thereon shall be immediately returned to Purchaser.

(b) Seller shall permit Purchaser, and its agents, representatives, investors, architects, engineers, lenders, insurance agents, and construction and environmental consultants (collectively, the "Consultants") immediate access to the Property for any inspections, studies, and testing as Purchaser deems appropriate, including, without limitation, Phase I and Phase II environmental investigations. Seller agrees to make itself, its property management company and site supervisor reasonably available during the Inspection Period in order to answer Purchaser's or its Consultant's questions concerning the Property, and Seller shall otherwise cooperate in good faith in any other manner reasonably requested by Purchaser or its Consultants during the Inspection Period to facilitate Purchaser's review of and due diligence concerning the Property.

(c) During the Inspection Period, Purchaser shall have the right to, with Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, apply for any and all licenses, zoning changes, platting or replatting, permits, entitlements and governmental approvals, including, but not limited to, signage, grading, building and other permits (collectively, the "Entitlements") necessary for Purchaser's contemplated development of the Property (the "Intended Use"). Seller agrees to reasonably cooperate with Purchaser in executing any applications or documents necessary for Purchaser to obtain the Entitlements for the Intended Use; provided, however: (i) Seller shall not incur any liability or costs in connection with Purchaser's applications for Entitlements (other than *de minimis* costs); and (ii) except for any plat or replat that is required to be recorded prior to the conveyance of the Property, all Entitlements shall be conditioned, and shall become effective only, upon Purchaser's acquisition of the Property.

(d) Seller shall provide, or cause to be provided, to Purchaser, on or before 5 business days after the Effective Date, true and complete copies of the following documents (collectively, the "Due Diligence Materials"), together with a certification by Seller that all such documentation and information has been delivered or, caused to be delivered, to Purchaser pursuant to this Section 4(c):

(i) The existing title insurance policy with respect to the ownership of the Real Property, including all endorsements thereto;

(ii) The Existing Survey of the Property;

(iii) All contracts and leases (including service contracts and equipment leases) pertaining to the Property, together with any and all amendments, modifications and supplements thereto, if any;

(iv) All easements, covenants and restrictions, and any information relating to exclusives, and architectural restrictions affecting the Property;

(v) Copies of the last 2 years of real estate tax bills, financial statements, tax returns and all information in Seller's possession relating to real estate taxes and assessments affecting the Property or any appeals related thereto;

(vi) Copies of the last 2 years of operating expenses related to the Property, including financial statements and all information in Seller's possession relating to the operating expenses for the Property;

(vii) All engineering reports, appraisal reports, and entitlement approval documents concerning the Property, if any;

(viii) All traffic, soil, asbestos, environmental inspection reports (including any Phase I and Phase II reports) and other hazardous substance, fire protection or other tests, reports and studies, if any;

(ix) Any notices of health, building, zoning or other code violations received by Seller during the two-year period preceding the Effective Date; and

(x) Any existing Licenses and Other Rights, Permits, Warranties, Service Contracts, Plans and Specifications and Other Information.

(e) Purchaser shall have 2 options (each, an "Extension Option") to extend the Inspection Period for additional 45 day periods, which Extension Options must be exercised by written notice to Seller on or before the expiration of the Inspection Period, as extended. No later than 3 business days after Purchaser exercises an Extension Option, Purchaser shall deposit an additional \$5,000.00 with Title Insurer (each, an "Extension Deposit"), which Extension Deposits shall be non-refundable to Purchaser, but credited to Purchaser at Closing; provided, however, in the event Purchaser terminates this Agreement pursuant to a Seller default or Seller's failure to meet a closing condition, the Extension Deposits together with all interest earned thereon shall be immediately returned to Purchaser.

5. Escrow and Closing Date. The transaction contemplated by this Agreement shall be consummated by means of a Deed and Money Escrow with GAP coverage over Seller's acts (the "Closing Escrow") to be opened with the Title Insurer on or prior to the Closing Date, in the normal form of agreement provided by the Title Insurer (the "Closing Escrow Agreement"), with such special provisions inserted in the Closing Escrow Agreement as may be required to conform with this Agreement. In the event of any conflict between the Closing Escrow Agreement and this Agreement, the terms of this Agreement shall prevail, unless the Closing Escrow Agreement specifically states it is intended to amend or modify this Agreement. The consummation of the transaction contemplated herein (the "Closing") shall occur on the 30<sup>th</sup> day following the expiration of the Inspection Period (the "Closing Date"). At Closing, Seller agrees to execute and deliver to Title Insurer all documentation reasonably required to effectuate an escrow closing. The Closing shall take place at the downtown Chicago, Illinois office of Title Insurer via "mail-in" with the parties delivering original documents to the Title Insurer in advance of Closing.

#### 6. Closing Documents

(a) Seller's Closing Documents to be Delivered on or Before the Closing Date. Seller shall deliver to Title Insurer pursuant to the Closing Escrow Agreement, or to Purchaser hereunder, as applicable, on or before the Closing Date, the following instruments and documents, all of which shall be reasonably acceptable to Purchaser:

- (i) The Dccd, executed by Seller;
- (ii) A bill of sale for the Personal Property, if any;
- (iii) An assignment and assumption of Licenses and Other Rights, Warranties, Permits, Plans and Specifications and Other Information, executed by Seller in favor of Purchaser (the "Assignment and Assumption of Intangible Property");
- (iv) If Purchaser elects (in its sole discretion), by written notice given to Seller prior to the Closing Date, to assume any of the Service Contracts from and after the Closing Date (the "Assumed Service Contracts"), and provided such Service Contracts are assignable, an assignment and assumption of such Assumed Service Contracts ("Assignment and Assumption of Assumed Service Contracts"), executed by Seller in favor of Purchaser;
- (v) Evidence of termination of all Service Contracts as of or prior to the Closing Date other than those that constitute Assumed Service Contracts;
- (vi) Originals of all Licenses and Other Rights, Warranties, Permits, Plans and Specifications, Other Information and Assumed Service Contracts in Seller's possession, if applicable;
- (vii) An Owner's Affidavit executed by Seller;
- (viii) A personal "gap" undertaking executed by Seller;
- (ix) Such proof of Seller's authority to enter into and carry out this transaction as required by Purchaser or Title Insurer;
- (x) Entity Transfer Certification confirming that Seller is a "United States Person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended;
- (xi) Such documentation as shall evidence release of any lien rights against the Property of any real estate broker or property manager retained by Seller; and
- (xii) A certificate, dated as of the date of Closing and executed on behalf of Seller by a duly authorized officer thereof, stating that the representations and warranties of Seller contained in this Agreement are true and correct in all respects as of the date of Closing (with appropriate modifications of those representations and warranties made in accordance with Section 9 hereof).

(b) Deliveries by Purchaser on or Before the Closing Date. Purchaser shall deliver to Title Insurer pursuant to the Closing Escrow Agreement or to Seller, as applicable, on or before the Closing Date, the following monies, instruments, and documents, all of which shall be reasonably acceptable to Seller:

- (i) The balance of the Purchase Price plus or minus Purchaser's share of closing costs and prorations, pursuant to the terms of this Agreement;

(ii) Original, executed counterpart signature pages to the Assignment and Assumption of Assumed Service Contracts (if applicable);

(iii) Original, executed counterpart signature pages to the Assignment and Assumption of Intangible Property; and

(iv) Such proof of Purchaser's authority to enter into this transaction as required by Title Insurer.

(c) Joint Deliveries On or Before the Closing Date. The Closing Escrow Agreement shall provide that the parties shall deliver to Title Insurer, and the parties hereby covenant and agree to deliver to Title Insurer, on or before the Closing Date, the following instruments and documents, all of which shall be consistent with the terms of this Agreement and otherwise reasonably acceptable to the parties:

(i) To the extent required, the real estate transfer tax declaration or other documentary stamp declarations required by the municipality, county and state in which the Property is located;

(ii) Closing Statement; and

(iii) Any further documentation reasonably required by the Title Insurer, Seller and/or Purchaser to consummate the transaction.

#### 7. Allocation of Closing Costs and Expenses.

(a) Seller shall pay the cost and expense of: (i) the cost of the Policy, including extended coverage and including any search and exam fees, and the cost to update the Survey in an amount not to exceed \$5,000.00 in the aggregate (which may be tendered as a credit to Purchaser at Closing); (ii) the costs of any endorsements to the Policy required in connection with insuring over any Unpermitted Exceptions; (iii) the recording of any instruments necessary to remove the Unpermitted Exceptions; (iv) any state, county and municipal transfer taxes; (v) one-half of any and all of the Title Insurer's escrow fees and "New York Style" closing fees; and (vi) such other costs and expenses related to the acquisition of the Property normally paid by Seller in the City of Manitowoc and Manitowoc County, Wisconsin.

(b) Purchaser shall pay the cost and expense of: (i) the cost of the Policy, including extended coverage and including any search and exam fees, and the cost to update the Survey in excess of the initial \$5,000.00 paid by Seller, (ii) the cost of any endorsements to the Policy; (iii) any title policy or escrow fees required by Purchaser's lender, if any; (iv) one-half of the Title Insurer's escrow fees and "New York Style" closing fee; (v) the recording of the Dced and any mortgage documents required by Purchaser's lender; and (vi) such other costs and expenses related to the acquisition of the Property normally paid by a Purchaser in the City of Manitowoc and Manitowoc County, Wisconsin. Except as otherwise stated herein, each party shall pay its own legal and professional fees and fees of their consultants.

8. Prorations and Adjustments. It is agreed that the Closing Date shall be an income and expense date for Seller. All items of income and expense shall be prorated on an accrual basis as of the Closing Date, with items accruing prior to or on the Closing Date being items attributable to or payable by Seller and items accruing from and after the Closing Date being attributable to or payable by Purchaser. Appropriate

adjustments and prorations shall be made for real estate taxes, assessments, rent, sewer, water, utilities and similar costs, as follows:

(a) Taxes and Assessments. Seller shall pay all real estate taxes and assessments on the Property that are due and payable at or prior to the Closing Date. At Closing, Seller shall give Purchaser a credit for all real estate taxes and assessments on the Property which have accrued but are unbilled based on 110% of the last full year tax bill issued with respect to the Property without regard to any pending tax appeal; provided, however, that in the event that there shall be any reduction of real estate taxes and assessments on the Property with respect to periods prior to the Closing Date, the parties agree to re-prorate such real estate taxes and assessments after the Closing based on such reduction.

(b) Utilities. Purchaser and Seller hereby acknowledge and agree that the amounts of all electric, sewer, water and other utility bills, trash removal bills, janitorial and maintenance service bills and all other operating expenses relating to the Property allocable to the period prior to the Closing Date shall be determined and paid by Seller before Closing, if possible, or shall be paid thereafter by Seller or adjusted between Purchaser and Seller immediately after the same have been determined. Seller shall attempt to have all utility meters, or utility services read as of the Closing Date. Purchaser shall cause all utility services to be placed in Purchaser's name as of the Closing Date.

(c) Other Costs. All other items customary to transactions of this type shall be adjusted and prorated as of the Closing Date. Except as otherwise provided for herein, all prorations shall be final. The Seller agrees to provide Purchaser a schedule of tentative credits and adjustments no later than 5 days prior to the Closing Date. Such adjustments, if and to the extent known and agreed upon as of the Closing Date, shall be paid by Purchaser to Seller (if the prorations result in a net credit to the Seller) or by Seller to Purchaser (if the prorations result in a net credit to the Purchaser), by increasing or reducing the amount to be paid by Purchaser at Closing. Purchaser and Seller agree the intent of this provision is to allocate the income and expenses attributable to the Property in a fair, just, and equitable manner, and the parties agree in the event of special circumstances not specifically covered herein, such equitable principles shall guide the parties in reaching a fair resolution.

9. Representations and Warranties of Seller. In addition to any other representations and warranties of Seller herein, Seller represents and warrants to Purchaser, as of the Effective Date and as of the Closing Date, as follows:

(a) Title. Seller has fee simple title to the Property, free and clear of all liens, encumbrances, covenants, conditions, restrictions, leases, tenancies, licenses, claims and option, except for the Permitted Exceptions.

(b) Employees. Other than the Seller, there are no persons employed on site by Seller in connection with management, operation or maintenance of all or any portion of the Property.

(c) Legal Matters. There is no pending or threatened action, suit, or proceeding, including without limitation, condemnation proceeding, affecting Seller or the Property by or before any court, municipal department, commissioner, board, bureau or agency, nor are there any pending or presently contemplated public improvements in, about or outside the Property which will in any manner affect access to the Property.



(d) No Conflicts. Seller has not received any written notice that the Property and the present use, occupancy and operation thereof are in violation of any applicable laws, ordinances, regulations, statutes, rules, agreements or restrictions pertaining to or affecting the Property. The execution and delivery of this Agreement and the consummation of the transaction herein contemplated will not conflict with any applicable law, ordinance, regulation, statute, rule, restriction, or any judgment, order, or decree of any court having jurisdiction over Seller or the Property.

(e) Default. Seller has not received written notice of a default in respect of any of its obligations or liabilities pertaining to the Property nor is there any state of facts or circumstances which, after notice or lapse of time, or both, would constitute such a default.

(f) Seller's Authority. Seller has the legal power, right and authority to enter into this Agreement and consummate the transactions contemplated hereby and no consent, authorization or approval of any third party or governmental authority is required in connection therewith.

(g) Taxes, Special Taxes or Assessments. Seller has paid, or will satisfy at Closing, all taxes and assessments which are due or payable on the Property or which may be assessed against the Property or Seller. Seller represents that there are no taxes or assessments due or payable, including but not limited to any taxes due or owing under any State of Wisconsin, Manitowoc County or City of Manitowoc "bnlk sales" ordinances or laws.

(h) Hazardous Materials. Seller has not received a notice of noncompliance with environmental laws for the Real Property and Improvements, and Seller has not treated, stored or disposed of Hazardous Materials on the Property and to the best of Seller's knowledge no such Hazardous Materials have been used at the Property. As used herein, the term "Hazardous Materials" means any hazardous substances, pollutant or contaminant regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas useable for fuel; pesticides regulated under FIFRA; asbestos, PCBs and other substances regulated under TSCA; source material, special nuclear material and byproduct materials regulated under the Atomic Energy Act; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA.

(i) Information. To the best of Seller's knowledge, all information, excluding all third party prepared reports and other third party prepared documents, delivered to Purchaser pursuant to this Agreement is true and complete as of the date delivered (provided further that Seller confirms that Seller has not done anything to make such reports untrue), and all exhibits to this Agreement are true and complete.

(j) Contracts. There are no contracts in place for the Property (except for the Service Contracts), and Seller has not entered into any contracts which affect the Property or are binding on the Property or Purchaser or which affect Seller's ability to perform its covenants and promises made in this Agreement, except for contracts that are terminable at Closing.

Prior to Closing Seller shall promptly notify Purchaser if Seller becomes aware that any of Seller's representations or warranties is no longer true and correct. If Seller gives notice to Purchaser prior to Closing that any of the aforesaid representations or warranties is no longer materially true or correct, Purchaser, as its sole and exclusive remedies, may either: (i) close the transaction contemplated hereby, in which event Purchaser will be conclusively deemed to have accepted the change in condition of such representation or warranty; or (ii) terminate this Agreement by giving notice thereof to Seller no later than 5 business days after Seller gives the aforesaid notice of change in condition to Purchaser and receive a refund of the Earnest Money upon its sole direction to Title

Insurer, provided, however, that if the representation or warranty in question is: (A) rendered inaccurate by virtue of a fact or circumstance which, by its nature, indicates that it has been rendered inaccurate by Seller's willful act or omission; or (B) was untrue as of the Effective Date; or (C) is rendered inaccurate as a result of Seller's breach of this Agreement, then such event shall constitute a default by Seller hereunder, and, in any such case, Purchaser, as its sole and exclusive remedy, shall be entitled to: (X) terminate this Agreement in which case the Earnest Money shall be immediately returned to Purchaser, plus Seller shall reimburse Purchaser for all of Purchaser's out-of-pocket expenses (including reasonable attorneys' fees, consultant fees and other similar costs) up to an amount not to exceed \$15,000.00, which payment obligation shall survive termination of this Agreement; or (Y) close the transaction contemplated hereby, in which event Purchaser will be conclusively deemed to have accepted the change in condition of such representation or warranty (provided Seller shall continue to be responsible for any pre-Closing defaults under any Service Contracts). If necessary, the Closing Date shall be extended to allow Purchaser the full benefit of said 5 business day period to consider Seller's notice of change in condition. Seller shall hold harmless, indemnify and defend Purchaser from and against any and all losses, claims, demands, liabilities, damages, obligations, legal actions or proceedings, investigations, fines or other penalties, and costs or expenses related thereto (including, without limitation, attorneys' fees and expenses) that Purchaser incurs by reason of any breach by Seller of a representation or warranty set forth in this Agreement. This Section 9 shall survive Closing, termination of this Agreement and the conveyance of the Property as contemplated under this Agreement for a period of 12 months after Closing.

10. Representations and Warranties of Purchaser. In addition to any other representations and warranties of Purchaser contained herein, Purchaser represents and warrants that, as of the Effective Date and as of the Closing Date, Purchaser has the legal power, right and authority to enter into this Agreement, to consummate the transactions contemplated hereby, and to execute and deliver all documents and instruments to be delivered by Purchaser hereunder.

11. Defaults and Remedies.

(a) Purchaser's Default. If Purchaser: (i) fails to perform in accordance with the terms of this Agreement, and such default is not cured within 5 business days from the date of Seller's written notice to Purchaser of such default; or (ii) breaches a representation or warranty in this Agreement, then, as Seller's sole and exclusive remedy for such default, Seller shall be entitled to terminate this Agreement by written notice to Purchaser and receive and retain the Earnest Money and any interest earned thereon; it being agreed between Purchaser and Seller that the amount of the Earnest Money shall be liquidated damages for a default of Purchaser hereunder, because of the difficulty, inconvenience and uncertainty of ascertaining actual damages for such default in view of the uncertainties of the real estate market, fluctuating property values, and differences of opinion with respect to damages for breach of a real estate transaction.

(b) Seller's Default. If Seller: (i) fails to perform in accordance with the terms of this Agreement and such default is not cured within 5 business days from the date of Purchaser's written notice to Seller of such default; or (ii) breaches a representation or warranty in this Agreement, then, unless otherwise provided for herein, Purchaser, as its sole and exclusive remedy, may either: (A) terminate this Agreement, receive a refund of the Earnest Money, together with all interest earned thereon, and recover from Seller all of Purchaser's out of pocket expenses (including reasonable attorneys' fees, consultant fees and other similar costs) up to an amount not to exceed \$15,000.00, whereupon neither party shall have any further obligation to the other party; or (B) seek any available remedy at law or in equity, including, without limitation, the right to specific performance.

(c) Prevailing Party. In the event legal action is instituted to interpret or enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable costs and attorney's fees, including, without limitation, all costs and fees that are incurred in any trial, on any appeal and/or in any bankruptcy proceeding.

## 12. Conditions to Obligation to Close.

(a) Seller's Conditions. Seller's obligation to close on the sale of the Property is subject to: (i) Purchaser's representations and warranties being true and correct on the Closing Date; and (ii) Purchaser having complied with all of its obligations hereunder.

(b) Purchaser's Conditions. Purchaser's obligation to close on the purchase of the Property is subject to: (i) Seller's representations and warranties being true and correct on the Closing Date; and (ii) Seller having complied with all of its obligations hereunder.

## 13. Other Covenants and Agreements.

(a) Operation of Property. Seller, from the Effective Date through the Closing Date, shall continue to manage the Property in accordance with past practice and maintain the Property in its current condition, ordinary wear and tear excepted and shall not, without Purchaser's prior written consent, enter into any new leases or licenses or any other types of agreements pertaining to the Property.

(b) Casualty or Condemnation. In the event of fire or other casualty for the Improvements not caused by Purchaser or its Consultants which would cost in excess of \$25,000 to repair (as determined by an insurance adjuster mutually selected by Purchaser and Seller) or impacts Purchaser's ability to develop the Property for its Intended Use, or condemnation of any portion of the Property by any Governmental Authority, or in the event any notice of such condemnation is received by Seller, Seller shall so advise Purchaser within 5 days of such event (or the day before Closing, if sooner) and Purchaser may elect, by written notice to Seller on or prior to the earlier of the 10<sup>th</sup> day following its receipt of Seller's notice or the Closing Date, to terminate this Agreement in which event the Earnest Money, together with all interest earned thereon, shall be immediately returned to Purchaser, and this Agreement shall be of no further force and effect other than for those provisions which expressly survive the termination of this Agreement. If Purchaser does not so elect or is not entitled to do so, then this transaction shall be consummated on the Closing Date and Seller shall assign and transfer to Purchaser on the Closing Date, without warranty or recourse, all of Seller's rights, title an interest in and to all insurance proceeds paid or payable to Seller on account of such fire or casualty and Seller shall pay the deductible therefor or all condemnation awards paid or payable to Seller on account of such eminent domain proceedings.

(c) Brokers. Purchaser and Seller represent and warrant to each other that no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement. In the event of any claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, each party shall indemnify, hold harmless and defend the other party from and against such claims and all costs and expenses, including reasonable attorneys' fees, related to any action, suits or judgments incident to such claims. The indemnification set forth in this Section 13(c) shall survive the Closing.

(d) Licensed Real Estate Broker. It is acknowledged that GMX Real Estate Group, LLC, an Illinois limited liability Company, a member and manager of Purchaser is a licensed real estate broker in the State of Illinois.

(e) Property Off Market. Seller agrees, from and after the Effective Date, it shall end any current negotiations to sell the Property with any third parties other than the Purchaser and shall not: (i) enter into any new negotiations with any third parties for the sale of the Property; (ii) directly or indirectly, market or otherwise attempt to sell the Property; or (iii) solicit offers of purchase for the Property. In the event Seller is approached by a third party to discuss a sale of all or some of the Property, then Seller shall refer such party to Purchaser and otherwise notify Purchaser of the same.

(f) Purchaser's Right to Market for Lease. Following the Effective Date and at any time prior to termination of this Agreement, Purchaser shall have the right to market the Property for lease, and may take all commercially reasonable actions in connection therewith.

(g) Like Kind Exchanges. The parties acknowledge that both Purchaser and Seller may desire that this transaction constitute a tax deferred exchange within the meaning of Section 1031 of the Internal Revenue Code. Provided there is no cost, expense or liability imposed upon the non-requesting party, and the non-requesting party is not required to take title to any other property, then each party agrees to execute any and all additional documentation that may be reasonably necessary to assist the requesting party in concluding this transaction as part of a tax deferred exchange. Purchaser agrees that Seller may assign its rights and obligations under the Purchase and Sale Agreement to Seller's §1031 exchange agent in order to complete an exchange, at no additional expense or liability to Purchaser. In no event shall any such tax deferred exchange result in any unreasonable delay in the Closing.

(h) Possession. Exclusive physical possession of the Property shall be delivered to Purchaser on the Closing Date.

(i) Confidentiality. Purchaser and Seller shall not disclose to any third party (other than prospective lenders, investors, accountants, attorneys and other professionals and Consultants working for either party in connection with the acquisition of the Property) the Purchase Price and any other terms of this transaction without the other's written consent, unless required to do so by law.

#### 14. Miscellaneous.

(a) Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be deemed to have been given and received: (i) when personally delivered or sent by email or facsimile, with a confirmation of transmission if sent by facsimile; (ii) one day after being sent by a nationally recognized overnight courier with guaranteed next day delivery; or (iii) three days after being mailed by United States certified mail, return receipt requested, postage prepaid, to the address set forth below. Notice of change of address shall be given by written notice in the manner set forth in this Section 14(a).

To Seller:                      City of Manitowoc  
   900 Quay Street  
   Manitowoc, WI 54220  
   Attn: Mackenzie Reed-Kadow, City Clerk  
   Fax: 920-686-6959  
   Email: mreedkadow@manitowoc.org

With a copy to:                City of Manitowoc  
   900 Quay Street

Manitowoc, WI 54220  
Attn: Kathleen McDaniel, City Attorney  
Fax: 920-686-6999  
Email: kmcdaniel@manitowoc.org

To Purchaser: GMX Real Estate Group Acquisitions, LLC  
3000 Dundee Road  
Suite 408  
Northbrook, Illinois 60062  
Attention: Kevin Mottlowitz  
FAX: (847) 480-0033  
Email: kbin@gmxre.com

With a copy to: Taft Stettinius & Hollister LLP  
111 East Wacker Drive, Suite 2800  
Chicago, Illinois 60601  
Attention: Kenneth Klassman  
FAX: 312-527-4100  
Email: kklassman@taftlaw.com

(b) Assignment. Purchaser may assign its rights under this Agreement without Seller's consent. To the extent Purchaser assigns this Agreement or designates a nominee to take title to the Property at Closing, all Closing deliverables hereunder shall be titled in the name of such assignee or designee. Seller shall not otherwise assign this Agreement without the prior written consent of Purchaser, provided, however, Seller may assign this Agreement in accordance with Section 13(g) herein without Purchaser's consent.

(c) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(d) Waivers. No waiver of any breach or any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(e) Entire Agreement. All Exhibits attached to this Agreement are hereby incorporated herein by reference. This Agreement (including all Exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any rights or obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. Other than as expressly set forth in this Agreement, the parties do not intend to confer any benefit hereunder on any person, firm or entity other than the parties hereto.

(f) Time of Essence. Seller and Purchaser hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

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

(h) Counterparts. This Agreement may be executed in any number of counterparts and by facsimile or other form of electronic transmission, and each of such counterparts shall, for all purposes, be deemed an original, and all such counterparts shall together constitute one and the same agreement.

(i) Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

(j) Terms. The use of any pronoun in this Agreement shall include the singular, plural, masculine, feminine and neuter, the use of the singular or plural form shall include the plural or singular form, and the use of any gender shall include all genders, as the context may require.

(k) Business Days. If the final day of any period or any date of performance or notice under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance or notice shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

(l) Inspection Prior to Closing. Prior to Closing, Purchaser shall have the right to re-inspect the Property to verify the Property is in the same condition as of the Effective Date, normal wear and tear excepted.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereby execute this Purchase and Sale Agreement as of the Effective Date.

**SELLER:**

CITY OF MANITOWOC, WISCONSIN

By: 

Name: Justin M. Nickels

Its: Mayor

**PURCHASER:**

GMX Real Estate Group Acquisitions, LLC,  
an Illinois limited liability company

By: GMX Real Estate Group, LLC,  
an Illinois limited liability company  
Its Manager

By: 

Kevin B. Mottlowitz, its Manager

**EXHIBIT A**

LEGAL DESCRIPTION

[TBD]



**EXHIBIT B**

STRICT JOINT ORDER ESCROW FORM



***First American  
Title Insurance Company***

NATIONAL COMMERCIAL SERVICES

Escrow Number: NCS \_\_\_\_\_ Date: \_\_\_\_\_, 2021

**STRICT JOINT ORDER ESCROW**

Buyer: GMX Real Estate Group Acquisitions, LLC  
Seller: City of Manitowoc, Wisconsin  
Property Address: 4221 Calumet Avenue, Manitowoc, Wisconsin

Deposit(s): Certified, uncertified, or cashier check(s), or wire(s) in the amount of:

Five Thousand and No/100 Dollars (\$5,000.00)

is/are hereby deposited with First American Title Insurance Company, as escrowee ("Escrowee") under this Strict Joint Order Escrow (this "Agreement") and shall be released and delivered by Escrowee only upon the joint written direction of the Purchaser and Seller (together, the "Parties", and each individually a "Party"), provided, however, that in the event Buyer terminates that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2021 by and between Seller and Buyer on or prior to \_\_\_\_\_, the Deposit shall be released to Buyer upon Buyer's sole direction.

Escrowee is hereby expressly authorized and directed to disregard any and all unilateral directions, notices or warnings given by any Party, or by any other person or entity, regarding this Agreement or the money deposited pursuant to this Agreement. Notwithstanding the foregoing, Escrowee is hereby expressly authorized to regard and to comply with and obey any and all orders, judgments or decrees entered or issued by any court with or without jurisdiction (each, a "Court Order"), and Escrowee shall not be liable to any Party or any other person or entity by reason of compliance with or obedience to any such Court Order, notwithstanding any such Court Order being entered without jurisdiction or being subsequently reversed, modified, annulled, set aside or vacated.

If conflicting demands are made upon Escrowee or legal action is threatened or commenced in connection with this Agreement, Escrowee may, in Escrowee's sole discretion, (a) withhold and stop all further proceedings without liability therefor, or (b) file suit for interpleader or declaratory relief. If (a) Escrowee is required to respond to any legal summons or proceedings, (b) any action of interpleader or declaratory relief is brought by Escrowee, or (c) conflicting demands by or notices from the Parties or any other person or entity are served upon Escrowee, the Parties jointly and severally agree to hold Escrowee harmless from and to pay any and all costs, expenses and attorneys' fees, whether such attorneys shall be regularly retained or specially employed, and any other expenses which Escrowee may incur or become liable for as a result of any of the above described events.

The Parties hereby direct that all amounts due to Escrowee pursuant to this Agreement be deducted from the money held pursuant to this Agreement prior to the disbursement of said money. To the extent said money is not sufficient to pay all amounts due Escrowee under this Agreement, the Parties jointly and severally agree to pay the fees of Escrowee and reimburse Escrowee for all expenses incurred in connection with this Agreement. The Parties hereby grant Escrowee a security interest in and to any and all money, accounts, deposit accounts, instruments or investment property established or held pursuant to this Agreement to secure all amounts due Escrowee under this Agreement.

The Escrow Fee of \$250 for this Strict Joint Order Escrow will be waived should this transaction close with First American Title Insurance Company.

In no case shall the money held pursuant to this Agreement be surrendered to any Party or other person or entity other than Escrowee except (a) in accordance with a written direction executed by both Parties, or their respective legal representatives or assigns, provided that Escrowee shall have received prior written authorization for such legal representative or assign to act on behalf of such Party under this Agreement, or (b) in compliance with a Court Order.

This Agreement is not intended to cancel, supersede or modify the terms of any purchase agreement by and between the Parties insofar as said purchase agreement relates to matters not actually pertinent to this Agreement such as, but not limited to inspections, repairs, warranties, personal property or possession. The duties and responsibilities of Escrowee are limited to this Agreement. For the foregoing purposes, amendments to this Agreement shall be considered the same as this Agreement.

Investment Direction: Money deposited pursuant to this Agreement may be invested on behalf of any Party. Any direction to Escrowee for such investment shall be expressed in writing by the requesting Party and be accompanied by the requisite taxpayer identification number and investment forms. Escrowee will, upon request, furnish information concerning Escrowee's procedures and fee schedules for investment. Any and all additional money deposited with Escrowee shall be governed by this Agreement as if the money were deposited at the execution of this Agreement without requirement for any additional investment instructions.

In the absence of express written direction concerning investment, the Parties agree Escrowee shall be under no duty to invest or reinvest any money at any time held by Escrowee hereunder. Escrowee shall have the full right, power and authority to commingle any and all money, or portion thereof, deposited under this Agreement with Escrowee's other accounts and all income, if any, derived from any use which Escrowee may make of any such money shall belong to Escrowee.

In the event Escrowee is requested to invest money deposited hereunder, Escrowee is not responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of this Agreement.

*[SIGNATURES ON THE FOLLOWING PAGE]*

BUYER: GMX REAL ESTATE GROUP ACQUISITIONS, LLC

By: GMX REAL ESTATE GROUP, LLC, its Manager

Signed By: Kevin Mottawitz  
Address: 3011 Dundee Rd Northbrook, IL 60062  
Phone: 312.401.1338 *site 408*  
E-mail: Km @ GMXRE.com

SELLER: CITY OF MANITOWOC, WISCONSIN

Signed By: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

ACCEPTED:

ESCROWEE: First American Title Insurance Company

By: \_\_\_\_\_  
National Commercial Services