

Community Development Division
625 52nd Street – **Room 308**
262.653.4030

**Redevelopment Authority
of the City of Kenosha
Agenda**

Monday, November 5, 2012
5:00 p.m.

*Katherine Marks - Chairperson and Bob Johnson - Vice Chairperson
Alderman Michael Orth, Everett Butler, Eric Migrin, John Potente, Doug Williams*

Call to Order and Roll Call

1. Second Amendment to Contract of Purchase and Sale and Development Agreement by and between Kenosha Newco Capital, LLC, f/k/a UBC Kenosha, LLC, the City of Kenosha, Wisconsin and the Redevelopment Authority of the City of Kenosha.

Public Comments

Authority Comments

Staff Comments

Adjournment

Community Development & Inspections
625 52nd Street – Room 308
Kenosha, WI 53140
262.653.4030 phone / 262.653.4045 fax
www.kenosha.org

If you are disabled in need of assistance, please call 262.653.4030 at least 72 hours before this meeting.

Notice is hereby given that a majority of the members of the Common Council may be present at the meeting. Although this may constitute a quorum of the Common Council, the Council will not take any action at this meeting.

**SECOND AMENDMENT TO CONTRACT OF
PURCHASE AND SALE AND
DEVELOPMENT AGREEMENT**

By And Between

**KENOSHA NEWCO CAPITAL, LLC
f/k/a UBC KENOSHA, LLC,
A Wisconsin Limited Liability Company**

And

**THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation,**

And

**THE REDEVELOPMENT AUTHORITY OF THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Redevelopment Authority,**

THIS SECOND AMENDMENT is made and entered into by and between **KENOSHA NEWCO CAPITAL, LLC f/k/a UBC KENOSHA, LLC**, a Wisconsin limited liability company, as the successor/assignee of Uptown Brass Development, LLC, **THE CITY OF KENOSHA, WISCONSIN**, a Wisconsin municipal corporation, and **THE REDEVELOPMENT AUTHORITY OF THE CITY OF KENOSHA, WISCONSIN**, a Wisconsin redevelopment authority.

WITNESSETH:

WHEREAS, on March 28, 2002, Outokumpu Copper Kenosha, Inc., Atlantic Richfield Company, City of Kenosha ("**CITY**") and TRC Companies, Inc. ("**TRC**") entered into an Exit Strategy Contract ("Exit Contract"); and,

WHEREAS, a Contract of Purchase and Sale and Development Agreement was entered into on February 17, 2005 ("**Contract**"), by and between **PROFESSIONAL REALTY AND DEVELOPMENT CORPORATION ("PRDC")**, **THE REDEVELOPMENT AUTHORITY OF THE CITY OF KENOSHA, WISCONSIN ("AUTHORITY")**, and **THE CITY OF KENOSHA, WISCONSIN, ("CITY")**; and,

WHEREAS, the real estate subject to the Contract was divided into five (5) parcels as depicted on Exhibit "A", attached hereto; and,

WHEREAS, pursuant to the terms of the Contract, **PRDC** was to purchase and develop certain real estate, as more particularly set forth in the Contract; and,

WHEREAS, **CITY**, **PRDC**, and **TRC** entered into a Contract for Coordination of Remediation dated March 11, 2005 ("**Remediation Contract**"); and

WHEREAS, on September 29, 2005, an Assignment and Assumption Agreement and Amendment to Development Agreement ("**Assignment**") was executed by **CITY**, **PRDC**, and **UPTOWN** wherein **PRDC** assigned its rights and obligations under the Exit Contract, Remediation Contract and Contract to Uptown Brass Development, LLC ("**UPTOWN**"); and,

WHEREAS, on September 29, 2005, **UPTOWN** purchased Parcels 1 through 3 for the sum of Two Hundred Fourteen Thousand Twenty-one (\$214,021.00) Dollars; and,

WHEREAS, pursuant to the terms of the Contract, **UPTOWN** had until February 17, 2009, to close upon the purchase of Parcels 4 and 5, but failed to exercise such right; and,

WHEREAS, pursuant to the terms of the Contract, **UPTOWN** was to develop Parcel 3 in accordance with a concept plan ("Plan"), as depicted in Exhibit "B", attached hereto; and,

WHEREAS, the Plan called for the development of a parcel within Parcel 3, which is identified thereon as M1 and M2 ("Parcel M1/M2"); and,

WHEREAS, development was commenced but not completed on Parcels M1 and M2; and,

WHEREAS, Parcels 1 and 3 was encumbered by a mortgage held by Associated Bank in the amount of Twelve Million Five Hundred Thousand (\$12,500,000.00) Dollars, and recorded in the Office of the Kenosha County Register of Deeds as Document No. 1516455; and,

WHEREAS, the mortgage held by Associated Bank has been assigned to Kenosha Newco Capital, LLC ("**KNC**") f/k/a UBC Kenosha, LLC, and said assignment has been recorded in the Office of the Kenosha County Register of Deeds as Document No. 1637746; and,

WHEREAS, **UPTOWN** has not commenced development of Parcel 1; and,

WHEREAS, **CITY** has the right to enforce various remedies under the Contract, including the right to repurchase parcels which were not developed in a timely manner, but has not to date asserted those rights; and,

WHEREAS, the purchase price to repurchase the Parcels is equal to the sum of (i) eighty percent (80%) of the original purchase price, and (ii) the outstanding balance of all principal and accrued interest under the mortgage loan encumbering the Parcels; and,

WHEREAS, **KNC** has foreclosed its mortgage, and intends to take title to Parcels 1 and 3, to refinance the Parcels and to complete the development.

WHEREAS, **KNC** has requested that the **CITY** terminate certain repurchase rights in order for it to proceed with a refinancing of the Parcels; and,

WHEREAS, the parties are agreeable to an extension of time for **KNC** to develop Parcels 1, and Parcel M1/M2.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained therein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between the undersigned as follows:

1. Extension. Subject to Sections 3 and 4 below, **KNC** shall have until August 15, 2017 and August 15, 2015, to commence construction on Parcel 1 and Parcel M1/M2, respectively. Construction shall include, but is not limited to, roads, sidewalks, landscaping, underground utilities and overhead street lighting on all internal and abutting street right-of-ways.

The development of each Parcel shall be subject to the following conditions:

a. Prior to commencing construction, **KNC** shall deliver to **CITY** a Performance Bond of the contractor, in amount determined by **CITY**, in its reasonable discretion, assuring timely construction completion.

b. All construction shall be carried out in a good and workmanlike manner using first class materials, and in accordance with all applicable State and **City** laws, ordinances, rules and regulations, and the Conditional Use Permit.

c. No construction shall take place that is not specified in the Conditional Use Permit for that Parcel or Parcel(s), unless the Conditional Use Permit is amended.

d. All State and City consents, licenses and permits required to undertake the construction will be obtained by **KNC**, at **KNC's** expense, prior to the commencement of work.

e. The Kenosha Department of City Development will monitor the progress and completion of the development of each Parcel. The Department of City Development will furnish **KNC** with a Certificate of Completion upon the satisfactory completion of all construction work and related improvements specified in the Conditional Use Permit ("Certificate of Completion").

The Progress Schedule attached as Exhibit "C" to the Development Agreement is deleted and replaced with the following:

<u>Phase I</u>	<u>Construction Start</u>	<u>Construction Completion</u>	<u>Occupancy</u>
Grocery Store	Completed and occupied	(Milestones met)	
Mixed Use Bldg. 20 th Ave	Completed and occupied	(Milestones met)	
Parcel 2	Completed and occupied	(Milestones met)	
Parcel 1 (vacant parcel)	(08/15/2017) ¹	12/31/19	12/31/20
Parcel M1/M2 (foundation parcel)	(8/15/2015)	12/31/17	12/31/18

2. **Site Security.** The parties acknowledge that **UPTOWN** has performed the following:

As to Parcel M1/M2:

a. All existing door, window and other foundation wall openings are to be boarded up with 3/4" exterior grade plywood, cut to fit each opening, and sealed to be weathertight.

b. All openings on the deck of the foundation, where chases and elevator shafts have been removed, shall be framed with 2" x 6" structural members, sixteen (16") inch on center, and covered with 3/4" exterior grade plywood and made weathertight.

c. All plywood shall be painted a gray color.

d. All debris, garbage, masonry blocks, snow fence, etc. are to be removed from the entire Parcel including the deck of the foundation.

e. All temporary erosion control measures shall be removed from the Parcel.

f. The entire area around the foundation shall be filled and graded so as to be no more than six (6) inches below the top of the foundation. The Parcel must then be re-seeded and restabilized.

g. No other materials or equipment is to be stored on the Parcel.

Furthermore, the parties agree that the condition and maintenance of the Parcels will be reevaluated by **CITY** from time to time and **KNC** shall comply with all orders, citations, and directions issued by **CITY** regarding the condition, maintenance and security of Parcels 14 and

¹ The installation of the cap on Parcel 1 shall be completed on or before October 1, 2013.

M1/M2.

3. Parcel M1/M2: Removal of Foundation or Development . With respect to Parcel M1/M2, **KNC** shall, on or before August 15, 2015, at its sole expense, either remove the foundation currently existing thereon or commence further construction thereon. In the event **KNC** removes the foundation, it shall restore the site to the condition in which the site can be seeded or covered by sod. Regardless of whether the foundation is removed **KNC** shall commence construction on Parcel M1/M2 on or before August 15, 2015.

4. Parcel 1: Environmental Issues/Development. (a) With respect to Parcel 1, **KNC** shall, at its sole expense, , install a cap on Parcel 1 in accordance with any requirements of the Wisconsin Department of Natural Resources. **KNC** shall obtain written documentation from the Wisconsin Department of Natural Resources that the cap is complete on or before October 1, 2013. **(b)** **KNC** shall, at its sole expense, on or before August 15, 2017, commence construction on Parcel 1. In the event **KNC** does not commence construction on Parcel 1 on or before August 15, 2017, then the **CITY** shall have the right to repurchase Parcel 1 for Twenty Thousand Two Hundred Eighty-One Dollars and Seventy-Three Cents (\$20,281.73). The parties acknowledge and agree that said sums are equal to eighty percent (80%) of **KNC's** purchase price. **KNC** shall convey the Parcel to **CITY** free and clear of all mortgages, liens and encumbrances. **KNC** shall provide, at its cost, title insurance in an amount equivalent to the sale price. Taxes, water, sewer and other utility charges shall be prorated as of the date of conveyance. The **CITY** shall exercise said right to repurchase Parcel 1 by providing a sixty (60) day written notice to **KNC** on or after August 15, 2017.

5. Liquidated Damages. The parties acknowledge that the **CITY** has incurred costs in connection with the Redevelopment Site. In the event **KNC** fails to comply with any requirement of Sections 3 or 4 above, **KNC** shall have an obligation to pay to the **CITY** within thirty (30) days notice \$200,000.00 as liquidated damages. As security for said obligation **KNC** shall post with **CITY** an irrevocable letter of credit, in a form acceptable to **CITY**, for said amount. Said irrevocable letter of credit shall be delivered to the **CITY** by **KNC** within ninety (90) days of **KNC** acquiring title to the Parcels. With the exception of **CITY's** right to repurchase as set forth in Section 4 herein **KNC** shall be released from any remaining liability with respect to its failure to comply with Sections 3 or 4.

6. Termination of Certain Repurchase Rights. Except with respect to Parcel 1, the **CITY's** right to repurchase the Parcels set forth in Section 17 of the Contract, is hereby terminated. The **CITY's** right to repurchase Parcel 1 is subject to Section 4 of this Amendment.

7. Recording. The parties agree that this Development Agreement as amended, or a memorandum thereof, shall be recorded at the Office of the Register of Deeds for Kenosha County and the covenants and agreements contained herein shall run with the land and be binding upon heirs, assigns, legal representatives and successors to the parties hereto.

8. Notices. Any notice required to be given to any party to this Agreement shall be in writing and delivered either by hand or certified mail, return receipt requested, to the addresses indicated below, or such address as the parties indicate in writing. Notice shall be effective as of the date of delivery, if by hand, or mailing, if by certified mail.

If to **CITY**:

Debra Salas
City Clerk/Treasurer
Municipal Building, Room 105,
625 - 52nd Street,
Kenosha, Wisconsin 53140;

with a copy to:

City Attorney
Municipal Building, Room 201,
625 - 52nd Street,
Kenosha, Wisconsin 53140.

If to **KNC**:

Kenosha Newco Capital, LLC
1200 N. Mayfair Road, Suite 220
Milwaukee, WI 53226

with a copy to:

Scott J. Grady, Esq.
Grady, Hayes & Neary, LLC
N14 W23777 Stone Ridge Drive, Suite 200
Waukesha, WI 53188

9. Exhibits. The following Exhibits are attached hereto and incorporated herein by reference:

- a. Exhibit "A" - General Property Description.
- b. Exhibit "B" - Concept Plan.
- c. Exhibit "C" - Progress Schedule
- d. Exhibit "D" - Assignment and Assumption Agreement

10. Waiver. No extension of time, forbearance, neglect or waiver by a party to this Contract with respect to any one or more of the covenants, terms or conditions of this Contract shall be construed as a waiver of any of the other covenants, terms or conditions of this Contract, nor shall any extension of time, forbearance or waiver by a party hereto in any one or more instance or particulars to be a waiver or act as an estoppel with respect to any other instance or particular covered by this Contract.

11. Effective Date. This Amendment shall be effective on the date of last execution by a party hereto (the "Effective Date"). Simultaneously with the execution of this Amendment, **KNC** shall execute an Assignment in the form attached as Exhibit "D" wherein it assumes the obligations of **UPTOWN** under the Exit Contract, Remediation Contract and Contract. In the event **KNC** does not take title to Parcels 1 and 3 and execute said Assignment by December 31, 2012, then this Amendment and the Assignment shall be null and void.

12. Amendment. Any reference in the Contract, as amended by the Amendment to Contract of Purchase and Sale and Development Agreement recorded with the Kenosha County Register of Deeds Office as Document No. 1628103, to the extent it is inconsistent with the above, shall be deemed amended.

13. Representation Of Authority To Enter Into Contract. Each of the undersigned hereby represents and warrants that: (a) such party has all requisite power and authority to execute this Contract; (b) the execution and delivery of this Contract by the undersigned, and the performance of its terms thereby have been duly and validly authorized and approved by all requisite action required by law; and (c) this Contract constitutes the valid and binding agreement of the undersigned, enforceable against each of them in accordance with the terms of the Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers, sealed, and delivered as of the day and year first above written.

**KENOSHA NEWCO CAPITAL, LLC
f/k/a UBC KENOSHA, LLC
By: Wangard Advisors LLC, Manager**

BY: _____
Stewart M. Wangard, Manager

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF MILWAUKEE)

Personally came before me this ____ day of _____, 2012, Stewart M. Wangard, the manager of **WANGARD ADVISORS, LLC**, a Wisconsin limited liability company, to me known to be such manager of said company and acknowledged to me that they executed the foregoing instrument as such manager as the agreement of said company, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

**THE REDEVELOPMENT AUTHORITY OF
THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Redevelopment Authority**

BY: _____
KATHERINE MARKS, Chairperson
Date: _____

BY: _____
JEFF LABAHN, Secretary
Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2012, **KATHERINE MARKS, Chairperson**, and **JEFF LABAHN, Secretary**, of **THE REDEVELOPMENT AUTHORITY OF THE CITY OF KENOSHA, WISCONSIN**, a Wisconsin redevelopment authority, to me known to be such Chairperson and Secretary of said Authority and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said Authority, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

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

BY: _____
KEITH G. BOSMAN, Mayor
Date: _____

BY: _____
DEBRA SALAS,
City Clerk/Treasurer
Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2012, **KEITH G. BOSMAN, Mayor**, and **DEBRA SALAS, City Clerk/Treasurer**, of the **CITY OF KENOSHA, WISCONSIN**, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the Agreement of said City, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

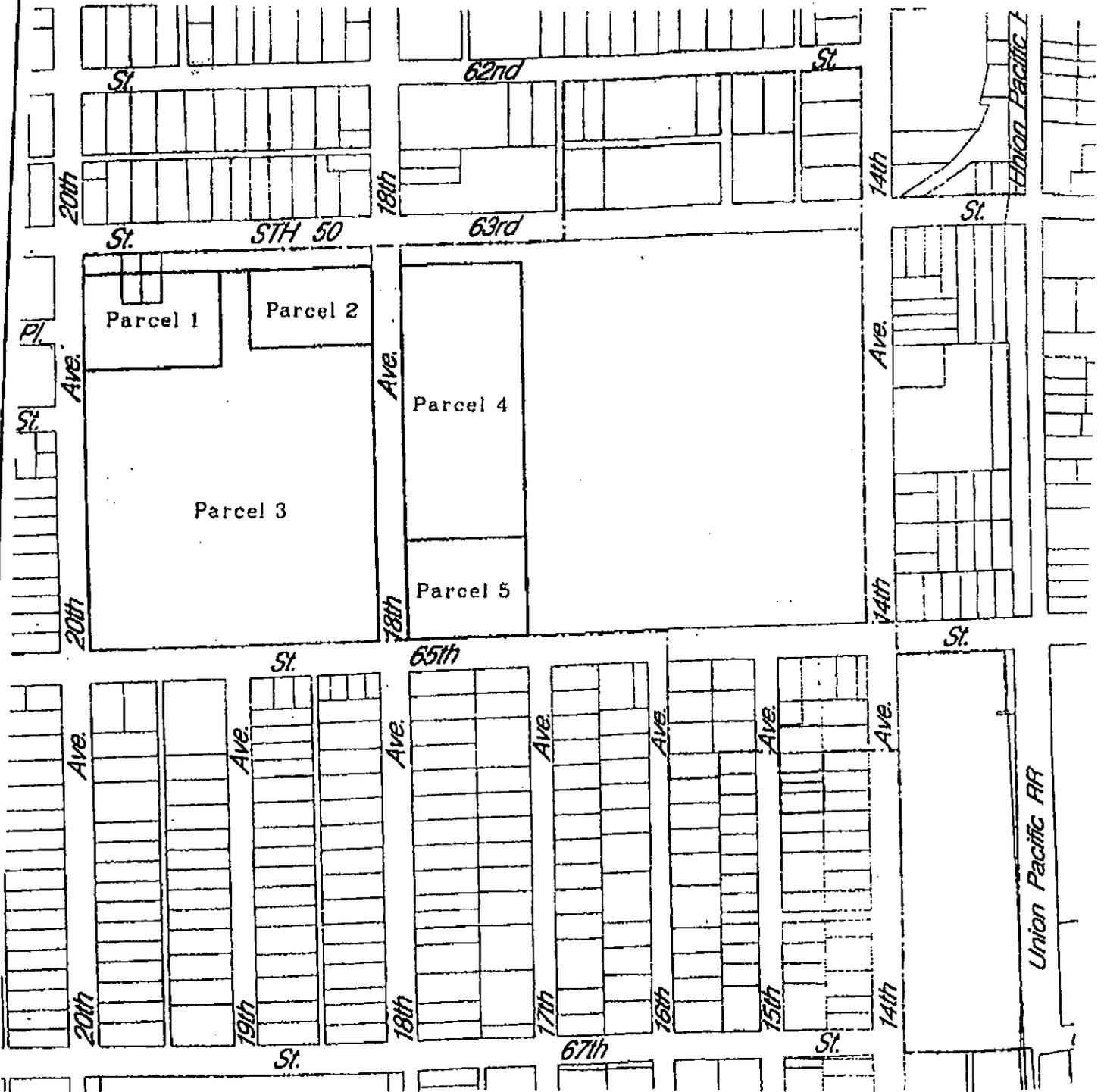
COUNTERSIGNED:

BY: _____
CAROL STANCATO, Finance Director
Date: _____

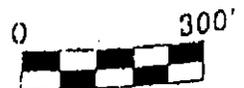
Drafted By:
WILLIAM K. RICHARDSON,
Assistant City Attorney

Exhibit "A"

General Property Description



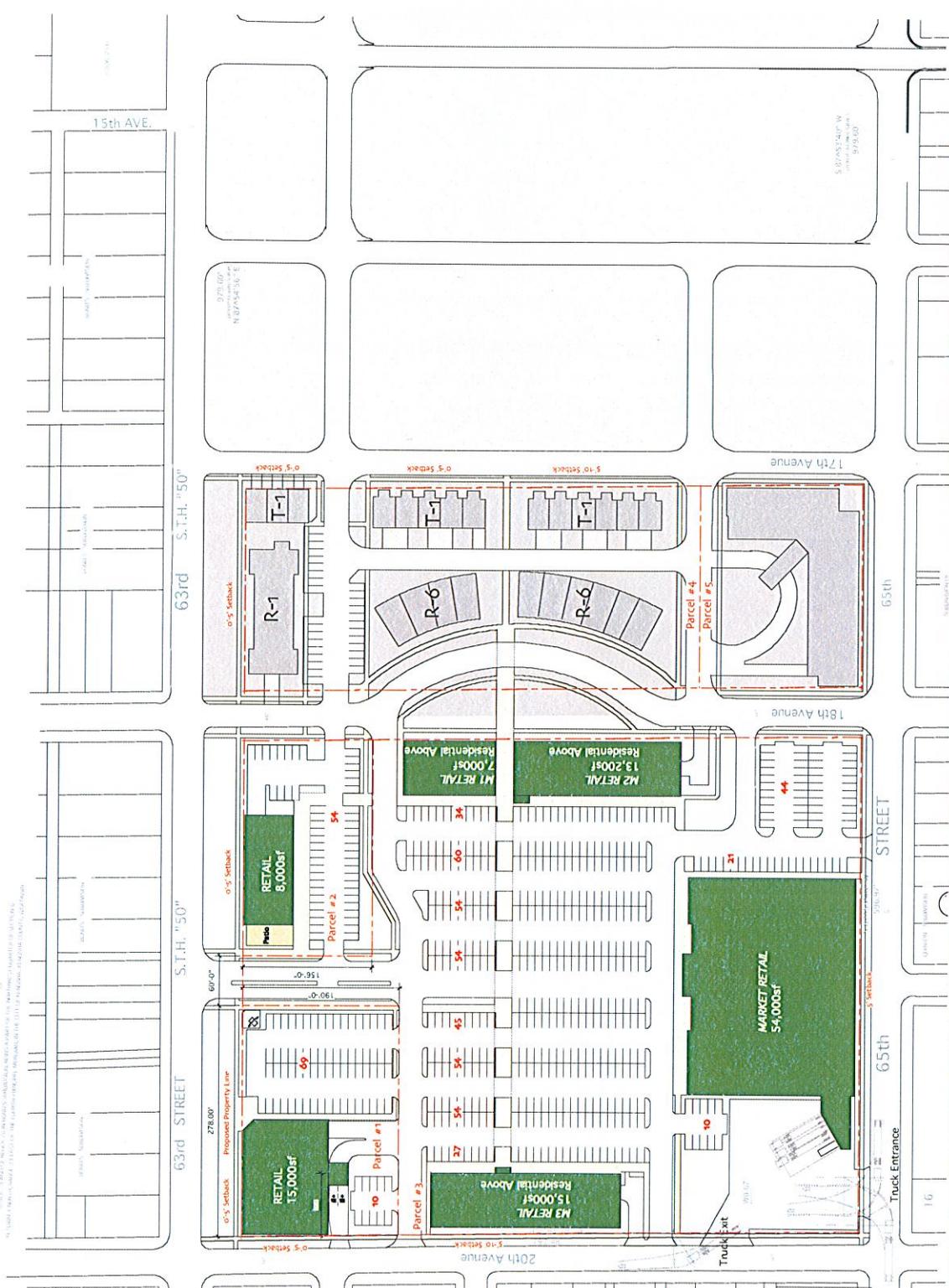
NORTH



----- Brass Redevelopment Project Area Boundary

FLAT OF SURVEY

PROPOSED LOT/STAIR REVISIONS
 15' SIDE SETBACK FROM EXISTING SIDEWALK FOR THE MARKET/RESIDENTIAL/RETAIL
 15' SIDE SETBACK FROM EXISTING SIDEWALK FOR THE MARKET/RESIDENTIAL/RETAIL/STAIR



MARKET	54,000sf		
RETAIL	54,000sf		
RESIDENTIAL	54,200sf		
Sub-Parking	62 UNITS		
Parcel #1	60	54	
Parcel #2	54	54	
Parcel #3	480	516	
UNDERGROUND PARKING (Proposed)			108 SPACES

Uptown Brass Center
 Kenosha Wisconsin

63rd S.T.H. "50"
 65th
 17th Avenue
 18th Avenue
 20th Avenue
 STREET
 Truck Entrance
 16



PRDC TWA 21-DEC-2004

EXHIBIT C
PROGRESS SCHEDULE

<u>Phase I</u>	<u>Construction Start</u>	<u>Construction Completion</u>	<u>Occupancy</u>
<u>Grocery Store</u>	<u>Completed and occupied</u>	<u>(Milestones met)</u>	
<u>Mixed Use Bldg. 20th Ave</u>	<u>Completed and occupied</u>	<u>(Milestones met)</u>	
<u>Parcel 2</u>	<u>Completed and occupied</u>	<u>(Milestones met)</u>	
<u>Parcel 1</u> <u>(vacant parcel)</u>	<u>(08/15/2017)¹</u>	<u>12/31/19</u>	<u>12/31/20</u>
<u>Parcel M1/M2</u> <u>(foundation parcel)</u>	<u>(8/15/2015)</u>	<u>12/31/17</u>	<u>12/31/18</u>

¹ The installation of the cap on Parcel 1 shall be completed on or before October 1, 2013.

EXHIBIT D

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is made and entered into as of the ____ day of October, 2012, ("Effective Date"), by and between **UPTOWN BRASS DEVELOPMENT, LLC**, a Wisconsin limited liability company, hereinafter referred to as "**Assignor**", and **KENOSHA NEWCO CAPITAL, LLC f/k/a UBC KENOSHA, LLC**, a Wisconsin limited liability company, hereinafter referred to as "**Assignee**".

WITNESSETH:

WHEREAS, **Assignor** is a party to the Contract of Purchase and Sale and Development Agreement dated effective February 17, 2005 by and among **Assignor**, the City of Kenosha, Wisconsin, a municipal corporation, and the Redevelopment Authority of the City of Kenosha, Wisconsin, a duly organized and existing redevelopment authority under the laws of the State of Wisconsin ("Developer's Agreement"), Exit Strategy Contract dated March 28, 2002 between Outokumpu Copper Kenosha, Inc., Atlantic Richfield Company and City of Kenosha and Contract for Coordination of Remediation dated March 11, 2005, between City of Kenosha, **Assignor**, and TRC Companies, Inc., all by virtue of the Assignment and Assumption Agreement and Amendment to Developer's Agreement dated September 29, 2005, a copy of which is attached hereto as Exhibit "A" ("Assignment Agreement");

WHEREAS, **Assignor** desires to assign to **Assignee**, and **Assignee** desires to assume all of **Assignor's** right, title and interest in, to and under the Developers Agreement, Exit Strategy Contract and Remediation Contract (collectively referred to as "Development Agreements")

NOW, THEREFORE, in consideration of the mutual covenants contained herein and all other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned do hereby agree as set forth below.

1. Assignment. As of the Effective Date hereof, **Assignor** hereby grants, sells, transfers, conveys, sets over and assigns to **Assignee** all of **Assignor's** rights, title and interest in, to and under the Developers Agreements.

2. Acceptance and Assumption. As of the Effective Date hereof, **Assignee** hereby accepts the assignment of all of **Assignor's** rights, title and interest in, to and under the Developers Agreements and agrees to fully and faithfully observe, perform and discharge all obligations, covenants, duties and liabilities to be performed by the **Assignor** under the Developers Agreements.

3. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of **Assignor** and **Assignee** and their respective permitted successors and assigns.

4. Further Assurances. From time to time, at any party's request and without further consideration, the other will execute and deliver such documents, instruments and consents and take such other action as the other may reasonably request in order to consummate more effectively the transactions and actions contemplated hereby.

IN WITNESS WHEREOF, the parties hereto have herein executed this Agreement on the dates below given.

ASSIGNOR:
UPTOWN BRASS DEVELOPMENT, LLC
A Wisconsin Limited Liability Company

BY: _____
Lawrence E. Kilduff, Member

Date: _____

ASSIGNEE:
KENOSHA NEWCO CAPITAL, LLC
f/k/a UBC KENOSHA, LLC
By: Wangard Advisors LLC, Manager

BY: _____
Stewart Wangaard, Member

CITY OF KENOSHA'S CONSENT

The undersigned hereby consent and agree to the terms of the foregoing Assignment and Assumption Agreement, and hereby releases **UPTOWN BRASS DEVELOPMENT, LLC**, from any obligation or liability under the Development Agreements.

CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation

BY: _____
Keith G. Bosman, Mayor

Date: _____

BY: _____
Debra Salas, City Clerk/Treasurer

Date: _____

Drafted By:
WILLIAM K. RICHARDSON,
Assistant City Attorney