

**COPY**

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 16

DANE COUNTY

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RICHARD G. McLELLAN,  
RICK BOGLE, and  
PRIMATE FREEDOM PROJECT,

Plaintiffs,

Case No.: 05-CV-3412

v.

ROGER L. CHARLY,

Defendant.

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**NOTICE OF MOTION AND MOTION FOR TEMPORARY INJUNCTION**

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TO: Roger L. Charly  
c/o Jon C. Manzo  
Attorney at Law  
6808 University Avenue, Suite 125  
Middleton, Wisconsin 53562

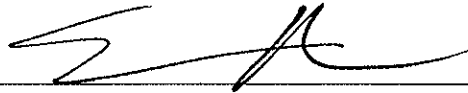
PLEASE TAKE NOTICE that Plaintiffs Richard G. McLellan, Rick Bogle and the Primate Freedom Project (together, "Plaintiffs"), by their attorneys LaFollette Godfrey & Kahn, move the Court, Hon. Sarah B. O'Brien presiding, for an order maintaining the status quo by immediately restraining and enjoining defendant Roger L. Charly from selling or otherwise encumbering the real property he owns and possesses at 26 North Charter Street, Madison, Wisconsin (the "Property"). The Property that is the object of the above-captioned action has the following legal description: The South ½ of Lot 6 and all of Lot 9 of the Morhoff Replat, in the City of Madison, Dane County, Wisconsin. Plaintiffs further move the Court to maintain the requested Order until such time as this action is fully and finally resolved and all possible appellate rights of any and all parties to this action are fully and finally exhausted. The grounds

for this motion are set forth in, and this motion is supported by, the record in this action, the accompanying brief, and the affidavit of Kendall W. Harrison. The motion will be heard at a time and place to be determined by the Court.

Dated: October 26, 2005.

LAFOLLETTE GODFREY & KAHN  
*an office of Godfrey & Kahn, S.C.*

By:



Kendall W. Harrison, State Bar No. 1023438  
Steven A. Heinzen, State Bar No. 1032278

Attorneys for Plaintiffs

One East Main Street, Suite 500  
P.O. Box 2719  
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**BRIEF IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY INJUNCTION**

---

**INTRODUCTION**

On several occasions during the past year and more defendant Roger L. Charly (“Charly”) promised to sell Plaintiffs Richard G. McLellan, Rick Bogle and the Primate Freedom Project the real property he owns at 26 North Charter Street in Madison, Wisconsin (the “Property”), which, significantly, lies between two University of Wisconsin facilities used in primate research. Mr. Charly’s promises culminated in a written option contract (the “McLellan Option”) whereby Mr. Charly agreed to sell Dr. McLellan the Property for \$675,000 once Dr. McLellan exercised his option rights.

After entering into the McLellan Option in May 2005, Mr. Charly later negotiated and then accepted from University Research Park Development, LLC (“URP Development”) a second and subordinate \$1,000,000 option contract on the Property (the “URP Option”). After securing this second option at a \$325,000 premium over the amount he had earlier agreed to sell the Property to Plaintiffs—and undoubtedly suffering from seller’s remorse—Mr. Charly

suggested that Plaintiffs increase the McLellan Option price. Recognizing that they have the earlier, superior option to purchase the Property, Plaintiffs have rightly declined to renegotiate. Instead, Dr. McLellan exercised the option in August 2005 and stands ready, willing and able to close on the Property. Unfortunately, with the higher purchase price of the URP Option in hand, Mr. Charly now refuses to convey the Property to Dr. McLellan as he had earlier agreed and contracted. Indeed, it has recently become apparent that despite Plaintiffs' clear legal interest in the Property—and despite Plaintiffs' request in this lawsuit for an order of specific performance requiring Mr. Charly to sell the Property to them—Mr. Charly nonetheless is working to convey the Property to URP Development outside of this proceeding. The Court should stop him from doing so.

### FACTS

The facts supporting Plaintiffs' motion are detailed in the Complaint and adopted here, supplemented with the recently uncovered information that Mr. Charly has accepted URP Development's \$1,000,000 option to purchase the Property and is moving forward with that conveyance.

In or about June 2004, Mr. Bogle, then a resident of California, was visiting Madison, Wisconsin. Affidavit of Rick Bogle ("Bogle Aff."), ¶ 2. While in Madison, Mr. Bogle visited a friend who was protesting the University's treatment of primates outside the two University of Wisconsin facilities used for primate research: 1) the National Institutes of Health's Wisconsin National Primate Research Center; and 2) a laboratory known as the Harlow Primate Laboratory (together, the "Primate Buildings"). *Id.* The Primate Buildings are located on Charter Street, in the first and second blocks north of Regent Street, in Madison. *Id.* The Property at issue in this action is situated between the University's Primate Buildings. *Id.* ¶¶ 2, 4-5.

Mr. Bogle has been actively involved with efforts to illuminate and end the inhumane treatment of primates in scientific research for nearly a decade, and helped to found the Primate Freedom Project, an organization dedicated to ending the use of primates in harmful biomedical and behavioral experimentation. Bogle Aff. ¶ 3.

During his June 2004 visit to Madison, Mr. Bogle immediately recognized that, due to its proximity to the Primate Buildings, the Property provided an absolutely unique space to present a primate research exhibit illuminating the inhumane practice of using primates in scientific research. Bogle Aff. ¶ 4. Mr. Bogle had visited the seven other National Primate Research Centers located throughout the United States and knew that there were no other opportunities for exhibition halls situated in such close proximity to any similar primate research facility. *Id.*

Mr. Bogle quickly discovered that Mr. Charly owned the Property and met with him during this June 2004 trip. Bogle Aff. ¶ 5. When they met, Mr. Bogle told Mr. Charly that he wished to use the Property for a primate research exhibition hall that would raise awareness of the results of studies on the minds and emotions of monkeys and apes and illuminate the inhumane practice of using primates in scientific research. *Id.* After learning of the use Mr. Bogle would make of the Property, Mr. Charly agreed to sell the Property—which had been assessed by the City of Madison at about \$140,000—for \$750,000. *Id.*

Over the next several months, Mr. Bogle and Mr. Charly discussed Mr. Bogle's and the Primate Freedom Project's anticipated use of the Property, as well as Mr. Bogle's concerns that the University would endeavor to stymie that work. Bogle Aff. ¶ 6. In response to Mr. Bogle's concerns that the University would work to interfere with his acquisition and use of the Property, Mr. Charly assured Mr. Bogle that he would never sell the Property to the University. *Id.*

Based on Mr. Charly's representations, Mr. Bogle and his wife turned down job offers they had received to teach in Florida starting in the 2004-2005 school year, and they turned away others inquiring into their availability to teach. Bogle Aff. ¶ 7. Instead, they prepared to move to Madison—which Mr. Bogle did in September 2004 and his wife in November 2004—and Mr. Bogle began pouring his energy and efforts into realizing an exhibition hall on the Property. *Id.* ¶¶ 7, 8. As part of his efforts, Mr. Bogle spent considerable time in the late summer and early fall of 2004 seeking financial backing from private donors for the purchase of the Property. *Id.* ¶ 8. One of the individuals he contacted was plaintiff Richard McLellan, a retired medical doctor. *Id.*

Like Mr. Bogle, Dr. McLellan has an interest in illuminating and ending the use of primates in scientific research. Bogle Aff. ¶ 9. At a meeting with Mr. Bogle in or around August 2004, Dr. McLellan agreed to mortgage some of his own property in order to provide the necessary funds for the initial purchase of the Property, with the understanding that Mr. Bogle would be personally responsible for making all mortgage payments and, eventually, would buy the Property from him. *Id.* They further agreed that, as soon as Dr. McLellan purchased the Property, it would be available to Mr. Bogle and the Primate Freedom Project for development of the exhibition hall. *Id.*

During the same period that he was working to raise the funds needed to purchase the Property, Mr. Bogle had a number of phone conversations with Mr. Charly to apprise him of his efforts. Bogle Aff. ¶ 10. In one or more of those conversations, Mr. Bogle told Mr. Charly that he and his wife were preparing to move from California to Madison to start laying the groundwork for the exhibition hall and that, accordingly, they would be buying a house in

Madison. *Id.* Mr. Charly assured Mr. Bogle on more than one occasion that he would sell the Property to him. *Id.*

In October 2004, Dr. McLellan flew from California to Madison to meet with Mr. Bogle and Mr. Charly in connection with the planned purchase of the Property. Bogle Aff. ¶ 11. During the October 2004 meeting in Madison, Mr. Charly, Mr. Bogle and Dr. McLellan negotiated key changes to Mr. Charly's oral agreement with Mr. Bogle. *Id.* Those changes included: (1) the reduction of the Property's sale price to \$675,000; and (2) the substitution of Dr. McLellan for Mr. Bogle as the purchaser, with the Property's use remaining for the benefit of Mr. Bogle and the Primate Freedom Project in establishing a primate research exhibition hall. *Id.* Mr. Charly, Dr. McLellan and Mr. Bogle agreed that it would be appropriate to memorialize the terms of the option in written form. *Id.*

In early January 2005, Mr. Bogle and Dr. McLellan hired a Wisconsin-based appraisal and consulting firm to conduct an appraisal of the Property's market value and, around the same time, and in furtherance of the parties' agreement, Mr. Bogle also hired an attorney to draft the option in written form. Bogle Aff. ¶ 12. Dr. McLellan, Mr. Charly and Mr. Bogle exchanged several drafts of the written contract as they continued to negotiate certain changes. *Id.* The parties reached a final agreement as to the terms of the written option in the spring of 2005, which is the option referred to herein as the McLellan Option. *Id.* Mr. Charly executed the McLellan Option on April 27, 2005, and Dr. McLellan countersigned on May 10, 2005. *Id.*, and Exhibit A to Bogle Aff.

In the days and weeks following the execution of the McLellan Option, and acting on the assurances of Mr. Charly as expressed in that agreement and otherwise, Mr. Bogle initiated a public national fund-raising campaign under the auspices of the Primate Freedom Project to raise

the necessary funding to pay back Dr. McLellan and begin initial renovations to the Property. Bogle Aff. ¶ 13. The campaign activities included, among other things, creating a web site ([www.PrimateResearch.com](http://www.PrimateResearch.com)); designing and printing over 400,000 pieces of fundraising literature; providing postage for initial mailings to approximately 40,000; and registering and obtaining the necessary fund-raising licenses with the majority of the states in the United States. *Id.* Then, on June 4, 2005, the Primate Freedom Project put on a public announcement and rally in front of the largest building on the Property, where a sign was unveiled announcing that the Property was the future location of the “National Primate Research Exhibition Hall.” *Id.*

On August 12, 2005, Dr. McLellan exercised the McLellan Option and delivered the execution to Mr. Charly and his attorney. Bogle Aff. ¶ 14, and Exhibit B to Bogle Aff. Despite that, Mr. Charly has refused to convey the Property pursuant to the terms of the McLellan Option. *Id.* ¶ 15. Indeed, just a few days before Dr. McLellan exercised the McLellan Option, Plaintiffs learned from Mr. Charly that he had decided not to respect the McLellan Option and that he had received an Option to Purchase the Property from URP Development for \$1,000,000—a \$325,000 premium over the purchase price to which Mr. Charly had agreed in the McLellan Option (the “URP Option”). *Id.* Through counsel, Mr. Charly sent Plaintiffs a copy of the URP Option which, at that time, had not been executed by Mr. Charly. *Id.*, and Exhibit C to Bogle Aff.

Plaintiffs filed the summons and complaint in this action on October 18, 2005, seeking an order for specific performance that Mr. Charly convey the Property to Plaintiffs. Affidavit of Kendall W. Harrison (“Harrison Aff.”), ¶ 2. The next morning, through counsel, Plaintiffs faxed a copy of the summons and complaint to Mr. Charly’s attorney, together with a request that Mr. Charly stipulate not to convey or otherwise encumber the Property until this action had been



fully and finally resolved and all appellate rights had been exhausted. *Id.* ¶ 3. On Thursday afternoon, October 20, 2005, having received no response to this request, Plaintiffs' counsel telephoned Mr. Charly's counsel and asked if Mr. Charly would stipulate to maintain the status quo in the action as requested. *Id.* ¶ 4. Mr. Charly's counsel explained that Mr. Charly would not so stipulate, that Mr. Charly would not convey the Property to Dr. McLellan, that Mr. Charley considered the McLellan Option void, and that Mr. Charly had accepted and entered into the URP Option. *Id.*, ¶ 5. He declined, though, to explain whether URP Development had exercised the URP Option and whether specific plans for closing on the Property were in the works. *Id.* On October 24, 2005, Mr. Charly's counsel wrote Plaintiffs' counsel to confirm that "it remains [Mr. Charly's] intention to sell [the Property at issue in this action] to URP Development, LLC." *Id.*, ¶ 7, and Exhibit A to Harrison Aff.

### ARGUMENT

Section 813.02(1), Stats., authorizes the issuance of temporary injunctions:

When it appears from [his] pleading that the party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure [him], or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

A party seeking a temporary injunction must demonstrate a reasonable likelihood of success on the merits, an inadequate remedy at law, and that it will suffer irreparable harm absent injunctive relief. *Werner v. A.L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520, 259 N.W.2d 310 (1977); *Spheris Sporting Goods, Inc. v. Spheris on Capitol*, 157 Wis. 2d 298, 305-06, 459 N.W.2d 581 (Ct. App. 1990). To meet the threshold burden of showing a reasonable likelihood of success on the merits, the movant need only establish that its chances are "better than

negligible.” *Brunswick Corp. v. Jones*, 784 F.2d 271, 275 (7th Cir. 1986) (applying Wisconsin law). The requirement of irreparable harm is met by showing that, without the temporary injunction to preserve the status quo, the relief requested would be rendered futile. *See Werner*, 80 Wis. 2d at 520.

Plaintiffs have a reasonable likelihood of success on the merits of their claims for both breach of contract and promissory estoppel. First, in connection with the breach of contract claim, Dr. McLellan and Mr. Charly entered into a valid and enforceable option contract on May 10, 2005, this “McLellan Option” being the final and governing iteration of months of negotiations for the Property between Mr. Charly, Mr. Bogle and Dr. McLellan. Plaintiffs understand that Mr. Charly refuses to convey the Property to Dr. McLellan because he is of the opinion that the option included insufficient consideration.

Under Wisconsin law, “[c]onsideration exists if an intent to be bound to the contract is evident.” *Gustafson v. Physicians Ins. Co.*, 223 Wis. 2d 164, 173, 588 N.W.2d 363 (Ct. App. 1998) (citation omitted). Moreover, “consideration of even an indeterminate value, incapable of being reduced to a fixed sum, can be sufficient to constitute legal consideration.” *St. Norbert College Foundation, Inc. v. McCormick*, 81 Wis. 2d 423, 430-31, 260 N.W.2d 776 (1978) (citation omitted). Indeed, “[i]t is not the amount of consideration that determines the validity of a contract . . . . ‘[] a valuable consideration however small is sufficient to support any contract; . . . inadequacy of consideration alone is not a fatal defect.’” *Id.* at 430 (quoted source omitted).

Here, Plaintiffs will be able to establish that adequate consideration has been made for the McLellan Option. First, the McLellan Option itself acknowledges the adequacy of consideration in Section 4, which provides as follows:

4. CONSIDERATION FOR OPTION

The parties acknowledge receipt of adequate consideration for this Option to Purchase. There shall be no payment due Seller for the rights granted hereunder.

*See Bogle Aff.*, Exhibit A, ¶ 4. The recitation of consideration in a contract is sufficient to raise a presumption that consideration exists. *In re Estate of Mingesz*, 70 Wis. 2d 734, 740, 235 N.W.2d 296 (1975) (citation omitted). It is remarkable that Mr. Charly, following months of negotiations with Plaintiffs for the option to sell the Property, should now assert—in complete disregard to this express provision—that he did not receive adequate consideration. Moreover, Mr. Charly’s execution of the McLellan Option after the extended negotiations and drafts of what became the McLellan Option are clear evidence that Mr. Charly had an intent to be bound by that document. *See Gustafson*, 223 Wis. 2d at 173.

In connection with their claim for promissory estoppel, the Plaintiffs will also be able to demonstrate that in reliance upon Mr. Charly’s promise to convey the Property, which promise Mr. Charly knew would induce Plaintiffs to take actions of a definite and substantial character, they did take action of a definite and substantial character in reliance upon his promise to convey the Property. *See Silberman v. Roethe*, 64 Wis. 2d 131, 147, 218 N.W.2d 723 (1974).

As detailed above and in the Complaint, in reliance upon Mr. Charly’s promise that he would sell the Property to Plaintiffs, Mr. Bogle and his wife moved from California to Madison (Bogle Aff. ¶¶7, 10); the two forewent jobs with benefits in Florida to devote time and resources to preparing an exhibition hall on the Property (*Id.* ¶ 7, 8, 10, 13); the Primate Freedom Project expended countless hours of labor and incurred significant costs in preparing an exhibition hall

on the Property including, but not limited to, raising funds for the purchase of the Property and expending many thousands of dollars in printing promotional materials that are now unusable without the Property (*Id.* ¶ 13); and Dr. McLellan expended considerable time and money—including for an appraisal and legal fees—working to acquire the Property. *Id.* ¶ 12.

In light of the facts supporting both of their claims, Plaintiffs' likelihood of success on the merits for each is much "better than negligible," *see Brunswick Corp. v. Jones*, 784 F.2d at 275, and certainly sufficient to support the temporary injunction they seek here.

The second and third prongs for prevailing on a motion for temporary injunction are evident here as well, since Plaintiffs have an inadequate remedy at law and, absent the requested injunctive relief, they will suffer irreparable harm. Because the remedy Plaintiffs seek in the underlying action is for specific performance of the sale of the Property, these two prongs collapse into a single element. This is because real property—being unique in fact and law—cannot be easily recovered once conveyed to a third party. Should Mr. Charly sell the Property, the Court will not be able to order him to sell it to Plaintiffs as required by the McLellan Option. Nor will monetary damages suffice as replacement, further demonstrating the irreparable harm that would be felt by Plaintiffs should Mr. Charly sell the Property. An irreparable harm is one that cannot be adequately compensated by monetary damages. *Pure Milk Products Cooperative v. National Farmers Organization*, 90 Wis.2d 781, 800, 280 N.W.2d 691 (1979).

The only property that will suffice for the purpose to which Plaintiffs intend it—to serve as an exhibition hall illuminating the inhumane practices taking place in the Primate Buildings right next door—is Mr. Charly's Property. No other property of which Plaintiffs are aware is so closely located directly next to primate research facilities—anywhere in the country. *Bogle Aff.*

¶ 4. This is the very reason why the Plaintiffs have agreed to pay far more for the Property than its assessed value—it is unique, particularly for their purposes. *Id.*

Thus, should Mr. Charly sell the Property to URP Development (or any third party) as he appears to be preparing, monetary damages could not replace the Property and the use to which Plaintiffs intended to put it. Without the temporary injunction, irreparable injury will assuredly result. *School Dist. of Slinger v. Wis. Interscholastic Athletic Ass'n*, 210 Wis. 2d 365, 563 N.W.2d 585 (Ct. App. 1997).

### CONCLUSION

For each of the above-stated reasons, plaintiffs Dr. McLellan, Rick Bogle, and the Primate Freedom Project respectfully request that the Court enter an Order enjoining defendant Roger Charly from selling or otherwise encumbering the Property at question in this action.

Dated: October 26, 2005.

LAFOLLETTE GODFREY & KAHN  
*an office of Godfrey & Kahn, S.C.*

By: \_\_\_\_\_



Kendall W. Harrison, State Bar No. 1023438  
Steven A. Heinzen, State Bar No. 1032278

Attorneys for Plaintiffs

One East Main Street, Suite 500  
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(608) 257-3911

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Plaintiffs,

Case No.: 05-CV-3412

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ROGER L. CHARLY,

Defendant.

**AFFIDAVIT OF KENDALL W. HARRISON**

STATE OF WISCONSIN            )  
  ) SS  
COUNTY OF DANE             )

2005 OCT 26 PM 4:23  
DANE COUNTY  
CIRCUIT COURT

Kendall W. Harrison, being duly sworn and on oath, states that:

1. I am an attorney with LaFollette Godfrey & Kahn, and I am one of the attorneys representing plaintiffs Richard G. McLellan, Rick Bogle and the Primate Freedom Project (the "Plaintiffs") in the above-captioned action. I make this affidavit upon personal knowledge, the court record in this matter, and our law firm's business records.

2. On behalf of Plaintiffs, we filed the summons and complaint in this action on Tuesday, October 18, 2005, seeking an order for specific performance requiring defendant Roger Charly to convey to Plaintiffs property he owns at 26 North Charter Street, Madison, Wisconsin (the "Property").

3. The next morning, I faxed a copy of the summons and complaint to Mr. Charly's attorney, Jon C. Manzo, together with, among other things, a request that Mr. Charly stipulate not

to convey or otherwise encumber the Property until this action had been fully and finally resolved and all appellate rights had been exhausted.

4. On Thursday afternoon, October 20, 2005, having received no response from Mr. Manzo, I telephoned him and asked whether Mr. Charly would stipulate as I had earlier requested.

5. Mr. Manzo told me that Mr. Charly would not so stipulate. He also told me that Mr. Charly would not convey the Property to Plaintiffs because, as he had on earlier occasions explained to Plaintiffs' previous counsel, Mr. Charly was of the opinion that the option to purchase that Mr. Charly and Dr. McLellan had executed in the Spring of 2005 (the "McLellan Option") was "void and voidable." Finally, Mr. Manzo told me that Mr. Charly had executed an option to purchase made by University Research Park Development, LLC ("URP Development"), and that Mr. Charly intended to convey the Property to URP Development upon it exercising that option (the "URP Option"). However, Mr. Manzo declined to explain whether URP Development had exercised the URP Option and what additional steps Mr. Charly had taken to convey the Property to URP Development.

6. Plaintiffs had known that URP Development had submitted a \$1,000,000.00 offer to purchase the Property to Mr. Charly in or about August 2005. However, they did not know that Mr. Charly had accepted the URP Option until after I spoke with Mr. Manzo on October 20, 2005.

7. On Monday, October 24, 2005, I received a letter from Mr. Manzo confirming his earlier statements to me regarding Mr. Charly's plans to sell the Property to URP Development. In this letter, Mr. Manzo offers to convey to Mr. Bogle a different property for the same price as

established in the McLellan Option for the Property at issue in this action. He also writes that Mr. Charly provided Plaintiffs an opportunity [after executing the \$675,000 McLellan Option] to negotiate a new option and an “opportunity to offer a competing proposal [to the \$1,000,000 URP Option]”. However, he expressly states at the outset that “it remains [Mr. Charly’s] intention to sell [the Property at issue in this action] to URP Development, LLC.” A true and correct copy of Mr. Manzo’s October 24, 2005 letter is attached to this affidavit as Exhibit A.

Dated the 26th day of October 2005.



Kendall W. Harrison

Signed and sworn to before me this  
26th day of October 2005.



Notary Public, State of Wisconsin  
My Commission expires 10/26/08

MN252455\_1



**JON C. MANZO**

Attorney at Law

6808 University Avenue  
Suite 125  
MIDDLETON, WISCONSIN 53562-2785(608) 831-2529  
FAX (608) 831-2549  
October 24, 2005Atty. Kendall W. Harrison  
LaFollette, Godfrey & Kahn  
One East Main St.  
P.O. Box 2719  
Madison, WI 53701-2719**Via Fax No. 257-0609 & U.S. Mail**Re: McLellan, et al, v. Charly  
Case No. 05-CV-3412

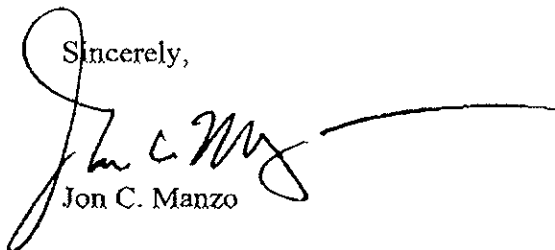
Dear Atty. Harrison:

I have checked with Roger Charly as regards the property at 26 North Charter Street, and it remains his intention to sell that property to URP Development, LLC. Your client was afforded an opportunity to negotiate a valid option as well as an opportunity to offer a competing proposal, and chose to do neither.

However, Roger did discuss an alternative property with Mr. Bogle. In early August, Roger took him through the property at 1201 Regent Street, which is a considerably nicer, two-story building which is only one block south of the primate lab. At that time, Roger indicated to Mr. Bogle that he would sell that property at the same price. That offer remains open.

Please discuss this with your clients and get back to me. If you have any questions, please give me a call.

Sincerely,

  
Jon C. Manzo

JCM:gm

cc: Mr. Roger Charly

EXHIBIT

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RECEIVED  
CIRCUIT COURT  
DANE COUNTY  
MAY 16 2005

**AFFIDAVIT OF RICK BOGLE**

STATE OF WISCONSIN            )  
  ) SS  
COUNTY OF DANE             )

Rick Bogle, being duly sworn and on oath, states that:

1. I am one of the named plaintiffs in the above-captioned action, and live in Madison, Wisconsin. I helped to found the Primate Freedom Project, another of the named plaintiffs in this action. I make this affidavit upon personal knowledge.

2. In or about June 2004, while I was a resident of California, I visited Madison, Wisconsin and while here visited a friend who was protesting the University of Wisconsin's treatment of primates outside of two University of Wisconsin facilities used for primate research:

1) the National Institutes of Health's Wisconsin National Primate Research Center; and 2) a laboratory known as the Harlow Primate Laboratory (together, the "Primate Buildings"). The

Primate Buildings are located on Charter Street, in the first and second blocks north of Regent Street, in Madison.

3. I have been actively involved with efforts to illuminate and end the inhumane treatment of primates in scientific research for nearly a decade, and had helped to found the Primate Freedom Project, an organization dedicated to ending the use of primates in harmful biomedical and behavioral experimentation.

4. During this June 2004 visit to Madison, I immediately saw a property between the two Primate Buildings. I recognized then that, due to this property's proximity to the Primate Buildings, it provided an absolutely unique space to present a primate research exhibit illuminating the inhumane practice of using primates in scientific research. I had visited the seven other National Primate Research Centers located throughout the United States and knew that there were no other opportunities for exhibition halls situated in such close proximity to any similar primate research facility.

5. I quickly discovered that Mr. Charly owned this property, which is located at 26 North Charter Street, Madison, Wisconsin (the "Property"). I then met with him during this June 2004 trip. When we met, I told Mr. Charly that I wanted to use the Property for a primate research exhibition hall that would raise awareness of the results of studies on the minds and emotions of monkeys and apes and illuminate the inhumane practice of using primates in scientific research. After I explained how I would use the Property, Mr. Charly agreed to sell it to me for \$750,000. I also understand that at this time, the Property had been assessed by the City of Madison at about \$140,000.

6. Over the next several months, I spoke with Mr. Charly on several occasions during which discussions I told him of mine and the Primate Freedom Project's anticipated use of the Property. I was also concerned that the University would work to stymie my work, and told Mr. Charly of my concerns in that regard. In response to my concerns that the University would work to interfere with my acquisition and use of the Property, Mr. Charly assured me that he would never sell the Property to the University.

7. After Mr. Charly told me he would not sell the Property to the University, and in reliance on these promises, my wife and I turned down job offers we had received to teach in Florida starting in the 2004-2005 school year. Again, based on Mr. Charly's promise that he would not sell the Property to the University, we turned away others who had inquired into our availability to teach. We instead prepared to move to Madison. I then moved to Madison in September 2004. My wife joined me in Madison in November 2004.

8. In or about this same time, I began pouring my energy and efforts into realizing an exhibition hall on the Property. As part of my efforts, I spent considerable time in the late summer and early fall of 2004 seeking financial backing from private donors for the purchase of the Property. One of the individuals I contacted was Richard McLellan, a retired medical doctor.

9. Like me, Dr. McLellan has an interest in illuminating and ending the use of primates in scientific research. At a meeting in or around August 2004, Dr. McLellan agreed to mortgage some of his own property in order to provide the necessary funds for the initial purchase of the Property, with the understanding that I would be personally responsible for making all mortgage payments and, eventually, would buy the Property from him. We further

agreed that, as soon as Dr. McLellan purchased the Property, it would be available to me and the Primate Freedom Project for development of the exhibition hall.

10. During the same period that I was working to raise the funds needed to purchase the Property, I spoke by phone with Mr. Charly on several occasions to apprise him of my efforts. In one or more of those conversations, I told Mr. Charly that my wife and I were preparing to move from California to Madison to start laying the groundwork for the exhibition hall and that, accordingly, we would be buying a house in Madison. Mr. Charly assured me on more than one occasion that he would sell the Property to me.

11. In October 2004, Dr. McLellan flew from California to Madison to meet with Mr. Charly and me to discuss the planned purchase of the Property. During the October 2004 meeting in Madison, Mr. Charly, Dr. McLellan and I negotiated key changes to Mr. Charly's oral agreement with me. Those changes included: (1) the reduction of the Property's sale price to \$675,000; and (2) the substitution of Dr. McLellan for me as the purchaser, with the Property's use remaining for my benefit and the benefit of the Primate Freedom Project in establishing a primate research exhibition hall. Mr. Charly, Dr. McLellan and I also agreed that it would be appropriate to memorialize the terms of the option in written form.

12. In early January 2005, Dr. McLellan and I hired a Wisconsin-based appraisal and consulting firm to conduct an appraisal of the Property's market value. At around this same time, and in furtherance of our agreement, I also hired an attorney to draft the option in written form. Dr. McLellan, Mr. Charly and I exchanged several drafts of the written contract as we continued to negotiate certain changes. We reached a final agreement as to the terms of the written option in the spring of 2005. Mr. Charly executed the written option (the "McLellan

Option”) on April 27, 2005, and Dr. McLellan countersigned on May 10, 2005. A true and correct copy of the McLellan Option is attached to this affidavit as Exhibit A.

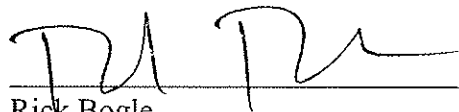
13. In the days and weeks following the execution of the McLellan Option, and acting on the assurances of Mr. Charly as expressed in that agreement and otherwise, I initiated a public national fund-raising campaign under the auspices of the Primate Freedom Project to raise the necessary funding to pay back Dr. McLellan and begin initial renovations to the Property. The campaign activities included, among other things, creating a web site ([www.PrimateResearch.com](http://www.PrimateResearch.com)); designing and printing over 400,000 pieces of fundraising literature; providing postage for initial mailings to approximately 40,000; and registering and obtaining the necessary fund-raising licenses with the majority of the states in the United States. Then, on June 4, 2005, the Primate Freedom Project put on a public announcement and rally in front of the largest building on the Property, where a sign was unveiled announcing that the Property was the future location of the “National Primate Research Exhibition Hall.”

14. On August 12, 2005, Dr. McLellan exercised the McLellan Option. A true and correct copy of the exercise of the McLellan Option is attached to this affidavit as Exhibit B.

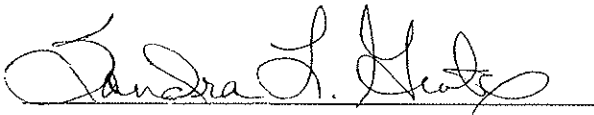
15. Despite Dr. McLellan exercising the McLellan Option, Mr. Charly has refused to convey the Property pursuant to the terms of the McLellan Option. Indeed, just a few days before Dr. McLellan exercised the McLellan Option, I learned from Mr. Charly that he had decided not to respect the McLellan Option and that he had received an Option to Purchase the Property from URP Development for \$1,000,000—a \$325,000 premium over the purchase price to which Mr. Charly had agreed in the McLellan Option (the “URP Option”). Through counsel, Mr. Charly sent us a copy of the URP Option which, at that time, had not been executed by Mr. Charly. A

true and correct copy of the URP Option we received from Mr. Charly's counsel is attached to this affidavit as Exhibit C.

Dated the 26th day of October 2005.

  
Rick Bogle

Signed and sworn to before me this  
26th day of October 2005.



Notary Public, State of Wisconsin

My Commission expires March 1, 2009

MN252632\_1.DOC

Newest

**OPTION TO PURCHASE**  
**BETWEEN**  
**ROGER L. CHARLY, SELLER**  
**AND**  
**RICHARD G. MCLELLAN, M.D., BUYER**

Effective Date: 10 MAY 2005

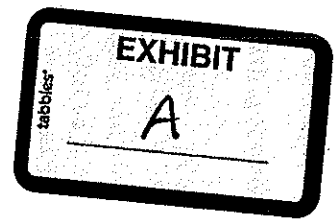




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## OPTION TO PURCHASE

The Option to Purchase (the "Option") between Roger L. Charly (hereinafter referred to as "Seller") and Richard G. McLellan (hereinafter referred to as "Buyer") is dated effective 10 MAY, 2005.

### 1. GRANT OF OPTION

Roger L. Charly, Seller, hereby grants to Richard G. McLellan, or his assigns, Buyer, an option to purchase the real property located at 26 North Charter Road in the City of Madison, Dane County, Wisconsin, and as more particularly described below, at the price and on the terms and conditions stated in this Option to Purchase:

The South ½ of Lot 6 and all of Lot 9 of the Morhoff Replat, in the City of Madison, Dane County, Wisconsin.

### 2. OPTION PRICE

The purchase price shall be Six Hundred Seventy-Five Thousand Dollars (\$675,000.00) to be paid in full at closing.

Buyer agrees that unless otherwise specified, Buyer shall, in good faith, pay all costs of securing any financing to the extent permitted by law, and shall perform all acts necessary to expedite such financing.

### 3. TIME OF ESSENCE

**TIME IS OF THE ESSENCE AS TO EXERCISE OF OPTION, LEGAL POSSESSION, OCCUPANCY, DATE OF CLOSING, AND ALL DATES INSERTED IN THIS OPTION.**

### 4. CONSIDERATION FOR OPTION

The parties acknowledge receipt of adequate consideration for this Option to Purchase. There shall be no payment due Seller for the rights granted hereunder.

### 5. EXERCISE OF OPTION

This Option must be exercised on or before one hundred eighty (180) days from the effective date hereof by Buyer's written notice to Seller of his exercise of the Option pursuant to the Notice provisions of paragraph 15 of this Option, provided that Buyer may elect to extend the Option for an additional ninety (90) days by providing written notice to Seller of his election to extend on or before one hundred eighty (180) days from the effective date hereof.

This transaction is to be closed at the office of Buyer's mortgagee, the title company, or at the office of Buyer's attorney within ninety (90) days after the delivery of Buyer's written notice of the exercise of the Option or at such other time and place as may be agreed in writing by Buyer and Seller.

6. TERMS OF CONVEYANCE

Seller shall, upon payment of the purchase price, convey the Property to Buyer, or his assigns, by warranty deed, free and clear of all liens and encumbrances, excepting: municipal and zoning ordinances, and agreements entered under them, recorded easements for public utilities serving the Property, recorded building and use restrictions and covenants, general taxes levied in the year of closing and none other, provided none of the foregoing prohibit present use. Seller shall complete and execute the documents necessary to record the conveyance.

Buyer may record this Option. Seller agrees at the request of Buyer to execute a recordable memorandum of this Option. This Option is assignable. This Property is not homestead property.

7. POSSESSION AND OCCUPANCY

Legal possession of Property shall be delivered to Buyer on date of closing. Occupancy of the Property shall be given to Buyer on date of closing. It is understood the Property is not subject to any lease at this time, however Buyer and Seller shall enter into a lease agreement at or prior to Closing whereby Seller will leaseback the Property from Buyer on mutually agreeable terms. If the Parties fail to enter into a lease at or prior to Closing, the Buyer may, but shall not be obligated to, declare this Option Agreement null and void, and if declared null and void by Buyer, neither Party shall have any further obligations to the other under this Agreement.

8. PRORATIONS

The following items shall be prorated as of the date of closing: property taxes, water and sewer use charges. All property taxes shall be prorated at the time of closing based on the net property taxes for the current year, if known, otherwise on the latest known mil rate times the latest known assessment. Special assessments, if any, for work on site actually commenced or levied prior to date of Closing shall be paid by Seller. All other special assessments shall be paid by Buyer.

9. WARRANTIES AND REPRESENTATIONS

Seller warrants and represents to Buyer that Seller has no notice or knowledge of any conditions affecting the Property. A condition affecting the Property is defined as follows:

- a. Planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property or the present use of the Property.
- b. Governmental agency or court order requiring repair, alteration or correction of any existing condition;
- c. Completed or pending reassessment of the Property for property tax purposes;
- d. Any land division involving the Property, for which required state or local approvals were not obtained;
- e. Any portion of the Property being in a 100 year floodplain, a wetland or shoreland zoning under local, state or federal regulations;
- f. Material violations of environmental rules or other rules or agreements regulating the use of the Property;
- g. Conditions constituting a significant health or safety hazard for occupants of Property;
- h. Underground storage tanks for storage of flammable or combustible liquids including but not limited to gasoline and heating oil, which were previously located on the Property;
- i. Subsoil conditions which would significantly increase the cost of development, if any, including but not limited to, subsurface foundations, organic or non-organic fill, dumpsites or containers on Property which contained or currently contain toxic or hazardous materials, high groundwater, soil conditions (e.g. low load bearing capacity) or excessive rocks or rock formations on the Property;
- j. A lack of legal vehicular access to the Property from public roads;
- k. Other conditions or occurrences which would significantly increase the cost of development or reduce the value of the Property to a reasonable person with knowledge of the nature and scope of the condition or occurrence;
- l. The Property is in compliance with all federal, state and local laws, rules, regulations, ordinances, codes and orders governing, establishing, limiting or otherwise affecting the discharge or disposal of air pollutants, water pollutants, processed waste water, or solid and hazardous waste, including, but no limited to, all regulations and standards of the Environmental Protection Agency and the Wisconsin Department of Natural Resources. There are no pending or threatened actions or proceedings by the local municipality, the Wisconsin

Department of Natural Resources, United States Environmental Protection Agency or any other government entity, and Seller is not aware that there is any basis for any such action or proceeding. Seller has never disposed of any solid or hazardous waste on the Property and Seller is not aware of any solid or hazardous waste having ever been disposed of on the Property. Seller is not aware of any landfills, hazardous substances, underground storage tanks, PCBs, subterranean tunnels, cavities, wells, mines, sinkholes, springs or concealed fill-ins on or under the Property, and Seller is not aware that either the Property or any part thereof has been used, and prior to closing will not be used, for the manufacture, storage or disposal of any hazardous substance, solid waste or hazardous waste as the same be identified as hazardous by any federal state county or municipal law, statute, ordinance, order or regulation related to protection of the environment and applicable to the Property (including without limitation, any regulations promulgated by the Federal Environmental Protection Agency and the Wisconsin Department of Natural Resources); and

- m. There are no dangerous, toxic, or hazardous materials affecting the Property.

The warranties and representations are made as of the date of the granting of this Option, and are deemed remade as of the date of Closing, and shall survive closing.

If any warranty or representation changes prior to the exercise of this Option, Seller shall notify Buyer in the manner required hereunder, within seventy-two (72) hours of any such change. If Seller provides notice of such change after exercise of Buyer's option rights hereunder, Buyer may elect to rescind Buyer's exercise of this Option and terminate the Option by written notice to Seller and may elect not to close and terminate Option.

#### 10. RIGHT OF ENTRY

Seller grants to Buyer, his agents, representatives, and/or independent contractors, an irrevocable right and license to enter upon the Property at any time during the Option to make such surveys, explorations, environmental, engineering and soils tests, and inspections of the Property as Buyer may deem desirable. Buyer shall hold Seller harmless from and indemnify Seller against any and all damages, claims or liabilities to property or person, arising out of or in any way connected to any such entry upon the Property by Buyer or his agents, representatives and/or independent contractors.

#### 11. TITLE EVIDENCE

Seller shall provide to Buyer at Seller's expense at least twenty (20) business days before closing, a commitment from an ALTA title company licensed in Wisconsin to issue title insurance in the amount of the purchase price on a current ALTA form upon recording of proper documents, showing title to the Property as of a date no more than fifteen (15) days before such title proof is provided to Buyer to be in the condition called for in this Option,

and further subject only to liens which will be paid out of the proceeds of the closing and standard title insurance exceptions or abstract certificate limitations, as appropriate. Buyer shall notify Seller of any valid objection to title in writing by closing. Seller shall have a reasonable time, but not exceeding 30 days, to remove the objections, and closing shall be extended as necessary for this purpose.

In the event the Seller is unable to remove said objection, Buyer shall have five (5) days from receipt of notice thereof to deliver written notice waiving the objections and the time for closing shall be extended accordingly. If Buyer does not waive the objections, Buyer's exercise of this Option shall be null and void and neither party shall have any further obligation to the other.

The commitment for title insurance shall include a gap endorsement commitment insuring the title as of the period between the effective date of the commitment and the recording of the deed. The gap endorsement shall be provided at Seller's expense.

Providing title evidence acceptable for closing does not extinguish Seller's obligation to give merchantable title to Buyer.

#### 12. DAMAGE

If the Property is damaged by fire or elements prior to time of closing in an amount of not more than five percent of the purchase price, Seller shall be obligated to repair the Property and restore it to the same condition that it was on the date of this Option. If such damage shall exceed such sum, this Option may be canceled at the discretion of Buyer by written notice to Seller. Should Buyer elect to carry out the Option despite such damage, Buyer shall be entitled to the insurance proceeds relating to any damage to the Property.

#### 13. REPURCHASE

The parties agree that at any time within the twenty-four (24) months following closing hereunder, the Buyer may elect to provide written notice to Seller requiring Seller to repurchase the Property from Buyer (the "Repurchase") upon the terms provided hereunder. The Repurchase price shall be the original purchase price paid by the Buyer for the Property less the sum of \$40,000 and less the sum of any and all rental payments made by Seller to Buyer as a tenant during the time Buyer owns the Property. Buyer shall convey the Property to Seller free and clear of all liens and encumbrances, excepting: municipal and zoning ordinances, and agreements entered under them, recorded easements for public utilities serving the Property, recorded building and use restrictions and covenants, general taxes levied in the year of closing and none other. The Buyer shall pay all transfer fees and other usual and customary Seller's costs incurred as part of the Repurchase, upon closing of the Repurchase. Closing of the Repurchase shall occur within forty-five (45) days following Buyer's notice to Seller. The parties shall execute an agreement at closing outlining the conditions and terms of this paragraph 13.

14. DEFAULT

Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions of this Option. A material failure to perform any obligation under this Option is a default which may subject the defaulting party to liability for damages or other legal remedies.

If Buyer defaults, Seller may terminate the Option and sue for actual damages.

If Seller defaults, Buyer may (1) sue for commercially reasonable specific performance; or (2) terminate the Option and sue for actual damages, or both.

The prevailing party shall be entitled to his legal fees and costs from the non-prevailing party.

15. NOTICES

Any notice, demand or request, required or permitted under this Agreement or by law, shall be deemed given, if in writing and delivered in person or mailed by registered or certified mail, postage prepaid, to the party who is to receive such notice, demand or request at the addresses below or at such address any party shall specify by written notice. When mailed with proper postage, such a notice, demand or request shall be deemed to have been given as of the date it was mailed.

IF TO BUYER:

Richard G. McLellan, MD  
2379 Panoma Terrace  
Los Angeles, CA 90039

WITH A COPY TO:

Attorney Vernon J. Jesse  
Murphy Desmond S.C.  
2 E. Mifflin Street, Suite 800  
P.O. Box 2038  
Madison, WI 53701-2038

IF TO SELLER:

Roger L. Charly  
5212 Harbor Court  
Madison, WI 53705-1306

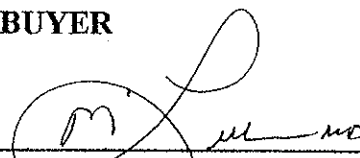
16. MISCELLANEOUS

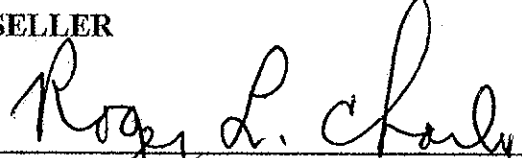
- a. This Option shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, and assigns. This option contains the entire agreement between the parties and is subject to no understandings, conditions or representations other than those expressly stated herein.
- b. This Option shall be governed, construed and enforced in accordance with the laws of the State of Wisconsin.
- c. The failure of either party to insist on strict performance of this Option by the other, according to the terms and understandings herein set forth, shall not be construed as a waiver of the right to insist on such performance and no waiver by either party of any breach by the other of any provision hereof shall be deemed a waiver of any other prior or subsequent breach.
- d. If any provision of this Option is invalid, unenforceable, or not enforced, this Option shall be considered divisible as to such provision and the remainder of the Option valid and binding as though such provision were not included therein.
- e. This Option may be executed in counterparts, each of which shall constitute an original but which when taken together shall constitute one and the same instrument.
- f. Without derogating from the obligations of the Buyer herein, on Closing, Seller shall convey title to the Property to an assignee of Buyer's if one is designated by Buyer in writing prior to Closing.

**THE WARRANTIES AND REPRESENTATIONS MADE HEREIN SURVIVE THE CLOSING OF THIS TRANSACTION. THE UNDERSIGNED SELLER HEREBY AGREES TO SELL AND CONVEY THE ABOVE-MENTIONED PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT.**

**BUYER**

**SELLER**

  
 \_\_\_\_\_  
 Richard G. McLellan, MD


  
 \_\_\_\_\_  
 Roger L. Charly

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

050236-6h/b/vij-010405has/mem/bjb  
Option to Purchase

Benjamin DAUCHEZ,  
 Robert PANHARD, Gérard BAFFOY  
 Caroline DENEUVILLE, René DALLEE  
 Notaires Associés à PARIS 5<sup>e</sup>  
 37, quai de la Tournelle

Le soussigné M<sup>o</sup> René DALLEE  
 Notaire Associé à Paris certifié  
 signature de R.G. McLELLAN  
 apposée ci-contre,  
 PARIS, le 10/05/2005





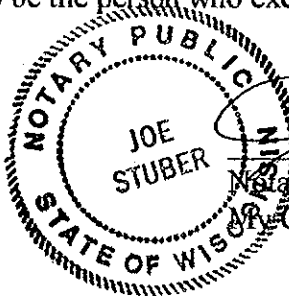
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2005, the above-named Roger G. McLellan, MD, to me known to be the person who executed the foregoing and acknowledged the same.

\_\_\_\_\_  
Notary Public  
My Commission: \_\_\_\_\_

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

Personally came before me this 27 day of April, 2005, the above-named Roger L. Charly, to me known to be the person who executed the foregoing and acknowledged the same.



[Signature]  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: Sept 30 2007

**EXERCISE OF OPTION TO PURCHASE**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

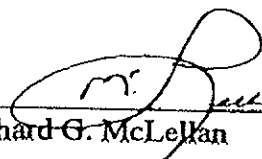
TO: Roger L. Charly  
5212 Harbor Court  
Madison, WI 53705-1306

The undersigned, Richard G. McLellan, hereby exercises his option to purchase the real property located at 26 North Charter Road in the City of Madison, Dane County, Wisconsin, under the terms and conditions set forth in the Option to Purchase between the parties dated May 10, 2005. The property subject to the Option is more particularly described as:

The South ½ of Lot 6 and all of Lot 9 of the Morhoff Replat, in the City of Madison, Dane County, Wisconsin.

The undersigned desires to close on the above described purchase on November 1, 2005.

Dated this 12<sup>th</sup> day of August, 2005.

  
Richard G. McLellan



8-1-00 (Optional Use Date)  
8-1-00 (Mandatory Use Date)

INFO-PRO #00-655-2021 www.infoforms.com

**OPTION TO PURCHASE**

Page 1 of 4

1 **BROKER** DRAFTING THIS OPTION ON \_\_\_\_\_ (DATE) IS AGENT OF (SELLER) (BUYER) (DUAL AGENT) (STRIKE TWO)

2 The Seller, Roger Charly \_\_\_\_\_, hereby grants to Buyer

3 URP Development, LLC, or assigns \_\_\_\_\_, an option to purchase (Option) the Property

4 known as (Street Address) 26 North Charter Street \_\_\_\_\_, in the

5 City of Madison \_\_\_\_\_, County of Dane \_\_\_\_\_, Wisconsin.

6 (If this Option is to be recorded, insert legal description at lines 216-224 or attach as an addendum per line 225) on the following terms:

7 **DEADLINE FOR GRANT OF OPTION** This Option is void unless a copy of the Option which has been signed by or on behalf of

8 all Owners is delivered to Buyer on or before August 8, 2006 (Time is of the Essence).

9 **OPTION TERMS** An option fee of \$ 1,000.00 will be paid by Buyer within 5 days of the granting of this Option, and

10 shall not be refundable if the Option is not exercised. If the Option is exercised, \$ 1,000.00 of the option fee shall be a credit

11 against the purchase price at closing. This Option may only be exercised by delivering written notice to Seller no later than

12 midnight January 31, 2006. Buyer may sign and deliver the notice at lines 247-248, or may deliver any other written notice

13 which specifically indicates an intent to exercise this Option. This Option shall be extended until June 30, 2006 upon

14 payment of \$ 1,000.00 in cash or equivalent to Seller on or before January 31, 2006 as an option extension

15 fee which shall not be refundable if this Option is not exercised. If this Option is exercised, \$ 1,000.00 of the option extension

16 fee shall be a credit against the purchase price at closing. The option fee and option extension fee shall be (paid directly to Seller)

17 ~~(not including broker's trust account fee)~~

18 \_\_\_\_\_ ) (STRIKE ONE)

19 This Option, or a separate instrument evidencing this Option, (may)(may not) (STRIKE ONE) be recorded. **CAUTION: FAILURE TO**

20 **RECORD MAY GIVE PERSONS WITH SUBSEQUENT INTERESTS IN THE PROPERTY PRIORITY OVER THIS OPTION.**

21 **TERMS OF PURCHASE** If this Option is exercised per the terms of this Option, the following shall be the terms of purchase:

22 ■ **PURCHASE PRICE: One Million and no hundredths**

23 Dollars (\$ 1,000,000.00 ) will be paid in cash or equivalent at closing unless otherwise provided below.

24 ■ **ADDITIONAL ITEMS INCLUDED IN PURCHASE PRICE:** Seller shall include in the purchase price and transfer, free and clear of

25 encumbrances, all fixtures, as defined at lines 172-175 and as may be on the Property on the date of this Option, unless excluded at lines

26 28-29, and the following additional items: None

27 \_\_\_\_\_

28 ■ **ITEMS NOT INCLUDED IN THE PURCHASE PRICE:** None

29 \_\_\_\_\_

30 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed (or

31 other conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and

32 agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use

33 restrictions and covenants, general taxes levied in the year of closing and no others \_\_\_\_\_

34 \_\_\_\_\_ (provided none

35 of the foregoing prohibit present use of the Property), which constitutes merchantable title for purposes of this transaction. Seller

36 further agrees to complete and execute the documents necessary to record the conveyance.

37 **PLACE OF CLOSING** This transaction is to be closed at the place designated by Buyer's mortgagee or Buyer's attorneys

38 within 30 days after the exercise of the Option, unless another date or place is agreed to in writing.

39 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Option

40 (lines 216-224 or in an addendum per line 225). Occupancy shall be given subject to tenant's rights, if any. **Caution: Consider**

41 **an agreement which addresses responsibility for clearing the Property of personal property and debris, if applicable.**

42 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights under the

43 lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) (oral) (STRIKE ONE)

44 lease(s), if any, are No leases

45 **CLOSING PRORATIONS** The following items shall be prorated at closing: real estate taxes, rents, private and municipal charges,

46 property owner's association assessments, fuel and \_\_\_\_\_

47 Any income, taxes or expenses shall accrue to Seller, and be prorated, through the day prior to closing. Net

48 general real estate taxes shall be prorated based on (the net general real estate taxes for the current year, unless otherwise on the net

49 general real estate taxes for the preceding year) (latest known assessment times) (latest known mill rate

50 \_\_\_\_\_) (STRIKE AND COMPLETE AS APPLICABLE)

51 **CAUTION: If proration on the basis of net general real estate taxes is not acceptable (for example, completed/pending**

52 **reassessment, changing mill rate, lottery credits), insert estimated annual tax or other formula for proration.**

53 **ZONING** Seller represents that the property is zoned \_\_\_\_\_

54 **REPRESENTATIONS REGARDING PROPERTY AND TRANSACTION** Seller represents to Buyer that: as of the date Seller grants this

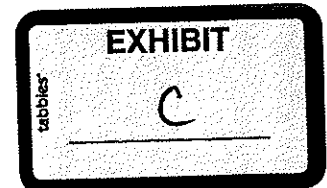
55 Option Seller has no notice or knowledge of conditions affecting the Property or transaction (as defined at lines 63 - 68) other than those

56 disclosed in Seller's property condition report, dated \_\_\_\_\_, which was reviewed by Buyer prior to Buyer signing

57 this Option COMPLETE DATE OR STRIKE AS APPLICABLE and \_\_\_\_\_

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To <u>BONNIE B.</u>	From <u>JOHN C. MANZO</u>
Co. <u>MURPHY DESMOND</u>	Co. <u>HANSON MANZO</u>
Dept. <u>VERON DEESE</u>	Phone # <u>831-2529</u>
Fax # <u>257-2508</u>	Fax # <u>831-2549</u>



59 Seller agrees to notify Buyer of any condition affecting the Property or transaction which is materially inconsistent with the above  
60 representations, which arises after this Option is granted, but prior to exercise of this Option. Buyer shall have reasonable access to the  
61 Property, upon reasonable notice, from the time this Option is granted until the time for closing, for the purpose of inspecting and testing  
62 the Property to the extent reasonably necessary to fulfill the inspection and testing provisions of this Option. (See lines 10-124).  
63 A "condition affecting the Property or transaction" is defined as follows:  
64 (a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the  
65 Property or the present use of the Property;  
66 (b) completed or pending reassessment of the Property for property tax purposes;  
67 (c) government agency or court order requiring repair, alteration or correction of any existing condition;  
68 (d) any land division involving the subject Property for which required state or local approvals had not been obtained;  
69 (e) any portion of the Property being in a 100 year floodplain, a wetland or a shoreland zoning area under local, state or federal laws;  
70 (f) conditions constituting a significant health or safety hazard for occupants of Property; Note: Possible LBP Disclosure Requirement  
71 (g) underground or aboveground storage tanks on the Property for storage of flammable or combustible liquids including but not  
72 limited to gasoline and heating oil which are currently or which were previously located on the Property. NOTE: Wis. Adm.  
73 Code, Chapter Comm 10 contains registration and operation rules for such underground and aboveground storage tanks.  
74 (h) material violations of environmental laws or other laws or agreements regulating the use of the Property;  
75 (i) high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property;  
76 (j) any portion of the Property being subject to, or in violation of, a Farmland Preservation Agreement under a County Farmland Preservation  
77 Plan or enrolled in, or in violation of, a Forest Crop, Woodland Tax, Managed Forest, Conservation Reserve or comparable program;  
78 (k) boundary disputes or material violation of fence laws (Wis. Stats. Chapter 90) which require the erection and maintenance of legal  
79 fences between adjoining properties where one or both of the properties is used and occupied for farming or grazing purposes;  
80 (l) wells on the Property required to be abandoned under state regulations (Wis. Adm. Code NR 112.28) but which are not abandoned;  
81 (m) dewater or septic tanks on the Property which are currently not servicing the Property;  
82 (n) subsurface conditions which would significantly increase the cost of building on the property including, but not limited to, subsurface  
83 foundations, organic or non-organic fill, dumpsites or containers on Property which contained or currently contain toxic or hazardous  
84 materials, high groundwater, soil conditions (e.g. low load bearing capacity) or excessive rocks or rock formations on the Property;  
85 (o) a lack of legal vehicular access to the Property from public roads,  
86 (p) prior reimbursement for corrective action costs under the Agricultural Chemical Cleanup Program (Wis. Stats. §94.73);  
87 (q) other conditions or occurrences which would reduce the value of the Property to a reasonable person with knowledge of the  
88 nature and scope of the condition or occurrence.  
89 **PROPERTY DIMENSIONS AND SURVEYS:** Buyer acknowledges that any land dimensions, total square footage/acreage  
90 figures, or allocation of acreage information, provided to Buyer by Seller or by a broker, may be approximate because of  
91 rounding or other reasons, unless verified by survey or other means. **CAUTION: Buyer should verify land dimensions, total**  
92 **square footage/acreage figures or allocation of acreage information if material to Buyer's decision to purchase.**  
93 **PROPERTY DAMAGE BETWEEN EXERCISE OF OPTION AND CLOSING:** Seller shall maintain the Property until the earlier of  
94 closing or occupancy of Buyer in materially the same condition as of the date Buyer exercises this Option, except for ordinary wear and  
95 tear. If, prior to closing, the Property is damaged in an amount of not more than five per cent (5%) of the purchase price, Seller shall be  
96 obligated to repair the Property and restore it to the same condition that it was on the day this Option is exercised. If the damage is greater  
97 than 5% of the purchase price, Seller shall promptly notify Buyer in writing of the damage and this Option may be rescinded by Buyer and  
98 all Option fees paid by Buyer shall be immediately returned to Buyer. Should Buyer elect to exercise this Option despite such damage,  
99 Seller shall either repair the Property and restore it to the same condition that it was on the day of exercise of this Option, except for  
100 ordinary wear and tear or Buyer shall be entitled to the insurance proceeds relating to the damage to the Property, plus a credit  
101 towards the purchase price equal to the amount of Seller's deductible on such policy.  
102 **BUYER DUE DILIGENCE:** Prior to exercising this Option Buyer may need to perform certain inspections, investigations and testing  
103 Buyer is only authorized to do those inspections, investigations and tests which are authorized at lines 136-200 or lines 218-225. In  
104 addition to these inspections, investigations and tests, Buyer may need to obtain financing, approvals or other information, including  
105 but not limited to building permits, zoning variances, Architectural Control Committee approvals, review of condominium documents,  
106 review of business records, estimates for utility hook-up expenses, special assessments, charges for installation of roads or utilities, etc.  
107 **WARNING:** If Buyer contemplates developing Property or a use other than the current use, there are a variety of issues which should  
108 be addressed in order to determine the feasibility of development of, or a particular use for, a property. Buyer is solely  
109 responsible for all expenses relating to financing, inspections, investigations, testing, approvals, permits, estimates, etc.  
110 **INSPECTIONS:** An "inspection" is defined as an observation of the Property which does not include testing of the Property, other than  
111 testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. Seller agrees to allow Buyer's inspectors  
112 reasonable access to the Property upon reasonable notice for those inspections authorized at lines 197-198. Buyer agrees to  
113 promptly restore the Property to its original condition after Buyer's inspections are completed, unless otherwise agreed in this Option.  
114 **TESTING:** Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the  
115 Property. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials from the Property and  
116 the laboratory or other analysis of these materials. Seller agrees to allow Buyer's testers reasonable access to the Property upon  
117 reasonable notice for those tests authorized at lines 199-200. Note: The authorization for testing should specify the areas of  
118 the Property to be tested, the purpose of the test, (e.g. to determine if environmental contamination is present), any limitations on  
119 Buyer's testing and any other material terms of the authorization. Unless otherwise agreed, Buyer shall return the Property to its  
120 original condition following testing. Seller acknowledges that certain inspections or tests may detect environmental  
121 pollution which may be required to be reported to the Wisconsin Department of Natural Resources.  
122 **PRE-CLOSING INSPECTION:** At a reasonable time, pre-approved by Seller or Seller's agent, within 3 days before closing, Buyer  
123 shall have the right to inspect the Property to determine that there has been no significant change in the condition of the Property,  
124 except for changes approved by Buyer.  
125 **CONDOMINIUM DISCLOSURES:** If the Property is a Condominium, Seller agrees to provide Buyer, at Seller's cost (see  
126 Wisconsin Statutes §703.20(2)), complete, current copies of the disclosure materials (organization and operational documents, plans, financial

127 statements, and in the case of a conversion condominium property information) as required by Wisconsin Statutes §703.33 no later than 16  
128 days prior to closing and any amendment to these materials promptly after its adoption (except as limited for small residential  
129 condominiums per Wisconsin Statutes §703.365). These materials are available at cost from the condominium association. As provided in  
130 Wisconsin Statutes §703.33(4). Buyer may, within five business days after receipt of these documents, including any material modification  
131 thereto, rescind this Option by written notice mailed or delivered to Seller, the date of mailing or actual delivery being the effective date of notice.

132 **TITLE EVIDENCE**

133 **FORM OF TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the  
134 purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. **CAUTION: IF TITLE**

135 **EVIDENCE WILL BE GIVEN BY ABSTRACT, STRIKE TITLE INSURANCE PROVISIONS AND INSERT ABSTRACT PROVISIONS.**

136 **PROVISION OF MERCHANTABLE TITLE:** Seller shall pay all costs of providing title evidence. For purposes of closing, title evidence shall  
137 be acceptable if the commitment for the required title insurance is delivered to Buyer's attorney or Buyer not less than 3 business days  
138 before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable, subject  
139 only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as  
140 appropriate. **CAUTION: BUYER SHOULD CONSIDER UPDATING THE EFFECTIVE DATE OF THE TITLE COMMITMENT PRIOR**  
141 **TO CLOSING OR A "GAP ENDORSEMENT" WHICH WOULD INSURE OVER LIENS FILED BETWEEN THE EFFECTIVE DATE**  
142 **OF THE COMMITMENT AND THE DATE THE DEED IS RECORDED.**

143 **TITLE ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by  
144 the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and  
145 the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer  
146 shall have 5 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be  
147 extended accordingly. If Buyer does not waive the objections, this Option shall be null and void. Providing title evidence acceptable for  
148 closing does not extinguish Seller's obligations to give merchantable title to Buyer.

149 **SPECIAL ASSESSMENTS:** Special assessments, if any, for work actually commenced or levied prior to date this Option is exercised  
150 shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer. **CAUTION: Consider a special**  
151 **agreement if area assessments, property owner's association assessments or other expenses are contemplated. "Other expenses"**  
152 **are one-time charges or ongoing fees for public improvements (other than those resulting in special assessments) relating to**  
153 **curb, gutter, street, sidewalk, sanitary and stormwater and storm sewer (including all sewer mains and hook-up and interceptor**  
154 **charges), parks, street lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. §86.55(1)(c) & (f).**

155 **DELIVERY/RECEIPT**

156 Unless otherwise stated in this Option, any signed document transmitted by facsimile machine (fax) shall be treated in all manner and respects  
157 as an original document and the signature of any Party upon a document transmitted by fax shall be considered an original signature. Personal  
158 delivery to, or actual receipt by, any named Buyer or Seller constitutes personal delivery to, or actual receipt by Buyer or Seller. Once  
159 received, a notice cannot be withdrawn by the Party delivering the notice without the consent of the Party receiving the notice. A Party may  
160 not unilaterally reinstate a contingency after a notice of a contingency waiver has been received by the other Party. The delivery  
161 provisions in this Option may be modified when appropriate (e.g., when mail delivery is not desirable (see lines 203-209). Buyer  
162 and Seller authorize the agents of Buyer and Seller to distribute copies of the Option to Buyer's lender, appraisers, title insurance companies  
163 and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA).

164 **DATES AND DEADLINES**

165 Deadlines expressed as a number of "days" from an event, such as exercise of this Option, are calculated by excluding the day the  
166 event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as  
167 a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law and other  
168 day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day.  
169 Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from  
170 the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or  
171 as the day of a specific event, such as closing, expire at midnight of that day.

172 **FIXTURES:** A "fixture" is defined as an item of property which is physically attached to or so closely associated with land  
173 or improvements so as to be treated as part of the real estate, including, without limitation, physically attached items  
174 not easily removable without damage to the Property, items specifically adapted to the Property, and items customarily  
175 treated as fixtures.

176 **ENTIRE CONTRACT:** This Option including any amendments to it, contains the entire agreement of the Buyer and Seller regarding  
177 the transaction. All prior negotiations and discussions have been merged into this Option. This agreement binds and inures to the  
178 benefit of the Parties to this Option and their successors in interest.

179 **DEFAULT:** Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions  
180 of the terms of purchase after exercise of this Option. A material failure to perform any obligation under the terms of purchase after  
181 exercise of this Option is a default which may subject the defaulting party to liability for damages or other legal remedies.

182 If Buyer defaults under the terms of purchase after exercise of this Option, Seller may:

- 183 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or
- 184 (2) terminate the purchase agreement and have the option to sue for actual damages.

185 If Seller defaults under the terms of purchase after exercise of this Option, Buyer may:

- 186 (1) sue for specific performance; or
- 187 (2) terminate the purchase agreement and sue for actual damages.

188 In addition, the Parties may seek any other remedies available in law or equity.

189 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the  
190 discretion of the courts. If either Party defaults, the Parties may renegotiate the terms of purchase or seek nonjudicial dispute resolution  
191 instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those  
192 disputes covered by the arbitration agreement.

193 **RENTAL WEATHERIZATION:** Unless otherwise agreed Buyer shall be responsible for compliance with Rental Weatherization Standards  
194 (Wis. Adm. Code Comm. 67), if applicable.

195 PROPERTY ADDRESS: 26 North Charter Street Page 4 of 4

198 **AUTHORIZATION FOR INSPECTIONS AND TESTS** Buyer is authorized to conduct the following inspections and tests (see lines 11C-12').

197 INSPECTIONS: Environmental, survey.

198

199 TESTS: Environmental, soil conditions.

200

201 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Option, delivery of documents and written

202 notices to a Party shall be effective only when accomplished by one of the methods specified at lines 203-212.

203 (1) By depositing the document or written notice postage or fees prepaid in the U.S. Mail or fees prepaid or charged to an account

204 with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery designated at lines 206 or 208

205 (if any), for delivery to the Party's delivery address at lines 207 or 209.

206 Seller's recipient for delivery (optional): c/o Attorney John Manzo

207 Seller's delivery address: 8808 University Avenue, Suite 123, Middleton, WI 53562

208 Buyer's recipient for delivery (optional): c/o Attorney Thomas P. Solheim

209 Buyer's delivery address: Solheim Billing & Grimmer S.C., One South Pinckney Street, Madison, WI 53703

210 (2) By giving the document or written notice personally to the Party or the Party's recipient for delivery if an individual is designated at lines 206 or 208.

211 (3) By fax transmission of the document or written notice to the following telephone number

212 Buyer: ( 608 ) 282-1218 Seller: ( 608 ) 831-2548

213 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to payment of option fees and extension fee and all other dates and

214 deadlines in this Option except: None If "Time is of the Essence"

215 applies to a date or deadline, failure to perform by the exact date or deadline is a breach of contract. If "Time is of the Essence" does not

216 apply to a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

217 This Option (is) (is not) ~~STRIKE ONE~~ assignable. This Property (is) (is not) ~~STRIKE ONE~~ homestead property.

218 **ADDITIONAL PROVISIONS**

219

220

221

222

223

224

225 **ADDENDA** The attached Addendum is/are made part of this Option.

226 IF GRANTED, THIS OPTION CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS

227 OPTION AND ALL ATTACHMENTS CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE

228 PROVISIONS OF THE OPTION BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING

229 YOUR LEGAL RIGHTS UNDER THIS OPTION OR HOW TITLE SHOULD BE TAKEN AT CLOSING IF THE OPTION

230 IS EXERCISED. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.

231 This Option was drafted on Aug. 1, 2005 [date] by [Licensee and firm] Attorney Thomas P. Solheim

232 (X) **URP Development, LLC**

233 Buyer's Signature ▲ Print Name Here: ▶ \_\_\_\_\_ Social Security No. or FEIN (Optional) ▲ Date ▲

234 (X) **By**

235 Buyer's Signature ▲ Print Name Here: ▶ Mark D. Bugher, Authorized Officer Social Security No. or FEIN (Optional) ▲ Date ▲

236 **SELLER GRANTS THIS OPTION. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS**

237 **OPTION SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. THE UNDERSIGNED HEREBY AGREES TO**

238 **CONVEY THE ABOVE-MENTIONED PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND**

239 **ACKNOWLEDGES RECEIPT OF A COPY OF THIS OPTION.**

240 (X)

241 Seller's Signature ▲ Print Name Here: ▶ \_\_\_\_\_ Social Security No. or FEIN (Optional) ▲ Date ▲

242 (X)

243 Seller's Signature ▲ Print Name Here: ▶ \_\_\_\_\_ Social Security No. or FEIN (Optional) ▲ Date ▲

244 This Offer was presented to Seller by \_\_\_\_\_ on \_\_\_\_\_, 01 \_\_\_\_\_, E.M.C.M.

245 THIS OPTION IS REJECTED \_\_\_\_\_ THIS OFFER IS COUNTERED [See attached counter]; \_\_\_\_\_

246 Seller Initials ▲ Date ▲ \_\_\_\_\_ SBA# NUMBER ▲ Date ▲

247 **NOTICE OF EXERCISE OF OPTION!** By signing below and delivering this notice (see lines 201-212) Buyer exercises the Option to Purchase.

248 (X)

249 Buyer's Signature ▲ Date ▲ \_\_\_\_\_ (X) Buyer's Signature ▲ Date ▲

**ADDENDUM A  
OPTION TO PURCHASE  
SELLER: ROGER CHARLY  
BUYER: URP DEVELOPMENT, LLC OR ASSIGNS**

The following terms and provisions are incorporated into and are part of the Option to Purchase submitted by URP Development, LLC, or assigns, as Buyer, for the property described as 26 N. Charter Street in the City of Madison, Dane County, Wisconsin (the "Property"):

1. **Property Description.** The Property to be purchased is the Property described as a lot having dimensions of approximately 142.6 feet by 45.1 feet, located at the northwest corner of the intersection of North Charter Street and Capitol Court, Parcel number 070922114065, City of Madison, Dane County, Wisconsin, as shown on Exhibit I.
2. **Restrictions and Covenants.** Seller shall provide Buyer within thirty (30) days of the signing of this option by both parties, copies of all current subdivision regulations and building and use restrictions and easements and zoning ordinances affecting the Property.
3. **Title Insurance Commitment.** Seller, at its expense, shall furnish and deliver to Buyer for examination within sixty (60) days of the signing of this option by both parties, a current title insurance commitment (including legible copies of all documents identified by the commitment as an exception to coverage) which, upon recording of the deed described in this option, shall insure title to the Property in the amount of the purchase price, and insure title to be in the condition called for this option, subject only to easements, liens, encumbrances or exceptions specifically approved by Buyer and those that shall be discharged by Seller at or before closing. Seller shall pay for the updating of the title insurance commitment, which shall be done no sooner than fifteen (15) days prior to closing. Seller shall also provide and pay for a gap endorsement to the title insurance policy.
4. **Section 1031 Exchange.** The parties agree to cooperate with each other in effectuating the tax-free exchange of the property by Seller, at no cost to the Buyer. The Buyer agrees to execute the documents required by the Internal Revenue Code to treat the sale as a tax-free exchange.
5. **Environmental Assessments/Surveys/Soil Investigations.** Seller shall provide Buyer with copies of any environmental surveys or assessments, land surveys, or soil investigations in its possession covering the Property within thirty (30) days of the signing of this option by both parties.
6. **Environmental Indemnification.** Notwithstanding any investigation conducted by Buyer, Seller will, at closing, warrant and represent that the Property is in full compliance with all environmental laws and permits; there are no claims, disputes, actions or proceedings existing against the Seller or affecting the Property that relate to environmental laws or permits; there are no hazardous substances on the Property and that no releases of hazardous substances on, at, over or from the Property are occurring or have occurred. There is no environmental condition, situation or incident that could in any manner give rise to any action or liability under any environmental law; the Seller is not subject to and are not currently operating under any compliance or consent order, schedule, decree or agreement issued or entered into under any

environmental law and the Property does not contain asbestos or PCBs. Seller agrees to indemnify and hold Buyer harmless against and from any and all damages, claims, losses, liabilities, costs and expenses, including reasonable attorney's fees, which may be imposed upon, incurred by or asserted against Buyer by any party arising out of, in connection with, or relating to Seller's breach of, or any inaccuracy in, any representations or warranties set forth in this paragraph.

7. **Closing Documents.** Buyer's attorneys shall prepare the necessary closing documents. Seller understands that Buyer's attorney is not representing it in the sale of the Property.
8. **Condition of Property at Closing.** All debris and personal property will be removed from the Property by Seller before closing and the Property shall be left in broom clean condition.
9. **Brokers Fees.** Each party shall be responsible for their own broker's fees, if any, in regard to this transaction.
10. **Indemnification.** Except as specifically provided otherwise in this option, Seller shall indemnify and hold Buyer harmless from and against any and all loss, cost, damages, injury or expense, including reasonable attorney's fees, arising out of or in any way related to claims or injury to or death of persons, damage to property or contract liabilities associated with the ownership or operation of the Property, or the business conducted thereon, arising out of events or transactions before the date of closing. Except as specifically provided otherwise in this option, Buyer shall indemnify and hold Seller harmless from and against any and all loss, cost, damages, injury or expenses, including reasonable attorney's fees, arising out of or in any way related to claims for injury to or death of persons, damage to property, or contract liabilities associated with the ownership or operation of the Property or business conducted thereon, arising out of events or transactions after the closing date.
11. **Survival of Conditions.** The provisions of this option shall survive a closing of the transaction and delivery of possession and title of the Property. This option is binding on and inures to the benefit of the parties hereto, and their successors and assigns.
12. **Counterparts/Facsimile Signatures.** This option may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature appearing on this option shall be given the same effect as if it were an original signature on an original option.