

**GOOD HOPE LIBRARY
PURCHASE, SALE, &
DEVELOPMENT AGREEMENT**

Document Number

Name and Return Address:
City of Milwaukee
Real Estate Section
Attn: Amy Turim
809 North Broadway, 2nd Floor
Milwaukee, WI 53202-3617

Tax Key No.: 118-9986-100-2

Recording Area

THIS AGREEMENT is by and between the **CITY OF MILWAUKEE**, a municipal corporation duly existing under Wisconsin law, ("City") and **MILL ROAD LIBRARY REDEVELOPMENT, LLC**, a Wisconsin limited liability company, ("Developer") with its principal office at 710 N Plankinton Ave, Suite 300, Milwaukee, WI 53203, and is dated and effective as of July ____, 2018. City and Developer are each a "Party" and collectively, the "Parties."

WITNESSETH:

WHEREAS, The City and the Milwaukee Public Library Board of Trustees ("MPL") desire to replace the City's Mill Road Library Branch and issued a Request for Proposal in November of 2014;

WHEREAS, Developer submitted a proposal within the established time and MPL selected Developer to demolish an existing building and construct a new library branch at 7717 W. Good Hope Road, a parcel of land legally described in Exhibit A (the "Property"), to provide the City with a new library branch and secondary uses to be utilized by Developer as defined herein;

WHEREAS, Developer's proposal includes plans to demolish the existing building on the Property; construct a multistory building to include approximately 17,000 square feet of gray box library space plus no less than 900 square feet of additional space to house HVAC and other mechanical equipment for the Library Unit, 65 residential apartments, 65 resident parking spaces and a minimum of 60 surface parking spaces for library use as described in greater detail herein and in the Approved Final Plans;

WHEREAS, MPL approved the Project, as defined herein, on September 26, 2017; and

WHEREAS, The City Common Council approved the Project, including conveyance of the Property to Developer and acquisition of a new library condominium unit by the City, on October 17, 2017, by passage of Resolution No. 170917 and by passage of Resolution No. 180497 on July 10, 2018.

NOW, THEREFORE, In consideration of the premises and the mutual obligations of the Parties hereto, each Party does hereby covenant and agree with the other as follows:

1. DEFINITIONS

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms when used in this Agreement shall have the following meanings:

- Approved Final Plans: Final construction plans for the Project dated April 3, 2018, as approved by DCD's Design Review Team and MPL.
- Closing 1: Conveyance of the Property from the City to Developer and closing the Loan and Developer's other financing.
- Closing 2: Conveyance of the Library Unit in a gray box condition as required by the terms of this Agreement from Developer to the City.
- DCD: The City's Department of City Development, represented by the Commissioner of DCD or designee or as specified in this Agreement. Any obligation of DCD hereunder shall be an obligation of the City.
- Developer's Architect: Developer's Architect means Engberg Anderson, Inc.
- Developer Unit: A condominium unit to be created by Developer within the Property to include 65 mixed income apartments and 65 surface parking spaces. The Developer Unit will be 4 levels with townhome style apartment units on the first floor and traditional apartments on floors 2 through 4. The apartments will be a mix of 3, 2, and 1 bedroom units with approximately 9 units being market-rate housing and the remainder being affordable to households at or below 60% of area median incomes.
- Environmental Laws: All federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Agency, regulations of the Nuclear Regulatory Agency, and regulations of the Wisconsin Department of Natural Resources now or at any time hereafter in effect.
- Library's Architect: Means the architectural firm hired by MPL to complete interior design of the Library Unit. Upon execution of this Agreement, it is expected that the Library's Architect will be Zimmerman Architectural Studios, Inc. However, nothing in this Agreement shall be construed to preclude MPL from changing architectural firms subsequent to execution of this Agreement.

Library Build Out: Shall be defined as it is in Section 4.D. of this Agreement.

Library Shell: Located on the first floor of the new building on the Property, a minimum of 17,000 square feet of library space plus additional space for the 900 square foot mechanical room constructed in accordance with the Approved Final Plans and including, at a minimum, the list of items as described in Exhibit B having a value at least equal to the Loan. The Library Shell may also be referred to as “gray box” within this Agreement.

Library Unit: A condominium unit to be created by Developer within the Property including the Library Shell, landscaped outdoor and green space around the exterior, rooftop space for mechanicals, and a minimum of 60 surface parking spaces adjacent to the building and for exclusive MPL use, which will all be conveyed to the City as part of Closing 2.

Loan: The Loan is a loan from MPL to Developer in amount of \$2,350,000 in accordance with the terms set forth in Section 5 of this Agreement.

MPL: Milwaukee Public Library, represented by its Board and the MPL Director or as specified in this Agreement. For purposes of this Agreement, MPL shall be considered a sub-entity of the City such that any obligation of MPL hereunder shall be an obligation of the City.

Permitted Successors: The holder of any security instrument authorized by this Agreement including any holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Property or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself. Permitted Successors shall also include any tenants of the Property.

Project Lender: Means Town Bank, its successors and/or assigns.

Purchase Price: The price to be paid by Developer for the Property shall be Seventy-Eight Thousand and No/100ths Dollars (\$78,000.00).

Special Member: Means HCP-ILP, LLC, a Nevada limited liability company, as investor member of Developer.

Substantial Completion: A written acknowledgment from Developer’s Architect and MPL that the Library Unit construction, including the Library Shell, is substantially completed by Developer to a point in accordance with the Approved Final Plans; the condominium documents required by Section 3.E. of this Agreement have been completed and recorded; the Developer has provided to the City and MPL evidence that title to the Library Unit is free of any liens, encumbrances, and mortgages that encumber the Property except for City Encumbrances, as defined in Section 9.F. of this Agreement; the Developer has provided to the City and MPL documentation showing that the Loan was expended in accordance with Section 5 of this Agreement; and the Library Unit can legally

be conveyed to the City. Substantial Completion does not require, among other things, the substantial completion of all landscaping and other minor improvements to the Library Unit.

2. PROJECT DESCRIPTION

Subject to the City's obligation to convey the Property to Developer, and the Developer's obligation to purchase the Property from the City, City and Developer agree that the Property will be redeveloped by Developer as set forth in items "A" through "G" immediately below and that those general activities constitute the "Project."

- A. Title to the Property shall be transferred from the City to Developer at Closing 1.
- B. Developer shall demolish the existing building at the Property.
- C. Building and site improvements on the Property shall be constructed by Developer in substantial compliance with the Approved Final Plans and this Agreement.
- D. Construction of the Library Shell to Substantial Completion, in accordance with standards attached and incorporated herein as Exhibit B, shall be completed by Developer.
- E. The Property shall be submitted to the condominium form of ownership, which includes, but is not limited to, recording a declaration of condominium ("Declaration") and a condominium plat (the "Plat") against the Property. Such condominium (the "Condominium") shall be divided into two condominium units (each a "Unit") consisting of the Library Unit and the Developer Unit and shall also have certain common elements that each owner of a Unit will own an undivided percentage interest in as defined in the Declaration.
- F. Title to the Library Unit shall be transferred from Developer to the City at Closing 2 at no cost to the City and free and clear from all liens, encumbrances, and mortgages created while Developer owned the Property.
- G. Developer shall complete construction of the Developer Unit.

3. DEVELOPER'S OBLIGATIONS

Developer shall have the following obligations with regard to completion of the Project:

- A. If Developer becomes the fee simple owner of the Property, and if the Loan is made to Developer in accordance with the Agreement, Developer shall be responsible for completing all aspects of the Project, including all of its obligations under this Section of the Agreement, at its sole cost except as otherwise specifically provided in this Agreement.
- B. Developer shall prepare and submit to DCD for approval by DCD's Design Review Team and MPL final plans for the Project, which, when approved by these entities, shall become the Approved Final Plans. City acknowledges this requirement was satisfied.
- C. Developer shall submit Project construction specifications and a budget to DCD and MPL for review. City acknowledges this requirement was satisfied.
- D. Developer shall enter into a Human Resources Agreement with the City in form and substance substantially similar to the document attached as Exhibit C.
- E. Developer shall create the Plat, which shall consist of the Library Unit, the Developer Unit and certain common elements. Developer shall prepare the Declaration and Condominium By-Laws and provide to MPL to be reviewed and approved by DCD and MPL prior to Closing 1, which shall, among other things, allocate financial responsibility for common area maintenance between the units. A condominium association shall be organized to manage the common operations of the Property. MPL

- shall hold one-half (1/2) of the voting rights of the condominium association.
- F. After Substantial Completion Developer shall convey the Library Unit to the City at no cost to the City at Closing 2 pursuant to Section 9 of this Agreement.
 - G. Developer shall limit the use of any commercial space within the Developer Unit as described in Section 11 of this Agreement.
 - H. Developer shall obtain and maintain liability insurance during the course of construction of the Project in accordance with the City's minimum guidelines as defined in Section 2.9.7. of the City of Milwaukee Department of Public Works General Specifications, available on the internet at <http://mpw.milwaukee.gov/Pages/bidData/GenSpecs.doc> (the "General Specifications"), except that the umbrella liability coverage required for personal injury / property damage shall be \$5,000,000 per occurrence / aggregate for the Project. Developer shall also bear the risk or require its general contractor to bear the risk of loss or damage to the Project by fire or other casualty prior to issuance of the Certificate, as defined in Section 8 below; provided, however, from and after the date of Closing 2, Developer and its general contractor shall not bear the risk of loss or damage to the Library Unit and the City shall bear such risk at the time of Closing 2, except if such loss or damage to the Library Unit is caused by the negligence or willful misconduct of Developer, its general contractor or any of its sub-contractors. Developer shall purchase and maintain or cause its general contractor to purchase and maintain builder's risk insurance on the Project to the full insurable value thereof, but the amount of such insurance shall be at least equal to the costs to construct improvements for the Project. From and after the date of Closing 2, Developer shall have no obligation to maintain builder's risk insurance on the Library Unit. This insurance shall be written on the standard complete value form. This insurance shall include the interests of Developer in the work and shall insure against fire, extended coverage and all risk perils. This policy of insurance shall bear a deductible no greater than \$10,000 for each occurrence. Developer shall maintain the insurance required by this Agreement until issuance of the Certificate. Certificates of insurance on all required policies shall be filed with DCD which shall include requirement for written notice, as required by the General Specifications, of material change or cancellation to DCD.
 - I. Within five (5) business days of the execution of this Agreement, Developer shall pay the City \$150 for the conditions on Developer's obligation to close on the Purchase of the Property.
 - J. From the time of Closing 1 through the issuance of the Certificate, at any time during normal business hours, Developer shall make available to the City for examination all of Developer's records with respect to all matters covered by this Agreement related to the Library Unit and Developer will permit the City or representatives of the City Comptroller to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, records of personnel, conditions or employment and other data relating to all matters covered by this Agreement related to the Library Unit; provided, however, this Section 3.J. does not require Developer to make available or provide to the City or representatives of the City Comptroller the personal financial information of Developer's investors.
 - K. Prior to hiring a general contractor other than Northtrack Construction Company for the Project, Developer shall submit to the City a list of any general contractors or demolition companies that Developer is considering hiring for the Project. If the City or any of its related entities have had any previous negative experiences with the general contractors or demolition companies being considered by Developer, City may report that previous negative experience to Developer and Developer shall take into account when hiring a general contractor or demolition company for the Project the negative experiences of the City and its related entities.
 - L. Developer shall meet Substantial Completion by April 15, 2019.
 - M. Developer shall complete the Project and request the Certificate, as defined in Section 8, by August 15, 2019.
 - N. Developer shall secure all financing necessary to complete the Project and provide evidence of same

to City prior to Closing 1.

- O. Developer shall submit to MPL prior to Substantial Completion, documentation of how the Loan was expended. This documentation shall be consistent with Exhibit B and shall include detailed invoices from contractors who completed work on the items listed in Exhibit B. Developer may also submit to MPL and an actual bid(s), subject to approval by MPL in writing, for any outstanding landscaping and hardscaping improvements that may be completed by Developer following Substantial Completion and Closing 2 if Developer has not completed such items prior to Substantial Completion.

4. CITY'S OBLIGATIONS

City shall have the following obligations with regard to completion of the Project:

- A. The parties acknowledge that prior to execution of this Agreement, DCD provided Developer, at City expense, with the WDNR GIS Registry Packet and the Historical Land Use Investigation (collectively, "Disclosure Materials"). Developer acknowledges this requirement was satisfied.
- B. City agrees to cooperate with MPL and the Developer to facilitate Closing 1 by expediting the zoning and plan approval process, to the extent possible. Developer acknowledges this requirement was satisfied.
- C. City shall convey the Property to Developer at Closing 1 as required herein.
- D. MPL shall commence interior build out of the Library Unit ("Library Build Out") at its sole expense upon Closing 2 and shall diligently and continuously pursue completion of the Library Build Out and then relocate from the Mill Road Library to the Library Unit at its expense within sixteen (16) months after Closing 2.
- E. While this Agreement is in full force and effect, the City shall not negotiate or enter into any secondary agreements related to the acquisition or development of the Property. This provision shall not apply during a continuing Event of Default or Reverter Default, as defined in Section 18, by Developer exists.

5. MPL LOAN TO DEVELOPER

MPL will make the Loan to Developer according to the following conditions:

- A. The Developer's use of the Loan shall be limited to the construction of the Library Unit.
- B. The Loan shall be fully funded at Closing 1 as long as the City and Developer have fully executed this Agreement.
- C. The Loan shall be documented with a promissory note, reflecting a term of thirty (30) years and a rate equal to the current Applicable Federal Rate, as established by the U.S. Internal Revenue Service (commonly known as "AFR") as of the date of Closing 1.
- D. Payment of principal and interest shall be deferred for the term of the Loan on a non-compounded basis and repayment of the Loan is subject to available cash flow except that in the event Developer fails to complete and convey the Library Unit to the City or MPL, the Loan shall be immediately repaid upon demand by MPL with interest.
- E. At Closing 2, the City shall provide a partial satisfaction of note, documenting such partial satisfaction of the Loan in the form attached as Exhibit E. The DCD Commissioner or his designee shall have authority to execute the satisfaction and other closing documents.
- F. In the event that the documentation required by Section 3.O shows that any portion of the Loan was not expended on construction of the Library Unit and the portions of the Developer Unit sharing common walls and ceiling with the Library unit as set forth in Exhibit B even though Developer has completed all of the items outlined in Exhibit B, Developer shall at MPL's sole discretion either using the remaining Loan funds to complete additional improvements to the Library Unit as approved in

writing by MPL or repay that portion of the Loan at Closing 2 for MPL's use during the Library Build Out. This subsection shall not apply to any Loan funds held by Developer for completion of any outstanding landscaping or hardscaping improvements that are agreed to by MPL pursuant to Section 3.O.

6. CONVEYANCE OF PROPERTY – CITY TO DEVELOPER (CLOSING 1)

- A. Closing 1. Closing 1 shall occur no later than July 31, 2018, but all parties shall work diligently to complete Closing 1 by July 12, 2018. Closing 1 shall occur at the City Real Estate Office, with the Deed and other recordable documents delivered in escrow to Developer's title company. Developer shall pay the Purchase Price to City at Closing 1 in the form of a check subject to the usual and customary pro-rations ("Net Purchase Price").
- B. City Closing Contingencies. Notwithstanding anything to the contrary contained herein, the City's duty to close and convey the Property at Closing 1 is contingent upon all of the following:
- (1) Developer entering into a Human Resources Agreement with the City at or before Closing 1;
 - (2) Developer meeting all of its obligations in Sections 3 that are required to be completed prior to Closing 1; and
 - (3) Developer meeting the City's Buyer Policies, outlined below.
 - (4) Developer entering into a Payment in Lieu of Taxes (PILOT) Agreement in substantially the same form as the document attached as Exhibit D with the City at or before Closing 1.
 - (5) Developer obtaining financing commitments in amounts sufficient to complete the Project and providing proof thereof to MPL prior to Closing 1.
- C. Developer Closing Contingencies. Notwithstanding anything to the contrary contained herein, the Developer's duty to close and purchase the Property at Closing 1 is contingent upon all of the following, which Developer shall diligently pursue fulfilling in order to meet the Closing 1 deadline:
- (1) Prior to Closing 1, Developer and City agreeing upon the form and substance of the Plat, Declaration and By-Laws of the condominium association. Closing 1 shall not be delayed for failure to meet this item, if the delay is caused by Developer, the Project Lender or the Special Member.
 - (2) Developer obtaining, at its cost, all surveys, inspection reports and assessments (acceptable to Developer in its sole discretion) describing the overall physical condition of the Property, as required by Developer to determine if the Property is suitable for the Project. Developer acknowledges that this condition has been satisfied.
 - (3) Prior to Closing 1, Developer obtaining all municipal and other approvals and permits necessary for Developer to demolish the existing building and complete construction and development of the Project as contemplated by this Agreement and the Approved Final Plans. Developer acknowledges that this condition has been satisfied.
 - (4) Prior to Closing 1, Developer obtaining a title commitment for the Property evidencing the status of title to the Property, subject only to such easements, restrictions, covenants and other conditions as approved by Developer in its sole discretion ("Permitted Exceptions"). Notwithstanding the foregoing, City shall satisfy all liens and encumbrances of a monetary nature at Closing 1. Developer acknowledges that this condition has been satisfied.
 - (5) Prior to Closing 1, Developer having reached a final agreement with City's Office of Small Business Development regarding the requirements of the Human Resources Agreement applicable to the Library Unit, including a final determination of Project Costs, eligible Categories of Work, and a final intermediate "benchmark" schedule applicable to the requirements of the Human Resources Agreement.

- D. Form of Deed. City shall, at Closing 1 and upon Developer's payment of the Purchase Price, convey the Property to Developer by quit claim deed ("Deed") in an "as is, where is" condition. The conveyance and title shall be subject to the following:
- (1) The provisions of Section 18 of this Agreement;
 - (2) Any recorded or unrecorded rights or interests of any person, entity or utility in any vacated alley, street, or public right-of-way at the Property including rights and interests of persons under Wis. Stat. § 66.1005(2); and
 - (3) All other conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement.
- D. Proration of Taxes. The City hereby represents that the Property is tax exempt. There shall be no proration of real estate taxes as the Property is tax exempt.
- E. Recordation of Deed. Developer shall promptly file the Deed for recording at the Milwaukee County Register of Deeds or as permitted by the Municipal Code of Ordinances. Developer shall pay all costs for so recording the Deed including the real estate transfer fee pursuant to Wis. Stat. Sections 77.22.
- F. Other Closing Documents. Developer shall be responsible for recording the Property as required by the City Department of Neighborhood Services Property Registration Program and shall execute the required application. Developer shall be solely responsible for all fees for such document. The City shall execute the Title Company's customary form of GAP Affidavit, Construction Work and Tenant's affidavit (a/k/a Owner's Affidavit), and Broker's Lien Affidavit.
- G. Special Assessments. Developer shall be responsible for all special assessments and charges levied after the date of Closing 1 and prior to the date of Closing 2, and the City shall be responsible for all other special assessments and charges affecting the Property prior to Closing 1. City shall be responsible for all special assessments and charges levied against the Library Unit after the date of Closing 2. City shall provide details of any levied, known or contemplated special assessments and charges at Closing 1. If special assessments or charges for which the City is responsible exist at Closing 1, City shall grant a credit in the full amount of such assessments and charges, as applicable, against the Purchase Price. Developer shall pay the applicable assessments or charge when billed, subject to Developer's right to pay in installments. If the estimated assessment or charge or any combination thereof are greater than the Purchase Price, DCD shall notify the Department of Public Works to bill DCD for the same and the City and DCD hereby indemnify, defend and hold Developer and its title insurance company harmless from such assessment, charge, or both, as applicable, and hereby agree to execute any customary title insurance company documentation necessary to allow the title insurance company to remove such assessment, charge or both from Developer's title insurance policy, including, without limitation affidavits, indemnity agreements and other similar title insurance company documents. If the special assessment, charge or both for which the City is responsible is billed to Developer or inadvertently certified to the tax roll, Developer shall provide the bill to DCD and DCD shall be responsible for and shall arrange for payment and DCD hereby indemnifies, defends and holds Developer harmless from any such payment.
- H. City Buyer Policies. Pursuant to City policy, City shall not sell property to any party, as an individual or by a partnership, limited liability company or corporation in which Developer has an ownership interest that is in violation of the City Buyer Policies contained herein. Developer certifies that it, as an individual or member of a corporation or partnership and its individual members, are not now and will not be at Closing 1 in violation of the following City Buyer Policies:

- (1) Is tax delinquent in the payment of any property tax (real or personal property), special assessment, special charge or special tax owed to the City;
- (2) Has an outstanding judgment owed to the City;
- (3) Has outstanding building or health code violations or orders from the City's Health Department or Department of Neighborhood Services that are not actively being abated;
- (4) Has been convicted of violating an order of the Health Department or Department of Neighborhood Services within 12 months preceding Closing 1;
- (5) Has been convicted of a felony that causes neighborhood or community concerns with respect to neighborhood stability, health, safety or welfare; or
- (6) Has been subject to a property tax foreclosure by the City within five years preceding Closing 1.

If Developer or any of its members are found to be in violation of any of these City Buyer Policies, City shall give Developer notice to correct this condition at least thirty (30) days prior to Closing 1; however, any violations that arise during the thirty (30) days prior to Closing 1 shall be corrected prior to Closing 1. For any violations arising during the thirty (30) days prior to Closing 1 that are incapable of being corrected prior to Closing 1, Developer shall diligently pursue correction of any such violations and the date for Closing 1 shall be extended a reasonable time to allow for such corrections to occur. No extension of the date for Closing 1 under this section results in an extension of deadline for Substantial Completion pursuant to Section 18.F. If the violation is not corrected within the specified period, this Agreement may be canceled at the option of the City or MPL and any fees paid by Developer shall be retained by the City or MPL, respectively, as liquidated damages.

- I. Agreement to be Recorded Against Title. At Closing 1 and before recording the Deed, a Memorandum of this Agreement shall be recorded against the Property in the Register of Deeds Office at Developer's expense and the Property's title will be encumbered by it until issuance of the Certificate, defined in Section 8 below.

7. PROPERTY CONDITION AND SITE PREPARATION

- A. Property Condition. City discloses that the Property contains a building and may contain old building foundations, rubble and debris from prior buildings that may have been demolished. City shall not conduct any geotechnical investigation or building evaluations at the Property. Developer agrees to accept the Property "as is, where is" and is solely responsible for conducting its own geotechnical investigation to determine the soil bearing capacity. City shall not conduct any investigations associated with building. City shall convey the Property in an "as is, where is" physical condition with all faults and defects, known or unknown, and without representation or warranty as to the physical condition of the Property, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims related to the physical condition, including any action based on non-disclosure, excluding, however, any action based on fraud. Developer shall rely on Developer's own due diligence and independent investigation and inspection, and Developer shall not rely upon any oral or written statement or representation of City or any employee or agent or contractor of City, MPL or DCD regarding the existing building and/or retaining wall improvements. The provisions in this Section 7.A. shall survive Closing 1.
- B. Environmental Condition.
 - (1) City has provided to Developer and Developer acknowledges receipt of the WDNR GIS Registry Packet and the Historical Land Use Investigation. Provision of these reports does not affect or impact the "as is, no representation or warranty" nature of this transaction.
 - (2) Developer Reports. Should Developer desire its own Phase I or Phase II environmental testing or remediation, all such investigation, testing and reports shall be at Developer's sole expense and

responsibility. Developer must use an environmental consultant under a master contract with the City for a Phase I or Phase II report if the City is to rely on such information. Phase II testing by Developer can occur only after City approval of a scope of work, granting of a right of entry to Developer and to Developer's environmental consultant and provision of certificate of insurance including environmental insurance to the City, naming the City as an additional insured. Developer shall provide City with all reports prepared by Developer's environmental consultant.

- (3) Remediation. If the Phase II reveals impacted soils subject to regulation by federal, state or local regulatory agencies and Developer becomes the fee simple owner of the Property, then, and only then, Developer agrees to: (i) remediate such impacted soils on the Property, if any, and to obtain regulatory closure; and (ii) register the Property if the approved remediation plan requires registration on the Wisconsin Department of Natural Resources' GIS Registry. Remediation performed pursuant to this Section 7.B.(3) shall be at Developer's sole expense unless City is able to obtain any federal or state grants for required remediation, which the City agrees to use reasonable efforts to obtain.
- (4) Termination for Feasibility. If the cost for Phase II testing or any required remediation renders the Project economically infeasible, this Agreement may be terminated at the option of either Party.

C. Access to Property. Prior to Closing 1, and while this Agreement is in full force and effect, MPL, the City and DCD shall permit representatives of Developer to have access to any part of the Property, at all reasonable times for the purpose of obtaining data and making various inspections, surveys, assessments and tests, at Developer's sole cost, that are necessary to carry out the Agreement upon receipt by the City of a written request for such entry describing the scope of work for the proposed activities and submittal of evidence of insurance according to the City's minimum guidelines. Prior to any such access, Developer shall provide the City with proof of Developer's or Developer's consultant's, as applicable, insurance coverage according to the City's minimum guidelines. Such evidence of insurance must be reasonably satisfactory to the City in form and substance prior to Developer or its representatives accessing the Property. After Closing 1 and prior to the issuance of the Certificate (defined below), Developer shall permit representatives of the City including, but not limited to, an owner's representative hired by MPL to represent MPL's interests during the construction of the Library Unit, access to the Property at all reasonable times upon reasonable prior notice for the purpose of inspecting the work being performed in connection with the Library Unit, provided that representatives of Developer, its general contractor or Developer's Architect may accompany City representatives during such access of the Property. No compensation shall be payable nor shall any charge be made in any form by any Party for the access provided for in this Section. Nothing in this Section shall be interpreted or construed in such a way as to limit the ability of the City to conduct normal and customary inspections of the construction site as required or permitted under local or state laws or regulations or as a condition of any permit issued for the Project.

8. CERTIFICATE OF COMPLETION

Promptly after completion of the Project, including, but not limited to, all closings, construction, condominium documents and landscaping, in accordance with this Agreement, the Human Resources Agreement attached as Exhibit C, and the Approved Final Plans, Developer shall request that the Commissioner of DCD in cooperation with MPL issue a Certificate of Completion certifying to Developer and its successors and assigns and Developer's successors in title to the Property, which certification shall be a conclusive determination, that the Project has been built in compliance with, and is in fact in compliance with, the covenants, conditions, requirements, and restrictions in this Agreement and the Approved Final Plans (the "Certificate"). The Certificate is not a conclusive determination that the Project is free from any and all defects as to construction, materials and design or other defects which cannot be easily ascertained through a visual

inspection of the completed construction. Representatives of the City shall inspect the Property and documentation related to hiring of Milwaukee residents as outlined in Chapter 355 of the Milwaukee Code of Ordinances and SBE requirements, (the "Inspections") within thirty (30) days following Developer's request for the Certificate and Developer providing to the City the documentation related thereto. In the event Developer has failed to complete construction of the Project in conformity with Approved Final Plans and covenants set forth in this Agreement and the Commissioner of DCD in cooperation with MPL declines to issue the Certificate for the Project, the City shall provide Developer and Project Lender with a written statement indicating in detail how Developer has failed to complete construction of the Project in conformity with Approved Final Plans and covenants set forth in this Agreement and setting forth what measures or acts are necessary for Developer to obtain the Certificate of Completion. The Certificate of Completion shall be in recordable form and may be recorded by Developer or Project Lender with the Register of Deeds for Milwaukee County. The Developer's successors-in-interest and successors-in-title shall be able to rely on the Certificate of Completion. Except as provided in Section 12 of this Agreement, issuance of the Certificate shall serve to automatically terminate the terms, conditions, provisions, covenants and restrictions of this Agreement.

9. CONVEYANCE OF LIBRARY UNIT – DEVELOPER TO CITY (CLOSING 2)

- A. Precondition of Closing 2. Developer shall submit the documentation required by Section 3.O. and MPL shall be satisfied that the Loan has been fully expended and used for the purpose described in Section 5.A. MPL shall be notified in writing of any amendments made to the Plat, Declaration, and Condominium By-laws subsequent to Closing 1 and MPL's approval of such amendments is a precondition to Closing 2.
- B. Timing of Closing 2. Closing 2 of the Library Unit to the City shall be at the City Real Estate Office within 30 days after Substantial Completion at a time mutually agreed to by the parties, unless some other timeframe is agreed to in writing by Developer and MPL.
- C. Form of Deed; Partial Satisfaction of the Loan. Developer shall, at Closing 2, convey the Library Unit by special warranty deed to the City at no cost to the City, except as provided herein, and such conveyance shall be deemed a partial prepayment of the Loan. City shall issue a partial satisfaction of the City note at Closing 2, accordingly.
- D. Intentionally omitted.
- E. Proration of Taxes. There shall be no proration of property taxes. Developer will pay all property taxes for the year during which Closing 2 occurs.
- F. Recordation of Deed. City shall promptly file the special warranty deed for recording at the Milwaukee County Register of Deeds and shall pay costs for recording the special warranty deed except that Developer shall pay the real estate transfer return fee. Title to the Library Unit shall be conveyed to the City subject to the Declaration, the Plat, this Agreement, any liens, encumbrances or other matters that encumbered the Property prior to or as of Closing 1 or that the City has otherwise consented to or caused prior to Closing 2 (collectively "City Encumbrances").
- G. Title Insurance. City, at its discretion, may pay for and obtain a title commitment and/or title insurance for the Library Unit in an amount determined by the City to be acceptable. If the title commitment shows exceptions or requirements to title that are unacceptable to the City and are not City Encumbrances, City shall, at least 30 days before Closing 2, notify Developer of such defects, and Developer shall cure such title defects and present a title insurance commitment on the basis of

which Closing 2 may occur, and the date for Closing 2 shall be extended as necessary to accommodate Developer's requirement to cure in accordance with the foregoing. Developer shall satisfy, at or prior to Closing 2, all liens and encumbrances against the Library Unit that secure monetary obligations provided such liens and encumbrances are not City Encumbrances.

- H. Warranty. Developer shall cause all warranties obtained by Developer in connection with the construction of the Library Shell, including construction and landscaping (the "Library Shell Warranties") to be assigned to MPL. If Developer is unable to cause such assignments, then Developer itself shall (i) warrant to MPL that the Library Shell conforms to the Approved Final Plans for a period of twelve (12) months following Substantial Completion, and (ii) warrant to MPL that the landscaping that will be part of the Library Unit shall conform to the Approved Final Plans; provided, however, that neither warranty shall extend to damage or defect caused by abuse, or alterations not approved by Developer or its general contractor, or to damage or defect caused by insufficient maintenance, improper operation, or normal wear and tear and normal usage.
- I. Construction Continuation. The parties acknowledge that after Closing 2 both Developer and MPL will be performing construction work on the Property and will need staging areas and on-site trailers. The parties and their contractors shall work together to develop mutually agreeable locations for their trailers and staging areas. After Closing 2 and upon MPL's commencement of the Library Build Out, Developer and MPL agree to use reasonable efforts to not interfere with each other's construction activities. As necessary for Developer to complete work on the library landscaping and the Developer Unit following Closing 2, MPL hereby grants Developer a right of entry over portions of the Library Unit (the "Right of Entry") necessary for the purpose of completing the library landscaping and Developer Unit. Prior to Closing 2, Developer shall provide proof to MPL that the outdoor portions of the Library Unit are covered under Developer's liability insurance and that MPL is named as an additional insured. Developer shall maintain such liability insurance coverage at all times that it uses the Right of Entry.

10. RESTRICTIONS ON USE

Developer agrees for itself and its successors and assigns, and every successor in interest to the Property, or any part thereof, to:

- A. Not discriminate upon the basis of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories in the sale, lease or rental, or in the use or occupancy of the Property or any improvements located or to be erected thereon, or any part thereof.
- B. Comply with all requirements of the Americans with Disabilities Act of 1990, U.S.C. #12101, et. seq.

11. LIMITATIONS ON USE

- A. Limitation on Commercial Space. In the event the Developer Unit is modified in the future to include any commercial space to be leased by Developer or its successor-in-interest in the Developer Unit, for only so long as MPL owns the Library Unit, Developer and its successors-in-interest shall not allow such commercial space in the Developer Unit to be used for the following activities or types of use: tavern, adult retail or entertainment establishment, animal services or any use requiring a liquor license.

B. Option to Purchase Library Unit. In the event that the City's Common Council formally declares that the Library Unit is surplus to municipal needs and/or decides to sell or lease the Library Unit, the City shall so notify the Developer or then Owner of the Developer Unit if no longer owned by the Developer ("Owner of the Developer Unit") of its intent to sell or lease the Library Unit and give the Owner of the Developer Unit the option to purchase the Library Unit before the City markets the Library Unit for sale or lease. This Section 11.B. shall survive the termination of this Agreement and run with the land. The following procedure shall be used with regard to the Library Unit option to purchase:

- (1) The City shall notify owner of the Developer Unit in writing of the Common Council's declaration and the City's intent to sell or lease the Library Unit ("Notice of Conveyance") and the owner of the Developer Unit shall have 60 days to notify the City in writing of its intent to exercise the option to purchase the Library Unit ("Notice of Intent"). If the Owner of the Developer Unit fails to so notify the City within 60 days or notifies the City that it has decided not to exercise the option to purchase the Library Unit, the City may proceed with selling or leasing the Library Unit to a third party and this Section 11.B. shall terminate. If the Owner of the Developer Unit does not exercise the option to purchase the Library Unit, such action shall constitute authorization under Section 7.02 of the Declaration for City to change the use of the Library Unit.
- (2) If the Owner of the Developer Unit provides the Notice of Intent to the City, City and the Owner of the Developer Unit shall each have 30 days to hire an appraiser and notify the other party in writing of the name of the appraiser hired. The City and the Owner of the Developer Unit shall each require their appraiser to provide a written appraisal of the fair market value of the Library Unit within 90 days after the date on which the second appraiser was identified to the other party. Each party shall provide a copy of its appraiser's report to the other party. From and after the City's delivery of the Notice of Conveyance until Owner of the Developer Unit's delivery of the Notice of Intent to the City, the Owner of the Developer Unit shall have access to the Library Unit upon forty-eight (48) hours prior written notice, for the purpose of performing an inspection of the Library Unit. From and after the Owner of the Developer Unit's delivery of the Notice of Intent to the City: (i) the City shall not enter into any leases of the Library Unit or any other contracts affecting the Library Unit, except for terminable contracts entered into in the ordinary course of operating the Library Unit; and (ii) the City shall not encumber the Library Unit including, without limitation, the City shall not grant any easements, mortgages, security interests, or liens in, to, or upon the Library Unit.
- (3) If the difference between the two appraisals is less than or equal to 10% of the higher of the two appraisals, the average of the two appraisals shall be the fair market value of the Library Unit. If the difference between the two appraisals is more than 10% of the higher of the two opinions, the City and the Owner of the Developer Unit shall meet and confer and attempt to negotiate a fair market value for the Library Unit. If the parties are unable to agree on a fair market value within 30 days of receipt of both appraisal reports, they shall, within 60 days of receipt of both appraisal reports, jointly hire and equally share the cost of a third appraiser chosen by their respective appraisers to complete a third appraisal report within 90 days of the selection of said third appraiser.
- (4) Upon receipt of the third appraisal report, the fair market value of the Library Unit shall be the value as stated in that appraisal.
- (5) After determining the fair market value of the Library Unit, the Owner of the Developer Unit shall have 30 days to notify the City in writing whether it intends to purchase the Library Unit for the fair market value as determined using the process described in this Section 11.B. ("Notice of Purchase"). Upon delivery of the Notice of Purchase, the parties shall have 90 days during which to close on the

sale of the Library Unit. This deadline may be extended by the parties if additional time is necessary for the Owner of the Developer Unit to obtain financing to purchase the Library Unit which extension shall not be unreasonably withheld so long as the Owner of the Developer Unit has made a good faith effort towards obtaining such financing. The standard and customary payment of closing costs and proration of other amounts owed at closing shall apply.

- (6) All appraisers used under this section shall be licensed as Certified General Appraisers by the State of Wisconsin.
- (7) If, prior to City's receipt of the Notice of Purchase from the Owner of the Developer Unit, the City decides that it wants to keep the Library Unit, the City shall so notify the Owner of the Developer Unit in writing and the City may retain ownership of the Library Unit and the City shall reimburse the Owner of the Developer Unit for its reasonable out of pocket expenses for appraisal costs incurred in connection with determining the fair market value of the Library Unit under this Section 11.B. However, anytime in the future that the City's Common Council formally declares that the Library Unit is surplus property no longer needed by the City, the City must first offer the Owner of the Developer Unit the option to purchase the Library Unit as described herein.
- (8) Pursuant to City policy, City shall not sell the Library Unit to any party, as an individual or by a partnership, limited liability company or corporation that is in violation of the following City Buyer Policies at the time of closing:
 - (a) Is tax delinquent in the payment of any property tax (real or personal property), special assessment, special charge or special tax owed to the City;
 - (b) Has an outstanding judgment owed to the City;
 - (c) Has outstanding building or health code violations or orders from the City's Health Department or Department of Neighborhood Services that are not actively being abated;
 - (d) Has been convicted of violating an order of the Health Department or Department of Neighborhood Services within preceding 12 months;
 - (e) Has been convicted of a felony that causes neighborhood or community concerns with respect to neighborhood stability, health, safety or welfare; or
 - (f) Has been subject to a property tax foreclosure by the City within the preceding five years.
- (9) The Owner of the Developer Unit may obtain a title insurance commitment reflecting the state of title for the Library Unit (the "Library Commitment"). If the Library Commitment shows any matter that affects the Library Unit that is unacceptable to the Owner of the Developer Unit that the City cannot or will not cure, then the Owner of the Developer Unit may elect, in its sole discretion, not to acquire the Library Unit. Notwithstanding anything to the contrary in this Agreement, prior to the conveyance of the Library Unit to the Owner of the Developer Unit, the City shall fully satisfy any monetary lien encumbering the Library Unit not caused by the Owner of the Developer Unit. If the Owner of the Developer Unit elects to not acquire the Library Unit in accordance with this Section 11.B.9, the Owner of the Developer Unit shall not be responsible for any costs incurred by the City, MPL or any other subdivision of the City in connection with this Section 11.B.

12. COVENANTS BINDING UPON SUCCESSORS IN INTEREST: PERIOD OF DURATION

It is intended and agreed that the covenants provided in Sections 3.G., 10, and 11 shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and

enforceable by, the City, its successors and assigns, MPL, and any successor in interest to the Property, or any part thereof, and the United States (in the case of the covenant provided in Section 10.B), against Developer, its successors and assigns, and every successor in interest to the Property or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the covenant provided in Section 10.A shall remain in effect without limitation as to time. With the exception of Sections 3.G., 10, and 11, issuance of the Certificate shall serve to automatically terminate the terms, conditions, provisions, covenants and restrictions of this Agreement.

13. TRANSFER OF PROPERTY

Developer has not made or created, and will not, prior to issuance of the Certificate, make or suffer to be made any other sale, assignment, conveyance, lease or transfer in any other form with respect to this Agreement or the Property, or any part thereof or any interest therein, or contract or agree to do any of the same, without the prior written approval of the Commissioner; provided, however, that Developer may, without the prior written approval of the Commissioner: (a) assign or transfer this Agreement to an entity which has substantially similar ownership as Developer, including the admission of an equity investor limited partner of the Developer; (b) grant a mortgage or any other security interest in the Property to Developer's lenders financing the Project; (c) enter into leases for the residential apartments located in the Developer Unit; and (d) convey the Library Unit to MPL pursuant to Section 9. In the event of (a) above, Developer must provide to MPL, within 3 days of any such assignment or transfer, written notice of the assignment or transfer, identifying the entity and the ownership interests in the assignee or transferee entity, and the similarity or overlap to Developer. Any such assignee or transferee (and any principal of any such entity) must meet and satisfy all of the City Buyer Policies set forth in Section 6.H, above.

14. LIMITATION UPON ENCUMBRANCE OF PROPERTY

Prior to issuance of the Certificate, neither Developer nor any successor in interest to the Property shall engage in any financing creating any security interest in the Property, whether by express agreement or operation of law, except for the purposes of obtaining (a) funds necessary for completion of the Project, and (b) such additional funds, if any, in an amount not to exceed the Purchase Price paid by Developer to the City. Until issuance of the Certificate, Developer (or its successor in interest) shall notify the City and MPL in advance of any financing secured by mortgage or other similar lien instrument it proposes to enter into with respect to the Property and of any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of Developer or otherwise.

15. MORTGAGEES NOT OBLIGATED TO CONSTRUCT

Notwithstanding any of the provisions of this Agreement, including but not limited to those which are intended to be covenants running with the land, Permitted Successors shall not be obligated by the provisions of this Agreement to complete the Project or to guarantee such Project; nor shall any covenant or any other provision in the Deed be construed to so obligate such Permitted Successor.

16. ENFORCED DELAY IN PERFORMANCE

The City, MPL, nor Developer, nor any successor in interest, shall be considered in breach or default of its obligations with respect to the preparation of the Property for development or commencement and completion of the Project, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence. The time for the performance of the obligations shall be extended for the period of the enforced delay, as reasonably determined by the City, if the Party seeking the

extension shall request it in writing of the other Party within ten (10) days after the beginning of the enforced delay.

17. NO DAMAGES FOR DELAY

Developer shall not be entitled to recover any damages from the City or MPL arising from or attributable to any delays in construction upon or development of the Property or the interior build out of the Library Unit, unless the City, DCD, MPL or the agent of any of them caused the delay in question.

18. DEFAULT AND REMEDIES

- A. Event of Default. Subject to Section 16, above, if City, MPL, or Developer shall default in the performance or observance of any of the covenants, agreements or conditions on the part of such Party set forth in this Agreement and the continuance thereof for thirty (30) days following receipt of written notice from the other Party (a copy of which notice shall be simultaneously delivered to Special Member and Project Lender) specifying such default and requesting that it be corrected, it is hereby defined as and declared to be and to constitute an “Event of Default” under and for purposes of this Agreement; provided, however, that if the Event of Default is one that cannot reasonably be cured within said 30 days, it shall not be an Event of Default if the defaulting Party is diligently and faithfully pursuing a cure. Notwithstanding the foregoing, City, MPL, and Developer agree that in the event Developer fails to perform any obligation or observe any condition or agreement under this Agreement or in the event of any default by Developer, or upon the occurrence of any Event of Default attributable to Developer, then the Special Member and the Project Lender shall have the right (but not the obligation) to perform in place of Developer and to cure such default, failure or Event of Default within ninety (90) days following receipt of notice by Special Member and Project Lender from City or MPL. Neither City nor MPL shall take any action with respect to such default, failure or Event of Default, including, without limitation, any action intended to terminate or rescind this Agreement, for such period of ninety (90) days after receipt of such written notice by Project Lender and Special Member or such longer period as may be applicable under the terms of this Agreement.
- B. Event of Default Prior to Closing 1. If an Event of Default occurs prior to Closing 1, the City or MPL may, at its option, terminate this Agreement and retain any fees submitted by Developer as liquidated damages, subject to the rights of Project Lender and Special Member as set forth above. If Event of Default results in delay of Closing 1, there shall be no extension of deadline for Substantial Completion pursuant to Section 18.F.
- C. Notice of Breach and Right to Cure. If an Event of Default shall occur, and if the defaulting Party fails to faithfully and diligently pursue cure after notice and the applicable period to cure as provided in this Agreement, then the aggrieved Party may institute such proceedings and/or take such action to secure any rights as the aggrieved Party may have available to it hereunder or at law or in equity, including, but not limited to, an action to compel specific performance and/or seek damages.
- D. Waiver. No delay, waiver, omission or forbearance on the part of any Party to exercise any right or power arising out of any other Party’s default shall be deemed a waiver by that Party of such right or power against the other Party for any subsequent Event of Default.
- E. City’s Retained Reversionary Interest.

(1) Notwithstanding anything to the contrary contained herein or in the Deed, if, subsequent to Closing

1 and prior to issuance of the Certificate:

- (a) Developer, or any successor, abandons construction or is proceeding with construction but is not constructing in substantial compliance with the Approved Final Plans or this Agreement, and any such default, violation, or abandonment is not cured, ended or remedied within 90 days after City's written demand to Developer (and Special Member and Project Lender) to do so; or
- (b) Developer, or any successor, fails to pay real estate taxes, special assessments or special charges (other than special assessments or special charges that are the responsibility of the City pursuant to Section 6.G. of this Agreement) on the Property or any part thereof when due and such taxes or assessment shall remain unpaid or no provision satisfactory to the City has been made for such payment within 90 days after City's written demand to do so; or
- (c) There is any transfer of the Property or any part thereof in violation of this Agreement, and such violation shall not be cured within 90 days after the City's written demand Developer (and Project Lender) to do so;

(collectively "Reverter Default") then, and only then, shall the City have the right to reenter and take possession of the Property and to record against the Property in the Milwaukee County Register of Deeds Office a "Notice of Reverter." Developer agrees that the recording of such Notice of Reverter in strict compliance with this Section E shall have the effect of delivering and recording a deed from Developer to City, and shall automatically terminate all of Developer's rights, title and interest in and to the Property (and any interest of any successor that has taken title from or through Developer, except Permitted Successors) and revert in the City, subject to rights of Permitted Successors and other parties with a recorded interest in the Property, the full estate conveyed by the Deed. The intent of this provision, together with other provisions of this Agreement, is that the conveyance of the Property to Developer pursuant and subject to this Agreement shall be made upon a condition subsequent to the conveyance that in the event of a Reverter Default, and the failure on the part of Developer to remedy, end, abrogate or otherwise cure such default, failure, violation, breach or other action or inaction, within the period and in the manner stated in such subdivisions, City at its option may effect a termination of the estate conveyed to Developer in favor of City in which case all rights and interests of Developer (and of any successor or assign to Developer or the Property, except Permitted Successors), shall revert to, and thereafter be solely and fully vested in, the City. And such reversion of title in the City shall be subject to, limited by, and shall not defeat, render invalidate or limit (a) the lien of any mortgage authorized by this Agreement, (b) any right or interest provided in the Agreement for the protection of the holder of such mortgage and (c) any right of any Permitted Successor, including any lessee authorized by this Agreement.

- (2) City's reversionary right is a material provision of this Agreement, without which, the City would not have entered into this transaction.
- (3) Upon the issuance of the Certificate, this Section 18.E. shall automatically terminate along with the City's reversionary interest in the Property.
- (4) Special Member Cure Rights. Notwithstanding anything to the contrary contained in this Agreement, City hereby agrees that any cure of any Reverter Default made or tendered by Special Member shall be deemed to be a cure by Developer and shall be accepted or rejected on the same basis as if made or tendered by Developer.

F. Delay in Substantial Completion. In the event Developer fails to meet the deadline in Section 3.L. for Substantial Completion of the Library Shell, subject to Section 16 of this Agreement, Developer shall pay liquidated damages to MPL in the amount of \$250 per day until such time that MPL is able to begin its interior build-out of the Library Unit.

G. Repayment and Reimbursement. In the event the Project fails and Developer is unable to provide the Library Unit to MPL, Developer shall repay the Loan and pay all of MPL's costs to date including costs of designing the interior build-out of the Library Unit and any legal fees. It shall be conclusive evidence that the Project has failed if (1) Developer fails to meet the deadline in Section 3.L. and work on the Library Unit has substantially ceased for a period of 90 days or (2) Developer fails to meet the deadline in Section 3.M. and work on the Project has substantially ceased for a period of 6 months.

19. RESALE OF REACQUIRED PROPERTY: DISPOSITION OF PROCEEDS

A. Upon the revesting in the City of title to the Property or any part thereof as provided in Section 18, City shall use best efforts to resell the Property or part thereof (subject to rights of Permitted Successors) as soon and in such manner as the City shall find feasible and consistent with the objectives of applicable law to a qualified and responsible party or parties (as determined by the City) who will either (a) assume the obligation of making or completing the Project as shall be satisfactory to the City or (b) agree to undertake such other project at the Property as shall meet City's approval or, alternatively, the Project with such modifications to which City agrees.

B. Upon City resale of the Property (or part thereof) the proceeds thereof shall be applied:

- (1) First, to reimburse the City for all costs and expenses incurred by the City, MPL or DCD, including, but not limited to, salaries of personnel in connection with the reversion in title, management and resale of the Property or part thereof (but less any income derived by the City from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the City, an amount equal to such taxes, assessments or charges (as determined by the City's assessing official) that would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Project (or such modified or alternate project as City may establish or to maintain the Property), and any amounts otherwise owing the City by the successors or transferee; and
- (2) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of the Net Purchase Price paid by it for the Property (or allocable to the part thereof) and the cash, labor and material actually invested by it in performing any aspect of the Project on the Property or part thereof, less any gains or income withdrawn or made by it from this Agreement or the Property.
- (3) Any balance remaining after such reimbursements shall be retained by the City as its property.

20. CONFLICT OF INTEREST: CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE

No City member, official or employee shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No City member, official or employee shall be personally liable to Developer, or any successor, in the event of any City default or breach or for any amount which may become due to his, or its successor, or on any obligations under the terms of this Agreement.

21. INDEMNIFICATION

Developer agrees to defend, indemnify and hold harmless City and MPL, the City's and MPL's officers, agents and employees, from and against all claims, demands, damages, liability, suits, judgments and decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever that may come or be asserted against City or MPL on account of (a) Developer's (or anyone acting for or at the direction of, or anyone claiming by, through, or under Developer) pre-Closing 1 entry onto or investigations at the Property; and (b) if Developer closes on this transaction and becomes owner of the Property, the activities of Developer (or other persons acting under Developer's direction or control) that result in violations or alleged violations of Environmental Laws. The provisions in this Section shall survive the completion of the Project, recording of the Certification, and any termination of this Agreement.

22. PROVISIONS NOT MERGED WITH DEED

No provision of this Agreement is intended to or shall be merged by reason of any deed transferring title to the Property from the City to Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

23. GOVERNING LAW

This Agreement shall be construed according to Wisconsin law.

24. PUBLIC RECORDS

Records shall be maintained in accordance with the requirements prescribed by the City with respect to all matters related to the Library Unit covered by this Agreement. Both Parties understand that the City is bound by the Wisconsin Public Records Law, Wis. Stat. §§ 19.31-39, and as such, all terms of this Agreement are subject to and conditioned on that law. Developer acknowledges and agrees that it is obligated to cooperate with the City in retaining and producing all records related to the Library Unit and expenditure of Loan funds in Developer's custody and control that have been created or maintained as a result of this Agreement to comply with the Wisconsin Public Records Law. Developer agrees that it shall cooperate with City and the Milwaukee City Attorney's Office in complying with the public records law and in defending actions under that law; provided, however, City shall be responsible for all costs and expenses associated with the defense of such actions excluding Developer's costs and expenses related to maintaining and producing any records. Those records shall be maintained for a period of seven years after Closing 2.

25. SUCCESSORS AND ASSIGNS.

This Agreement is binding upon the Parties hereto and their successors and assigns, including successors in interest to the Property. Notwithstanding the foregoing, until issuance of the Certificate, Developer may not assign this Agreement or its rights hereunder without City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except as permitted under Section 13.

26. APPROVALS

In any instance in which City's approval or consent and/or the approval or consent of the Commissioner of DCD or MPL is required under this Agreement, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

27. NOTICES

Notices required to be sent under this Agreement shall be in writing and given either by personal delivery, by certified mail postage prepaid, or by email to the following individuals. Notices personally delivered shall be deemed delivered upon actual receipt or upon refusal to accept delivery. Notices sent by certified mail shall be deemed delivered two business days after mailing. Notices sent by facsimile shall be deemed delivered on the date of sending – providing, however, **(i)** any such notice is (and must be) sent between the hours of 9:00 A.M. and 4:00 P.M. on business days that the City’s City Hall is open for business; and **(ii)** no error or similar message indicating inability to send is prompted by the sending of such notice by email. Notice recipient and sending information may be changed from time to time by sending written notice of the same to all Parties in accordance with this paragraph.

If to the CITY:

City Real Estate Officer, Department of City Development
809 North Broadway, Milwaukee, Wisconsin 53202-3617
Phone: 414-286-5730
Email: Amy.Turim@milwaukee.gov

With a copy to:

Attorney Mary L. Schanning
Milwaukee City Attorney’s Office
200 E. Wells Street, Room 800
Milwaukee, WI 53202-3551
Email: mschan@milwaukee.gov

and a copy to:

Paula Kiely, Milwaukee Public Library Director
and Milwaukee Public Library Board of Trustees
814 W. Wisconsin Avenue
Milwaukee, WI 53233
Email: pkieley@milwaukee.gov

If to Developer:

Mill Road Library Redevelopment, LLC
c/o Royal Capital Group LLC
710 N Plankinton Ave, Suite 300
Milwaukee, WI 53203
Attention: Kevin Newell, President
Email: k.newell@royalcapital.net

and a copy to:

Maures Development Group, LLC
1420 West Center Street, Suite 2
Milwaukee, Wisconsin 53206
Attention: Melissa N. Goins, President

Email: Melissa@mauresllc.com

and a copy to:

HCP-ILP, LLC
c/o Hunt Capital Partners LLC
15910 Ventura Blvd., Suite 1100
Encino, CA 91436
Attention: William Teschke, Director
Email: william.teschke@huntcompanies.com

and a copy to:

Attorney Danielle Bergner
Michael Best & Friedrich LLP
100 E. Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202
Email: dbergner@michaelbest.com

28. SPECIAL PROVISIONS

- A. Developer will not discriminate against any employee or applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.
- B. Developer will include the provisions of Section 28.A in every construction contract affecting the Property that Developer is a direct party to and shall ensure that each such contract include a provision that requires the contractor to include the provisions of Section 28.A in any subcontract the contractor enters into with respect to the Project.

29. COUNTERPARTS

The Agreement is executed in counterparts, each of which shall constitute one and the same instrument.

30. CONFIDENTIALITY

As permitted by law, and subject to Section 24 of this Agreement, the Parties shall use their best efforts to take all necessary or appropriate measures in good faith to maintain the confidentiality of any proprietary information either Party may receive about the other Party during the course of this Agreement. This obligation shall survive the termination of this Agreement.

[Remainder of this page left intentionally blank. Signatures are on the following pages.]

Approved by the Common Council of the City of Milwaukee on October 17, 2017, by adoption of Resolution No. 170917 and on July 10, 2018 by adoption of Resolution No. 180497.

IN WITNESS WHEREOF, Amy Turim, Special Deputy Commissioner of the Department of City Development, on behalf of the City of Milwaukee pursuant to Common Council Resolution No. 150785 approved October 13, 2015, has caused this Agreement to be duly executed in its name effective as of the date first written above.

CITY OF MILWAUKEE

By _____
Paula A. Kiely, Director
Milwaukee Public Library

By _____
Amy Turim, Special Deputy Commissioner
Department of City Development

Countersigned

By _____
Martin Matson, Comptroller

State of Wisconsin)
) **ss.**
County of Milwaukee)

Signatures of Paula A. Kiely, Amy Turim, and Martin Matson authenticated this ____ day of July, 2018.

Rachel S. Kennedy, Assistant City Attorney
State Bar No. 1066459

This document was drafted by the City of Milwaukee, City Attorney’s Office.

1125-2014-2934:243899v11

EXHIBIT A
Description of Property

A tract of land in the Northeast 1/4 of Section 21, Township 8 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, which is bounded and described as follows, to-wit:

Beginning at a point in the North line of the Northeast 1/4 of Section 21, Township 8 North, Range 21 East, 270 feet West of the Northeast corner of said 1/4 Section; thence South and parallel to the East line of said 1/4 Section, 80 feet to the point of beginning of the tract to be herein described; thence South and parallel to the East line of said 1/4 Section, 124 feet to a point; thence West and parallel to the North line of said 1/4 Section, 85 feet to a point; thence South and parallel to the East line of said 1/4 Section, 108 feet to a point; thence West to a point in the Easterly right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad; thence Northwesterly on and along the Easterly right of way line of said railroad to a point in the South line of West Good Hope Road; thence East on and along the South line of said road, 553.35 feet to the point of beginning.

Property Address: 7717 West Good Hope Road, Milwaukee, WI
Tax Key Number: 118-9986-100-2

EXHIBIT B
Library Shell Construction Scope of Work

[Attached]

EXHIBIT C
Human Resources Agreement

[Attached]

EXHIBIT D
Payment in Lieu of Taxes (PILOT) Agreement

[Attached]

EXHIBIT E
Form of Partial Satisfaction of Promissory Note

[Attached]