

SAMPLE – 07-2013  
Terms tailored for accepted submittal  
**PURCHASE AND SALE AGREEMENT**

Document Number

Name and Return Address:  
City of Milwaukee  
Real Estate Section  
Attn: Matt Haessly  
809 North Broadway, 2<sup>nd</sup> Floor  
Milwaukee, WI 53202-3617

Tax Key No.: 348-1541-100-7

Recording Area

AGREEMENT, By and between **CITY OF MILWAUKEE** ("City"), a municipal corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Milwaukee, Wisconsin, and \_\_\_\_\_, a \_\_\_\_\_ (legal entity as specified in Proposal Summary), ("Buyer") located at \_\_\_\_\_, Milwaukee, WI, WITNESSETH:

WHEREAS, Pursuant to Resolution No. \_\_\_\_\_ adopted by the Common Council of the City of Milwaukee on \_\_\_\_\_, City has offered to sell and Buyer is willing to purchase said real property at 4243 West North Avenue ("Property") and more particularly described in **Exhibit A** attached hereto and made a part hereof, and to improve the Property for and in accordance with the uses specified in the provisions of this Agreement:

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

**SEC. 1. PROJECT DESCRIPTION**

City and Buyer agree to develop the Property as follows, which is collectively defined as the "Project":

Rehabilitate the existing building according to the Minimum Rehabilitation Standards attached as **Exhibit B** hereto and the Certificate of Appropriateness issued by the Historic Preservation Commission ("HPC") for use as \_\_\_\_\_ and obtain City Certificate of Occupancy for the use and construct associated parking and landscaping according to plans approved by City's Department of City Development ("DCD") pursuant to Section 2.

**SEC. 2. BUYER ACTIONS**

(a) In connection with the Project, Buyer shall:

1. Submit final construction plans including building plans and elevations and a site plan detailing fencing, paving and landscaping (collectively "Final Plans") and a Scope of Work for the rehabilitation to the DCD and for approval and obtain a Certificate of Appropriateness for all exterior renovations prior to closing pursuant to Section 4. Final Plans and Scope of Work must conform to the DCD-approved preliminary plans submitted by Buyer on \_\_\_\_\_ in response to the Property Listing and as revised according to DCD Plan Review comments or by HPC staff. Final Plans and Scope of Work shall be submitted to City DCD's Real Estate Office prior to applying to City for building permits. Changes made to Final Plans may require Common Council confirmation if the Commissioner of DCD determines that the changes differ significantly from approved preliminary plans.

2. Submit a final construction budget and evidence of financing for the Project in a form satisfactory to the Agency prior to Closing pursuant to Section 4 (“Financing Approval”).
3. Obtain a COA from the HPC prior to closing pursuant to Section 4.
4. Be responsible for all site development expenses, including, but not limited to, extension of water and sewer laterals to the Property and the provision or replacement of sidewalks and curb cuts.
5. Commence construction of the Project within thirty (30) days following Closing for the Property and complete construction, including landscaping, within twelve (12) months following Closing, subject to force majeure delays, and other delays not within the control of the Redeveloper. Buyer shall apply for a Certificate of Occupancy at Closing for each unit of the Property and complete necessary work to receive the Certificate of Occupancy within the time period above.

(b) Buyer Covenants and agrees that no additional buildings, structures, or other similar improvements shall be constructed on the Property without the prior written approval of DCD, including without limitation because of enumeration, any addition to or expansion of any principal building currently located on or presently proposed for construction on the Property or any accessory building to such principal building.

(c) Buyer agrees to Comply with City’s Small Business Enterprise (SBE) policy. Buyer agrees to make best faith efforts for SBE participation that is at 25% of Project construction costs and 18% of Project professional services. Buyer shall contact City’s Office of Small Business Development (“OSBD”) prior to Closing and obtain a list of City certified SBEs. Buyer shall execute an SBE agreement with City prior to Closing if required by OSBD based on the amount of the Project Budget and scope of renovations. After completion of the Project, Buyer shall report on its use of SBE’s to DCD’s Real Estate Office in terms of the total number of SBE contractors used and the dollar volume of such contracts. Such information shall be provided in writing prior to or with Buyer’s request for a Certificate of Completion pursuant to Section 7 of this Agreement.

**SEC. 3. PURCHASE PRICE, EARNEST MONEY & BROKER COMMISSION**

(a) Purchase Price. The “Purchase Price” for the Property shall be \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_.00). Buyer shall pay the Net Purchase Price to City at Closing in the form of a check subject to the usual and customary prorations. If applicable: Buyer shall reimburse City at Closing for Buyer’s share of environmental costs pursuant to Section 6(b). Buyer may be asked to allocate the Net Purchase Price to City expenses, fees and reimbursements.

(b) Earnest Money. Buyer shall tender to City earnest money (“Earnest Money”) in the amount of \$3,750.00 in good funds on or before a date that is not later than fifteen (15) days following the date of approval of this Agreement by City’s Common Council. The Earnest Money is non-refundable except for default by City. Earnest Money shall be held by City in a City account. If this transaction fails to close as required hereunder, other than as a result of a default by City in which event the Earnest Money shall be returned to Buyer immediately, City shall keep the Earnest Money. If this transaction closes within the “Base Period” (as defined below) and as required hereunder, the Earnest Money shall be credited toward the Purchase Price at Closing. No credit of Earnest Money shall be granted if the Agreement is extended pursuant to Section 4(b). If the Earnest Money is not timely paid, City may declare this Agreement terminated.

(c) Broker Commission. If Buyer’s Proposal Summary & Public Disclosure Statement was submitted to City by a Wisconsin-license commercial real estate broker (“Broker”), City At Closing, agrees to pay Broker a commission of \$\_\_\_\_\_ (7% of the Purchase Price or \$3,000, whichever is greater). Seller shall not pay any broker commission if Buyer and Broker are same or related in any manner. Seller has not retained any broker concerning the Property or this transaction and no brokerage arrangement or contract exists between Seller and the Broker. Buyer has retained Broker as the sole-broker concerning this transaction. At Closing, Buyer will sign an affidavit regarding brokers consistent with this paragraph.

Broker: \_\_\_\_\_ (Name and Firm)

#### SEC. 4. CONVEYANCE OF PROPERTY

(a) Closing. Closing on this transaction and conveyance of the Property from City to Buyer ("Closing") shall be at City's Real Estate Office at a date and time mutually agreed to by the parties, which date shall be on or before \_\_\_\_\_ ("Base Period"), provided:

1. such date is not more than four months following the date of approval of this Agreement by City's Common Council;
2. Buyer has satisfied City Closing Contingencies in Section 4(c); and
3. is not in violation of City Policies pursuant to Section 4(m).

(b) Extension. If Buyer is unable to close on or before expiration of the Base Period, Buyer may submit a written request for one (1) six (6)-month extension of this Agreement ("Extended Period") from the DCD Commissioner, a \$500 renewal fee and a progress report of Buyer's efforts to obtain final construction plans and firm financing. The DCD Commissioner shall grant the Extended Period if DCD is satisfied that Buyer is making progress to obtain Final Plans and financing. The renewal fee shall not be credited toward the Purchase Price.

(c) City Closing Contingencies. Notwithstanding anything to the contrary contained herein, City's duty to Close and convey the Property on or before the expiration of the Base Period or Extended Period is contingent upon:

1. Financing and/or Equity. Buyer submitting to DCD evidence of financing without contingencies and/or equity in an amount equal to the Final Budget and satisfactory to DCD;
2. Final Plans. DCD Design Review Team approving Buyer's Final Plans.
3. Buyer obtaining a COA from City's HPC.
4. SBE. Buyer meeting with City's OSBD to discuss SBE participation in the Project and executing a SBE Agreement if required by the OSBD.

(d) Buyer Contingencies. This Offer is contingent upon the following items (collectively "Buyer Contingencies"):

- Financing Contingency of Buyer being able to obtain:
  - first mortgage loan commitment
  - rehabilitation/construction loan commitmentwithin \_\_\_ days of the Effective Date ("Financing Deadline") for a combined amount not less than \$\_\_\_\_\_ for a term of not less than \_\_\_\_\_ years with an initial interest rate not to exceed \_\_\_\_\_% per annum with monthly payment not to exceed \$\_\_\_\_\_ for principal and interest.
- Other Contingency: \_\_\_\_\_

Buyer agrees to pay all customary financing costs (including closing costs), to apply for financing promptly and to provide evidence of application promptly upon Seller request. If, despite Buyer good faith efforts, Buyer is not able to obtain financing on the above terms (or other terms reasonably acceptable to Buyer), Buyer shall promptly, and on or before the expiration of the Base Period or Renewal Period, whichever is applicable, deliver written notice to Seller of same including copies of lender(s) rejection letters or other evidence of unavailability. If Buyer's notice is timely given, this Offer shall be null and void, but Seller shall retain the Earnest Money and any Extension Fee.

(e) Form of Deed. City shall, at Closing and upon submission of the Purchase Price, convey the Property to Buyer by Quit Claim Deed and Restrictive Covenants ("Deed") in an "as is, where is" condition with all faults and defects, known or unknown, physical or otherwise, including but not limited to environmental or geotechnical defects, whether disclosed or not disclosed, known or not known, and without representation or warranty, express or implied. Such provisions shall bar all tort, warranty, and misrepresentation claims, including any action based on non-disclosure. The conveyance and title shall, in addition to the provisions of Section 15 of this Agreement and all other conditions, covenants and restrictions

set forth or referred to elsewhere in this Agreement, be subject to:

1. Applicable statutes, orders, rules and regulations of the Federal Government and State of Wisconsin, and laws and ordinances of the City of Milwaukee, including zoning, building and land subdivision laws and regulations;
2. All easements of record;
3. A restriction that the Property must be taxable for property-tax purposes. The restriction shall require that no owner or occupant of the Property shall apply for, or seek, or accept, property-tax exemption (whether under Wis. Stat. § 70.11 or otherwise) for the Property, or any part thereof. This restriction shall be a permanent covenant that runs with the land, and may only be released by resolution passed by City's Common Council.
4. Matters that would be revealed by an ALTA survey including, but not limited to, encroachments from the Property to a public right of way or adjacent property or encroachments on the Property from adjacent properties.
5. 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 interest of persons under Wis. Stat. § 66.1005(2).
6. A Historic Preservation Easement for the building façade, a sample of which is attached as Exhibit C.

(f) Proration of Taxes. Taxes shall be pro-rated to the date of Closing if the property is not tax exempt for the current year.

(g) Recordation of Deed. City shall promptly file the Deed for recording with the Milwaukee County Register of Deeds or as permitted by the Municipal Code of Ordinances. Buyer shall pay all costs for so recording the Deed. No real estate transfer fee is due and no real estate transfer return is required pursuant to Wis. Stat. Section 77.25(s) and Section 77.23 (2), respectively, unless City is a lender in the transaction.

(h) DNS Registrations. At Closing. Buyer shall execute registrations for City Department of Neighborhood Services ("DNS") Property Recording Program and the Vacant Building Registration Form, if applicable. Buyer shall be solely responsible for all fees for such documents. Completed applications and fees shall be provided to City at Closing for City transmittal to DNS.

(i) Certificate of Occupancy. At DCD's request, Buyer may be required to provide a complete Certificate of Occupancy application and fee at Closing. DCD shall transmit the application after Closing to the Development Center. Buyer shall take steps necessary to receive the Certificate of Occupancy as outlined above.

(j) Weatherization Program. Buyer shall apply to the Wisconsin Department of Safety and Professional Services for the Rental Weatherization Program for any residential units comprising the Property, unless such units shall be owner-occupied. Buyer shall execute the required application and provide the required fee to City at Closing.

(k) Title Insurance. City shall procure and deliver to Buyer for examination a preliminary commitment for title insurance prepared by Chicago Title Insurance Company under contract with City in the amount of the full Purchase Price, naming Buyer as the insured. This commitment shall guarantee City's title to be in the condition called for by this Agreement. City shall pay the base cost of title insurance. The cost of title updates, gap endorsements and special assessment letters shall be paid by Buyer. No title insurance shall be provided if the Purchase Price is less than \$5,000.

(l) Special Assessments. City will be responsible for all special assessments levied as of the date this Agreement was accepted by City's Common Council. Buyer is responsible for all special assessments levied after that date. City shall provide details of any known or contemplated special assessments at Closing. If outstanding special assessments for which City is responsible exist at Closing, City shall grant a credit in the amount of such assessments against the Purchase Price. Buyer shall pay the assessment when billed. If the estimated assessment is greater than the Purchase Price, DCD shall notify the Department of Public Work to bill DCD City for the special assessment. If the special assessment for which City is responsible is billed to Buyer or inadvertently certified to the tax roll, Buyer shall provide the bill to DCD and DCD shall arrange for payment.

(m) City Policies. Buyer certifies that it as individual or member of a corporation or partnership is not now and will not be at Closing in violation of the following City Policies:

1. Delinquent real estate or personal property taxes due City.
2. Building or health code violations that are not being actively abated.
3. Convicted of violating an order of the Department of Neighborhood Services or Health Department within 12 months preceding Closing.
4. Convicted of a felony crime that affects property or neighborhood stability or safety.
5. Outstanding judgment to City
6. In Rem foreclosure by City within five years preceding Closing.

If Buyer is found to violate any of these City Policies, City shall give Buyer notice to correct this condition by the expiration of the Base Period or Extended Period or other such period as determined by the Commissioner of DCD. If the violation is not corrected within the specified period, this Agreement for Sale may be canceled at the option of City and the Earnest Money and renewal fees, if any, shall be retained by City as liquidated damages.

(n) Agreement to be Recorded Against Title. At Closing, and before recording the Deed, City shall record this Agreement against the Property in the Register of Deeds Office at Buyer's expense, and the Property's title will be encumbered by it until issuance of the Certificate defined below

## **SEC. 5. PERFORMANCE DEPOSIT**

Buyer shall submit at Closing a Performance Deposit in the amount of Seven Thousand Five Hundred and No/100ths (\$7,500.00) Dollars ("Deposit"). The Deposit shall serve as security for the performance of the obligations of Buyer to construct as provided hereinafter. DCD shall authorized return of the Deposit concurrently with its formal approval of the Certificate of Completion pursuant to Section 7 or shall retain the Deposit as liquidated damages in accordance with the provisions of Sections 7 and 15. No interest shall be paid on the deposit. All or part of the Deposit may be retained by City if Buyer fails to complete the Project according to the time schedule provided in Section 2.

## **SEC. 6. PROPERTY CONDITION, SITE PREPARATION AND CERTAIN OTHER ACTION BY CITY**

(a) Property Condition – Vacant Land. City discloses that the Property may contain old building foundations, rubble and debris from prior buildings that may have been demolished. City shall not conduct any geotechnical investigation at the Property. Buyer 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 and for all site excavation, debris removal, fill and development expenses.

(b) Property Condition – Improved Property. City discloses that the Property may contain lead-based paint, asbestos, underground storage tanks, old building foundations, rubble and debris from prior buildings that may have been demolished. Buyer agrees to accept the Property "as is, where is" and is solely responsible for conducting its own geotechnical investigation to determine the bearing capacity of the soil and for all site excavation, debris removal, fill and development expenses. Buyer acknowledges that Seller has no disclosure requirements, as Wis. Stat. Ch. 709 does not apply to this transaction.

(c) Environmental Work To Be Performed By City. City shall, without expense to Buyer except as noted, prepare the Property for redevelopment by Buyer in the following manner:

1. City has provided to Buyer and Buyer acknowledges receipt of:
  - a. Phase I Environmental Site Assessment dated December 8, 2003 prepared by City staff. This report is for informational purposes only and the City does not warrant its contents or conclusions.
  - b. Asbestos Inventory and Response Action Summary dated July 17, 1990 prepared by the Department of

Public Works.

2. City shall conduct no additional environmental investigations of the Property.
3. If Buyer or Buyer's lender requires a Phase I Environmental Site Assessment ("Phase I ESA"), such investigation shall be conducted by an environmental consultant under a City master contract if City will be asked to rely on the report. Buyer shall be responsible for the cost of the Phase I ESA.
4. If Buyer's Phase I ESA recommends a Phase II investigation, City must review and approve the scope of work after which it may grant Buyer a right of entry to conduct such investigation. All Phase II costs shall be the responsibility of Buyer.
5. If the cost for Phase II testing or any required remediation renders a project economically infeasible, this Agreement may be canceled at the option of either party and the Earnest Money and Renewal Fee shall be returned by City.

(c) Right of Entry for Utility Service. City reserves for itself, City, and any public utility company as may be appropriate, the unqualified right to enter upon the Property at all reasonable times for the purpose of reconstructing, maintaining, repairing or servicing the public utilities located within the Property boundary lines and provided for in the easements described or referred to in Paragraph (a), Section 2 hereof. This right-of-entry shall not interfere with Buyer's use of the Property.

(d) Buyer Not to Construct Over Utility Easements. Buyer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in Paragraph (a), Section 2 hereof, unless such construction is provided for in such easement or has been approved by City. If approval for such construction is requested by Buyer, City shall use its best efforts to assure that such approval shall not be withheld unreasonably.

(e) Access to Property. Prior to the conveyance of the Property to Buyer and Buyer, City shall permit representatives of Buyer to have access to any part of the Property as to which City holds title, at all reasonable times for the purpose of obtaining data and making various tests that necessary to carry out the Agreement upon receipt by City of a written request for such entry and submittal of evidence of insurance according to City's minimum guidelines. Such request and evidence of insurance must be satisfactory to City in form and substance prior to City granting such access. After the conveyance of the Property to Buyer, Buyer shall permit the representatives of City, or City upon five (5) days prior written notice access to the property at all reasonable times which any of them deems necessary for the purposes of the Agreement, including, but not limited to, inspection of all work being performed in connection with the construction as hereinafter defined. 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.

## **SEC. 7. CERTIFICATE OF COMPLETION**

Promptly after completion of the construction, including landscaping, in accordance with this Agreement, Buyer shall request that the Commissioner of DCD issue a Certificate of Completion ("Certificate") and return the Performance Deposit ("Deposit"). This Certificate shall be a conclusive determination of satisfaction and termination of the covenants in the Agreement and the Deed with respect to the obligations of Buyer and its successors and assigns to construct and the dates for the beginning and completion thereof. Representatives of City shall inspect the Property within thirty (30) days following receipt of Buyer's request to determine if the work has been completed according to City-approved plans and this Agreement. If the property is determined to be in conformance, the Commissioner shall execute the Certificate within thirty (30) days of the inspection and shall present the Certificate to Buyer. If the Commissioner refuses to authorize this Certificate, City shall within thirty (30) days of the Property inspection provide Buyer with a written statement indicating in adequate detail how Buyer has failed to complete the development of the Property in conformity with approved plans or this Agreement, or is otherwise in default, and what measures or acts are necessary, in the opinion of the Commissioner, for Buyer to take or perform in order to obtain the Certificate. Concurrent with DCD's consideration of the request for the Certificate, City shall consider return of the Deposit. All or part of the Deposit may be retained by City if the project is not

completed according to the schedule specified in Section 2. A check for the amount of Deposit authorized for return by City shall be provided within ten (10) days of issuance of the Certificate by City.

#### **SEC. 8. RESTRICTIONS ON USE**

Buyer 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.

#### **SEC. 9. COVENANTS BINDING UPON SUCCESSORS IN INTEREST: PERIOD OF DURATION**

It is intended and agreed that the covenants provided in Sections 8 and 19 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, City, its successors and assigns, City, and any successor in interest to the Property, or any part thereof, and the United States (in the case of the covenant provided in subsection (b) of Section 8), against Buyer, 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 subsection (a) of Section 8 shall remain in effect without limitation as to time.

#### **SEC. 10. TRANSFER OF PROPERTY**

Buyer has not made or created, and will not, prior to the completion of the redevelopment as certified by DCD, not make or suffer to be made any other sale, assignment, conveyance, lease or transfer in any other form of or 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 that Buyer may assign or transfer to an entity which has the substantially similar ownership as Buyer.

#### **SEC. 11. LIMITATION UPON ENCUMBRANCE OF PROPERTY**

Prior to issuance of the Certificate, neither Buyer nor any successor in interest to the Property shall engage in any financing or any other transaction creating any mortgage or other encumbrances or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property except for the purposes only of obtaining (a) funds only to the extent necessary for the construction provided in Section 5 and (b) such additional funds, if any, in an amount not to exceed the Purchase Price paid by Buyer to City. Until issuance of the Certificate, Buyer (or successor in interest) shall notify City 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 Buyer or otherwise.

#### **SEC. 12. 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, the holder of any mortgage 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) shall not be obligated by the provisions of this Agreement to complete the construction or to guarantee such construction; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder.

### **SEC. 13. ENFORCED DELAY IN PERFORMANCE**

Neither City nor Buyer, 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 construction, 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 determined by 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.

### **SEC 14. NO DAMAGES FOR DELAY**

Buyer shall not be entitled to recover any damages from City arising from or attributable to any delays in construction upon or development of the Property, unless City caused the delay in question.

### **SEC. 15. REMEDIES**

(a) General. In the event of breach of this Agreement, the parties have their respective rights hereunder, and those available at law and in equity. City expressly retains all rights under Wis. Stat. Section 893.80

(b) Prior to Conveyance. If, prior to City's conveyance of the Property, Buyer assigns or attempts to assign this Agreement or any rights hereunder or fails to pay the Purchase Price and take title to the Property upon City's offer of conveyance, City may, at its option, terminate this Agreement and retain any fees submitted by Buyer as liquidated damages.

(c) Notice of Breach and Right to Cure. Except as otherwise provided herein, in the event of default or breach ("Default") by either party hereto, the defaulting party shall, upon written notice from the other, cure or remedy such Default within 30 days after receipt of notice and demand to cure providing, however, that if the Default is one that cannot reasonably be cured with said 30 days, the defaulting party must diligently and faithfully pursue cure, and if the Default is not then remedied or cured with a reasonable time, or if the defaulting party fails to faithfully and diligently pursue cure, then (in any of the events described above) 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 seeking 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 Default.

(e) City's Retained Reversionary Interest.

1. City's Right to Reverter and Deposit. Notwithstanding anything to the contrary contained herein, or in the Deed, if subsequent to conveyance of the Property to Buyer and prior to issuance of the Certificate:
  - i. Buyer or any successor defaults on or violates its obligations with respect to the Project, including the nature of, and the dates for beginning and completion there, or abandons or substantially suspends construction, and any such default, violation, abandonment or suspension shall not be cured, ended to remedied with 90 days after City written demand so to do; or

- ii. Buyer or any successor fails to pay real estate taxes, special assessment or special changes on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy, lien, or attachment to be made, or any materialman, mechanic, or construction lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessment shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to City made for such payment, removal or discharge, within 90 days after City written demand so to do; or
- iii. 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 City written demand;

then City shall 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." Buyer agrees that the recording of such Notice of Reverter shall have the effect of delivering and recording a deed from Buyer to City, and shall automatically terminate all of Buyer's rights, title and interest in and to the Property (and any interest of any successor that has taken title from or through Buyer, except Permitted Successors) and revert in City, subject to rights of Permitted Successors, 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 Buyer pursuant and subject to this Agreement shall be made upon a condition subsequent to the conveyance that in the event of any default, failure, violation, breach or other action or inaction by Buyer specified in subsections (a), (b) or (c) above, and the failure on the part of Buyer 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 Buyer in favor of City in which case all rights and interests of Buyer (and of any successor or assign to Buyer or the Property, except Permitted Successors), shall revert to, and thereafter be solely and fully vested in, City. And such reversion of title in City shall be subject to, limited by, and shall not defeat, render invalid 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 or buyer authorized by this Agreement.

If City exercises its reversionary right as set forth above, City may also retain the Deposit.

City's reversionary right is a material provision of this Agreement, without which, City would not have entered into this transaction.

#### **SEC. 16. RESALE OF REACQUIRED PROPERTY: DISPOSITION OF PROCEEDS**

Upon the reversion in City of title to the Property or any part thereof as provided in Section 15, 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 City shall find feasible and consistent with the objectives of applicable law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by City) who will either (a) assume the obligation of making or completing the Project as shall be satisfactory to 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 may agree.

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

(a) First, to reimburse City, on its own behalf or on behalf of City, for all costs and expenses incurred by City, 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 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 City, an amount, if paid, equal to such taxes, assessments or charges (as determined by City 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 reversion of title thereto in City or to

discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Buyer, 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 City by Buyer and its successors or transferee; and

(b) Second, to reimburse Buyer, 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 construction on or rehabilitation of the Property or part thereof, less any gains or income withdrawn or made by it from the Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by City as its property.

**SEC. 17. 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 Buyer or any successor in the event of any City default or breach or for any amount which may become due to Buyer or successor or on any obligations under the terms of this Agreement.

**SEC. 18. INDEMNIFICATION**

Buyer agrees to defend, indemnify and hold harmless City and City and their respective 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 City on account of: (a) Buyer's (or anyone acting for or at the direction of, or anyone claiming by, through, or under Buyer) preacquisition entry onto or investigations at the Property; and (b) if Buyer closes on this transaction and becomes owner of the Property, the condition of the Property, including environmental and geotechnical. The provisions in this Section shall survive completion of the Project, recording of the Certification and any termination of this Agreement.

**SEC. 19. 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 City to Buyer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

**SEC. 20 GOVERNING LAW**

This Agreement shall be construed according to Wisconsin Law.

**SEC. 21 PUBLIC RECORDS**

This Agreement and certain documents relating hereto are, or may be, subject to Wisconsin's Open Records Law (Wis. Stat. Chapter 19, Subchapter II and Wis. State. Section 19.36(3) that includes records produced or collected hereunder. Buyer agrees to cooperate with City if City receives a request under Wisconsin's Open Records Law for any such record.

**SEC. 22 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, Buyer may not assign this Agreement or its rights hereunder without City's prior written consent.

**SEC. 23. APPROVALS**

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

**SEC. 24. 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 facsimile 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 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 facsimile. 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 City:**

City Real Estate Officer, Department of City Development  
809 North Broadway, Milwaukee, Wisconsin 53202-3617  
Phone: 414-286-5730  
Facsimile: 414-286-0395

**If to Buyer:**

Buyer Name \_\_\_\_\_  
Attn: \_\_\_\_\_  
Buyer Address \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_/\_\_\_\_-\_\_\_\_\_  
Facsimile: \_\_\_\_/\_\_\_\_-\_\_\_\_\_

**SEC. 25. SPECIAL PROVISIONS**

(a) Buyer 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. Buyer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their 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. Such action shall include, but not be limited to, the following: employment, upgrading, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by City or the Wisconsin Department of Commerce setting forth the provisions of this nondiscrimination clause.

(b) Buyer will include the provisions of Paragraph (a) in every construction contract for this property, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provisions will be

binding upon each such contractor or subcontractor, as the case may be.

(c) Buyer may be required to meet housing or employment goals of the U.S. Department of Housing and Urban Development (“HUD”) for low-to-moderate income households. If City expenditures using HUD funds for the Property exceed \$25,000 and the Purchase Price is not market value as determined by City (“HUD Threshold”), the Project must include housing for HUD defined low-to-moderate income households or create employment, other than construction of the Project, for individuals from HUD defined low-to-moderate income households. At Closing, City shall inform Buyer if the Property exceeds the HUD Threshold and shall provide the number of HUD required housing units and/or jobs that must be created by the Project. Buyer shall be required to complete HUD housing or employment reports for City Community Development Block Grant Office. If Buyer fails to provide the required amount of housing or employment within two years following the date of Closing, Buyer shall reimburse City \$35,000 for each job or housing unit that was not created.



Approved by the Common Council of the City of Milwaukee on \_\_\_\_\_, 2013, by adoption of Resolution No. \_\_\_\_\_.

IN WITNESS WHEREOF, Elaine M. Miller, Special Deputy Commissioner of the Department of City Development, on behalf of the City of Milwaukee has caused this Agreement to be duly executed in its name and on its behalf this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

f

**CITY OF MILWAUKEE (CITY)**

By \_\_\_\_\_  
Elaine M. Miller  
Title: Special Deputy Commissioner  
Department of City Development  
signed pursuant to Council File No. 041216

State of Wisconsin            )  
                                          ) ss.  
County of Milwaukee         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, Elaine M. Miller, to me known to be the Special Deputy Commissioner of the Department of City Development and being authorized so to do, executed the foregoing Agreement for the purposes therein contained for and on behalf of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

SEAL

\_\_\_\_\_  
Notary Public  
Milwaukee County  
My commission \_\_\_\_\_

**EXHIBIT A**  
Description of Property

All that certain parcel or parcels of land located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described as follows:

Lot 1 excluding the South 79.56 feet of the East 76.66 feet, of Certified Survey Map No. 7888, a division of 1, 2, 3, 4 and 21, all of Lots 5, 6, 7, 22 and 23 and vacated alley adjoining Lots 7, 23, and Part of Lot 6, in Block 4 of Grant Park and Lands all in the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 24, Township 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin.

Address:                   4243 West North Avenue  
Tax Key Number:       348-1541-100-7

**Exhibit B**  
Former Finney Library  
Minimum Rehabilitation Standards

These requirements may be adapted by staff of the Department of City Development (“DCD”) in consultation with the Historic Preservation Commission (“HPC”) based on the proposed use. A Certificate of Appropriateness for all exterior work must be issued by HPC prior to closing

1. Renovate existing structure for commercial use consistent with the character of the building.
  - a. Tuck point the masonry as necessary; match the existing jointing in style, color and hardness (Note: Mortar that is too hard will fail).
  - b. Install new doors and windows as needed in original openings using clear plate-glass with an anodized aluminum frame and doors that are paneled and appropriate to the design of the building.
  - c. No new openings are permitted in areas not traditionally occupied with windows or doors except upon approval by DCD.
  - d. Closing any existing openings is discouraged; If an opening must be closed, match the brick and mortar in style and color.
  - e. Cleaning the brick/stone façade is not required. If cleaned, must be power washed or chemically cleaned with the mildest method possible.
  - f. Sandblasting or other abrasive blasting methods in style and color that employ glass beads, baking soda, or ground –up shells are prohibited.
  - g. Correct any foundation and structural defects.
  - h. Reappoint any chimneys or repair vents used to exhaust the heating system.
  - i. Incorporate “green”/energy saving features in the rehabilitation
2. Remove existing chain-link fence by the parking lot and replace with ornamental fencing. Add attractive landscaping.
3. Provide all parking on site; repair or replace existing paving as necessary.
4. Repair stone wall adjacent the front entrance.
5. Add an outdoor element or community space.

**Additions**

A building addition may be acceptable if compatible with existing building in terms of massing, scale, details, windows and exterior cladding materials. Rooftop additions are discouraged.

**Signage**

The installation of any permanent exterior sign other than those now in existence shall require the approval of HPC. Approval will be based on the compatibility of the proposed sign with the historic and architectural character of the building.

HPC’s publication, “Good for Business,” has many great suggestions for proper storefront restoration. Please refer to Chapter 4, “Planning a Storefront Rehabilitation.” The book also provides many illustrations for proper storefront restoration.

**Exhibit C**  
Historic Preservation Easement

Document Number	Sample HISTORIC PRESERVATION EASEMENT
Name and Return Address: City of Milwaukee Attn: Historic Preservation Officer 200 East Wells Street. Room B-4 Milwaukee, WI 53202	
Tax Key No.:        348-1541-100-7	Recording Area

Made this \_\_\_\_ Day of \_\_\_\_\_, 2013, between \_\_\_\_\_ (hereafter "OWNER"), in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, grants to, and covenants with, the **CITY OF MILWAUKEE** (hereafter CITY), a municipal corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, its successors and assigns, and to the public generally, that the real estate, at 4243 West North Avenue described herein and any improvements thereon (hereafter, PROPERTY) will be subject to this easement and the covenants as authorized under 66.037 and 700.40 Stats., as hereafter described which will be covenants binding on the OWNER successors, assigns and on any subsequent purchasers, and will be considered as running with the land. The PROPERTY is located in the City of Milwaukee, County of Milwaukee, Wisconsin. The PROPERTY is part of the North Sherman Boulevard National Historic District and is located in a City of Milwaukee historic district) and is more fully described as:

Lot 1 excluding the South 79.56 feet of the East 76.66 feet, of Certified Survey Map No. 7888, a division of 1, 2, 3, 4 and 21, all of Lots 5, 6, 7, 22 and 23 and vacated alley adjoining Lots 7, 23, and Part of Lot 6, in Block 4 of Grant Park and Lands all in the Northwest ¼ of the Northwest ¼ of Section 24, Township 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin.

The Common Council of the City of Milwaukee has approved accepting and holding of the rights under this Historic Preservation Easement on \_\_\_\_\_ 2013, by adoption of Resolution File \_\_\_\_\_.

Unless otherwise indicated, all authorizations or written actions of the CITY stipulated herein must be executed in writing by the Historic Preservation Officer (Hereafter "OFFICER") of the CITY and all notifications to the CITY or to the OFFICER must be directed to the Historic Preservation Office at 200 East Wells Street, Room B-4, Milwaukee, WI 53202.

The OWNER agrees to protect, preserve, and maintain all historic features of the PROPERTY, including the structural integrity of the PROPERTY, except those listed in Exhibit "A" attached hereto below, which are excepted as specific exclusions from these covenants:

The OWNER hereby agrees to the following:

1. To assume the cost of continued maintenance and repair of the PROPERTY in accordance with the recommended approaches in the Secretary of the United States Department of the Interior's standards for rehabilitation and associated guidelines, or substantially similar standards of the CITY, so as to preserve the architectural, structural and historical integrity of the features, materials, appearance, workmanship, and environment in order to protect and enhance those qualities that made the property eligible for listing in the Local Designation.
2. That any alterations that may affect the historical or structural integrity of the PROPERTY must have the prior written approval of the OFFICER of the CITY. The OWNER shall neither construct, demolish, alter, nor remodel any portion of the PROPERTY, including any structures, buildings, or objects thereon that are not named herein as specific exclusions. The OWNER shall not construct additions to, or abrasively clean or sandblast, any building or structure not specifically excluded from these covenants, nor may the OWNER construct any new building or structure on or move any existing building or structure to the PROPERTY, nor

erect fences or signs on the PROPERTY, nor disturb the ground surface of the PROPERTY, without the express written approval of the OFFICER.

3. To notify the OFFICER in writing of any proposed actions to be undertaken by the OWNER, or any other party known to the OWNER, that may affect the historical or structural integrity of the PROPERTY. The OWNER furthermore agrees that the OFFICER will be allowed 30 days to respond with a written approval or denial of such proposed actions, except that the OFFICER may extend this period up to an additional 60 days upon written notice to the OWNER. In the event of denial, the OWNER may request a written statement of the reasons for denial. If the OWNER disagrees with the reasons for denial, OWNER may appeal to the State of Wisconsin Historical Society, whose ruling shall be final.
4. To notify the OFFICER in writing of any substantial damage to the property by accidental, natural, or deliberate causes within 30 days of the date on which the damage was incurred. The OWNER further agrees that no repairs of reconstruction of any type, other than temporary emergency work to prevent further damage to the PROPERTY and to protect public safety, shall be undertaken by the OWNER without prior written approval of the work by the OFFICER, in accordance with paragraph (3) above.
5. To give access to the interior and exterior of the premises to the CITY, its agents, successors, or assigns for purposes of monitoring the OWNER's compliance with the covenant upon reasonable verbal or written notice. Nothing in this instrument shall require the CITY to conduct on-site inspections of the PROPERTY.
6. That the failure of the CITY to exercise any right or remedy granted under this instrument, or to conduct on-site inspections of the PROPERTY shall not have the effect of waiving or limiting the exercise of any right or remedy or the use of such right or remedy at any other time.
7. To insert the covenants contained herein, either verbatim or by express reference, in any deed or other legal instrument by which the OWNER divests itself of either the fee simple title or any lesser estate in the PROPERTY.
8. That, in the event of a violation of this Historic Preservation Easement, and in addition to any remedy now or hereafter provided by law, the CITY may, following reasonable notice to the OWNER, institute suit to enjoin said violation or to require specific performance and/or restoration of those portions of the PROPERTY that were affected.
9. That it shall indemnify and hold the CITY and its successors and assigns harmless for any liability, costs, attorney's fees, judgments, or expenses to the CITY, or any officer, employee, agent, or independent contractor of the CITY, resulting from actions or claims of any nature by third parties arising from defaults under this Historic Preservation Easement, exercise of rights under this historic preservation easement, excepting any such matters arising solely from the negligence of the CITY should the CITY conduct on-site inspections of the PROPERTY.
10. That the CITY may, at its discretion, without prior notice to the OWNER, convey and assign all or part of the CITY's rights and responsibilities contained herein to a third party.

This Historic Preservation Easement may only be amended by written agreement between the parties, or their successors or assigns, and such amendment shall become effective upon its recordation by the OWNER at the Register of Deeds in the County in which the PROPERTY is located. The covenants contained herein are enforceable by the CITY by an action in the Circuit Court of Milwaukee County, Wisconsin, or any other court of competent jurisdiction.

In Witness Whereof, the said parties have hereunto caused these presents to be signed as of the date first written above.

OWNER: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Print Name \_\_\_\_\_  
 Print Title \_\_\_\_\_

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

State of Wisconsin        )  
                                       ) SS  
 Milwaukee County        )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2013, the above named \_\_\_\_\_ to me known to be to be the persons who as OWNER executed the foregoing contract for the purposes therein contained.

In Witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
Milwaukee County, Wisconsin  
My commission \_\_\_\_\_

**CITY OF MILWAUKEE**

By: \_\_\_\_\_  
Elaine M. Miller  
Special Deputy Commissioner, Department of City Development

State of Wisconsin        )  
                                      ) SS  
Milwaukee County        )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2013, Elaine M. Miller, the Special Deputy Commissioner, Department of City Development of the City of Milwaukee, who, with the City's authority and on its behalf, executed the foregoing instrument and acknowledged the same.

In Witness whereof, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
Milwaukee County, Wisconsin  
My commission \_\_\_\_\_

**EXHIBIT "A"**

**Activities Exempt from Further Review  
(To be negotiated with HPC staff)**

**BUILDING INTERIOR**

1. Repair or replacing of existing interior walls if windows and exterior doors are not altered.
2. Repair or replacing of interior doors.
3. Repair or replacing of interior flooring

**MECHANICAL, ELECTRICAL, AND PLUMBING SYSTEMS**

1. Installation of new furnaces and water heaters, if it does not result in installation or relocation of chimneys.
2. Upgrading, repair, and replacement of electrical systems and plumbing systems and fixtures.