



Department of City Development

Housing Authority  
Redevelopment Authority  
City Plan Commission  
Historic Preservation Commission

March 22, 2005

Mr. Ronald D. Leonhardt  
City Clerk  
City Hall, Room 205  
Milwaukee, WI 53202

Dear Mr. Leonhardt:

Enclosed is a fully executed original of a Development Fund Grant Agreement identified as Contract No. 05-032 (CM), dated March 14, 2005, between the City of Milwaukee and the 3500 West National Avenue, LLC by Layton Boulevard West Neighbors, Inc. its sole member.

Please insert this agreement into Common Council Resolution File No. 040960, adopted December 21, 2004.

Sincerely,

Rocky Marcoux  
Commissioner

Enclosure

## DEVELOPMENT FUND GRANT AGREEMENT

**THIS AGREEMENT** is made and entered into as of the 14<sup>th</sup> day of March, 2005 by and between the City of Milwaukee, a municipal corporation organized under the laws of the State of Wisconsin (the "City"), and 3500 West National Avenue, LLC, a limited liability company organized under the laws of the State of Wisconsin (the "Grantee").

### WITNESSETH

**WHEREAS**, the City has an ongoing commitment to the revitalization of neighborhood commercial districts;

**WHEREAS**, Layton Boulevard West Neighbors, Inc. ("LBWN") is a non-profit community development corporation that is committed to the revitalization of National Avenue from South 27<sup>th</sup> Street to South 43<sup>rd</sup> Street;

**WHEREAS**, LBWN is committed to (i) purchasing and redeveloping the dilapidated, vacant property located at 3500 West National Avenue, Milwaukee, Wisconsin (the "Property"), into a viable mixed-use building with a bakery on the first floor and two remodeled apartment units on the second floor, (ii) adding six new jobs to the neighborhood, and (iii) significantly increasing the value of the Property, resulting in an increase in the tax base for the City (the "Project");

**WHEREAS**, LBWN has organized the Grantee for the purpose of owning, redeveloping and operating the Property;

**WHEREAS**, the City desires to assist LBWN in the development of the Project by providing the Grantee a grant in the amount of \$150,000 from the City's Development Fund (the "Funds") to assist in the purchase of the Property;

**WHEREAS**, the City believes the appropriation of the Funds for the purpose set forth above is in the best interests of the public; and

**WHEREAS**, by Resolution File No. 040960, adopted December 21, 2004, the City's Common Council has authorized the transfer and expenditure of the Funds;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

### ARTICLE I AWARD OF GRANT

The City hereby awards a Development Fund Grant in the amount of \$150,000 to the Grantee to assist in the purchase of the Property (the "Grant"). The Grantee agrees to undertake and implement the Project in accordance with the terms and conditions of this Agreement and to complete the Project not later than June 30, 2006.

### ARTICLE II REQUIREMENTS OF THE GRANTEE

In the implementation of the Project, the Grantee shall:

- A. Purchase and redevelop the Property into a viable mixed-use building containing two (2) residential units and one (1) ground-floor commercial unit of approximately 2,520 square feet (the "Commercial Unit").
- B. Substantially increase the value of the Property by performing the renovations and improvements that are necessary to complete the Project.
- C. Use the Funds for the exclusive purpose of purchasing the Property.
- D. Keep and maintain books, records, and other documents as may be reasonably necessary to reflect and disclose fully the disposition of the Funds. All such books, records and documents shall be maintained for a period of seven (7) years following completion of the Project.
- E. Provide status reports to the City regarding the progress of the renovation of the Property and the leasing of the Commercial Unit in such formats and at such times as may be requested by the City.
- F. Allow the City's Commissioner of City Development, the City's Comptroller, and their designees and agents, at any time during normal business hours, to undertake examination of all of the Grantee's books, records and documents with respect to all matters covered by this Agreement and the Project and permit such City representatives to audit, examine and make copies of all contracts, invoices, materials, payroll records, and other data relating to the activities related to the Project.
- G. Comply with all applicable city, state, and federal laws, rules and regulations applicable to entities such as the Grantee receiving funding through the City. Provide credit to the City in brochures, news releases, program publications and other printed materials in the following manner:
 

"This Project is funded in part through a grant from the City of Milwaukee through the City of Milwaukee Development Fund"
- H. Not discriminate on the basis of age, race, religion, color, disability, sex, physical condition, developmental disability, sexual orientation, or national origin against (i) any person participating in the Project and activities funded in whole or in part with the Funds, (ii) any employee or employee applicant of the Grantee, or (iii) any tenant of the Project.
- I. Enter into an Emerging Business Enterprise Agreement (the "EBE Agreement"), in the form attached as Exhibit A hereto, upon execution of this Agreement, and comply with all the terms and conditions of the EBE Agreement in its implementation of the Project.
- J. Indemnify and hold the City, its officers, employees, and agents harmless from and against any and all losses, claims, damages, expenses, and all suits in equity or actions of law arising from, in connection with or as a result of the implementation of the Project or any actions of the Grantee undertaken pursuant to this Agreement. Nothing in the foregoing indemnity shall protect the City, its officers, officials, employees, and agents from their own default, active negligence or misconduct.

**ARTICLE III  
REQUIREMENTS OF THE CITY**

- A. Following execution of this Agreement, the City shall provide the Funds to the Grantee by depositing the Funds in an escrow account (the "Escrow Account") with the Milwaukee Title

Company. Full funding of the purchase price for the Property must be in the Escrow Account prior to the use of the Funds.

- B. The City Comptroller may, from time to time as in his judgment is appropriate, review the receipts and expenditures of the Grantee in relation to the Project, and the City Comptroller shall have full power to conduct an audit or to have an audit conducted as is necessary in his judgment to provide a full accounting to the City. The results of such audits may be reported to the City's Common Council.

**ARTICLE IV  
RETURN OF FUNDS**

In the event that the Funds are not used exclusively for the purposes set forth herein, the Grantee fails to complete the Project pursuant to the terms and conditions hereof, the Grantee fails to comply with any terms of this Agreement, or this Agreement is terminated pursuant to Article VII hereof, the Grantee shall be liable for the return of the Funds (or any unused portions thereof, as may be applicable) to the City. Reimbursement under this paragraph shall occur no later than thirty (30) days following demand by the City.

**ARTICLE V  
SALE, TRANSFER OR CONVEYANCE OF PROPERTY**

During the term of this Agreement, the Grantee shall not sell, transfer or convey the Property to any person or entity without the prior written consent of the Commissioner of the City's Department of City Development, which consent shall not be unreasonably withheld. In the event that such conveyance shall be to an entity that is exempt from paying real property taxes in the State of Wisconsin, such entity shall be required to enter into a Payment in Lieu of Taxes (PILOT) Agreement with the City, on such terms and conditions as are approved by the Commissioner of the City's Department of City Development, as a condition precedent to such conveyance.

**ARTICLE VI  
NOTICES**

All notices under this Agreement shall be made in writing and deemed served upon depositing the same in the United States Postal Service as "Certified Mail, Return Receipt Requested," addressed as follows:

To the City:                   City of Milwaukee Department of City Development  
809 North Broadway  
Milwaukee, WI 53202  
Attn: Commissioner

To the Grantee:               3500 West National Avenue, LLC  
1545 S. Layton Boulevard, Suite 513  
Milwaukee, WI 53215  
Attn: Charlotte John-Gomez

**ARTICLE VII  
DURATION AND TERMINATION**

This Agreement shall continue in full force and effect for a period of three (3) years from its date of execution by the parties. Notwithstanding the foregoing, in the event that the Grantee fails to comply

with any of the terms or conditions of this Agreement, the City may terminate this Agreement upon thirty (30) days written notice to the Grantee.

## **ARTICLE VIII OTHER PROVISIONS**

### **A. CONFLICT OF INTEREST**

1. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

2. No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

### **B. DISCRIMINATION PROHIBITED**

1. In all hiring or employment made possible by or resulting from this Agreement, (i) there will not be any unlawful discrimination against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status (Section 109-9 of the Milwaukee Code of Ordinances), and (ii) affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status.

This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status.

2. No person in the United States shall, on the ground of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. The Grantee will comply with all requirements imposed by or required pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.

3. The Grantee will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4. The Grantee agrees that it will comply with all applicable requirements of the Americans with Disability Act of 1990, 42 U.S.C. 12101. et seq.

### **C. ENTIRE AGREEMENT AND AMENDMENTS**

This Agreement sets forth all the covenants, provisions, agreements, conditions and understandings between the parties and there are no covenants, promises, agreements, conditions or

understandings either oral, or written other than those set forth herein. Any amendments to this Agreement shall be in writing signed by the parties.

D. BINDING EFFECT/ASSIGNMENT

This Agreement shall be binding upon and insure to the benefit of the City, the Grantee, and their successors and permitted assigns. The Grantee shall not assign any interest in this Agreement without the prior written consent of the City.

E. COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day, month and year set forth above.

**3500 WEST NATIONAL AVENUE, LLC**

By: Layton Boulevard West Neighbors, Inc.,  
its sole member

By: Charlotte John-Gomez  
Charlotte John-Gomez, Executive Director

**CITY OF MILWAUKEE**

Tom Barrett  
Tom Barrett, Mayor

Ronald D. Leonhardt  
Ronald D. Leonhardt, City Clerk

Countersigned:

John E. [Signature] SPECIAL DEPUTY  
City Comptroller

**CITY ATTORNEY**

Examined and approved as to content  
this 6<sup>th</sup> day of March, 2005.

[Signature]  
Assistant City Attorney

Examined and approved as to form and  
execution this 6<sup>th</sup> day of March, 2005.

[Signature]  
Assistant City Attorney