

AGREEMENT TO AMEND
AGREEMENT FOR SALE,
DECLARE RESTRICTIVE COVENANTS
AND RELEASE DEED RESTRICTION
(Veterans Gardens Project)

Document Number

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

Tax Key No.: 213-0132-000-8, 214-0902-100-7, 214-0901-000-5 &
223-0601-000-3

Recording Area

THIS AGREEMENT TO AMEND AGREEMENT FOR SALE, DECLARE RESTRICTIVE COVENANTS AND RELEASE DEED RESTRICTION ("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 **VETERANS GARDENS, LLC**, a Wisconsin limited liability company, ("Veterans Gardens") located at 315 West Court Street, Milwaukee, WI, 53208, and is dated as of _____, 2015 ("Effective Date").

WHEREAS, City and Veterans Gardens entered into an Agreement for Sale dated December 3, 2014, and recorded with the Milwaukee County Register of Deeds on December 10, 2014 as Document No. 10418355 ("Sale Agreement") that obligated Veterans Gardens to acquire the four properties described in Exhibit A attached hereto (collectively "Property") and to rehabilitate the Property to provide 20 units of supportive and affordable housing for homeless, disabled veterans ("Project") using fund provided in part from the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, The City conveyed the Property to Veterans Gardens by Quit Claim Deed and Restrictive Covenants ("Deed") dated December 11, 2014 and recorded with Milwaukee County Register of Deeds on December 17, 2014 as Document No. 10420636; and

WHEREAS, Veterans Gardens submitted an application to HUD for a Supportive Housing Grant to HUD dated as of _____, 2014; and was awarded said grant by HUD in the amount of \$ _____; and

WHEREAS, Veterans Gardens entered into a Supportive Housing Grant Agreement (the "Grant Agreement") with HUD for Project Number _____ dated as of _____, 2014; and

WHEREAS, the McKinney-Vento Homeless Assistance Act, 42 USC §§ 11381 et seq. ("ACT") imposes use and repayment requirements on projects receiving acquisition, rehabilitation and new construction funding; and

WHEREAS, Veterans Gardens is required by the Grant Agreement to cause to be executed an instrument in recordable form which obligates Veterans Gardens, its successors and assigns, to operate and maintain the supportive housing project in accordance with the Grant Agreement, the ACT, and HUD regulations as provided for in the Grant Agreement; and

WHEREAS, Veterans Gardens under this Agreement agree that the restrictive covenants set forth in this Agreement shall be and are covenants running with the Property for the term described herein, are binding upon all subsequent owners of the Property for such term and are superior to the restrictive covenants listed in the Sale Agreement and Deed and are not

merely personal covenants of Veterans Gardens; and

WHEREAS, The Deed contained a provision required in the Sale Agreement prohibiting Veterans Gardens or any subsequent owner from applying for an exemption from real estate taxes pursuant to Section 70.11, Wisconsin Statutes; and

WHEREAS, HUD has requested an amendment to the Sale Agreement and Deed to state that Veterans Gardens gives certain restrictive covenants to HUD as required by the Grant Agreement and for City to acknowledge these restrictive covenants; and

WHEREAS, the City is willing to make the restrictive covenants contained in the Sale Agreement and the Deed subordinate to the restrictive covenants granted in this Agreement to HUD; and

WHEREAS, HUD requested that the City release its tax exemption prohibition restrictive covenant in the Sale Agreement and Deed and City agrees to remove the prohibition on application for tax exempt status in exchange for Veterans Gardens and City executing a Payment in Lieu of Taxes ("PILOT") Agreement; and

WHEREAS, By adoption of Resolution No. _____ by the Common Council of the City of Milwaukee on _____, 2015, City has authorized this Agreement.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following declarations and amendments are hereby made:

SEC. 1. DECLARATION OF RESTRICTIVE COVENANTS

- A. Veterans Gardens, its successors or assigns, shall operate the Project as a supportive housing program and provide supportive services throughout a period of twenty (20) years commencing from the date of initial occupancy or the provision of initial services, in accordance with the terms of the Grant Agreement, the ACT, HUD regulations, and all applicable federal, state and local laws.
- B. If, pursuant to a request from Veterans Gardens, HUD determines that the Property is no longer needed for use as supportive housing, HUD may authorize Veterans Gardens, its successors or assigns, to convert the use of the Property for the direct benefit of low-income persons. Upon expiration of the period during which Veterans Gardens is obligated to use the Property in accordance with the Grant Agreement, this Agreement shall terminate and shall no longer be effective.
- C. Veterans Gardens agrees, that if the Property ceases to be used as supportive housing within ten (10) years after the project is placed in service, Veterans Gardens, its successors or assigns, shall be obligated to repay HUD one hundred percent (100%) of any assistance received for acquisition, rehabilitation and new construction under the Grant Agreement. If the Property is used as supportive housing for more than ten (10) years, HUD shall reduce the percentage of the amount required to be repaid by ten (10) percentage points for each year in excess of ten (10) that the Property is used as supportive housing.
- D. HUD, acting by and through a duly authorized official, may approve such action as may be necessary to allow the transfer, conveyance, assignment, leasing, mortgaging, or encumbering of the Property or to accomplish the acts described above.
- E. This Agreement and the covenants set forth herein regulating and restricting the use and occupancy of the Property
 - (i) shall be and are covenants running with the Property, encumbering the Property for the term of this Agreement, and binding upon Veterans Gardens' successors in title and all subsequent owners of the Property,

- (ii) are not merely personal covenants of Veterans Gardens, and
- (iii) shall bind Veterans Gardens and its respective successors and assigns during the term of this Agreement.

F. Any and all requirements of the laws of the State of Wisconsin to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. For the term of this Agreement, each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Agreement.

G. Veterans Gardens and City agree and acknowledge that the restrictive covenants in this Agreement are superior to and take precedence over the restrictive covenants in the Deed and Sale Agreement even though the Deed and Sale Agreement were executed and recorded prior to this Agreement.

2. RELEASE OF DEED RESTRICTION AND PAYMENT IN LIEU OF TAXES AGREEMENT

In exchange for Veterans Gardens entering in to a PILOT Agreement with the City, the City hereby deletes Section 4(e)2. From the Sale Agreement and the releases the Tax Exemption Prohibition Restrictive Covenant contained in the Deed.

The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

3. COUNTERPARTS

This Agreement is executed in three (3) counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Veterans Gardens, LLC has hereunto set its hand effective as of the date first written above.

VETERANS GARDENS, LLC

By _____

Title: _____

By _____

Title: _____

STATE OF _____)
) ss.
 COUNTY OF _____)

Personally came before me this _____ day of _____, 2015, _____
 _____, to me known to be the person(s) who as Veterans Gardens, LLC
 executed the foregoing Agreement for the purposes therein contained.

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

Notary Public,
_____ County
My commission _____

Approved by the Common Council of the City of Milwaukee on _____, 2015, by adoption of Resolution No. _____.

IN WITNESS WHEREOF, Martha L. Brown, 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 effective as of the date first written above.

CITY OF MILWAUKEE (CITY)

By _____
Martha L. Brown
Title: Deputy Commissioner
Department of City Development

State of Wisconsin)
) ss.
County of Milwaukee)

Personally came before me this ____ day of _____, 2015, Martha L. Brown, to me known to be the 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.

Notary Public
Milwaukee County
My commission _____

This document was drafted by the Department of City Development, City of Milwaukee.

EXHIBIT A
Description of Property

Lot 12, Block 2, Longwood Parksites No. 4 in the Southeast ¼ of Section 33, Town 8 North, Range 21 East, in the City of Milwaukee, Milwaukee County, State of Wisconsin.

Address: 7829-31 West Villard Avenue

Tax Key No.: 213-0132-000-8

Lots 2, 3 and 4, Block 3, Villard Estates Addition No. 1 in the Northwest and Southwest ¼ of Section 33, Town 8 North, Range 21 East, in the City of Milwaukee, Milwaukee County, State of Wisconsin.

Address: 8905-11 West Villard Avenue

Tax Key No.: 214-0902-100-7

Lot 1, Block 3, Villard Estates Addition No. 1 in the Northwest and Southwest ¼ of Section 33, Town 8 North, Range 21 East, in the City of Milwaukee, Milwaukee County, State of Wisconsin.

Address: 9009 West Villard Avenue

Tax Key No.: 214-0901-000-5

All of Lots 1 and 2 and the North 30 feet of Lot 3, Block 1, Long Island Parksites No. 6, in the Northwest and Southwest ¼ of Section 4, Town 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, State of Wisconsin.

Address: 4483-93 North 84th Street

Tax Key No.: 223-0601-000-3