

FIRST AMENDMENT TO
GOOD HOPE LIBRARY
PURCHASE, SALE, &
DEVELOPMENT AGREEMENT

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AGREEMENT

Recording Area

Name and Return Address:

Mary L. Schanning
Deputy City Attorney
841 N. Broadway – 7th Floor
Milwaukee, WI 53202

Tax Key Numbers:

118-0302-000; 118-0301-000

THIS FIRST AMENDMENT TO THE GOOD HOPE LIBRARY PURCHASE, SALE, AND DEVELOPMENT AGREEMENT (this “**Amendment**”) is made as of this _____ day of April, 2020, and is between the City of Milwaukee (“**City**”) and Mill Road Library Redevelopment, LLC (“**Developer**”).

RECITALS

- A. The City and Developer entered into the Good Hope Library Purchase, Sale, and Development Agreement (the “**Original Agreement**”), dated July 19, 2018 which is memorialized by the Memorandum of Good Hope Library Purchase, Sale, and Development Agreement recorded in the Milwaukee County Register of Deeds Office on July 23, 2018 as Document No. 10796372.
- B. Any capitalized terms in this Amendment not defined herein shall be defined as they are in the Original Agreement.
- C. The Original Agreement contemplated that after Substantial Completion, title to the Library Unit would be transferred from Developer to the City at Closing 2.

- D. The Original Agreement also contemplated that Developer would complete the Project and request the Certificate.
- E. The Parties desire to enter into this Amendment because Developer has not met Substantial Completion and has not requested the Certificate, but the City would like to take ownership of the Library Unit to complete its build out while Developer continues to work toward Substantial Completion of the Project.
- F. The City has, via Resolution No. 191779 approved this Amendment and authorized the proper City officers to execute same on the City's behalf.
- G. The Milwaukee Public Library Board of Trustees ("MPL") approved this Amendment at its meeting on March 24, 2020.
- H. Developer has approved the Amendment and authorized execution of same on its behalf.

AMENDMENT

The recitals above and all attached exhibits are hereby accepted and incorporated herein. The section numbering below coincides with the sections being amended in the Original Agreement. The Original Agreement is hereby amended as follows:

1. DEFINITIONS

The following definitions are added to Section 1 of the Original Agreement.

- Completion Agreement: Means the Completion Agreement by and among the City, Royal Capital Group, LLC and Maures Development LLC dated even herewith. A copy of the Completion Agreement is attached as Exhibit F.
- Completion Bids: Means bids for completion of the Outstanding Items.
- Completion Costs: Means an amount equal to the sum of the Completion Bids for the completion of the Outstanding Items plus a 10% contingency.
- Exterior Panels: Means the removal of replacement of the decorative exterior panels on the north and west façade of the Library Unit and installation of aluminum "Longboard" extruded louver design features as shown in in accordance with the plans and specifications dated April 3, 2018 and attached as Exhibit G.
- Landscaping: Means outstanding landscaping items as described in the letter from Heller & Associates dated January 17, 2020, and attached as Exhibit H.

Outstanding Items: Means collectively the Exterior Panels and Storm Water Basin.

Punch List Items: Means the outstanding items that are the responsibility of the Developer under the terms of the Original Agreement as described in Exhibit I.

Storm Water Basin: Means the completion of the revised storm water management plan for the Property to include demolition of the existing storm water basin located on the northwest corner of the Library Unit and installation of the new storm water management facilities as show in the plans attached as Exhibit J along with repair and restoration of the parking lot and associated landscaping following installation of the new storm water facilities.

The following definition in the Original Agreement is amended to read as follows:

Substantial Completion: Means all of the following items have been completed to the satisfaction of both Developer and MPL: (1) 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 except for the Outstanding Items; (2) the condominium documents required by Section 3.E. of this Agreement have been completed and recorded; (3) 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; (4) the Developer has provided to the City and MPL documentation showing that the Loan was expended in accordance with Section 5 of this Agreement; (5) Developer has paid the Completion Costs to the City or has caused the Completion Agreement to be executed and delivered to the City; and the Library Unit can legally be conveyed to the City.

2. PROJECT DESCRIPTION

The Original Agreement is amended so that the introductory language of Section 2 reads as follows:

The Property will be redeveloped by Developer as set forth in items “A” through “I” immediately below and that those general activities constitute the “Project.”

The Original Agreement is amended by adding Section 2.H. and I as follows:

- H. Developer shall complete the Punch List Items and the Landscaping within 45 days after City completes the Outstanding Items or City gives Developer notice that it has decided to not complete the Outstanding Items.
- I. Developer shall provide the services of Developer's Architect for MPL's completion of the Outstanding Items at Developer's sole cost to include: (1) review and provide feedback for shop drawings associated with the Outstanding Items and (2) consult with City and its contractor(s) on the design intent associated with the Outstanding Items.

3. DEVELOPER'S OBLIGATIONS

Section 3.L. is deleted and replaced with the following:

- L. Developer shall meet Substantial Completion by April 30, 2020.

Section 3.M. is deleted and replaced with the following:

- M. Developer shall request the Certificate, pursuant to Section 8 of this Agreement, within 60 days after completion of the Project .

Section 3.N. is deleted and replaced with the following:

- N. Developer shall cause the Completion Agreement to be executed and delivered to the City.

Section 3.O. is deleted and replaced with the following:

- 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 shall also submit to MPL actual bid(s), subject to approval by MPL in writing, for the Landscaping and Punch List Items to be completed by Developer following Substantial Completion and Closing 2.

4. CITY'S OBLIGATIONS

Section 4.D. is deleted and replaced with the following:

- D. MPL shall continue interior build out of the Library Unit ("Library Build Out") at its sole expense 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.

Section 4.F. is created to read as follows:

- F. In the event that City decides to complete the Outstanding Items and the cost of the Outstanding Items is less than the Completion Cost, City shall return to Developer any portion of the 10% contingency included in the Completion Costs to Developer within 30 days following completion of the Outstanding Items. In the event the City decides not to complete the Outstanding Items, the entire 10% contingency included in the Completion Costs shall be returned to Developer upon Developer requesting the Certificate pursuant to Section 8 of this Agreement.

5. MPL LOAN TO DEVELOPER

Section 5.F. is deleted and replaced with the following:

- F. In the event that the Loan Documentation 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, except the Outstanding Items, Developer shall, at MPL's sole discretion, either use the remaining Loan funds to complete the Outstanding Items or repay that portion of the Loan at the time Developer requests the Certificate.

8. CERTIFICATE OF COMPLETION

The first sentence of Section 8 is deleted and replaced with the following:

Promptly after completion of the Project, including, but not limited to, all closings, construction, condominium documents and landscaping and payment of the Completion Costs, in accordance with this Agreement, the Human Resources Agreement attached as Exhibit C, and the Approved Final Plans (with exception of the Outstanding Items), 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, not including the Outstanding Items (the "Certificate").

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

Section 9.A. is deleted and replaced with the following:

- A. Preconditions of Closing 2. Developer shall meet Substantial Completion and Developer shall notify MPL in writing of any amendments made to the Plat, Declaration, and Condominium By-laws subsequent to Closing 1, or if none, confirm in writing to MPL that there are none. MPL's approval of such amendments, if any, is a precondition to Closing 2.

Section 9.I. is deleted and replaced with the following:

- J. Construction Continuation. The parties acknowledge that after Closing 2 both Developer and MPL may be performing work on the Property and may 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 in a way that does not significantly interfere with library operations once the Library Unit is open to the public as an MPL branch library. As necessary for Developer to complete work on the Outstanding Items 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 Outstanding Items. 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.

27. NOTICES

The addresses to provide notice to the Developer shall be amended to remove the contact information for Attorney Danielle Bergner and replace it with the following:

Michael Best & Friedrich LLP
Attn: Thomas O. Gartner, Esq.
100 E. Wisconsin Ave., Ste. 3300
Milwaukee, WI 53202

31. MISCELLANEOUS PROVISIONS

This Section 31 shall be added to the Original Agreement to read as follows:

- A. This Amendment 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.
- B. Except as otherwise expressly amended or clarified hereby, the Original Agreement and its terms and conditions remain in full force and effect and shall apply to the terms of this Amendment. If there is any conflict between the terms of the Original Agreement and this Amendment, this Amendment shall control.

(Signatures appear on the following page(s))

EXHIBIT F
COMPLETION AGREEMENT

EXHIBIT G

EXTERIOR PANELS PLANS & SPECIFICATIONS

EXHIBIT H

HELLER LETTER RE; LANDSCAPING

EXHIBIT I

PUNCH LIST OF ITEMS

EXHIBIT J
STORM WATER PLANS