

Document Number	<b>FIRST AMENDMENT TO EAST LIBRARY PURCHASE, SALE &amp; DEVELOPMENT AGREEMENT</b>
Name and Return Address: City of Milwaukee Real Estate Section Attn: Elaine Miller 809 North Broadway, 2 <sup>nd</sup> Floor Milwaukee, WI 53202-3617   Tax Key No.: 319-0772-100-3	
Recording Area	

THIS FIRST AMENDMENT TO EAST LIBRARY PURCHASE, SALE & DEVELOPMENT AGREEMENT (“Amendment”) is by and between the CITY OF MILWAUKEE, a municipal corporation duly existing under Wisconsin law, (“City”) and HSI EAST LIBRARY RESIDENTIAL, LLC, a Wisconsin limited liability company, ("HSI") with its principal office at 20975 Swenson Drive, Suite 395, Waukesha, WI, and is dated as of \_\_\_\_\_, 2013 (the “Amendment Effective Date”).

WHEREAS, the City and HSI entered into the East Library Purchase, Sale & Development Agreement dated June 11, 2012, related to the demolition of the East Library and construction of a new building that will contain apartments, retail space and a new East Library, a copy of which is attached as Exhibit A (the “Agreement”), affecting real property identified in Exhibit A of the Agreement;

WHEREAS, the City and HSI would like to amend the Agreement to reduce the number of parking spaces to be included in the Library Unit (as that term is defined in the Agreement), to allow HSI to seek alternate financing other than through HUD (as that term is defined in the Agreement), to allow additional time for the parties to agree on the form and substance of the condominium documents and to allow the HSI Unit (as that term is defined in the Agreement) to be divided into two separate condominium units.

NOW, THEREFORE, in consideration of the premises and mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the City and HSI agree as follows:

1. All references in the Agreement referring to the requirement for a minimum of 40 parking spaces for the Library Unit shall be amended to require a minimum of 38 ground level parking spaces for the Library Unit.
2. Section 3.B.vii. shall be amended to allow HSI to seek alternate financing at anytime during the Financing Plan even if they have not been denied financing by HUD. Section 3.B.vii., as amended, shall read as follows:
  - vii. If HUD’s response to the Preliminary Application Package, the Additional Application Material, the Final Application Package or the Additional Final Application Material is a denial of HSI’s application for HUD financing or if at anytime during the Financing Plan

HSI decides to seek alternate financing other than HUD financing, HSI shall so notify the City and discuss with the City potential options for alternate financing. If HSI and City both reasonably believe that alternate financing is available and HSI desires seeking such alternate financing, HSI shall have 6 months thereafter (the "Alternate Financing Period") to seek alternate financing from another source or sources. HSI may request from the City an extension of the Alternate Financing Period for 6 more months (the "Alternate Financing Extension"), which extension shall not be unreasonably withheld, conditioned or delayed provided HSI is making reasonable efforts to obtain alternate financing and it pays the City \$500.00 (the "Extension Fee"). During the Alternate Financing Period and the Alternate Financing Extension, HSI shall report to the City every 60 days on its efforts to obtain Alternate Firm Financing, as defined below. If HSI has not obtained Alternate Firm Financing upon termination of the Alternate Financing Extension (as the same may be extended as set forth in the following clause "(a)"), the City may either: (a) allow HSI additional 6 month periods during which to obtain Alternate Firm Financing for which HSI shall pay \$1000.00 to the City (the "Additional Extension Fee") for each additional 6 month period allowed by the City; or (b) terminate this Agreement if the City believes, in its sole discretion, that HSI has not made reasonable efforts to obtain Alternate Firm Financing or is not likely to obtain Alternate Firm Financing. If HSI obtains a written financing commitment for the Project from a source or sources other than HUD upon terms acceptable to HSI in its sole discretion (the "Alternate Firm Financing"), then the parties shall prepare for Closing 1 pursuant to Section 5.C.

3. Section 4.C. of the Agreement is hereby deleted and replaced with the following:

- C. Other than site location costs, rental costs and lease negotiation costs for the Temporary Library incurred by HSI, MPL shall be responsible for all costs, expenses, fees, and charges related to each and every aspect of the Temporary Library, including, without limitation, operating expenses, , cost of improvements, build-out costs, furnishings, and moving out of the East Library and moving to and from the Temporary Library (collectively, "Temporary Library Costs"). Rental costs paid by HSI shall include all items identified as "Rent" and "Additional Rent" in the Temporary Library Lease (as defined below) and reimbursement of the Security Deposit identified in the Temporary Library Lease or any portion thereof if the Security Deposit is forfeited due to the Termination Right (as defined below) or failure to pay rental costs. Notwithstanding anything to the contrary in this Agreement, HSI hereby agrees to reimburse MPL for Temporary Library Costs actually incurred by MPL. However, such reimbursement along with the other costs HSI is obligated to pay under this subsection related to the Temporary Library shall not exceed a total of One Hundred Thousand Dollars (\$100,000.00).

4. Section 5.A.(2) of the Agreement is amended to allow more time to finalize the condominium documents. The amended Section 5.A.(2) shall read as follows:

- (2) Within 9 months of the execution of this Agreement, HSI and MPL agreeing upon the form and substance of the Plat, the Declaration and any other material documentation related to the Condominium.

5. Section 5 shall be amended to acknowledge that HSI has chosen to seek alternate financing instead of using HUD. The final paragraph of Section 5 shall be amended so the second sentence reads as follows:

The parties agree that any waiver or satisfaction by HSI of the conditions or contingencies listed above are subject to and conditioned upon Grandbridge Real Estate Capital, LLC, or HSI's alternate financing entity being satisfied with and approving the matters addressed in each condition or contingency in Section 5.A.(1) through (5).

The final sentence in the final paragraph of Section 5 shall be amended to read as follows:

If, prior to Closing 1, Grandbridge Real Estate Capital, LLC, or HSI's alternate financing entity does not approve of the matters addressed in Section 5.A.(1) through (5), then HSI may terminate this Agreement by providing the City written notice thereof.

6. The first sentence of Section 5.C. shall be amended to delete the words "but in any case, not later than three business days prior to HSI's closing on the loan."
7. Section 29 of the Agreement is created to read as follows:

## **29. NUMBER OF CONDOMINIUM UNITS**

- A. Notwithstanding anything to the contrary set forth in this Agreement, the terms, conditions and covenants of this Agreement do not, and shall not be construed to, prohibit or restrict the Condominium from having more than two condominium units. However, any further division of units beyond what is allowed under Section 29.B, below, shall follow the approval requirements found in the Condominium Declaration.
  - B. If HSI, in its sole discretion, desires to cause the commercial retail space to be a separate condominium unit within the Condominium, then the City and MPL hereby: (a) consent to the commercial retail space being a separate condominium unit within the Condominium; and (b) agree to do all things necessary to allow the commercial retail space to be a separate condominium unit within the Condominium. The consent and obligations set forth in this Section 29.B. are conditioned upon the condominium documentation establishing a voting system for the condominium association such that HSI and the owner of the commercial retail unit together do not constitute the minimum number of votes necessary to take any action, unless the owner of the Library Unit agrees or consents in writing to less voting authority and power.
8. As of the Amendment Effective Date, MPL has executed a lease (the "Temporary Library Lease") with William F. & Joan Judge Irrevocable Trust & 2430 LLC for the premises commonly known as Units 1 and 2 located at 2430 North Murray Avenue, Milwaukee, Wisconsin (collectively the "Premises"). MPL hereby acknowledges and agrees that the Premises satisfies HSI's obligation under Section 3.K of the Agreement to locate a site to be used as the Temporary Library and MPL hereby agrees that the Premises is sufficient for those purposes. Under the Temporary Library Lease, MPL has certain lease termination rights that allow MPL to terminate the Lease prior to June 1, 2013 for any reason ("Termination Right"). MPL hereby agrees to exercise the Termination Right in the event HSI, in accordance with and pursuant to the Agreement, terminates the Agreement not later than June 1, 2013. MPL shall not begin any build out of the Premises or any other improvements or alterations related to the Premises prior to obtaining HSI's prior written consent thereto ("Consent to Build Out"). If HSI terminates the Agreement after it provides MPL the Consent to Build Out but prior to June 1, 2013, and MPL exercises the Termination Right and terminates the Temporary

Library Lease, then HSI shall reimburse MPL any construction costs actually incurred by MPL in connection with the build out of the Premises as of the date of HSI's termination of the Agreement.

9. Except as modified by this Amendment, the Agreement shall continue in full force and effect as provided therein.

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

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

IN WITNESS WHEREOF, HSI East Library Residential, LLC has hereunto set its hand this \_\_\_\_ day of \_\_\_\_\_, 2013.

**HSI EAST LIBRARY RESIDENTIAL, LLC**

**By: HSI Development Partners, LLC**

By \_\_\_\_\_  
Ryan Schultz, a manager

By \_\_\_\_\_  
Brett Haney, a manager

STATE OF WISCONSIN            )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2013, Ryan Schultz, to me known to me known to be a manager of the Manager of HSI East Library Residential, LLC and being authorized so to do, executed the foregoing Amendment for the purposes therein contained for and on behalf of HSI East Library Residential, LLC.

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

SEAL

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

STATE OF WISCONSIN            )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2013, Brett Haney, to me known to me known to be a manager of the Manager of HSI East Library Residential, LLC and being authorized so to do, executed the foregoing Amendment for the purposes therein contained for and on behalf of HSI East Library Residential, LLC.

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

SEAL

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

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 Amendment to be duly executed in its name effective as of the date first written above.

**CITY OF MILWAUKEE**

By \_\_\_\_\_  
Paula A. Kiely, Director  
Milwaukee Public Library

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

**Countersigned**

By \_\_\_\_\_  
Martin Matson, Comptroller

State of Wisconsin            )  
  ) ss.  
County of Milwaukee        )

Signatures of Paula A. Kiely and Elaine M. Miller authenticated this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mary Schanning, Assistant City Attorney  
State Bar No. 1029016

State of Wisconsin            )  
  ) ss.  
County of Milwaukee        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, Martin Matson, to me known to be the Comptroller of the City of Milwaukee and being authorized so to do, executed the foregoing Amendment 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 \_\_\_\_\_

This document was drafted by Mary L. Schanning, Assistant City Attorney

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