

Document Number	<p style="text-align: center;">SECOND AMENDMENT TO EAST LIBRARY PURCHASE, SALE &amp; DEVELOPMENT AGREEMENT</p>
<p>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</p> <p>Tax Key No.: 319-0772-110-0</p>	
Recording Area	

THIS SECOND 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”) and is dated as of June 1, 2014 (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, which was amended by the First Amendment to East Library Purchase, Sale & Development Agreement dated May 20, 2013, both of which were recorded in the Milwaukee County Register of Deeds Office on May 21, 2013 as Document No. 10250763 (collectively the “Agreement”), affecting real property described as:

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, Certified Survey Map No. 8529, recorded as Document No. 10251395, being a division of Lots 11, 12, 13, 14, 15, 16, 17 and 18 and part of Lot 10 in Block 210 and the vacated 5.5 feet of East Thomas Avenue adjacent to Lot 18, in Murray’s Addition, located in the Southwest ¼ of the Southwest ¼ of Section 15, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Address: 1910 East North Avenue

WHEREAS, the City and HSI would like to further amend the Agreement to address various issues that arose during construction and other issues related to the conveyance of the Library Unit to the City.

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

1. Any capitalized terms used in this Second Amendment, but not defined herein, shall be defined as they are in the Agreement.

2. Section 2.E. of the Agreement shall be amended to read as follows:

Construction of the Library Shell to Substantial Completion, in accordance with standards attached and incorporated herein as Exhibit B, shall be completed by HSI on or before July 11, 2014. If this deadline is not met due to no fault of the City, MPL or DCD and not as the result of a force majeure event, then HSI shall pay to MPL liquidated damages of \$500.00 per calendar day of delay, which penalty may be waived or reduced at the sole discretion of MPL. For purposes of this Agreement, a “force majeure event” shall mean unforeseen events beyond the control of HSI, its employees, contractors or agents including Acts of God (including unusual weather, fire, flood, earthquake, sinkholes or other natural disasters), war, invasion or other acts of foreign enemies, revolution or rebellion, terrorist activities, labor disputes or embargos. A “force majeure event” shall not include any event or act that occurred prior to the Amendment Effective Date.

3. Section 4.C. shall be amended to add the following sentence to the end of that subsection:

Pursuant to and subject to the terms of the Temporary Library Lease, MPL may renew the term of the Temporary Library Lease for two consecutive three (3) month periods of time (each, a “Renewal Period”). If the Temporary Library Lease must be extended due to delays in the construction of the Library Shell or delays in the Library Build Out not due to the fault or negligence of the City, MPL or DCD, or any of their agents, contractors, consultants, or employees, nor due to a force majeure event, then HSI shall: (a) pay MPL Seven Thousand Six Hundred Fifty Dollars (\$7,650.00) (which is the equivalent of total Base Rent for one Renewal Period) (“Renewal Base Rent Payment”), and (b) reimburse MPL’s share of Additional Rent for the first Renewal Period (“HSI’s Share of Renewal Additional Rent”) (Renewal Base Rent Payment and HSI’s Share of Renewal Additional Rent are hereinafter collectively referred to as “HSI’s Renewal Costs”). If MPL exercises its right to the first Renewal Period due to delays in the construction of the Library Shell or delays in the Library Build Out not due to the fault or negligence of the City, MPL or DCD, or any of their agents, contractors, consultants, or employees, nor due to a force majeure event, then HSI shall pay HSI’s Renewal Costs even if those costs cause HSI’s contribution to the Temporary Library Costs to exceed the \$100,000.00 maximum established in this subsection. Notwithstanding anything to the contrary in the Agreement or this Amendment, HSI shall not be responsible for any costs or expenses: (i) related in any way to MPL’s default under the Temporary Library Lease (excluding a default due to HSI’s failure to timely pay Rent or Additional Rent on MPL’s behalf for the original term of the Temporary Library Lease); (ii) related in any way to MPL’s negligence or the negligence of MPL’s agents, contractors, consultants, or employees; or (iii) related in any way to MPL’s failure to exercise its rights under the Temporary Library Lease. MPL shall not amend, modify or alter the Temporary Library Lease without HSI’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

4. Section 4.D. of the Agreement shall be amended to read as follows:

- D. MPL commenced interior build out of the Library Unit (“Library Build Out”) in April of 2014 in accordance with a Right of Entry Agreement entered into between MPL and HSI and attached to this Lease as Exhibit 1 (“City’s Right of Entry”). MPL shall diligently and continuously pursue completion of the Library Build Out and, following Closing 2, relocate from the Temporary Library to the Library Unit at its expense, except as expressly provided herein.

5. Section 6.5 shall be created to read as follows:

#### **6.5 RESOLUTION OF MISCELLANEOUS CONSTRUCTION ISSUES**

- A. Fireplace Venting. At the direction of MPL, a revision was made to the plans for venting of the fireplace in the Library Unit that will cause the vent to go through the roof of the Library Unit, which roof consists of, in part, post-tension concrete. In order for MPL and its contractor to vent the fireplace through the roof of the Library Unit, MPL or MPL's contractor must drill a hole through the aforementioned post-tension concrete, which if not done correctly or in a proper location could negatively affect the structural integrity of the Library Unit and the HSI Unit, including, without limitation the structural integrity of the Library Unit's roof. In the event the fireplace vent in the Library Unit's roof, the work related to such vent, or both result in, or is a source of, leaks in the roof, or structural defects, MPL and the City hereby accept all responsibility and costs to repair such leaks, structural defects, and any damage related to such leaks or structural defects, and further agree to indemnify, and hold HSI harmless from any costs, expenses, actions, claims, suits, injury, and damages related to, or arising out of any such leaks or structural defects. Any repairs to such leaks, structural defects and damage related to either shall be done in a good and workmanlike manner, in accordance with generally accepted construction standards for commercial roofs similar to the Library Unit's roof located in southeastern Wisconsin, and shall be done in accordance with all laws.
- B. Ceiling Heights. City and MPL accept the ceiling heights of the Library Unit as constructed. The ceiling heights as constructed required MPL to adjust its design plans for the Library Build Out resulting in additional design, materials and construction costs of \$14,600.03 for the Library Build Out (the "Ceiling Height Charges"). HSI shall reimburse MPL for the Ceiling Height Charges at Closing 2. City and MPL hereby agree that the Ceiling Height Charges are the total additional costs and expenses incurred by MPL in connection with the ceiling heights of the Library Unit. City and MPL hereby fully, and unconditionally waive and release any claims for costs, expenses, and damages in any way relating thereto other than the Ceiling Height Charges.
- C. Landscaping. The landscaping required by the Approved Plans includes stamped concrete and ornamental planters around the exterior of the Library Unit. Notwithstanding anything to the contrary in the Agreement, City and HSI acknowledge and agree that HSI is responsible for completion and costs of landscaping for the Library Unit including stamped concrete and ornamental planters in accordance with the Approved Plans. In the event that MPL desires any alternate site landscaping, including specialty stamped concrete, ornamental planters or art installations, that is above and beyond, or different than, the landscaping shown in the Approved Plans, the added expense of those landscaping items shall be the responsibility of the City. Notwithstanding anything to the contrary in this Agreement or elsewhere, the City and MPL shall be responsible for performing any plantings (flowers, trees, etc.) in the ornamental planters and shall be responsible for all costs related thereto. HSI shall be responsible for all costs related to all other plantings required by the Approved Plans that are not within the ornamental planters located at the west and south exterior of the Library Unit.

D. Plumbing. MPL, on behalf of itself and its successors-in-title and successors-in-interest, hereby agrees, for the benefit of the HSI Unit and its owner: (i) to allow plumbing for the HSI Unit to be installed, used, and maintained within the ceiling of the Library Unit and within columns located in the Library Unit; and (ii) to allow the owner of the HSI Unit reasonable access to the Library Unit for the purpose of maintaining, repairing, and replacing the HSI Plumbing Items (defined hereinafter). Such plumbing and any related facilities (“HSI Plumbing Items”) shall be part of the HSI Unit despite their location within the Library Unit. In the event the HSI Plumbing Items are a source of leaks or cause any damage to the Library Unit or any property within the Library Unit or cause injury to staff, agents or invitees of MPL or City, HSI hereby accepts all responsibility and costs to repair the HSI Plumbing Items and shall be liable for any damages caused by such leaks or such damages, provided such leaks or such damages do not arise out of damage to the HSI Plumbing Items caused by the City’s or MPL’s negligence. HSI further agrees to indemnify, and hold City and MPL harmless from any costs, expenses, actions, claims, suits, injury and damages related to, or arising out of any such leaks or such damages, provided such leaks or such damages do not arise out of damage to the HSI Plumbing Items caused by the City’s or MPL’s negligence. Any repairs to the HSI Plumbing Items shall be done in a good and workmanlike manner, in accordance with generally accepted plumbing standards, by a licensed plumber and shall be done in accordance with all laws. The rights granted by MPL for the benefit of the HSI Unit and its owner in this Section shall run with the land and shall burden the Library Unit.

6. Section 8.E. shall be amended to change “30 days” to “10 days” and to add the following sentence to the end of that subsection:

Prior to Closing 2, HSI shall obtain and provide to the City lien waivers for the Library Unit from all contractors and subcontractors who constructed or worked on the construction of the Library Unit.

7. Section 8.H shall be amended to read as follows:

H. Construction Continuation. The parties acknowledge that both HSI and the City are and will be performing construction work on the Property and will 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. HSI and the City agree to use reasonable efforts to not interfere with each other’s construction activities. The City’s Right of Entry shall remain in effect until Closing 2. As necessary for HSI to complete work on the Library Landscaping and the HSI Unit following Closing 2, City hereby grants HSI a right of entry over exterior and interior portions of the Library Unit necessary for the purpose of completing the Library Landscaping and HSI Unit (“HSI’s Right of Entry”). Prior to Closing 2, HSI shall provide proof to the City that the outdoor portions of the Library Unit are covered under HSI’s liability insurance and that the City is named as an additional insured. HSI shall maintain such liability insurance coverage at all times that it uses HSI’s Right of Entry. This Section and the rights granted hereunder are in addition to and do not amend, alter, or limit any rights of the Declarant (as defined in the Declaration) under the Declaration.

8. Section 26 shall be amended to update the mailing address of HSI to read as follows:

HSI East Library Residential, LLC  
c/o HSI Development Partners, LLC

Attn: Brett Haney or Ryan Schultz  
Brookfield Lakes Corporate Center XVII  
18500 West Corporate Drive, Suite 120  
Brookfield, WI 53045

9. City and MPL hereby rescind and terminate the default notice sent to HSI via letter from the City of Milwaukee Office of the City Attorney dated March 17, 2014. City and MPL hereby fully and unconditionally waive and release HSI from any costs, expenses, and damages caused by, associated with, resulting from, related to, or arising out of Substantial Completion of the Library Shell not occurring until July 11, 2014, except for costs, expenses, and damages expressly set forth in this Amendment.
10. For purposes of the Agreement, as amended, MPL shall be considered a sub-entity of the City such that any obligation of MPL under the Agreement, as amended, shall be an obligation of the City, and any obligation of the City under the Agreement, as amended, shall be an obligation of MPL.

IN WITNESS WHEREOF, the parties hereto have caused this Second 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 \_\_\_\_\_, 2014.

**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 \_\_\_\_\_, 2014, 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 \_\_\_\_\_, 2014, 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 \_\_\_\_\_, 2014, 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 \_\_\_\_\_, 2014.

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

State of Wisconsin            )  
  ) ss.  
County of Milwaukee        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, 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

1125-2011-2953:201655

## **Exhibit 1**

### **RIGHT OF ENTRY EAST LIBRARY PROJECT**

**RIGHT OF ENTRY AGREEMENT** made as of this 11th day of April, 2014 by and among the Milwaukee Public Library ("MPL") and HSI East Library Residential, LLC ("HSI").

#### **RECITALS**

1. HSI owns property at 1910 East North Avenue in the City of Milwaukee (the "Property") where it is the developer on a Project to construct a building that will include apartments, commercial space and a public library pursuant to the East Library Purchase, Sale and Development Agreement, as amended, between HSI and the City of Milwaukee recorded at the Milwaukee County Register of Deeds Office on May 21, 2013 as Document No. 10250763 (the "Development Agreement").

2. Any capitalized terms not defined herein shall be defined as they are in the Development Agreement.

3. MPL will be the operator of the public library space within the Project and is responsible for the Library Build Out in the Library Unit.

4. Although the Development Agreement anticipates that Library Build Out will occur after the Library Unit is conveyed by HSI to the City of Milwaukee, HSI and MPL would like MPL to start the Library Build Out before such conveyance.

5. Subject to the terms of this Right of Entry Agreement, HSI would like to give MPL a right of entry to enter onto the Property for the purpose of doing the Library Build Out.

#### **AGREEMENT**

In consideration of the above recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MPL and HSI agree as follows:

A. HSI grants to MPL, its employees, agents, contractors, and subcontractors, permission to enter upon the Property solely for the purpose of undertaking the activities required for the Library Build Out. This right of entry shall be limited to the Library Unit portion of the Property as well as the ground level



parking lot area of the Property and any other areas that are reasonably necessary for MPL to access in order to complete the Library Build Out.

B. The parties acknowledge that both HSI and MPL will be performing construction work on the Property and will 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. HSI and MPL agree to use reasonable efforts to not interfere with each other's construction activities.


C. The parties agree that this Right of Entry Agreement does not amend, terminate or waive any provisions of the Development Agreement in any way and that all parties to this Right of Entry Agreement and the Development Agreement retain all of their rights, responsibilities and liabilities under the Development Agreement.

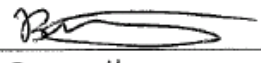
D. This Right of Entry Agreement shall be effective as of the date first written above and shall remain effective until Closing 2.

E. HSI shall not charge MPL any fee for this right of entry.

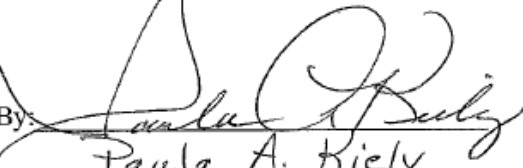
The parties hereto have caused this Right of Entry Agreement to be executed by their duly authorized representatives as of the day and year set forth above.

**HSI EAST LIBRARY RESIDENTIAL, LLC**  
**By: HSI Development Partners, LLC**

By:   
\_\_\_\_\_  
RYAN SCHULTZ MANAGER

By:   
\_\_\_\_\_  
Brett Honey manager

**MILWAUKEE PUBLIC LIBRARY**

By:   
\_\_\_\_\_  
Paula A. Kiely