

LIBRARY PROJECT – 910 W. MITCHELL ST.
FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT

Name and Return Address:
City of Milwaukee
City Attorney's Office
Attn: Mary L. Schanning
841 North Broadway, 7th Floor
Milwaukee, WI 53202

Tax Key No.: 461-1396-100

Recording Area

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("Amendment") is by and among the **CITY OF MILWAUKEE**, a municipal corporation duly existing under Wisconsin law ("CITY"), the **MILWAUKEE PUBLIC LIBRARY**, a public library entity operated by its Board of Trustees, ("MPL") and **GORMAN & COMPANY, INC.**, a Wisconsin corporation ("**DEVELOPER**"), with its principal office at 200 North Main Street, Oregon, WI, and is dated as of March 28, 2017.

RECITALS

1. CITY, MPL and DEVELOPER are parties to a certain Development Agreement dated June 28, 2016 and recorded at the Milwaukee County Register of Deeds Office as Document No. 10579880 on July 6, 2016 (the "Development Agreement").
2. CITY, MPL and DEVELOPER wish to amend the Development Agreement as described in this Amendment.
3. Any capitalized terms used in this Amendment not defined in this Amendment shall be defined as they are in the Development Agreement.
4. MPL approved this Amendment and authorized its execution by vote of its Board of Trustees on March 28, 2017.
5. CITY's Common Council approved this Amendment and authorized its execution on March 28, 2017, by passage of Resolution No. 161511.
6. These recitals and all exhibits attached hereto are incorporated into this Amendment.

AMENDMENT

NOW, THEREFORE, In consideration of the premises and the mutual obligations of the parties hereto, each party does hereby covenant and agree with the other as follows:

- A.** Section I.F. of the Development Agreement is amended to read as follows:

"**City Loan**" means a \$5,300,000 loan to be made by the CITY to the Leverage Lender, \$800,000 of which will be advanced on the NMTC Closing Date to fund a portion of the Leverage Loan and the remaining \$4,500,000 of which will be advanced no later than March 31, 2017, to (directly or indirectly) repay the BMO Loan in full.

- B.** Section I.Q. of the Development Agreement is amended to read as follows:
- “**Library Lease**” means the lease between Landlord, as lessor, and MPL, as lessee, in the form attached as Exhibit D to the Agreement, executed on the NMTC Closing Date and amended on March 28, 2017 by the First Amendment to Lease Agreement, attached as Exhibit 1 to the Amendment, as the same may be further amended from time to time in accordance with its terms.
- C.** Add the following to the end of Section I.HH. of the Development Agreement:
- Completion of the improvements to the Parking Lot, as described in Section IV.G., shall not be considered to be part of the Shell.
- D.** Section I.JJ. of the Development Agreement is amended to read as follows:
- “**Substantial Completion**” means written confirmation from DEVELOPER’s architect and construction manager that construction of the Shell is substantially completed by DEVELOPER in accordance with (1) the Approved Project Plans and (2) design plans for the historic restoration of the Property that are consistent with the Certificate of Appropriateness approved by CITY’s Historic Preservation Commission and written confirmation from DEVELOPER that the Condominium documents required by Section III.D. of this Agreement have been completed and are recorded. It is expressly acknowledged and agreed that DEVELOPER may achieve Substantial Completion without the need to obtain a certificate of occupancy for the Library Unit or the Shell and before the completion of the Parking Lot improvements as required by Section IV.G. of this Agreement.
- E.** Section III.K. of the Development Agreement is amended to read as follows:
- Complete the Project to Substantial Completion and request the Certificate by June 1, 2017.
- F.** Delete the words “and achieve Substantial Completion” from the first sentence of Section III.P. of the Development Agreement.
- G.** Section IV.A. of the Development Agreement is amended to read as follows:
- CITY shall make the City Loan: (i) with respect to the \$800,000 to be advanced at the NMTC Closing Date, on or before the NMTC Closing Date; and (ii) with respect to the remaining \$4,500,000 to be advanced no later than March 31, 2017. CITY hereby waives the language in Section 4.02(b) of the Source Loan Agreement, dated June 30, 2016, between CITY and the Leverage Lender requiring DEVELOPER to achieve Substantial Completion before CITY makes the advance described in (ii), above. The parties acknowledge that, except for any Library Shortfall, the City Loan is the maximum amount the CITY and MPL will contribute towards the Project.
- H.** Delete the following from Section IV.G. of the Development Agreement:
- On or prior to December 31, 2016, DEVELOPER and CITY shall have agreed in writing on the schedule for completion of such work and the final configuration of the Parking Lot prior to the CITY commencing any work.
- I.** Add the following to the end of Section IV.G. of the Development Agreement:
- The Parking Lot improvements described herein shall be completed no later than July 1, 2017. Upon mutual agreement by CITY’s Department of Public Works Commissioner and DEVELOPER, the work described in (i) through (iii), above, shall be completed by DEVELOPER instead of CITY if necessary in order to meet the deadline for such work. In the event that DEVELOPER completes the work instead of CITY, CITY shall reimburse DEVELOPER \$105,000 towards the completion of the Parking Lot improvements. On or prior to April 30, 2017, DEVELOPER and CITY shall agree in writing on the schedule for completion of such work, the

final configuration of the Parking Lot and whether the work will be completed by CITY or DEVELOPER.

J. Section XIV.C. of the Development Agreement is amended to read as follows:

Delay in Substantial Completion. In the event DEVELOPER fails to meet the deadline in Section III.K. for Substantial Completion of the Project, DEVELOPER shall pay liquidated damages to MPL in the amount of \$250 per day of delay. DEVELOPER shall be given a 30 day grace period following the deadline in Section III.K. to meet Substantial Completion before any liquidated damages are due. In the event Substantial Completion is met within the 30 day grace period, no liquidated damages shall be owed to MPL. If Substantial Completion is not met within the 30 day grace period, liquidated damages shall be paid by DEVELOPER to MPL for the 30 days within the grace period and all subsequent days until Substantial Completion is met. In the event Substantial Completion is not met by August 1, 2017, MPL and CITY may jointly terminate this Agreement. In the event DEVELOPER fails to meet the deadline in Section IV.G. for completion of the Parking Lot improvements, DEVELOPER shall pay liquidated damages to MPL in the amount of \$250 per day of delay. Any liquidated damages provided for in this subsection may be waived in writing by the MPL Director, in her sole discretion, but only if the delay by DEVELOPER does not result in a delay in the opening of the Library Unit as a public library branch.

K. Delete the final 2 sentences from Section XXIV.F. of the Development Agreement and replace them with the following:

The right of entry shall expire upon the completion of such improvements to the Parking Lot or upon CITY and DEVELOPER agreeing that the improvements to the Parking Lot will be completed by DEVELOPER and not by CITY.

Except as specifically provided herein, all other terms of the Development Agreement shall remain in effect as originally stated in the Development Agreement.

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

IN WITNESS WHEREOF, DEVELOPER, Gorman & Company, Inc., has hereunto set its hand this ____ day of March, 2017, on its own behalf and on behalf of all Affiliates described in this Amendment.

GORMAN & COMPANY, INC.,
a Wisconsin corporation

By: _____
Gary J. Gorman, President

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this ____ day of March, 2017, Gary J. Gorman, to me known to me known to be the President of Gorman & Company, Inc. and being authorized so to do, executed the foregoing Amendment for the purposes therein contained for and on behalf of Gorman & Company, Inc.

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

SEAL

Notary Public,

_____ County
My commission _____

IN WITNESS WHEREOF, City of Milwaukee has caused this Amendment to be duly executed in its name effective as of the date first written above.

Tom Barrett, Mayor

James R. Owczarski, City Clerk

Countersigned:

Martin Matson, City Comptroller

Signatures of Tom Barrett, Mayor; James R. Owczarski, City Clerk; Martin Matson, Comptroller; and Paula A. Kiely, Director, authenticated this _____ day of March, 2017.

Mary L. Schanning, Deputy City Attorney
State Bar No. 1029016

IN WITNESS WHEREOF, Milwaukee Public Library has caused this Agreement to be duly executed in its name effective as of the date first written above.

Paula A. Kiely, Director

This document was drafted by Mary L. Schanning, Milwaukee City Attorney's Office.

1125-2014-2935:237215

[Signature Page to First Amendment to Development Agreement]

EXHIBIT 1

First Amendment to Lease Agreement