

Document Number

AGREEMENT AND
PARTIAL
RELEASE OF DEED
RESTRICTIONS

Document Title

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Recording Area

Name and Return Address

A portion of 392-1726-114

Parcel Identification Number (PIN)

**AGREEMENT AND
PARTIAL RELEASE OF DEED RESTRICTIONS**

THIS AGREEMENT AND PARTIAL RELEASE OF DEED RESTRICTIONS

made as of this _____ day of _____, 2017 between the CITY OF MILWAUKEE, a Wisconsin municipal corporation ("CITY"), and the MUSEUM CENTER PARK, INC., a Wisconsin corporation and controlled subsidiary of Milwaukee Art Museum, Inc., ("MAM").

W I T N E S S E T H:

WHEREAS, CITY conveyed a portion of certain real property, located at 929 East Wisconsin Avenue and 910 East Michigan Street, consisting of the former Juneau Park, and which is legally described on **Exhibit "A"** ("Property") to the County of Milwaukee, pursuant to

two deeds, the first a Deed dated December 22, 1939, recorded with the Milwaukee County Register of Deeds on May 8, 1940, as Document No. 2261025, and the second, a Quit Claim Deed dated January 4, 1991, recorded with the Milwaukee County Register of Deeds on January 29, 1991, at Reel 2534, Images 832 to 838, inclusive, Document No. 6453546 (collectively, the “Deeds”). Such conveyances were subject to various deed restrictions, including certain restrictions (the “Deed Restrictions”), stating:

- (i) “The above described premises are sold and conveyed upon the further express condition that the same shall be used forever solely and exclusively as a public park, amusement and recreation grounds or parkway and for such purposes as municipal public park grounds are generally used, and upon further condition that the party of the second part [Milwaukee County] will maintain said premises forever for such purposes and will never alien or convey said lands to any private person or to any municipal corporation; provided, that in the event that the City and County of Milwaukee shall at some future time be consolidated, the happening of said event shall in no event be considered a breach of the last above mentioned condition.

The above described premises are sold and conveyed upon the further express condition that the County will operate and maintain said lands and improvements forever as a public park without expense to the City of Milwaukee.” (Deed dated January 4, 1991); and

- (ii) “It is expressly understood and agreed by the parties hereto that this deed is given upon condition that the lands herein conveyed shall always be used for and as a public park without expense to the City of Milwaukee, except such as may properly be included in the tax levy upon said city for the current year involved; and in the event that the said lands shall at any time in the future cease to be used, kept and maintained for public park purposes, then and in such event, title to said lands shall at once revert to and revest in the grantor [City of Milwaukee], its successors or assigns.” (Deed dated December 22, 1939); and

WHEREAS, the Property comprises a portion of the land and improvements owned by Milwaukee County known as O'Donnell Park; and

WHEREAS, MAM and Milwaukee County have entered into an agreement (the "Agreement") pursuant to which MAM has been granted the right to purchase all of the

improvements located on the Property, inclusive of the park parking structure (the "Improvements") but not the land, which will be retained by Milwaukee County; and

WHEREAS, pursuant to the terms of such Agreement, MAM will be subjecting property south of the Property to a restrictive covenant for the benefit of the County (the "Restrictive Covenant"); and

WHEREAS, in conjunction with the purchase of the Improvements from Milwaukee County, MAM has requested that CITY execute and deliver this Partial Release of Deed Restrictions in order to allow the purchase and private ownership by MAM of the portion of the Improvements located on the Property; and

WHEREAS, CITY has determined that certain Deed Restrictions are no longer necessary with respect to the uses proposed by MAM for the portion of the Improvements located on the Property; and

WHEREAS, this Partial Release of Deed Restrictions will be subject to the conditions set forth below.

NOW, THEREFORE, CITY hereby partially releases the Deed Restrictions with respect to the Property; provided, however, that such partial release is expressly subject to the following conditions:

1. MAM shall abide by the terms and conditions of the Agreement and the Restrictive Covenant. MAM acknowledges that CITY shall be deemed a third-party beneficiary of the Restrictive Covenant, with the right to enforce its terms and provisions as if CITY were a party thereto.

2. In the event MAM undertakes Major Modifications to the Improvements located on the Property, or undertakes the construction of new or replacement improvements on the

Property, the exterior design and the plans and specifications for such modifications or improvements shall be subject to the approval of CITY's Commissioner of City Development. For purposes of this Agreement and Partial Release of Deed Restrictions, "Major Modifications" shall mean any modification that would include the replacement or new construction of any permanent structures on the Property or any redesign of the overall park amenities and their layout or other improvements on the Property; provided, however, that repair, maintenance or replacement of existing park amenities, such as walkways, benches, sculptures, landscaping, plantings and art work, at the same location as they are currently existing, and installation of new artwork, sculptures, landscaping and plantings, will not be deemed Major Modifications. Nothing in this paragraph shall be construed as a waiver by CITY of any standard requirements, approvals or permits typically required of parks, new construction or building modification under building codes, zoning codes, the Americans with Disabilities Act or other applicable laws.

3. Notwithstanding any term or provision of this Agreement and Partial Release of Deed Restrictions to the contrary, the Property shall always be used for and open to public access in a manner consistent with a public park, without expense to CITY. In the event that the Property shall at any time in the future cease to be used, kept and maintained as a park and held open for such public access, then and in such event, title to the Property shall at once revert to and revert in CITY, unless waived by CITY. Notwithstanding the foregoing, MAM shall have the right, upon prior written notice to the City, to temporarily exclude the public from the Property during such periods when construction activity would pose a risk to the public, or when necessary to facilitate any repairs, maintenance, redevelopment or reconstruction on, under, over or upon the Property. MAM shall also have the right, without fee or charge, to exclude the public from the Property for MAM's exclusive use for a maximum of four events per year

comprised of not more than 20 days total (including set-up and break-down days) for all events during a calendar year not to include dates on which major events are scheduled on the Milwaukee lakefront including, without limitation, the fireworks display annually presented on July 3. MAM shall notify the CITY in writing to its Commissioner of City Development and the Alderperson for the district in which the Property is located of the days it wishes to reserve the Property for exclusive use by December 1 of the prior year. Nothing herein shall restrict MAM from installing, constructing and maintaining landscaping, artwork, sculptures and other open air installations on the Property, subject to the requirements of paragraph 2, above.

4. CITY does not release the Deed Restriction that states Milwaukee County “will never alien[ate] (sic) or convey said lands to any private person or to any municipal corporation.” CITY agrees that the conveyance of the Improvements on the Property to MAM is not a violation of this Deed Restriction.

5. MAM agrees that this Agreement and Partial Release of Deed Restrictions may not be amended except with the written consent of MAM, the CITY and Milwaukee County.

6. CITY’s release of the Deed Restrictions applies only to the Property and not to any other real property conveyed by the Deeds. The Deed Restrictions shall remain in effect on all other real property conveyed by the Deeds.

IN WITNESS WHEREOF, CITY and MAM have caused this Agreement and Partial Release of Deed Restrictions to be executed by their duly authorized representatives as of the day and date set forth above.

MUSEUM CENTER PARK, INC.

CITY OF MILWAUKEE

By: _____
Marcelle Polednik
Executive Director

Tom Barrett, Mayor

James R. Owczarski, City Clerk

COUNTERSIGNED:

Martin Matson, Comptroller

Signatures of Tom Barrett, Mayor, and James R. Owczarski, City Clerk, and Martin Matson, Comptroller, authenticated this _____ day of _____, 2017.

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

STATE OF WISCONSIN)
) ss:
MILWAUKEE COUNTY)

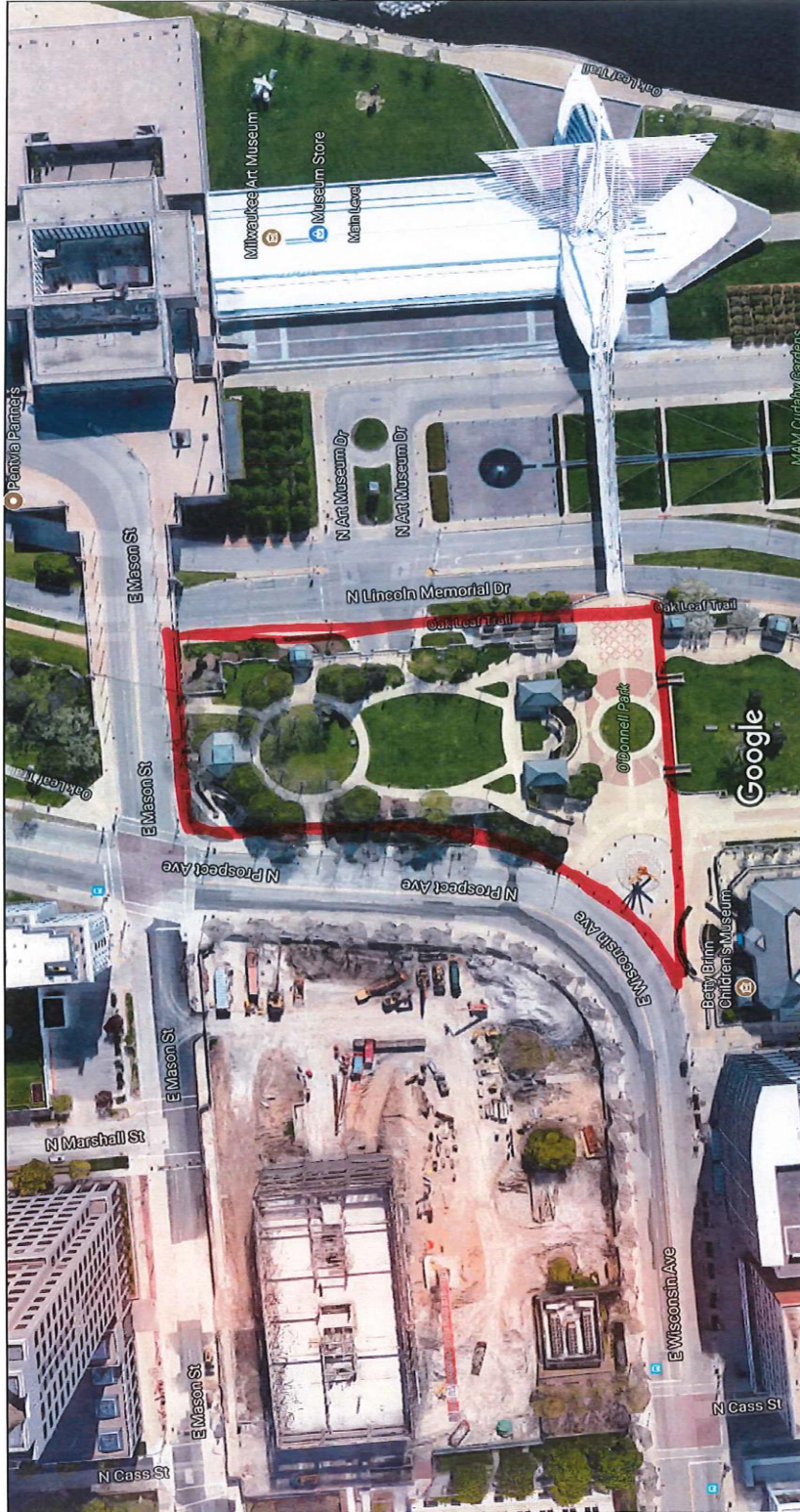
Personally came before me this _____ day of _____, 2017, Marcelle Polednik, Executive Director of Museum Center Park, Inc., to me known to be the person who executed the foregoing instrument.

Name: _____
Notary Public, State of Wisconsin
My Commission (is permanent) (expires: _____)

1050-2016-742:228579

EXHIBIT "A"

(Legal Description of the Property)



Approximate diagram of the property
Legal description is being prepared + will be added
to final document