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**HEARTLAND HOUSING  
GRANT AGREEMENT**

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Effective Date: \_\_\_\_\_ 2017

Parties:

Milwaukee County,  
Heartland Housing, Inc.,  
St. Anthony's Apartments, LLC

## **GRANT AGREEMENT**

This Grant Agreement (“Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and among Milwaukee County, a Wisconsin municipal corporation (“County”), Heartland Housing, Inc, an Illinois not-for-profit corporation (“HH”) and St. Anthony’s Apartments, LLC, a Wisconsin limited liability company (“Owner”) . Referenced together, County, HH and Owner are collectively the “Parties,” and individually as a “Party.”

### **RECITALS**

**WHEREAS**, Milwaukee County is the owner of the former Community Correctional Center (“CCC”) located at 1004 N. 10<sup>th</sup> St., Milwaukee, WI; and

**WHEREAS**, pursuant to County Board Resolution File No. 14-939, enacted effective 12/23/2014, and amended pursuant to File No. 16-506, enacted effective 9/30/2016, attached hereto as Exhibit A, County has identified HH in partnership with the St. Ben’s Community Meal Program as the purchaser and developer of the property into supportive housing; and

**WHEREAS**, File No. 14-939 authorized that contingent upon any County Board approved Option for the CCC Building, \$1,800,000 shall be administratively appropriated by the Office of Performance, Strategy, and Budget, from the Economic Development Reserve Fund to either (a) provide funding for the redevelopment of the CCC or (b) provide funding for the demolition of the CCC in a new capital improvement project which the Office of the Comptroller is authorized to create; and

**WHEREAS**, File No. 16-506 authorized the County’s Economic Development Division to amend the terms under which the CCC is sold to HH to allocate \$1,800,000 as a grant and to enter into a grant agreement that guides disbursement of these funds; and

**WHEREAS**, the County and HH have entered into an Option Agreement dated 1/26/2015, as amended on 11/16/2016, a copy of which attached hereto as Exhibit B (the “Option Agreement”) relating to the property more particularly described therein (the “Property”), whereby HH has the right to purchase the CCC; and

**WHEREAS**, HH has caused Owner to be formed for the purpose of acquiring, rehabilitating, constructing, developing, owning and operating building that is comprised of sixty (60) units of affordable housing, accessory parking and commercial space (the “Project”) and HH has assigned its right to purchase the Property pursuant to the Option Agreement to Owner;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which

is hereby acknowledged, the Parties hereto agree as follows:

- 1) **TERM.** This Agreement shall be effective as of the closing date of the sale of the property to Owner as contemplated in the Option Agreement and, except as otherwise provided herein, shall continue in full force and effect through twenty-four (24) months from the date of closing (“Initial Term”).
  
- 2) **ELIGIBLE PROJECT COSTS.** The following costs related to the Project (“Eligible Project Costs”), will be eligible for payment:
  - a) Hard costs of the Project – costs associated with the structure, site, and landscaping including all labor and materials required for construction, including demolition and site clearance.
  - b) Soft costs of the Project – costs associated with architectural, engineering, financing, and legal fees.

3) **GRANT FUND STRUCTURE.**

a) **Funding Sources.**

Subject to the terms and conditions set forth in this Agreement, County shall provide to HH a grant (“Grant Funds”) of up to One Million Eight Hundred Thousand Dollars (\$1,800,000) for the payment of eligible Project Costs. HH may make the proceeds of the Grant available to Owner as a loan.

b) **Grant Fund Disbursements.**

- i) The full amount of the Grant Funds shall be disbursed into escrow with Wisconsin Title, Closing & Credit Services (“Escrow Agent”) upon the closing the sale of the Property to Owner. Upon the satisfaction of the conditions in this Section 3(b) and those listed in Exhibit C attached hereto, County shall authorize Escrow Agent to make disbursements of Grant Funds to HH or Owner (as directed by HH) for the payment of Eligible Costs.
- ii) In addition to the conditions listed in Exhibit C, the following terms shall apply to disbursement requests:
  - (1) Requests for disbursement may be made no more frequently than on a monthly basis and with each request for disbursement, Owner shall submit to County the complete construction draw package that Owner submits to Escrow Agent, its construction lender (U.S. Bank National Association) and its equity investor member (the “Draw Package”).

- (2) All Grant Fund disbursements shall require written approval of the County’s

Economic Development Director which shall not be unreasonably withheld, conditioned or delayed. The County shall approve or reject a disbursement request within 15 calendar days of receiving the same from Owner. Failure of the County to provide Escrow Agent, Owner and HH with objections in writing to a disbursement request shall be deemed approval of the disbursement request and Escrow Agent shall be entitled to disburse the requested funds to HH or Owner, as directed by HH.

- (3) The Grant Funds may be disbursed as the first source of funding for Eligible Costs.
  - (4) If Grant Funds are not sufficient to cover all of the rehabilitation costs, any additional funds required shall be the responsibility of Owner; and
  - (5) Any remaining Grant Funds remaining with Escrow Agent after twenty-four (24) months of the date the Developer takes title to the Property shall be returned to the County.
- iii) HH and Owner shall provide County accounting statements that detail Grant Fund usage as reasonably requested by County. Notwithstanding the foregoing, County may make reasonable requests access to account records pursuant to Sections 9 and 10 herein.
  - iv) For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, County shall not have approval rights for any disbursement of Owner funds (including, but not limited to equity funds, loan proceeds or other grant funds) for the Project unless such disbursements include Grant Funds.
- 4) **ANNOUNCING GRANTS.** Parties to this Agreement are encouraged to make public announcements of each County grant award by developing news releases and writing stories for agency publications. HH and Owner shall refer to “Milwaukee County” in any print materials or press releases, and utilize the County logo on any print materials related to County grant awards. HH and Owner shall work with County staff prior to sending any press releases and forward to Milwaukee County any news stories or other articles that are generated from the programming related to the grant.
  - 6) **COMPENSATION.** HH and Owner staff shall receive no compensation for participation in this Agreement.
  - 7) **NONDISCRIMINATION.** In the performance of its obligations under the Agreement, HH and Owner shall not discriminate against any employee, applicant for employment or grant applicant because of race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking, which shall

include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. HH and Owner will post in conspicuous places, available for all employees and applicants for employment, notices setting forth the provision of the non-discriminatory clause.

8) **INDEMNIFICATION.**

- a) **Indemnification of County.** To the fullest extent permitted by law, HH and Owner, as applicable, each agree to defend, indemnify and save harmless County from all claims, investigations and suits, with respect to or arising out of their respective (i) alleged or actual violation of state or federal labor or other laws pertaining to employees retained for purposes of performing this Agreement, it being expressly agreed and understood that as between County, Owner and HH, all persons employed in connection with this Agreement are employees of HH or Owner, not County; or (ii) Owner's or HH's breach of this Agreement which has a material adverse effect on the Project or County; or (iii) Owner's or HH's negligence or willful misconduct.
- b) **Indemnification of HH and Owner.** To the fullest extent permitted by law, the County agrees to defend, indemnify and save harmless HH and Owner from all claims and suits in connection with the Agreement provided that such claims and suits are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and such claims and suits which arise, or are alleged to arise, in whole or in part out of any negligent act or omission of the County, its officers, employees, or agents. Milwaukee County's liability shall be limited by Wisconsin State Statutes § 345.05(3) for automobile and § 893.80(3) for general liability.
- c) **Survival of Indemnity Obligations.** The indemnity obligations contained in this Agreement shall survive the termination of this Agreement.

- 9) **INSURANCE.** HH and Owner agree to maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from HH and Owner activities, by whomever performed, in such coverage and amounts as required and approved by the County. HH and Owner shall cause its consultants, contractors and subcontractors to have and maintain in connection with any work being performed at or for the Property one or more insurance policies with at least the following coverage and limits (Minimum limits may be obtained through an umbrella or excess insurance policies):

Type of Coverage	Minimum Limits
Wisconsin Workers' Compensation Employer's Liability & Disease	Statutory / Waiver of Subrogation \$100,000/\$500,000/\$100,000
General Liability Bodily Injury and Property Damage to include: Personal Injury, Fire, Products and Completed Operations	\$5,000,000 Per Occurrence \$5,000,000 Per Aggregate
Automobile Liability Bodily Injury & Property Damage – All Autos	\$1,000,000 Per Accident
Contractor's Pollution Liability	\$1,000,000 Per Occurrence
Professional Liability	\$2,000,000 Per Occurrence

Milwaukee County shall be named as an Additional Insured on General, Automobile, Umbrella and Contractor's Pollution Liability policies as respects the services provided in this agreement. A Waiver of Subrogation shall be afforded to Milwaukee County on the Workers' Compensation and Contractor's Pollution policies. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

The insurance specified above shall be placed with a Carrier approved to do business in the State of Wisconsin. All carriers must be A rated or better per AM Best's Rating Guide. Acceptable proof of such coverage shall be furnished to the County prior to commencement of activities under this agreement. A certificate indicating the above coverages shall be submitted for review and approval by the County for each successive period of coverage for the duration of this Agreement. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Risk Manager as a condition of this agreement.

10) **RECORDS AND REPORTS.**

- a) In addition to requirements specified elsewhere in this Agreement, County, HH and Owner shall each establish and maintain a system of records, books, and accounts with respect to this Agreement and all Grant Fund awards. All such records, books, and accounts shall be subject to examination by County pursuant to Section 11 herein.
  - b) HH and Owner will provide a report on the use of Grant Funds to Milwaukee County at least annually.
- 11) **RIGHT TO AUDIT AND INSPECT.** HH and Owner shall allow County, the Milwaukee County Office of the Comptroller Audit Services Division, or any other party County may name, when and as they demand, to audit, examine, access and make copies of, excerpts or transcripts from any record, books, files, premises or other information. HH and Owner shall maintain and make available to County the above-described information for no less than three years after the conclusion of the obligations and responsibilities of HH and Owner described herein and required by this Agreement. These requirements shall apply to any and all Grantees, assignees or otherwise under this Agreement.
- 12) **DEFAULTS AND REMEDIES.**
- a) **Events of Default by HH or Owner.** If HH or Owner shall fail to perform any term, condition or covenant to be performed or observed pursuant to this Agreement for more than thirty (30) days, it shall constitute an “Event of Default” by HH or Owner, as applicable, for purposes of this Agreement. If an Event of Default by HH or Owner occurs, County shall send written notice to the parties set forth in Exhibit D (“Default Notice”) specifying a) the nature of the default in detail and including b) a cease and desist letter directing Escrow Agent to freeze the segregated account and make no attempt to withdraw or disburse funds to HH or Owner until the subject of the Default Notice is resolved. HH, Owner, Owner’s lender, and Owner’s equity investor shall have thirty (30) days after receipt of the Default Notice to cure such Event of Default. In the event any of such parties not cure such Event of Default within such thirty (30)-day period (or such other reasonable time as necessary if such default cannot be cured within thirty (30) days and any of such parties, upon receipt of such notice, promptly commences the progress of curing such default and diligently and continuously pursues such cure to completion), County may terminate this Agreement and pursue any available remedy against HH and Owner, as applicable, either at law or in equity, including, without limitation, the right to pursue specific performance or injunctive relief and collect actual damages for HH’s or Owner’s breach or failure to perform (including reasonable attorney’s fees and court costs).

An “Event of Default” by Owner pursuant to Section 3.1 of the Development Agreement between Owner and County, attached hereto as Exhibit E, which is not cured within the time period provided in the Development Agreement shall also be an Event of Default

under this Agreement.

- b) **Events of Default by County.** If County shall fail to perform any term, condition or covenant to be performed or observed pursuant to this Agreement for more than 30 days after receipt by County of Default Notice from HH or Owner specifying in detail the nature of such default (or such other reasonable time as is necessary if such default cannot be cured within thirty (30) days and County, upon receipt of such notice, promptly commences the process of curing such default and diligently and continuously pursues such cure to completion), HH and Owner may pursue any available remedy against County at law or in equity including, without limitation, the right to pursue specific performance or injunctive relief and collect actual damages for the County's breach or failure to perform (including reasonable attorneys' fees and court costs).
  - c) **Rights and Remedies Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times of any other rights or remedies for the same default or any other default by the other Party.
- 13) **TERMINATION.** Upon termination of this Agreement for any reason, including by notice, default or otherwise, any funds remaining in the segregated account shall be returned to the party that supplied them, i.e., the County, Owner or HH as the case may be. The Parties shall jointly execute such documents as necessary to effect this return of funds, and a party failing to do so shall be subject to costs and fees, including legal fees, incurred by the other party in effecting the proper disbursement of funds. Joint signatory authorization to withdraw funds from the segregated account shall survive termination of this Agreement.
- 14) **NOTICES.** All notices, demands, consents and reports provided for in this Agreement shall be given in writing and shall be deemed received by the addressee on the third (3rd) business day after mailing if mailed by United States certified or registered mail, postage prepaid or one business day after deposit with an overnight courier, or on the day delivered if personally delivered or emailed at the following addresses:

If to County:

Milwaukee County  
Attn: James Tarantino  
633 W. Wisconsin Ave, Suite 903  
Milwaukee, WI 53203  
Phone: 414-278-4185  
Email: james.tarantino@milwaukeecountywi.gov



If to HH or Owner:

See Exhibit D

If to Escrow Agent:

Wisconsin Title, Closing & Credit Services  
Attn: Mark Ciborowski, Vice-President  
1716 Paramount Dr  
Waukesha WI 53186

The above addresses may be changed by the appropriate Party giving written notice of such change to the other Parties.

15) **MISCELLANEOUS.**

- a) **Assignment.** Neither HH nor Owner shall assign its rights under this Agreement or subcontract the performance of its obligations hereunder without the prior written consent of County, which may be withheld for any reason, and any purported assignment without County's prior written consent shall be of no effect.
- b) **Consent.** Whenever in this Agreement the consent or approval of HH, Owner or County is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed – except in cases of Assignment. Such consent shall be in writing and shall be duly executed by an authorized officer or agent for the Party granting such consent or approval; provided, however, notwithstanding anything in this Agreement to the contrary, if such consent or approval would be required for HH or Owner to comply with the Requirements, HH and Owner shall not be responsible for a failure to comply with the Requirements as a result of County's refusal or unreasonable delay to so consent or approve.
- c) **Amendments.** This Agreement constitutes the entire understanding between HH, Owner and County and no amendment, alteration, modification or addition to this Agreement shall be valid or enforceable unless expressed in writing, and signed by both Parties.
- d) **Cooperation.** If any claims, demands, suits or other legal proceedings arising out of any of the matters relating to this Agreement be made or instituted by any person against either County, HH or Owner such party shall give to the others all pertinent information and reasonable assistance in the defense or other disposition thereof, at its sole expense.

- e) **Waiver.** The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed as waiver of such terms and conditions on any future occasion.
- f) **Illegality.** If any provision of this Agreement shall prove to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected thereby.
- g) **Relationship.** Nothing contained in this Agreement shall be construed to create a relationship of employer and employee between County, Owner and HH, it being the intent of the Parties hereto that the relationship created hereby is that of an independent contractor.
- h) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of County, its successors and permitted assigns, and shall be binding upon and inure to the benefit of HH, its successors and its permitted assigns, and shall be binding upon and inure to the benefit of Owner, its successors and its permitted assigns.
- i) **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Wisconsin.
- j) **Enforceability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. County's remedies under this Agreement are cumulative, and the exercise of one remedy shall not be deemed an election of remedies nor foreclose the exercise of County's other remedies. No waiver by County of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach.
- k) **Execution of Counterparts.** For the convenience of the Parties, this Agreement may be executed in multiple counterparts, each of which shall constitute a complete original of this Agreement, which may be introduced in evidence or used for any other purpose without the production of any other counterparts.
- l) **Power to Execute.** The Parties executing this Agreement on behalf of County, Owner and HH each hereby warrant and represent that each has full right, power, and authority to enter into, execute, acknowledge, and deliver this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement as of the date first set forth above.

[SIGNATURE PAGES FOLLOW]

GRANT AGREEMENT  
MILWAUKEE COUNTY  
EXECUTION PAGE

MILWAUKEE COUNTY

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Chris Abele

Its: County Executive

STATE OF WISCONSIN        )  
  ) SS  
COUNTY OF MILWAUKEE    )

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by Chris Abele, as County Executive of Milwaukee County.

\_\_\_\_\_  
( \_\_\_\_\_ )

Notary Public, State of \_\_\_\_\_

My Commission \_\_\_\_\_

GRANT AGREEMENT  
MILWAUKEE COUNTY  
EXECUTION PAGE

Approved with regards to County Ordinance Chapter 42:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Community Business Development Partners

Reviewed by:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Risk Management

Approved for execution:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel

Approved as to funds available per Wisconsin Statutes Sec. 59.255(2)(e):

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Comptroller

Approved as compliant under sec. 59.42(2)(b)5, Stats.:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel

GRANT AGREEMENT  
HEARTLAND HOUSING, INC.  
EXECUTION PAGE

HEARTLAND HOUSING, INC., an Illinois not-  
for-profit corporation

BY \_\_\_\_\_  
Michael Goldberg, Executive Director

State of Illinois )  
 )  
 : SS  
 \_\_\_\_\_ County )

This instrument was acknowledged before me on \_\_\_\_\_, 2017 by  
Michael Goldberg, as Executive Director of Heartland Housing, Inc., an Illinois not-for-profit  
corporation, on behalf of the corporation.

[Seal]

\_\_\_\_\_  
( \_\_\_\_\_ )  
Notary Public, State of Illinois  
Acting in \_\_\_\_\_ County  
My commission expires \_\_\_\_\_



**Exhibit A**  
Resolution File No. 15-509

**Exhibit B**  
Option to Purchase Agreement and Amendment



## Exhibit C

### Conditions to Disbursement

- a. Neither HH nor Owner shall be in default under this Agreement.
- b. If requested by the County, the receipt by the County of all permits required for work on the Project that has been started as of the date of the request for disbursement.
- c. Owner has made payment to any payees identified in an approved request for any prior disbursements.
- d. If requested by County, evidence satisfactory to the County that there are no construction liens or claims of construction liens filed against the Project.
- e. A current lien waiver executed by the Owner's general contractor for work to be paid for with the current draw request and a copy of such contractor's pay application to Owner for payment.
- f. Paid invoices and full, final, unconditional lien waivers from all persons or entities for all labor performed and materials supplied in connection with all construction or other work completed prior to the date of the previous request for disbursement and for which payments were made out of the previous request for disbursement, if any.
- g. Invoices or other appropriate documentation submitted in connection with the requested disbursement, to confirm which costs, expenses and fees have been actually incurred by Borrower, and that they are Eligible Costs.

EXHIBIT D

Notice Parties for Owner and HH

To HH: Heartland Housing, Inc.  
208 S. LaSalle Street, Suite 1300  
Chicago, IL 60604  
Attn: Executive Director

With copies to:

Reinhart Boerner Van Deuren s.c.  
1000 N. Water St. Suite 1700  
Milwaukee, Wisconsin 53202  
Attn: Stephen Elliott

To Owner: St. Anthony's Apartments, LLC  
208 S. LaSalle Street, Suite 1300  
Chicago, IL 60604  
Attn: Executive Director

With copies to:

Reinhart Boerner Van Deuren s.c.  
1000 N. Water St. Suite 1700  
Milwaukee, Wisconsin 53202  
Attn: Stephen Elliott  
Wincopin Circle LLLP

Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, Maryland 21044  
Attention: Asset Management  
Attention: General Counsel

[continues on following page]

Craig A. Emden, Esq.  
Bocarsly Emden Cowan Esmail & Arndt LLP  
7700 Old Georgetown Road, Suite 600  
Bethesda, MD 20814

U.S. Bank National Association  
1307 Washington Ave., Suite 300  
St. Louis, Missouri 63103  
Attn: Director of CLD Asset Management

EXHIBIT E  
Development Agreement