

Cross Reference: Quitclaim Deed dated _____, 2013 and recorded _____, 2013 in the Office of the Recorder of Marion County, Indiana.

PROJECT AGREEMENT

**TRANSFER OF PROPERTY
PURSUANT TO INDIANA CODE §6-1.1-24-6.7
MARION COUNTY TREASURER'S OFFICE
MARION COUNTY, INDIANA**

Description of Property: Lot 44 in Osgood Forest Park addition, Third Section, an addition to the City of Indianapolis, Indiana, as per plat thereof recorded in Plat Book 14, Page 201, in the office of the Recorder of Marion County, Indiana

3359 N. Ruckle St., Indianapolis, IN 46205
(hereafter "Property")

This Agreement ("Agreement"), made on or as of the ___ day of October, 2013, is by and between the Marion County Board of Commissioners (hereinafter "Board") in accordance with IC 6-1.1-24-6.7 and having an office at Suite 1001, 200 E. Washington St. Indianapolis, Indiana, and Historic Landmarks Foundation of Indiana, Inc., an Indiana not for profit corporation doing business as Indiana Landmarks (hereinafter "Indiana Landmarks"), having an office for the transaction of business at 1201 N. Central Avenue, Indianapolis, IN 46202.

RECITALS

WHEREAS, the Board controls, and is responsible for the maintenance and disposal of, property owned by Marion County (the "County");

WHEREAS, IC 6-1.1-24-6.7 provides that the Board may transfer tax delinquent parcels to a qualified nonprofit corporation."

WHEREAS, the Board has determined that the transfer of certain real estate located at 3359 N. Ruckle St., Indianapolis, Indiana, is in the vital and best interests of the County and its residents;

WHEREAS, the Board has asked the Marion County Treasurer's Office ("Treasurer") to dispose of the Property and has authorized the Treasurer to be its agent for purposes of this Agreement; and

WHEREAS, the Board desires to transfer and Indiana Landmarks desires to acquire the Property in accordance with the terms, conditions and provisions of this Agreement.

AGREEMENT

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

SECTION 1: GRANT OF PROPERTY

Subject to all the terms, covenants, and conditions of this Agreement, the Board shall convey title for the Property to Indiana Landmarks in exchange for an initial purchase price of Five Thousand Dollars (\$5,000.00) ("Purchase Price") subject to the additional specific condition that within two (2) years of conveyance of title and recordation of this Agreement ("Completion Date"), Indiana Landmarks shall cause substantial completion of the Conditions of Transfer set forth in Section 3 below. An additional payment of \$45,000.00 ("Additional Payment") shall be due by the Completion Date and prior to the Disclaimer of Interest being recorded by the County; provided, however, Indiana Landmarks may appear before a future Board meeting to ask the Board for a reduction in or waiver of Additional Payment. Nevertheless, in the future, the Board may be composed of different members who may or may not agree to a reduction in or waiver of the Additional Payment.

SECTION 2: CONVEYANCE OF PROPERTY

(a) **Form of Deed.** The Board shall convey to Indiana Landmarks title to the Property by Quitclaim Deed ("Deed") subject to the following:

- (i) All easements and right-of-way;
- (ii) Building and zoning ordinances; and
- (iii) Terms, conditions, and restrictions of this Agreement.

(b) **Time and Place for Delivery of Deed.** The Board shall deliver the Deed and possession of the Property to Indiana Landmarks no more than thirty (30) days after the execution of this Agreement. Exchange of the Purchase Price and Deed shall be made at the Treasurer's Office and Indiana Landmarks shall accept such conveyance at such time and place.

(c) **Recordation of Deed and Agreement.** Indiana Landmarks, at Indiana Landmarks' sole expense, shall promptly record this Agreement and the Deed at the Office of the Recorder of Marion County, Indiana (the date of recording hereinafter being the "Conveyance Date").

(d) **As-Is Transfer.** Indiana Landmarks shall accept the Property “as is,” free and clear however, of all liens and encumbrances created or suffered before or after the ~~tax sale~~date hereof except those liens granted priority under federal law and the lien of the state or a political subdivision for taxes and special assessments that accrue subsequent to the ~~sale~~date hereof. The Board makes no representations or warranties concerning the physical or environmental condition of the Property or any fact bearing upon the value of the Property.

(e) **Conveyance Costs.** Indiana Landmarks agrees to pay any recording costs associated with the conveyance of the Property.

SECTION 3: CONDITIONS OF TRANSFER

(a) Indiana Landmarks, or its successors and assigns, agrees that the Property and the exterior of the improvements located thereon must be brought into compliance with the Department of Code Enforcement and any Health and Hospital rules or regulations within three months of the Conveyance Date.

(b) Indiana Landmarks, or its successors and assigns, shall cause any improvements to be made in compliance with this Agreement and all applicable laws, including all local ordinances, state and federal statutes, local, state and federal building, zoning, environmental, historic preservation and safety and sanitary codes.

(c) Indiana Landmarks, or its successors and assigns, agrees that no citations shall be placed on the Property from any governmental entity, local, state or federal, from the Conveyance Date. If any new liens are placed on this parcel, Indiana Landmarks shall remediate the condition giving rise to the citation within thirty (30) days of notice of the citation.

(d) Indiana Landmarks, or its successors and assigns, shall be responsible for any and all property taxes associated with the Property first occurring from and after the date hereof. Indiana Landmarks agrees to timely pay all future property tax bills for the Property.

(e) Upon and after the Conveyance Date, the Property will be continuously secured to prevent trespass and structurally secured to the extent necessary to avoid a public safety risk.

(f) Indiana Landmarks, or its successors and assigns, shall provide written updates to Board at six (6), twelve (12) and twenty four (24) months from the Conveyance Date, ~~or until this Agreement is terminated as set forth in Section 10 or as otherwise agreed upon by the parties.~~

(g) Indiana Landmarks, or its successors and assigns, will stabilize ~~in phase 1~~ the exterior ~~and the interior~~ of the building located on the Property by installing a new roofing and drainage system within six months of the Conveyance Date.

~~(h) Indiana Landmarks will complete in phase 2 the rehabilitation of the building located on the Property by the Completion Date.~~

SECTION 4: NOTICE AND DEMANDS

A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested or delivered personally, to:

Indiana Landmarks at:

Indiana Landmarks
Attn: Mark Dollase, Vice President of Preservation Services
1201 N. Central Avenue
Indianapolis, IN 46202

With a copy to:

Barnes & Thornburg, LLP
Attn: Thomas H. Engle, Esq.
11 South Meridian St.
Indianapolis, Indiana 46204

The Board at:

c/o Marion County Treasurer's Office
Attn: Cindy Land, Administrative Deputy
Suite 1001, 200 E. Washington St.
Indianapolis, Indiana 46204

or at such other address either party may, from time to time, designate in writing and forward to the other as provided in this section.

SECTION 5: ALLOCATION OF RISK

Indiana Landmarks agrees to indemnify, defend and hold harmless the Board and its present and future officers, officials and employees from and against any and all claims, suits, causes of action, losses, liabilities, penalties, fines, cleanup costs, costs and expenses arising out of or resulting from, in whole or in part, a) the transfer of the Property to Indiana Landmarks, b) Indiana Landmarks' performance under this Agreement, c) the environmental condition of the Property at the time of transfer subject to any applicable statutory landowner liability defenses, or d) the environmental condition of Property after the transfer also subject to any applicable statutory landowner liability defenses. Such indemnity shall include reasonable attorney's fees and all other costs and expenses whether or not the Board is the prevailing party; provided, however, the Board shall assert for the benefit of itself and Indiana Landmarks any and all defenses available to it under all applicable laws including but not limited to the Indiana Tort Claims Act.

These indemnification provisions shall survive the termination of this Agreement and the execution and delivery of the Deed for the Property.

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SECTION 6: NONDISCRIMINATION

Indiana Landmarks and its contractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

Indiana Landmarks represents for itself and all its contractors compliance with existing laws of the State of Indiana and the United States regarding:

- (a) Prohibition of discrimination in employment practice sex, creed, color, religion, national origin, ancestry, veteran status and Vietnam era veteran status; and
- (b) The utilization of Minority and Women Businesses, which Indiana Landmarks further represents that it:
 - (i) Has, or will require its contractors to have, formulated its own Affirmative Action Plan for training and employment of minorities and women, including goals and timetables; and
 - (ii) Strongly encourages the use of small businesses, minority-owned businesses and women-owned businesses in its operations.

Indiana Landmarks shall include all covenants and certifications as are contained in this Section in all sub-agreements related to this Agreement.

SECTION 7: COUNTERPARTS; BINDING EFFECT

This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument. Each of the covenants in this Agreement will be binding upon and will inure to the benefit of the assigns and successors in interest of each of the parties and all those claiming through the parties.

SECTION 8: INTEGRATION

This Agreement and the documents incorporated herein represent the entire understanding between and among the parties hereto. The signing of this Agreement by the parties constitutes their mutual recognition that no other contracts or agreements, oral or written, except as attached hereto or specifically incorporated herein, exists between them, and that if such oral or written contacts or agreements exist, such are hereby canceled. Each party hereby represents to the other that it will not rely upon any agreement, contract or understanding not reduced to writing and incorporated in this Agreement prior to the execution thereof or not reduced to writing and incorporated in written amendments to this Agreement.

SECTION 9: SPECIAL PROVISIONS

(a) Any amendment of this Agreement shall occur only after a written request from Indiana Landmarks has been submitted to the Board for consideration. The Board may approve or reject any requested amendment. Any amendment to this Agreement must be in writing signed by both Indiana Landmarks and the Board.

(b) In the event that Indiana Landmarks shall be in default in any obligation or covenant under this Agreement, in particular but not limited to Indiana Landmarks' failure to comply with any of the conditions stated within this Agreement, for a period of thirty days (or such longer period of time as shall be reasonably necessary to cure the same so long as corrective action is commenced within such thirty (30) day period and thereafter diligently pursued) after receipt of written demand by Board to do so, the Board shall be entitled to take any one or more of the following actions: (i) suspend its performance under this Agreement until it receives assurances from Indiana Landmarks, reasonably deemed adequate by the Board, that Indiana Landmarks will cure its default and continue its performance under this Agreement, (ii) seek specific performance against Indiana Landmarks (it being acknowledged and understood by Indiana Landmarks that monetary damages may not be an adequate remedy to Board for Indiana Landmarks' failure to observe its covenant hereunder), (iii) ~~pursue a claim for money damages,~~ (iv) terminate this Agreement, in which event none of the parties hereto shall have any further right or obligation hereunder (except for those rights and obligations which expressly survive the expiration or termination of this Agreement). If Board expends any money in the enforcement of its rights of Indiana Landmarks' covenants hereunder, Indiana Landmarks shall reimburse Board for all such expenditures (including reasonable attorneys' fees and court costs).

SECTION 10: DISCLAIMER OF INTEREST

Following the completion of the Conditions of Transfer contained in this Agreement, Indiana Landmarks shall request a review by the Board. The Board shall issue a Disclaimer of Interest ("Disclaimer") once a satisfactory review is completed. The Disclaimer shall serve only as a statement to the effect that the County disclaims any remedy set forth in Section 9(b) above and shall not serve as warranty of any kind for the work of Indiana Landmarks. Upon issuance of the Disclaimer, this Agreement shall be deemed satisfied and terminated.

SECTION 11: ASSIGNMENT OF AGREEMENT AND TRANSFER OF PROPERTY

Indiana Landmarks may transfer the Property for the purposes of redevelopment and assign this Agreement to (a) an entity controlled by Indiana Landmarks upon notice to Board with the prior written approval of the Board, such approval not to be unreasonably withheld, or (b) Temple Heritage Center, Inc. Indiana Landmarks may not assign this Agreement to any other unrelated third party without the prior written approval of the Board, such approval not to be unreasonably withheld. Indiana Landmarks shall only be released from its obligations and liabilities under this Agreement when the transferee or assignee, by instrument in writing satisfactory to the Board and in recordable form, has assumed all of the obligations and responsibilities to which Indiana Landmarks is subject under this Agreement.

SECTION 12: ENFORCEMENT OF AGREEMENT AND NON-WAIVER

The Board or Indiana Landmarks or their successors and assigns, may enlist the assistance of any appropriate body to use its authority to require remedial action to seek compliance with this Agreement. Furthermore, the Board or Indiana Landmarks or their successors and assigns may enter into a civil lawsuit to stop or rescind actions not in conformance with this Agreement, or to enforce contractual agreements to ensure conformance with this Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

SECTION 13: GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the Consolidated City of Indianapolis, County of Marion. Suit, if any, shall be brought in the State of Indiana, County of Marion.

SECTION 14: AUTHORITY TO BIND

Notwithstanding anything in this Agreement to the contrary, the signatory for Indiana Landmarks represents that he/she has been duly authorized to execute agreements on behalf of Indiana Landmarks and has obtained all necessary or applicable approval to make this Agreement fully binding upon Indiana Landmarks when his/her signature is affixed and accepted by Board.

[REMAINDER INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have caused this Agreement to be executed as of the date first written above.

“INDIANA LANDMARKS”

Historic Landmarks Foundation of Indiana, Inc.

By: _____
J. Marshall Davis, President

“COUNTY”

MARION COUNTY BOARD OF COMMISSIONERS

By: MARION COUNTY TREASURER,
its authorized agent

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, personally appeared J. Marshall Davis, the President of Historic Landmarks Foundation of Indiana, Inc., who executed and acknowledged the foregoing Agreement for and on behalf of said entity.

Witness my hand and Notarial Seal this _____ day of _____, 2013.

My Commission Expires: _____
Notary Public

County of Residence: _____
Printed

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, personally appeared the above indicated individual representing the Marion County Treasurer, who executed and acknowledged the foregoing Agreement for and on behalf of the Treasurer, as authorized agent for the Marion County Board of Commissioners.

Witness my hand and Notarial Seal this _____ day of _____, 2013.

My Commission Expires: _____
Notary Public

County of Residence: _____
Printed

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. *Thomas H. Engle*

This instrument was prepared by (and return to): Thomas H. Engle, Barnes & Thornburg, LLP, 11 South Meridian Street, Indianapolis, IN 46204.

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