

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this “**Agreement**”) is made and effective as of the ____ day of _____, 201__, by and among the **STATE OF WISCONSIN, DEPARTMENT OF ADMINISTRATION** (the “**State**”), the **SOUTHEAST WISCONSIN PROFESSIONAL BASEBALL PARK DISTRICT**, a political subdivision of the State of Wisconsin (“**District**”), and the **MILWAUKEE BREWERS BASEBALL CLUB, LIMITED PARTNERSHIP**, a Wisconsin limited partnership (the “**Club**” and, together with the State and the District, as their interests appear, “**Grantor**”), and the **CITY OF MILWAUKEE**, a Wisconsin municipal corporation (“**Grantee**”).

W I T N E S S E T H :

WHEREAS, the State is the owner of certain real property situated in the City of Milwaukee, Milwaukee County, Wisconsin, as more particularly described on **Exhibit A** attached hereto and made a part hereof (“**Area 9**”);

WHEREAS, the State, as lessor, and the District, as lessee, are parties to a Ground Lease dated October 21, 1996, as amended by that certain First Amendment to Ground Lease dated as of October 31, 1998 (as amended, the “**Ground Lease**”), which Ground Lease encumbers Area 9, among other property;

WHEREAS, pursuant to an Amended and Restated Lease Agreement dated as of June 30, 2004, as amended by First Amendment to Amended and Restated Lease Agreement dated as of December 1, 2004, and by Second Amendment to Amended and Restated Lease Agreement dated as of January 14, 2005 (as amended, the “**Sublease**”), the District subleases the property subject to the Ground Lease, including Area 9, to the Club;

WHEREAS, Grantee is the owner of certain real property situated adjacent to, and contiguous with, Area 9, as more particularly described on **Exhibit B** attached hereto and made a part hereof (the “**Grantee Property**”); and

WHEREAS, upon the terms and conditions herein set forth, Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, an easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) on, over and across that portion of Area 9 more particularly described on **Exhibit C** attached hereto and made a part hereof (the “**Easement Area**”).

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and also in consideration of the terms, conditions, covenants and mutual agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. **Grant of Easement.** Effective as of the date hereof, Grantor hereby declares, grants and creates for the benefit of Grantee, as owner of the Grantee Property, for its use and for the use of its Permittees, in common with others entitled to use the same, a perpetual, nonexclusive easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) on, over and across the Easement Area for purposes of ingress and egress to and from the Grantee Property from and to public rights of way, and for no other purpose. For purposes of this Agreement, “**Permittees**” shall mean Grantee’s officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, tenants and concessionaires.

2. **Maintenance.** Grantee shall, at its sole cost and expense, maintain, repair and replace the Easement Area in good order, condition and repair. The maintenance, repair and replacement obligations of Grantee hereunder shall include, but not be limited to: (i) maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacing base, skin patching, resealing, resurfacing and restriping, and (ii) removing all papers, debris, filth, refuse, ice and snow to the standard of a first class private road. Notwithstanding the foregoing, if and to the extent any replacement of the paving and/or other surface improvements within the Easement Area is required, Grantee shall have the right, in connection therewith, to reconstruct same without curb and gutter to the standard of a first class private road provided that (i) all required municipal and other governmental approvals are first obtained, and (ii) Grantee shall, at Grantee's expense, be responsible for the disconnection and/or relocation of storm sewer facilities located within the Easement Area as and to the extent required by the City of Milwaukee and/or the District, as applicable, as owner(s) thereof.

3. **Indemnification.** Grantee shall indemnify, defend and hold Grantor and its officers, directors, employees, contractors, tenants, agents, representatives and invitees (collectively, the "**Indemnified Parties**") harmless from and against and any and all injuries, damages, claims, liabilities, losses, actions, fees, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees) arising out of the use or occupancy of the Easement Area by Grantee, its Permittees, or any party acting by, through or under Grantee or said Permittees, or the exercise of any rights granted hereunder by any of said parties.

4. **Insurance.** So long as this Agreement is in force, Grantee shall maintain in full force and effect commercial liability insurance that (i) covers loss or damage arising out of the Easement Area and the use of the Easement Area by Grantee and its Permittees; (ii) covers the contractual indemnity set forth in Paragraph 3 hereof; (iii) is primary in the event of any claim or loss in any way arising out of the use of the Easement Area by Grantee or any of its Permittees; and (iv) names Grantor as an additional insured. Prior to using the Easement Area, Grantee shall provide Grantor with reasonable evidence of such insurance written by an insurance company licensed in the State of Wisconsin and reasonably satisfactory to Grantor, including such coverages and in such amounts as may be reasonably satisfactory to Grantor.

5. **Covenants Running with the Land.** All of the terms, covenants and conditions hereof shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns as subsequent owners of Area 9 and the Grantee Property, it being the intent of the parties hereto that all of the covenants hereunder shall be "covenants running with the land" and shall inure to the benefit of and be binding upon Area 9 and the Grantee Property.

6. **Liens.** Grantee shall not permit the filing of any liens on the Easement Area as a result of the exercise of its rights hereunder.

7. **Default.** It shall be a default hereunder if any party (i) fails to pay any sums payable hereunder by such party within ten (10) days after such party's receipt of written notice that the same are due and owing, or (ii) fails to perform each and all of its obligations hereunder (other than payment obligations) within thirty (30) days after such party's receipt of written notice setting forth such failure; provided, however, that if such default is not of a type that can reasonably be corrected within thirty (30) days, then if such party fails to promptly commence and proceed in good faith with due diligence to correct such default.

8. **Right to Cure.** In the event of a default by Grantee of its obligation to repair, maintain and replace the Easement Area beyond any applicable cure period, Grantor shall have the right, upon ten (10) days' prior written notice to Grantee (except in the event of an emergency, in which event notice shall not be required), to cure any such default and, in the event Grantor so elects to exercise its

rights hereunder, Grantee shall pay to Grantor the reasonable actual out of pocket costs and expenses incurred by Grantor in connection therewith, together with interest at the Default Rate (as hereinafter defined) on such amounts from the day expended by Grantor, such payment to be made within ten (10) days following Grantee's receipt of written request from Grantor, together with reasonable evidence of such costs. For purposes hereof, the term "**Default Rate**" shall mean the "prime rate" as announced from time to time by U. S. Bank, N.A., its successors or assigns, at its principal place of business in Milwaukee, Wisconsin. In the event of a default by Grantor of its obligations hereunder, Grantee shall have the same cure and repayment rights under this Paragraph 8 as those applicable to Grantor.

9. **Estoppel Certificate**. Each party hereto agrees that, within ten (10) days of written request from time to time by the other party, said party shall execute, acknowledge and deliver to the requesting party, for the benefit of said requesting party and any mortgagee, prospective mortgagee or prospective purchaser of the requesting party's property, an estoppel certificate stating that the requesting party is not in default hereunder, that this Agreement remains in full force and effect and containing such other information as may be reasonably requested by the requesting party, or, if such statements are not accurate, then as modified so such statements are accurate.

10. **Reservation of Rights**. Subject to the terms of this Agreement, Grantor reserves to itself, its successors and assigns, the right to make use of the land included in the Easement Area to access and maintain existing infrastructure and to further improve same, as long as, in all events, such activities will not injure or disturb the use of the Easement Area by Grantee for the purposes permitted under this Agreement. Notwithstanding the foregoing, Grantor shall have the right to relocate the Easement Area upon thirty (30) days' prior written notice to Grantee, provided that such relocation: (i) shall not, during improvement of a new easement area, unreasonably interfere with or diminish Grantee's access to the Grantee Property during Grantee's normal business hours; (ii) shall not, following improvement of a new easement area, reduce or alter the usefulness or function of the access easement granted by this Agreement; and (iii) shall be performed without cost or expense to Grantee, and shall be completed using materials and design standards which equal or exceed those used within the original Easement Area (but may, at Grantor's option, exclude curb and gutter improvements). Documentation of the relocated easement area, including the furnishing of an "as-built" survey, shall be performed at Grantor's expense and shall be accomplished as soon as possible following completion of any such relocation. Upon any such relocation, Grantee agrees to execute an amendment to this Agreement, in recordable form, evidencing the relocation of the Easement Area.

11. **Enforcement**. Either party hereto may enforce this Agreement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.

12. **Amendment**. This Agreement may not be modified or amended except by a writing executed and delivered by Grantor and Grantee, or their respective successors and assigns.

13. **Waiver**. No waiver of, acquiescence in or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in or consent to any other, further or succeeding breach of the same or any other term, covenant or condition.

14. **Severability**. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of the Agreement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by law.

15. **Choice of Law**. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

16. **Notices.** All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; or (b) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows (or such other addresses as Grantor, Grantee or their respective successors or assigns may designate by like notice):

If to Grantor:

If to Grantee:

The State:

State of Wisconsin, Department of
Administration
101 E. Wilson Street
Madison, Wisconsin 53703
Attn: Secretary

City of Milwaukee
809 N. Broadway
Milwaukee, Wisconsin 53202
Attn: Commissioner of the Dept. of City
Development

With a copy to:

With a copy to:

State of Wisconsin, Department of
Administration
101 E. Wilson Street, 10th Floor
Madison, Wisconsin 53702
Attn: Ernest Jones, Esq.

City of Milwaukee
Office of the City Attorney
200 E. Wells Street, 8th Floor
Milwaukee, Wisconsin 53202
Attn: Danielle Bergner, Esq.

The District:

Southeast Wisconsin Professional Baseball
Park District
Miller Park
One Brewers Way
Milwaukee, Wisconsin 53214
Attn: Michael Duckett, Executive Director

With a copy to:

Davis & Kuelthau, s.c.
111 E. Kilbourn Avenue, Suite 1400
Milwaukee, Wisconsin 53202
Attn: Susan Schellinger, Esq.

The Club:

Milwaukee Brewers Baseball Club
Miller Park
One Brewers Way
Milwaukee, Wisconsin 53214
Attn: Marti Wronski, Esq.

With a copy to:

Foley & Lardner LLP
777 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202
Attn: Joseph Rupkey, Esq.

17. **Interpretation.** All terms and words used in this Agreement, whether singular or plural, and regardless of the gender thereof, shall be deemed to include any other number or other gender as the context may require.

18. **No Merger.** The rights and interests created hereunder, including the easements created hereby, shall remain in full force and effect, notwithstanding the fact that the same party may now or hereafter own and possess all of the real property interests associated therewith.

19. **Not a Public Dedication.** Nothing herein contained shall be deemed a gift or dedication of any portion of the Easement Area to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities hereunder shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained herein.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

GRANTOR:

**STATE OF WISCONSIN, DEPARTMENT OF
ADMINISTRATION**

By: _____
Name: _____
Title: _____

**SOUTHEAST WISCONSIN PROFESSIONAL
BASEBALL PARK DISTRICT**

By: _____
Name: Jay Williams
Title: Chairman

**MILWAUKEE BREWERS BASEBALL CLUB,
LIMITED PARTNERSHIP**

By: Milwaukee Brewers Baseball Club, Inc., its
General Partner

By: _____
Name: Richard C. Schlesinger
Title: Executive Vice President

GRANTEE:

CITY OF MILWAUKEE

By: _____
Tom Barrett, Mayor

By: _____
Ronald D. Leonhardt, City Clerk

Countersigned:

By: _____
W. Martin Morics, City Comptroller

ACKNOWLEDGMENT OF THE STATE

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on this ____ day of _____, by _____, as _____ of STATE OF WISCONSIN, DEPARTMENT OF ADMINISTRATION.

[NOTARIAL SEAL]

Name Printed: _____
Notary Public, County of _____
My commission expires: _____

ACKNOWLEDGMENT OF THE DISTRICT

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on this ____ day of _____, by Jay Williams, as Chairman of SOUTHEAST WISCONSIN PROFESSIONAL BASEBALL PARK DISTRICT, a statutorily created instrumentality of the State of Wisconsin.

[NOTARIAL SEAL]

Name Printed: _____
Notary Public, County of _____
My commission expires: _____

ACKNOWLEDGMENT OF THE CLUB

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on this ____ day of _____ by Richard C. Schlesinger, as Executive Vice President of Milwaukee Brewers Baseball Club, Inc., the General Partner of MILWAUKEE BREWERS BASEBALL CLUB, LIMITED PARTNERSHIP, a Wisconsin limited partnership.

[NOTARIAL SEAL]

Name Printed: _____
Notary Public, County of _____
My commission expires: _____

ACKNOWLEDGMENT OF THE CITY

Danielle M. Bergner, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the Milwaukee representatives above, and also authenticates the signatures of each of the above Milwaukee representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b). This document is further approved as to form and execution.

By: _____

DANIELLE M. BERGNER

Assistant City Attorney

State Bar No. 1049359

Date: _____

Approved as to form and execution:

Danielle M. Bergner, Assistant City Attorney

This instrument was drafted by Joseph S. Rupkey of Foley & Lardner LLP, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5306.

EXHIBIT A

Legal Description of Area 9

The following tract of land in the City of Milwaukee, Milwaukee County, State of Wisconsin, described as:

That part of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, Section 35, Township 7 North, Range 21 East, described as follows:

Commencing at the North Witness corner to the Southeast corner of said Northeast $\frac{1}{4}$, Section 35, said Witness Corner being North $01^{\circ}26'46''$ West, 33.88 feet from the Southeast corner of said Northeast $\frac{1}{4}$, Section 35; Thence North $01^{\circ}26'46''$ West along the east line of said Northeast $\frac{1}{4}$ of Section 35, 100.80 feet to the north line of Canadian Pacific Railway right of way and the Point of Beginning of this description; Thence North $79^{\circ}45'44''$ West along said north line, 446.87 feet to the easterly right of way line of RELOCATED S.T.H. 341 (Miller Parkway); Thence the following courses along said easterly right of way line of RELOCATED S.T.H. 341 (Miller Parkway); North $27^{\circ}15'22''$ East, 35.63 feet; Thence North $49^{\circ}24'42''$ East, 75.40 feet; Thence North $58^{\circ}52'24''$ East, 145.72 feet; Thence North $48^{\circ}41'45''$ East, 76.57 feet; Thence North $27^{\circ}40'53''$ East, 82.39 feet; Thence North $20^{\circ}55'26''$ East, 60.90 feet; Thence North $17^{\circ}45'04''$ East, 251.42 feet; Thence North $46^{\circ}04'03''$ East, 41.61 feet to the east line of said Northeast $\frac{1}{4}$ of Section 35 and the end of said courses along the easterly line of RELOCATED S.T.H. 341 (Miller Parkway); Thence South $01^{\circ}26'46''$ East, 684.41 feet along said east line to the Point of Beginning.

Tax Key No.: 422-9994-000
Address: 618 S. 44th Street

EXHIBIT B

Legal Description of the Grantee Property

That part of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of Section 35, Town 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Southeast corner of said Northeast 1/4 of Section 35; thence North 01°26'46" West along the east line of said Northeast 1/4 of Section 35, 128.00 feet; thence perpendicular to said section line South 88°33'14" West 461.51 feet to the POINT OF BEGINNING; thence South 01°31'15" East 524.04 feet; thence South 0°41'19" West 766.39 feet to the north right of way line of National Avenue; thence along said north line North 83°00'10" West 100.27 feet to the east right of way line of S.T.H. 341; thence along said east line the following courses: North 11°59'12" West 137.46 feet; thence North 06°33'18" West 142.26 feet; thence North 00°17'46" East 135.49 feet; thence North 6°56'02" East 143.68 feet; thence North 12°08'36" East 154.88 feet; thence North 12°02'50" East 206.66 feet; thence North 89°32'33" East 25.68 feet; thence North 0°59'08" West 190.85 feet; thence North 3°54'00" East 50.04 feet; thence North 03°46'26" East 115.44 feet; thence North 12°32'40" East 16.40 feet to a point of the end of the following courses along said east line of S.T.H. 341; thence South 79°45'43" East 9.04 feet to the Point of Beginning.

Part of Tax Key No.: 437-9998-3
Address: 4400 W. National Avenue

EXHIBIT C
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Legal Description of the Easement Area

An easement for ingress and egress, over, across and through that part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Town 7 North, Range 21 East, City of Milwaukee, Milwaukee County, Wisconsin the centerline of which is described as follows:

Commencing at the East $\frac{1}{4}$ corner of said Section 35; thence N $01^{\circ}26'46''$ W along the Easterly line of said Northeast $\frac{1}{4}$ of Section 35, 134.68 feet to the Northerly right of way line of the Canadian Pacific Railroad; thence N $79^{\circ}45'43''$ W along said Northerly line of the Canadian Pacific Railroad, 429.50 to the centerline of a 32.00 foot paved roadway being 16.00 feet on each side of said centerline and the point of beginning ; thence Northeasterly along said centerline of a 32.00 foot paved roadway and along an arc of a curve to the right; Central Angle, $64^{\circ}45'36''$; Radius, 125.00; Chord Bearing , N $68^{\circ}10'36''$ E; Chord, 133.88 feet; Arc length, 141.28 feet; thence S $79^{\circ}26'36''$ E continuing along said centerline of a 32.00 foot paved roadway, 229.07 feet to the center of a paved circle with a Radius of 52 feet; thence N $10^{\circ}33'24''$ E continuing along the centerline of a 36.00 foot paved roadway being 18.00 feet on each side of said centerline, 181.99 feet; thence Northwesterly continuing along said centerline of a 36.00 foot paved roadway and along the arc of a curve to the left; Central Angle, $80^{\circ}33'14''$; Radius, 100.00 feet; Chord Bearing, N $29^{\circ}43'13''$ W; Chord, 129.30 feet; Arc, Length, 140.59 feet; thence N $69^{\circ}59'49''$ W continuing along said centerline of a 36.00 foot paved roadway, 78.09 feet to the Easterly right of way line of US highway 41 and the point of termination.

INCLUSIVE of all paved areas within the 52 foot paved circle, as described above, and the paved area within the return radii at the Northerly and Westerly sides of said 52 foot paved circle.