

**GRAND AVENUE MALL PHASE TWO
DEVELOPMENT AND COOPERATION
AGREEMENT (PLANKINTON BUILDING)**

THIS PHASE TWO DEVELOPMENT AND COOPERATION AGREEMENT is made this ___ day of _____, 2002, by and among the CITY OF MILWAUKEE, a Wisconsin municipal corporation (the "City"), the REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE (the "Authority") and NEW ARCADE, LLC, a Wisconsin limited liability company (the "Developer").

RECITALS

The City, the Authority and Developer acknowledge the following:

A. Developer is the operator of the Grand Avenue Mall shopping center (the "Grand Avenue") located in the City of Milwaukee and bounded by Plankinton Avenue (to the east), the Boston Store building (to the west), Wisconsin Avenue (to the north) and Michigan Street (to the south).

B. As part of a comprehensive plan for upgrading the Grand Avenue, the parties hereto entered into a Development and Cooperation Agreement dated as of November 1, 2001 (the "Phase One Agreement") pursuant to which Developer agreed to undertake certain development activities relating to the Grand Avenue and the City and the Authority agreed to convey certain property and provide certain financial assistance to Developer in connection with such activities.

C. The City has, via Common Council Resolution File No. 010322 adopted September 5, 2001, created Tax Incremental District 46 ("TID-46") for the purpose of assisting the Developer in the redevelopment and upgrading of the Grand Avenue.

D. The Phase One Agreement provided that the City and the Authority would review Developer's plans for subsequent phases of redevelopment of the Grand Avenue and would consider appropriate financial assistance for such plans.

E. Developer has presented the City and the Authority with plans for redevelopment of a portion of the Grand Avenue located in the first two floors of the Plankinton Building (the "Project"). The City and the Authority desire to assist Developer in the development of the Project and have agreed to provide a TID-46 funded grant in the amount of up to \$5,000,000 toward the costs of the Project, to be funded in accordance with the terms of this Agreement.

F. The City, pursuant to Common Council Resolution File No. _____ adopted _____, has approved the terms of this Agreement and authorized the execution of this Agreement by the proper City officers on the City's behalf.

G. The Authority, pursuant to Resolution No. _____ adopted _____, 2002, has approved the terms of this Agreement and authorized the execution of this Agreement by the proper Authority officers on the Authority's behalf.

H. The Developer has approved this Agreement and authorized the undersigned to execute this Agreement on the Developer's behalf.

AGREEMENTS

NOW, THEREFORE, the City, the Authority and Developer, in consideration of the Recitals and the mutual promises and undertakings set forth herein, mutually agree and covenant as follows:

ARTICLE I DEVELOPER ACTIVITIES AND CITY/AUTHORITY ASSISTANCE

A. Developer's obligations hereunder shall include the following:

1. expending up to \$12 million of Developer equity or debt to carry out the activities described on Exhibit A attached hereto (the "Plankinton Building Work");

2. Completing the Plankinton Building Work by December 31, 2005 (the "Completion Date") in accordance with the terms and conditions of this Agreement. (The Completion Date shall be extended as provided in Article IX, herein.)

B. City and Authority shall assist Developer in completing the Project by providing a grant to Developer from TID-46 in an amount up to \$5,000,000 to be used for the costs of the Plankinton Building Work (the "Grant"). The City shall contribute up to \$5,000,000 to the Authority on a timely basis such that the Authority is able to fund the Grant to Developer in accordance with the requirements of this Agreement. All funds so contributed by the City to the Authority shall be utilized for the purpose of implementing the Plankinton Building Work as set forth in this Agreement.

ARTICLE II DISBURSEMENT OF GRANT

The Authority shall disburse the Grant to Developer to reimburse or pay directly costs incurred by Developer for the Plankinton Building Work in accordance with the following terms:

A. Prior to disbursement of any funds, the Commissioner of the City's Department of City Development (the "Commissioner") shall approve, in writing, the plans and specifications for the Plankinton Building Work (the "Plans") and the proposed budget for the Plankinton Building Work (the "Budget"). (The Commissioner has previously approved the two leases for the ground floor space of the Plankinton Building.)

B. After the Commissioner has approved the Plans and the Budget and the Plankinton Building Work has commenced, Developer shall submit a draw request to the Commissioner no more than once per month, in form satisfactory to the Commissioner, identifying the Plankinton Building Work that has been performed, the cost thereof and the amount of such cost to be reimbursed or paid directly from the Grant;

C. the Grant will be disbursed on a ratio of 2.4 to 1; that is, the Authority will disburse \$1.00 of the Grant for each \$2.40 expended or incurred by Developer for the Plankinton Building Work (such that Developer will have to expend or incur at least \$12 million in order to receive the maximum Grant amount of \$5 million);

D. the Authority shall disburse the requested portion of the Grant within 20 days following receipt of a draw request, unless the Commissioner shall have objected to all or a portion of the draw request, in which case the Commissioner shall inform Developer in writing of the nature of such objection within the same 20-day period; and

E. the Authority shall have no obligation to fund any portion of the Grant after the Completion Date (as such date may be extended as provided in Article IX).

ARTICLE III HUMAN RESOURCE/LABOR AND RELOCATION REQUIREMENTS

In carrying out the physical renovations and new construction components of the Project that will be performed by Developer, Developer shall comply with the terms of the Residence Preference Program and the Disadvantaged Business Enterprise Program attached hereto as Exhibits B and C, respectively. Developer shall further comply with all labor standards and all state and federal relocation requirements that may apply to the Project.

ARTICLE IV CHANGES

No material changes in the Budget or in the type, placement or use of construction materials as indicated on the approved Plans for the Plankinton Building Work shall be made by Developer without the prior written consent of the Commissioner, which consent shall not unreasonably be withheld or delayed.

ARTICLE V INSPECTIONS

A. Developer and its contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or affect any relationship between the City and any contractor or subcontractor employed by Developer in the construction of the Project.

B. At no cost to Developer (other than the payment of any permit fees required under state or local law), the City may make reasonable inspections of the Project, including but not limited to inspections by the City's Department of Public Works, Department of City Development, and Department of Neighborhood Services, in order to confirm that the Project is being completed in accordance with the approved plans and specifications, provided that such inspections do not interfere with the progress of the work.

C. In the event the Commissioner determines, as a result of inspections made by City representatives, that Developer's contractors or subcontractors are not constructing the Project in accordance with the approved Plans, the Commissioner shall promptly inform Developer of the noncompliance with the Plans; Developer shall, as soon as reasonably possible, require its contractors or subcontractors to remedy such noncompliance. The Commissioner may withhold any payment of the Grant until such corrective measures are commenced in a satisfactory manner.

ARTICLE VI RECORDS

A. Developer shall keep accurate, full and complete books and accounts with respect to the cost of constructing the Project and shall include a provision in all its contracts requiring its contractors and subcontractors to do the same. All such books and accounts shall be maintained in accordance with generally accepted accounting principles consistently applied, and shall be kept for a period of six years subsequent to the completion of the Project.

B. The City Comptroller shall have the right, upon reasonable notice to Developer, its contractors or subcontractors as the case may be, to examine the books and accounts of Developer, its contractors or subcontractors relating to the Project during normal business hours.

ARTICLE VII DEFAULT

If Developer fails to fulfill its material obligations hereunder, the City shall have the right to terminate this entire Agreement if, within 90 days after receipt from the Commissioner of a notice of intent to terminate because of the default(s) specified therein, Developer has not substantially cured such default(s). If the City terminates this Agreement pursuant to this provision, the City shall have no further obligation to provide Developer with the Grant and/or no further obligation to perform any other acts under this Agreement. Notwithstanding the foregoing, the City agrees to send simultaneously to any first mortgage lender for the Project (at the address provided to the City by such lender) copies of all default notices sent to Developer and to provide such lender an additional 30 days to cure any default that remains uncured by Developer after the above-described 90-day period.

ARTICLE VIII
CONFLICT OF INTEREST

No member, officer or employee of City or the Authority, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

ARTICLE IX
FORCE MAJEURE

If Developer is delayed or prevented from the performance of any act required by this Agreement by reason of fire, earthquake, war, flood, riot, strikes, labor disputes, judicial orders, public emergency or regulations, or other causes beyond the reasonable control of Developer, performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

ARTICLE X
WRITTEN NOTICES

Any written notice required under this Agreement shall be sent to the following individuals:

FOR THE AUTHORITY

Redevelopment Authority of
the City of Milwaukee
Attn: Executive Director/Secretary
809 North Broadway
Milwaukee, WI 53202

FOR THE CITY:

Commissioner
Department of City Development
809 North Broadway
Milwaukee, WI 53202

With a copy to:

City of Milwaukee
Office of City Attorney
200 East Wells Street
Milwaukee, WI 53202-8550

FOR THE DEVELOPER:
New Arcade, LLC
c/o Northwestern Mutual Life
720 East Wisconsin Avenue
Milwaukee, WI 53202
Attn: Mr. John Seifert

With a copy to:

Thomas Scheer
Northwestern Mutual Life
720 East Wisconsin Avenue
Milwaukee, WI 53202

ARTICLE XI
ASSIGNMENT

No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of the other party. Notwithstanding the foregoing, Developer may: (i) assign its rights and obligations under this Agreement to an entity that holds title to all or any portion of the Grand Avenue and that is controlled by Developer or one or more of the principals of Developer; and/or (ii) collaterally assign its rights hereunder to a first mortgage lender for all or any portion of the Grand Avenue. Such first mortgage lender may avail itself of the rights afforded to Developer only if it fulfills all of the obligations of Developer.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

REDEVELOPMENT AUTHORITY OF
THE CITY OF MILWAUKEE

CITY OF MILWAUKEE

BY _____
_____, Chair

Mayor

BY _____
_____, Executive
Director/Secretary

City Clerk

COUNTERSIGNED:

Comptroller

NEW ARCADE, LLC

BY _____
Its _____

Approved as to content this ____
day of _____, 2002

Special Deputy City Attorney

Approved as to form and execution
this ____ day of _____, 2002

Special Deputy City Attorney

SCHEDULE OF EXHIBITS

- A Plankinton Building Work
- B Residence Preference Program
- C DBE Program

Exhibit "A"
Plankinton Building Work
December 12, 2002

The Plankinton Building Work generally includes the renovation of the Plankinton Arcade common areas, the up-fit for two to four major retail stores, retention, relocation, and recruitment of specialty retail tenants, the marketing of the renovated Plankinton portion of the shopping center, and all soft costs attendant thereto.

The Plankinton Building Work shall specifically include, without limitation, the following costs: acquisition of the real estate interest not already controlled by New Arcade, LLC or its affiliates; construction of the common area renovations (including, but not limited to, vertical transportation modifications, replacement or repair of all or part of the common area flooring, replacement of common restroom finishes and fixtures; roof replacement, skylight repair, exterior architectural lighting, refinishing of all common area painted surfaces, electrical fixture replacements and enhancements, doors and hardware, and miscellaneous repairs, improvements or replacements); architecture, engineering, survey, graphic design, and other professional services; interior and exterior signage; window replacement; tenant improvement work (whether performed by Developer or by tenant via a cash allowance); insurance; bonding; permits; legal fees; disbursements; marketing and promotions; market research; tenant relocation; rent abatement; leasing commissions; lease terminations fees; developer fees, incentives, and overhead; interest during construction; furniture, fixtures, and equipment; travel, lodging, meals, ground transportation, and entertainment; conventions and seminars; and administrative costs.

EXHIBIT B

DEPARTMENT OF CITY DEVELOPMENT RESIDENTS PREFERENCE PROGRAM PROVISIONS

I. General

- A. The Developer is required to show that a minimum 21% of worker hours will be performed by unemployed residents of the CDBG area.
- B. The Developer shall prepare or cause to be prepared and submit or cause to be submitted accurate and timely resident utilization forms and reports as hereinafter set forth.
- C. During the performance of this contract, the City reserves the right to conduct compliance reviews. If the Developer or its contractor is not in compliance with the specifications, the City will notify the Developer or its contractor in writing of the corrective action that will bring the Developer or its contractor into compliance. If the Developer or its contractor fails or refuses to take correction action as directed, or if the Developer or its contractor, prime or sub, submits any documents which contain any false, misleading or fraudulent information, or if the Developer or its contractor or subcontractor fail to comply with this exhibit, the City may take one or more of the actions listed below:
 - 1. Withhold payments on this Agreement.
 - 2. Terminate or cancel this Agreement, in whole or in part.
 - 3. Any other remedy available to the City at law or in equity.
- D. The penalty for any person, firm or corporation knowingly engaging in fraud, misrepresentation, or in any attempt directly or indirectly, to evade the provisions of this ordinance by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$1,000 or more than \$5,000 together with the costs of prosecution and, upon default of payment, shall be imprisoned in the county jail or house of correction not to exceed 90 days, or until the forfeiture costs are paid.

II. Definitions

- A. **RESIDENT** – A person who maintains his or her place of permanent abode in the CDBG area within the City of Milwaukee. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the CDBG area. Mere ownership of property is not sufficient to establish domiciliary

intent. Evidence of domiciliary intent includes, without limitations, the location where a person votes, pays personal income taxes or obtains a driver's license.

- B. **COMMUNITY DEVELOPMENT BLOCK GRANT AREA OR CDBG AREA** – That portion of the City of Milwaukee designated as such by the Common Council which is identified by census tracts on maps maintained at the offices of the City Clerk and the Commissioner of City Development (map attached).
- C. **UNEMPLOYED** – A resident that has worked less than 1,200 hours in the preceding 12 months or has not worked in the preceding 30 days or has qualified since the inception of the Residence Preference Program. An individual will continue to qualify as a CDBG resident and as unemployed for at least three (3) years from the date he or she first participates in a contract entered into under the Development Agreement for the redevelopment of the Grand Avenue Project.

D. **Residency Utilization Requirements**

- A. The Developer or its contractor shall utilize unemployed residents of the CDBG area in a minimum amount equal to the percentage of the worker hours stated in paragraph I.A. above. Worker hours, as specified herein, shall include work performed by persons filling apprenticeship and on-the-job training programs.
- B. The contractor must submit with their bid the Proposed CDBG Resident Utilization Report (Form A). This report itemizes by job classification the proposed total worker hours, proposed number of CDBG resident worker hours and proposed number of non-CDBG worker hours the contractor plans to utilize to complete the contract.
- C. An affidavit of compliance (Form B) must be submitted by the contractor with the bid which certifies that the contractor understands the provisions of the residents Preference Program described in this Exhibit.
- D. The Developer or its contractor must submit an Employee Affidavit (Form C) prior to commencing work. The Employee Affidavit certifies that the employee utilized to meet the residency requirements is both unemployed and a resident of the CDBG area, as defined in Section II.A. and C.
- E. The Developer or its contractor must submit biweekly the CDBG Resident Utilization Report (Form D). This report lists the name, address, race, gender, job classification and hours worked of all employees utilized on the contract.
- F. The Developer or its contractor shall maintain personnel records listing the names, addresses, race and gender of its employees utilized for this contract and any records demonstrating that the employees utilized by the contractor in meeting the residency requirements are actual residents of the CDBG area. These records shall be maintained for three (3) years after the Developer or its contractor

has received final payment under the contract and shall be made available to the Commissioner of City Development upon reasonable notice.

- G. Modifications or waivers of the residents preference program requirement set forth herein shall only be effective if agreed to by the City's Equal Opportunities—Disadvantaged Business Enterprise Program Manager and the Developer in writing. Any modifications or waiver shall only be made on the basis of verified information that existing, qualified and available, unemployed residents of the CDBG area are insufficient to achieve the required participation.

EXHIBIT C
DISADVANTAGED BUSINESS ENTERPRISE AGREEMENT

- A. The Developer shall utilize, or cause to be utilized, Disadvantaged Business Enterprises (“DBEs”), as defined in Chapter 360, Milwaukee Code of Ordinances, for a minimum of 18% of the total dollars necessary for the construction of the Project.
- B. The Developer agrees to report to the City’s Equal Opportunities—Disadvantaged Business Enterprise Program Manager (“Manager”) on the Developer’s utilization of DBEs in its contracting activities of the Project, pursuant to Chapter 360 of the Milwaukee Code of Ordinances. In order to monitor the Project’s DBE participation, the City requests, and the Developer agrees to take the following steps:
1. Provide a list of all categories of work on the above-described Project with budget allowances, for which bids will be solicited and highlight those categories, based upon the Developer’s knowledge and experience, which are conducive to DBE participation prior to any bids being solicited or awarded. (Example 1.)
 2. Provide the Manager with documentation supporting efforts extended to solicit bids from DBEs. Upon request, the Developer shall make information related to DBE bids available to the Manager.
 3. Submit a DBE Monthly Report to the Manager on the form attached as Attachment 1.
- C. Only DBEs that have been DBE City certified by the Equal Opportunity enterprise Program shall be listed on the DBE monthly Report and counted towards the percentage requirements of this project. A listing of the current City certified DBE firms is maintained at:
- Equal Opportunity Enterprise Program
City Hall, room 101
200 East Wells Street
Milwaukee, WI 53202
- D. Modifications or waivers of the DBE participation requirement set forth herein shall only be effective if agreed to by the Manager and the Developer in writing. Any such modification or waiver shall be made only on the basis of verified information that the existing, available, certified DBEs in any particular trade area or tier level are insufficient to achieve the required participation.
- E. This Agreement shall be deemed a City contract for purposes of empowering the City to impose any or all of the sanctions set forth in sec. 360-08, Milwaukee Code of Ordinances. In addition, as liquidated damages, the Developer may be liable to the City of that percentage of the total dollars necessary for the construction of the Project which represents the difference between the DBE participation required hereunder and the actual DBE participation attained.