

**RIVERWALK
EASEMENT AGREEMENT**
* 233 East Erie Street

THIS GRANT OF RIVERWALK EASEMENT AGREEMENT is made as of _____, 2012 by and between 252, LLC, a Wisconsin limited liability company ("Grantor") and the City of Milwaukee, a Wisconsin municipal corporation ("Grantee").

WHEREAS, Grantor is the owner of certain property located along the Milwaukee River in the City of Milwaukee, State of Wisconsin more particularly described on **Exhibit A** attached hereto (the "Property"); and

WHEREAS, Grantee is undertaking the construction of a comprehensive, publicly accessible riverwalk system (the "Riverwalk System") and the parties acknowledge that it is desirable that the components of the Riverwalk System be generally compatible in design and appearance and generally uniform in maintenance and usage; and

WHEREAS, In order to provide for the future construction of certain riverwalk improvements (the "Improvements") on the portion of the Property outboard of the existing dock wall, which is identified as "Riverwalk Improvement" on **Exhibit B** (the "Easement Area") and the use, operation and maintenance of the Improvements as part of the Riverwalk System, Grantor has agreed to (i) convey to Grantee the easement rights specified in this Agreement and (ii) agrees to the covenants, restrictions and obligations imposed by this Agreement; and

WHEREAS, In order to provide for the future construction of the Improvements, the dock wall abutting the Property must be rehabilitated; and

WHEREAS, The Improvements are to be, constructed, owned, operated and maintained by Grantee and title to the Improvements is to be held by Grantee; and

WHEREAS, The dock wall is to be is to be rehabilitated by Grantee, the cost to be divided between Grantee and Grantor.

NOW, THEREFORE, in consideration of the premises, the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, Grantor and Grantee agree as follows:

1. Grantor hereby grants and conveys to Grantee, and Grantee accepts, a permanent non-exclusive easement upon, across and under the Easement Area, solely to the extent reasonably necessary to carry out the activities and for the purposes described below:

a) pedestrian access, for the benefit of the public, over the walkway of the Improvements in accordance with the terms of this Agreement; provided, however, that the public, pedestrian access granted herein across the designated walkway shall exclude any vendor or other commercial activities or operations not expressly permitted by Grantor.

b) construction, maintenance, repair and/or replacement of all or any portion of the Improvements by Grantee in accordance with the terms of this Agreement; and

c) installation and removal of holiday, seasonal or thematic decorations, banners, plantings and similar items (collectively, the "Decorations") by Grantee, in accordance with the terms of this Agreement.

2. Grantor hereby grants and conveys to Grantee, and Grantee accepts, a temporary non-exclusive Construction Easement, for the period April 15, 2012, through and including

August 15, 2012, upon and across the southerly forty (40) feet of Grantor's Property (immediately adjacent to the dock wall), together with an access easement to East Erie Street over the existing drive aisle located on Grantor's Property and solely to the extent reasonably necessary to facilitate the construction, maintenance, repair and/or replacement of all or any portion of the Improvements by Grantee on the Easement Area owned by Grantor in accordance with the terms of this Agreement. The temporary Construction Easement granted by this paragraph is subject to the following conditions, requirements, and restrictions:

- a) No permanent structure may be placed by Grantee upon portions of the Property other than the Easement Area.
- b) So much of the paved surface or the subsurface of the Property and any improvements thereon, including, by way of illustration and not by way of limitation, restriping, as may be disturbed by Grantee in its activities undertaken pursuant to this paragraph shall, at the expense of Grantee, be replaced in substantially the same condition as existed prior to such disturbance. In addition, Grantee, at Grantee's expense, shall remove any existing fencing located at the dock line of Grantor's Property and shall install a new cyclone fence at the dock line for the full width of Grantor's river frontage, which fence shall have an operable gate.
- c) Grantee shall save harmless Grantor from all loss, injury, damage or liability of any kind whatsoever due to utilization of the Property and the Easement Area hereunder by Grantee, its agents, employees, and contractors or resulting from the negligence of Grantee, its agents, employees and contractors.

d) Five days notice shall be given to Grantor prior to Grantee's entering upon the Property, except for emergency situations.

e) Grantor shall contribute \$32,000.00 towards the rehabilitation of the dock wall. Grantor's contribution shall be made as follows, \$32,000.00 to be paid upon completion of the dock wall portion of the project.

3. Grantor shall, at all times, allow the walkway of the Improvements to be available for use by members of the public, except for such times as such walkway must be closed for maintenance or repair or to avoid the acquisition of adverse or prescriptive rights. Grantor shall have the right periodically (i.e., not more often than once a year and not more than 24 hours at a time) to close off the walkway in order to prevent the acquisition of any adverse or prescriptive rights. Nothing contained in this Agreement shall grant the members of the public or the Grantee the right to the use of or access to any portion of Grantor's Property, except the Riverwalk Improvement, as contained herein. Nothing contained in this Agreement shall grant the members of the public or the Grantee any interest in or rights of any nature to the Grantor Property's riparian rights. Grantor shall have a right to (i) secure any gate to and from the Riverwalk Improvement so as to prevent such access to Grantor's Property from the Riverwalk Improvement; and (ii) construct such fences, walls or other improvements on such portion or all of Grantor's Property or Grantor's mooring facilities as Grantor, at Grantor's sole option and expense, shall elect.

4. Grantee shall have the right to formulate reasonable rules and regulations regarding the use and operation of the Improvements. Grantee may, at all times, exclude any vendors or other commercial activities from the Easement Area. Such rules and regulations shall be uniform and consistent for all properties subject to agreements similar to

this Agreement and shall be effective upon delivery of a copy of same to Grantor. Provided, however, Grantee or its assignee shall be responsible for maintaining the Riverwalk Improvement in good, safe condition and repair and reasonably clean and free of debris, and shall properly maintain all landscaping. Grantor shall not be responsible to expend any efforts for the performance of the foregoing or enforcement of such rules and regulations as they pertain to the Improvements or the supervision or use of the Easement Area by any party or entity. Except as provided in Paragraph 7 hereof, Grantee shall, and hereby does, hold harmless and indemnify Grantor with respect to any causes of action or damages arising out of any use of the Easement Area.

5. Grantor acknowledges that title to the Improvements shall be held by Grantee and that the Improvements shall be owned, operated and maintained solely by Grantee. Grantor shall have no ownership interest in the Improvements whatsoever by virtue of this Agreement. Grantee shall not make any structural alterations or modifications to the Improvements or make any changes to the color scheme of the Improvements as originally installed without the prior written consent of Grantor, which consent shall not be unreasonably withheld or delayed. Further, Grantee shall not install any Decorations or attach any fixtures to or upon the Improvements without the prior written consent of Grantor. Any request by Grantee for the approval of installation of Decorations or the attachment of fixtures must be in writing, and Grantor shall approve or disapprove such request in writing within 15 business days following receipt. Failure of Grantor to deliver a written response within such time period shall constitute approval of the request. Other than installation and removal of Decorations as provided herein and normal maintenance, Grantee shall not make any changes to the Improvements without the prior written approval

of Grantor, which consent shall not be unreasonably withheld or delayed, provided such changes shall not impede or restrict the mooring rights as provided in Paragraph 7 of this Agreement and the access rights of the Property to the Easement Area (elimination and/or increase of gate accessibility) and, provided further, however, such changes are not materially different than the Riverwalk Improvement as originally constructed herein.

6. Grantee shall have the right from time to time, and upon at least 72 hours prior written notice to Grantor, to enter upon the Improvements to install and/or remove Decorations. Such installations and removals shall not materially interfere with the lawful use of the Property by Grantor, its tenants, licensees or invitees and shall be at the sole expense of Grantee.

7. Grantor, its tenants, licensees or invitees of the Property, shall have the right, from time to time, to moor boats upon the Milwaukee River adjacent to the Improvements. The design of any structures constructed by Grantor in order to facilitate such mooring shall be subject to the approval of Grantee, which approval shall not be unreasonably withheld or delayed, and shall be designed and constructed in a fashion which will not damage the Improvements. Grantor shall bear all costs and expenses related to the design, construction, maintenance, and operation of any structures constructed by Grantor in order to facilitate the mooring of boats. Grantor shall hold harmless and indemnify Grantee with respect to any causes of action or damages arising out of such mooring activities or the construction of any structures necessary to facilitate mooring.

8. The parties to this Agreement acknowledge that, except as set forth in this Agreement, Grantor shall have no rights with respect to the use, operation and maintenance of the Improvements other than those rights afforded to members of the general public

regarding the use of the Improvements and access rights necessary to moor boats upon the Milwaukee River adjacent to the Improvements and to provide for the construction, maintenance and operation of any structures constructed by Grantor in order to facilitate such mooring.

In the event that Grantor desires to establish a physical connection between the Property and the Improvements during the term of this Agreement and to secure the right to use the Improvements in conjunction with Grantor's use of the Property, then, Grantor may exercise such rights subject to the following conditions:

a) The design and construction of any structures to be constructed by Grantor in order to facilitate a physical connection between the Property and the Improvements shall be subject to the approval of Grantee, which approval shall not be unreasonably withheld or delayed, and shall be designed and constructed in a fashion which will not damage the Improvements;

b) Grantor shall hold harmless and indemnify Grantee with respect to any causes of action or damages arising out of the construction, use, operation or maintenance of such facilities which physically connect the Property and/or Grantor's mooring facilities with the Improvements ("the Connection") to the extent that the same are completed and utilized by Grantor; and

c) Grantor shall provide insurance coverage, assume responsibility for the payment of utility costs for the Connection, secure rights to install decorations upon the Connection and otherwise utilize the Connection in a manner consistent with easements applicable to other segments of the City's Riverwalk system adjacent to the Improvements. This paragraph is intended to confer rights with respect to the

Connection upon Grantor consistent with those rights held by adjoining property owners with respect to adjoining segments of the City's Riverwalk system, only upon the written assumption by Grantor of specific obligations consistent with the obligations undertaken by such adjoining property owners.

d) Within 60 days after the completion of construction of the Connection, Grantor shall submit payment equal to 30% of the cost of the final construction cost of the Improvements. Grantee shall provide the final construction costs of the Improvements to Grantor within 90 days after the completion of construction of the Improvements.

9. This Agreement shall run with the land, encumbering the Property, and shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

10. All notices to be given by one party to the other under this Agreement shall be in writing and given either by personal delivery or certified mail, postage prepaid, to the addresses set forth in this paragraph. A notice shall be deemed delivered either upon actual receipt or upon refusal by a party to accept delivery. Either party may change its address for purposes of receiving notice by delivering written notice thereof in accordance with this paragraph. A successor or assignee may, by written notice, given in accordance with this paragraph, specify the name and address of such successor or assignee.

To Grantor:

252, LLC
% Michael D. Weiss
6938 N. Santa Monica Blvd
Fox Point, WI. 53217

To Grantee:

City of Milwaukee

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

11. The Agreement may be enforced at law or in equity, with the nonbreaching party entitled to injunctive relief and/or monetary damages.

12. This Agreement may be amended only by a written instrument executed by both Grantee and Grantor, or their successors in title, and consented to in writing by the Commissioner of City Development of the City of Milwaukee, provided, however, the consent of no other party shall be required thereto.

13. This Agreement may be assigned, in whole or in part, by Grantee only to a governmental entity, including without limitation, the board for Business Improvement District No. 2 or any successor thereto, which agrees in writing to accept responsibility for the construction, maintenance and operation of the Riverwalk System or any portion thereof, without the consent of the Grantor, provided, however, Grantee shall remain liable for all obligations of Grantee hereunder. Grantee shall promptly provide a copy of any such assignment to Grantor, containing the address of the succeeding Grantee for notice hereunder.

14. This Agreement shall be governed by the internal laws of the State of Wisconsin.

[Signature Pages Follow]

Jeremy R. McKenzie, Assistant City Attorney
State Bar No. 1051310

a Wisconsin limited liability company

STATE OF _____)
) ss.
COUNTY OF _____)

Notary Public,
_____ County
My commission _____

Assistant City Attorney
Drafted By: Jeremy R. McKenzie, Assistant City Attorney
1050-2010-2424:177871

EXHIBIT A

Legal Description of the Property

Lot 5, in Block 34, in Plat of the Town of Milwaukee on the East Side of the River, in the Southeast $\frac{1}{4}$ of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

ALSO Lot 3, in Subdivision into Town Lots of Lot 10, in the Northeast $\frac{1}{4}$ of Section 32, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Together with lands lying between all of the above described lands and

the Dock Line of the Milwaukee River.

Address: 233 East Erie Street, Milwaukee, Wisconsin
2012 Tax Key No. 392-0962-X

Exhibit B

Riverwalk Improvement and Easement Area

An approximately ____-foot wide Riverwalk running the entire length of the Property along the Milwaukee River as shown on Plans prepared by CH2MHILL for the City of Milwaukee, Department of Public Works , attached to this Exhibit B, as Sheets B-1, B-2 and B-3 (“Riverwalk Improvement”). Improvements to the Riverwalk include the walking surface, landscaping, lighting, decorative railing, benches, trash receptacles, sculptures and/or sculpture foundations located from time to time thereon. All Riverwalk improvements have been approved by the City of Milwaukee Planning Commission on _____.