

CONSERVATION EASEMENT
Lakeshore State Park

Document Number

Document Title

THIS INDENTURE, Made as of the 1st day of September, 2004, by and among the CITY OF MILWAUKEE, WISCONSIN, acting by and through its BOARD OF HARBOR COMMISSIONERS, ("GRANTOR"), the STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES, ("GRANTEE") and MILWAUKEE WORLD FESTIVAL, INC. ("FESTIVAL").

WITNESSETH

WHEREAS, GRANTOR, holds title to certain real estate, legally described and depicted as Parcels 1 through Parcel 5 on EXHIBIT "A", which is located on the shore of Lake Michigan in the City of Milwaukee and which includes portions of real property commonly known as the Henry Maier Festival Grounds, portions of the real property commonly known as the South Urban Park as well as adjacent areas of the bed of Lake Michigan (collectively, the "Property"); and

WHEREAS, GRANTEE has announced the creation of a new Wisconsin State Park to be known as Lakeshore State Park (the "State Park") which is to be constructed pursuant to the terms of the Lakeshore State Park Master Plan approved by the Natural Resources Board on October 24, 2000, as amended from time to time, (the "Master Plan"); and

WHEREAS, The Property includes portions of the Henry Maier Festival Grounds which have been leased by GRANTOR to FESTIVAL pursuant to the terms of a Lease Agreement effective as of January 1, 2001, (the "Lease"); and

WHEREAS, GRANTOR and GRANTEE have entered into a Cooperation and Development Agreement – Lakeshore State Park Project, dated as of September 1, 2004, (the "Cooperation Agreement") providing for the construction, operation, and maintenance of the State Park by GRANTEE with the cooperation and assistance of GRANTOR and FESTIVAL, pursuant to the terms of this Agreement; and

WHEREAS, GRANTOR desires to convey to GRANTEE a non-exclusive limited fee interest, in the nature of a Conservation Easement, in and to portions of the Property depicted as Parcels 2 through Parcel 5 on EXHIBIT "A"; and

WHEREAS, GRANTOR will convey to GRANTEE a fee simple interest, by Quit Claim Deed, in the real property commonly known as Harbor Island and depicted as Parcel 1 on EXHIBIT "A" which, after reconfiguration by GRANTEE, is to comprise the main body of the State Park (the "Island"); and

WHEREAS, The Property and the Island collectively will become the State Park, a Wisconsin State Trail, and related lakewalk and access areas; and

WHEREAS, The purpose of this Conservation Easement is to provide for:

1. The inclusion of the Property within the bounds of the State Park.
2. The construction, operation and maintenance of the State Park, a Wisconsin State Trail and a lakewalk, as well as permanent pedestrian ingress and egress, upon the terms and conditions set forth herein, for utilization of the general public in conjunction with the operation of the State Park by GRANTEE.

Recording Area

Name and Return Address

Thomas O. Gartner
Office of the City Attorney
200 East Wells Street, Room 800
Milwaukee, WI 53202

Parcel Identification Number (PIN)

3. Limited vehicular ingress and egress to and from the State Park for utilization by GRANTEE for access to the State Park and for maintenance, operation and service vehicles as well as emergency vehicles.
4. The construction, operation, and maintenance of underground utilities required to serve the State Park by GRANTEE.
5. The allocation of responsibility for the construction, operation and maintenance of various improvements on the Property between GRANTEE and FESTIVAL; and
6. The coordination of hours of operation, utilization of portions of the Property by GRANTOR, GRANTEE and FESTIVAL for their respective operations and overall public access to the Property.

WHEREAS, Legal counsel for GRANTOR, GRANTEE and FESTIVAL have reviewed this Conservation Easement and have determined that the public access provisions set forth therein are consistent with the spirit and requirements of the Wisconsin Public Trust Doctrine.

NOW, THEREFORE, For and in consideration of the recitals set forth above and the mutual grants, covenants and conditions set forth in this Agreement, GRANTOR, GRANTEE and FESTIVAL hereby agree as follows:

I. GRANT OF CONSERVATION EASEMENT

GRANTOR hereby grants to GRANTEE, and FESTIVAL hereby approves, with respect to those portions of the Property which are subject to the Lease, a permanent, non-exclusive Conservation Easement in and to Parcels 2 through 5, upon the terms and conditions set forth below. GRANTOR also hereby grants to FESTIVAL, and GRANTEE hereby approves, a non-exclusive easement for ingress and egress over and through Parcel 4, upon the same terms and conditions set forth below.

II. PURPOSE OF CONSERVATION EASEMENT

WHEREAS, The purpose of this Conservation Easement is to provide for:

1. The inclusion of the Property within the bounds of the State Park.
2. The construction, operation and maintenance of the State Park, a Wisconsin State Trail and a lakewalk, as well as permanent pedestrian ingress and egress, upon the terms and conditions set forth herein, for utilization of the general public in conjunction with the operation of the State Park by GRANTEE.
3. Limited vehicular ingress and egress from the State Park for utilization by GRANTEE for access to the State Park and for maintenance, operation and service vehicles as well as emergency vehicles.
4. The construction, operation, and maintenance of underground utilities required to serve the State Park by GRANTEE.
5. The allocation of responsibility for the construction, operation and maintenance of various improvements on the Property among GRANTOR, GRANTEE and FESTIVAL; and
7. The coordination of hours of operation and utilization of portions of the Property by GRANTOR, GRANTEE and FESTIVAL for their respective operations and to provide for overall public access to the Property.

III. PUBLIC ACCESS

The parties acknowledge that the provision of public access to the State Park and the shores of Lake Michigan is one of the primary purposes of this Conservation Easement.

All portions of the Property which are not subject to the Lease shall be open to public access at all times.

Public access to those portions of the Property which are subject to the Lease shall be governed by the terms of the Lease, in particular paragraph 10, and by such other terms, provisions and regulations as may be approved by GRANTEE and FESTIVAL, in writing, from time to time. EXHIBIT "B" sets forth the current understanding of GRANTEE and FESTIVAL with respect to such public access.

IV. MAINTENANCE

A. Areas subject to the Lease

Pursuant to the terms of paragraph 14 of the Lease, FESTIVAL is responsible for all maintenance and housekeeping on the real property subject to the Lease. Said maintenance responsibility includes all dockwalls located on the real property subject to the Lease, together with their support and anchoring systems.

The parties acknowledge that GRANTEE and FESTIVAL will allocate maintenance and housekeeping responsibility for those areas of the Property which are subject to the Lease among themselves and coordinate maintenance and housekeeping activities as may be approved by GRANTEE and FESTIVAL, in writing, from time to time. EXHIBIT "C" sets forth the current undertaking of GRANTEE and FESTIVAL with respect to such maintenance responsibility.

Maintenance and housekeeping responsibilities for those portions of the Property which are subject to the Lease may be changed in the manner agreed upon by GRANTEE and FESTIVAL, in writing, from time to time.

B. Areas Not Subject to the Lease

GRANTEE shall be responsible for and shall bear the entire cost of all maintenance for those portions of the Property which are not subject to the Lease. This maintenance responsibility includes, without limitation, all dockwalls located on those portions of the Property which are not subject to the Lease, together with their support and anchoring systems which are located on or provide support for the Property.

V. IMPROVEMENTS

A. GRANTEE shall have the right to:

1. Make such improvements and installations, exclusive of the placement or erection of new structures, as are necessary, convenient, and incidental for enjoyment and use of the rights and privileges granted by this Conservation Easement; provided, however, that all such improvements and installations shall be consistent with the terms of the Master Plan and any amendments thereto from time to time and further provided that the design, construction and location of such improvements and installations shall also be consistent with the terms of the Millennium Momentum Master Plan and Design Guidelines attached to the Lease as EXHIBIT "G". It is the intent of the parties to this Agreement that the design construction and location of all improvements undertaken by GRANTEE shall be generally consistent with the design and construction of improvements undertaken by FESTIVAL on the real property subject to the Lease. In the event that GRANTEE desires to undertake improvements and installations which

are not consistent with the terms of the Master Plan, as amended from time to time and the Millennium Momentum Plan, then such improvements and installations shall be subject to the written approval of FESTIVAL and GRANTOR, which shall not be unreasonably conditioned or withheld.

2. Landscape the Property as necessary, convenient and incidental for the enjoyment and use of the rights and privileges granted by this Conservation Easement; provided, however, that all such landscaping shall be consistent with the terms of the Master Plan, as amended from time to time and further provided that all landscaping shall be consistent with the terms of the Millennium Momentum Master Plan and Design Guidelines attached to the Lease as EXHIBIT "G". It is the intent of the parties to this Agreement that the design and installation of all landscaping undertaken by GRANTEE shall be generally consistent with the design and installation of landscaping undertaken by FESTIVAL on the real property subject to the Lease. In the event that GRANTEE desires to undertake landscaping which is not consistent with the terms of the Master Plan, as amended from time to time and the Millennium Momentum Plan, then such landscaping shall be subject to the written approval of FESTIVAL and GRANTOR, which shall not be unreasonably conditioned or withheld.

VII. UTILITIES

- A. Water and Sewer. All construction, maintenance, replacement and repair of water and sewer lines required to serve the State Park or through the real property subject to the Lease shall be undertaken by GRANTEE at its own expense.
- B. Other Utility Services. All other utility services required to serve the State Park shall be provided and paid for in full by GRANTEE. GRANTOR and FESTIVAL agree to grant and approve all reasonable and necessary utility easements to accommodate such utility services.

VIII. EASEMENTS

GRANTEE'S use of the Property is subject to all existing easements and restrictions of record, including the Lease. GRANTOR reserves the right to reasonably modify any existing easement applicable to the Property and to create new easements applicable to the Property; provided that no such modification or creation of easements shall materially interfere with: (i) GRANTEE's use and enjoyment of the Property for State Park or Wisconsin State Trail purposes; or (ii) FESTIVAL's use and enjoyment of the real property subject to the Lease for the purposes set forth therein.

IX. STATUS OF PROPERTY

GRANTEE expressly declares that it has satisfied itself that the Property is usable for State Park and Wisconsin State Trail purposes without any further action by GRANTOR. GRANTEE acknowledges that substantially all of the Property was ceded to GRANTOR by the State of Wisconsin and that as a part of such ceding to GRANTOR, conditions have been imposed by the State upon GRANTOR through legislative acts which are a matter of record. GRANTEE further acknowledges that in addition to conditions imposed by the State of Wisconsin there are certain conditions imposed by the United States government and the Lease and that this Agreement is expressly subject to all such conditions.

X. VESSEL BERTHING

The parties acknowledge that, pursuant to paragraph 20 of the Lease, GRANTOR has granted preferential, non-exclusive berthing rights to FESTIVAL at all dockwalls on the real property subject to the Lease.

Subject to the rights of FESTIVAL and further subject to the approval of GRANTOR's Port Director, GRANTEE shall have non-exclusive berthing rights at all dock walls on the Property. Vessel berthing adjacent to rubble pile

dock walls is prohibited. In authorizing vessel berthing adjacent to the Property, GRANTOR shall use its best efforts to provide that vessels berthed at dockwalls will not interfere with: (i) GRANTEE's rights or activities under this Agreement; provided, however, that GRANTEE shall be required to provide access to the side of vessels berthed adjacent to the Property, which access shall, as determined by GRANTOR's Port Director be sufficient to accommodate ingress and egress for passengers and their accountments and to permit the provision of ship's services; or (ii) FESTIVAL's rights or activities under the Lease. Nothing in this paragraph shall abridge the right of GRANTOR's Port Director to authorize vessel berthing adjacent to the Property.

XI. RESERVED RIGHTS OF GRANTOR

- A. GRANTOR shall have a non-exclusive right to use the Property insofar as such use is consistent with the rights, privileges, restrictions, and covenants contained herein and in the Lease.
- B. GRANTOR shall not, however, sell, give or otherwise convey the Property, except as set forth in C. below, unless such sale, gift or conveyance is expressly subject to the terms of this instrument.
- C. GRANTOR may renew the Lease or enter into a new lease for the Henry Maier Festival Grounds, subject to the rights of GRANTEE pursuant to the terms of this Agreement.

XII. GRANTEE COVENANTS

- A. GRANTEE shall not allow the State Park to be used by others for any festival or event which directly competes with FESTIVAL's business on the real property subject to the Lease, i.e. "Summerfest" or any festival or event operated, conducted, managed or promoted by FESTIVAL or the real property subject to the Lease.
- B. The parties acknowledge that FESTIVAL may submit Special Events Recreational Use Application and License forms (Form 2200-127) to GRANTEE from time to time seeking approval for FESTIVAL sponsored events on the Island. GRANTEE covenants and agrees to expeditiously consider all such applications.

XIII. DEFAULT

- A. The occurrence of one or more of the following shall be considered events of default under the terms of this Agreement:
 - 1. Should GRANTEE abandon the Property for a period of thirty (30) days; or
 - 2. Should GRANTEE cease to use the Property as a State Park or a Wisconsin State Trail or use the Property for a purpose not permitted by this Agreement; or
 - 3. Should GRANTEE default in any of the other covenants or agreements contained in this Agreement to be kept, observed and performed by GRANTEE, provided that if default shall be made in any such covenants, agreements, conditions or undertakings to be observed and performed by GRANTEE, which cannot with due diligence be cured within a period of thirty (30) days, and if notice thereof in writing shall have been given to GRANTEE, and if GRANTEE, prior to the expiration of said thirty (30) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and thereafter does so cure such default in not more than ninety (90) days, then GRANTOR shall not have the right to declare the term of this Agreement as ended. The curing of any default in such manner shall not be construed to limit or restrict GRANTOR's rights and remedies hereunder for any other default

not so cured, and should such default continue for thirty (30) days after notice thereof in writing to GRANTEE; or

- B. Upon the occurrence of any one or more of such events of default, it shall be lawful for GRANTOR, at its election, to declare this Agreement ended, to recover possession of the Property, to record a termination of this Agreement, and with process of law to reenter and to expel, and remove GRANTEE and all agents, employees and representatives of GRANTEE engaged in operating the Property or occupying the Property.

XIV. TIME OF THE ESSENCE

It is expressly understood and agreed by the parties hereto that time is of the essence for each term and provision of this Agreement.

XV. APPROVALS AND CONSENTS

Whenever in this Agreement the consent or approval of any party is required or the discretion of any party may be exercised, such consent shall not be unreasonably withheld, conditioned or delayed and any such discretion shall be exercised in good faith and in a reasonable manner. Whenever in this Agreement the consent or approval of the GRANTOR is required or the discretion of the GRANTOR may be exercised, the Board of Harbor Commissioners of GRANTOR shall have the authority to provide such consent or approval or to exercise such discretion.

XVI. WAIVER

One or more waivers by any party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by another party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

XVII. AMENDMENT

This Agreement shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Agreement.

XVIII. GOVERNING LAW

This Agreement shall be governed by the internal laws of the State of Wisconsin. If any term or provision of this Agreement or any Exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Agreement and Exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

XIX. NOTICE

In the event any notice is required to be delivered hereunder, it shall be given in writing, and shall be delivered personally or shall be deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, in which latter event it shall be deemed given five days after the date mailed. If it is to be sent to GRANTOR, then it shall be addressed as follows:

Port of Milwaukee
2323 South Lincoln Memorial Drive
Milwaukee, WI 53207
Attention: Municipal Port Director

With a copy to:

Office of the City Attorney
City of Milwaukee
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

If it is to be sent to FESTIVAL it shall be addressed as follows:

Milwaukee World Festival, Inc.
200 North Harbor Drive
Milwaukee, WI 53202

Attn: Chief Executive Officer

With a copy to:

Michael J. Kelly
Park Bank, Suite 150
330 East Kilbourn Avenue
Milwaukee, WI 53202

If it is to be sent to GRANTEE it shall be addressed as follows:

State of Wisconsin Department of Natural Resources
Southeast Region Headquarters
2300 North Dr. Martin Luther King, Jr. Drive
PO Box 12436
Milwaukee, WI 53212

Attn: Southeast Region Director

XX. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. The term "GRANTOR" whenever used herein shall include the Board of Harbor Commissioners of the City of Milwaukee and/or its successors and assigns in authority as the context may require.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto, have caused these presents to be executed by their proper respective officers and their corporate seals to be affixed hereto on the day, month and year first above written.

BOARD OF HARBOR COMMISSIONERS

President

Secretary

**CITY OF MILWAUKEE,
a Wisconsin municipal corporation**

Tom Barrett, Mayor

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

W. Martin Morics, City Comptroller

STATE OF WISCONSIN

**MILWAUKEE WORLD FESTIVAL, INC.
a Wisconsin corporation**

Howard Scholl, President

Don Smiley, Chief Executive Officer

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, Tom Barrett, Mayor of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, Ronald D. Leonhardt, City Clerk of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, _____, President and _____, of the above-named Board of Harbor Commissioners who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, _____, _____ of the above-named State of Wisconsin, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, _____, _____ of the above-named State of Wisconsin, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, Howard Scholl, President of the above-named Milwaukee World Festival, Inc., a Wisconsin corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2004, Don Smiley, Chief Executive Officer of the above-named Milwaukee World Festival, Inc., a Wisconsin corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires:_____

Approved as to content this _____ day
of _____, 2004.

Thomas O. Gartner
Assistant City Attorney

Approved as to form and execution this
_____ day of _____, 2004.

Thomas O. Gartner
Assistant City Attorney

Prepared by
Thomas O. Gartner, Assistant City Attorney
Milwaukee, Wisconsin

1050-2002-914:86248

EXHIBIT “A”
(Legal Description)

EXHIBIT “B”

(Access)

[To be provided by State]

EXHIBIT “C”

(Maintenance)

[To be provided by State.]