

**1887 NORTH WATER STREET  
RIVERWALK DEVELOPMENT AGREEMENT**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and among the City of Milwaukee (the "City"), the Redevelopment Authority of the City of Milwaukee ("RACM") and Tomich Riverfront Properties, LLC (the "Developer").

**WITNESSETH:**

Whereas, The Developer is the owner of certain property located at 1887 N Water Street, Milwaukee, Wisconsin (the "Property," as more particularly described on Exhibit A); and

Whereas, The Property fronts on the Milwaukee River; and

Whereas, The Developer wishes to undertake construction of a riverwalk along the Property (the "Riverwalk Improvement") which will comply with the Milwaukee Riverwalk Design Guidelines (attached hereto as Exhibit B), and a dockwall on the bank of the Milwaukee River (the "Dockwall Improvement"). The Riverwalk Improvement is more particularly described on Exhibit C attached hereto and will be adjacent to Developer's building on the Property; and

Whereas, Developer will maintain and operate the Riverwalk Improvement, including making the Riverwalk Improvement available for use by members of the general public; and

Whereas, The Riverwalk Improvement will constitute a portion of the overall riverwalk system which is intended to cover a substantial portion of the Milwaukee River extending from the harbor entrance to the former North Avenue Dam area; and because of the Developer's willingness to make the Riverwalk Improvement available to members of the public, the Riverwalk Improvement will serve the public purpose of affording members of the public the opportunity to more fully enjoy the valuable river resource; and

Whereas, Because of the public purpose served by the construction and operation of the Riverwalk Improvement, RACM is willing to make a grant to the Developer in an amount not to exceed **\$1,541,413** to be used by the Developer to fund up to 70% of the cost of constructing the Riverwalk Improvement and up to 50% of the cost of constructing the Dockwall Improvement; and

Whereas, the City, via Common Council Resolution File No. \_\_\_\_\_ adopted \_\_\_\_\_, has approved this Agreement and authorized proper officials of the City to execute this Agreement; and

Whereas, RACM, via Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_ has approved this Agreement and authorized proper officers of RACM to execute this Agreement on RACM's behalf; and

Whereas, the Developer has approved this Agreement;

Now, Therefore, the City, RACM and the Developer, in consideration of the premises and the mutual promises and undertakings hereinafter contained, mutually agree and covenant as follows:

**I.  
RACM ACTIVITIES**

A. Subject to the terms and conditions hereinafter set forth, RACM grants to the Developer an amount not to exceed 70% of the cost of construction of the Riverwalk Improvement and 50% of the cost of construction of the Dockwall Improvement, but in no case exceeding, in the aggregate, **\$1,541,413** (the "RACM Grant"). The RACM Grant is to be disbursed to the Developer in accordance with the Milestone Payment Schedule attached as Exhibit E-Part 2 (the "Milestone Payment Schedule"), subject to satisfaction of the conditions set forth in Section B, and is to be used solely to reimburse the Developer for costs incurred in the construction of the Riverwalk Improvement and the Dockwall Improvement (collectively, the "Improvements").

B. The RACM Grant shall be disbursed to the Developer in accordance with the Milestone Payment Schedule, provided the following requirements set forth below at numbers 1 through 7 are met:

1. The Developer has received all federal, state and local agency approvals, including but not limited to the United States Army Corps of Engineers, the Wisconsin Department of Natural Resources, and the City's Board of Harbor Commissioners, and has complied with all applicable federal, state and local laws, including, but not limited to, the Americans with Disabilities Act, which are necessary to undertake construction of the Improvements.

2. The Commissioner of the Department of City Development ("Commissioner") has approved the final plans and specifications for the Improvements.

3. The Commissioner has approved the final construction budget for the Improvements a copy of which is attached as Exhibit E-Part 1.

4. The Commissioner has approved as to form, content, terms and parties, all the contracts entered into by the Developer for the preparation of plans and specifications for the Improvements, which approval shall not unreasonably be withheld.

5. The Commissioner has approved as to form, content, terms and parties, all contracts and subcontracts entered into by the Developer to undertake the construction of the Improvements, which approval shall not unreasonably be withheld.

6. The Developer's architect or engineer has certified in writing to the Commissioner that each milestone of the Improvements has been completed and will certify the

percentage of work completed, as outlined on Exhibit E-Part 2, so that progress payments can be made. The architect or engineer will further certify that the milestone of the Improvements has been completed in accordance with the Commissioner-approved plans and specifications and the Improvements costs have been fully substantiated by the Developer on appropriate AIA forms such as AIA Document G702 (the "Architect's Certification").

7. The City has received a grant of an easement across the Riverwalk Improvement in a form as set forth on Exhibit D (the "Riverwalk Easement"). Prior to, or concurrently with, the first payment request, Developer agrees to deposit a fully executed Riverwalk Easement with the City for the City to hold in escrow until such time as the Improvements are completed. Upon completion of the Improvements, the City shall execute the Riverwalk Easement and cause the same to be recorded with the Milwaukee County Register of Deeds.

## **II. CITY ACTIVITIES**

A. The City shall make available to RACM an amount up to \$XXX (the "City Grant") in order to allow RACM to supply the Developer with the RACM Grant for reimbursement of up to 70% of the costs of constructing the Riverwalk Improvement and 50% of the costs of constructing the Dockwall Improvement in accordance with the Milestone Payment Schedule.

## **III. DEVELOPER ACTIVITIES**

- A. The Developer shall:
1. Prepare, or have prepared, final plans and specifications for the Improvements subject to the approval by the Commissioner as provided in Section I.B.2.
  2. Prepare, or have prepared, a final construction budget for the Improvements for approval by the Commissioner as provided in Section I.B.3.
  3. Obtain and pay for all governmental permits and approvals necessary to construct the Improvements.
  4. Prepare, or have prepared, all contracts and subcontracts for the design and construction of the Improvements, subject to the approval of the Commissioner.
  5. Comply with all applicable federal, state and local laws.
  6. Construct the Improvements in accordance with the approved plans and specifications.

7. Execute the SBE Agreement (in the form attached as Exhibit F) and submit same to the Commissioner for approval.

8. Submit a Certificate of Insurance to the Commissioner for approval.

9. Substantially complete the Riverwalk Improvements and the Dockwall Improvement within six months after receiving a Certificate of Occupancy for Developer's primary building on the Property. The date set forth herein for completion of the Improvements shall hereinafter be the "Completion Deadline." Notwithstanding the foregoing, in the event Developer encounters construction delays beyond the Developer's reasonable control, other than delays caused by the fault or negligence of Developer (an "Excusable Delay") and Developer provides the City and RACM with a notice describing the cause, nature and duration of the Excusable Delay, then the Completion Deadline shall automatically be extended for a period equal to the duration of the Excusable Delay.

10. Own, operate and maintain the Riverwalk Improvement, including undertaking all necessary capital repairs and replacements, as more fully provided in the Grant of Easement Agreement. The Easement Agreement shall govern all aspect of the operation of the Riverwalk Improvement once the same is completed.

11. When the Improvements are completed, provide the Commissioner with a complete set of "As Built" plans and specifications covering same.

#### **IV. CHANGES**

No material changes in the type, placement or use of construction materials, as indicated on the approved plans and specifications, shall be made by the Developer in the approved plans and specifications or in the manner in which the Developer is obligated to operate and maintain the Riverwalk Improvement, without prior written consent of the Commissioner, which consent shall not be unreasonably withheld or delayed. Any changes approved by the Commissioner shall not increase the RACM Grant unless such increase has been approved by RACM.

#### **V. INSPECTIONS**

A. Developer and its contractors or subcontractors shall be solely responsible for the completion of the Improvements. Nothing contained in this paragraph shall create or affect any relationship between the City or RACM, on the one hand, and any contractor or subcontractor employed by Developer, on the other hand, in construction of the Improvements.

B. RACM may make reasonable inspections, including but not limited to inspections on behalf of RACM by the City Department of Public Works, Department of City Development and Department of Neighborhood Services, of the Riverwalk Improvement during the period of construction thereof, provided that such inspections do not interfere with the progress of the work and RACM and/or the City provides Developer with at least twenty four (24) hours prior written notice of such inspections. In order to allow RACM and the City agencies to undertake

these inspections in a meaningful fashion, the Developer shall provide RACM with a complete set of plans and specifications in respect of the Improvements as well as any change orders and shop drawings relating thereto.

C. In the event that the Commissioner determines, as a result of such inspections, that the Developer's contractor or subcontractors are not constructing any of the Improvements in accordance with the approved plans and specifications, the Commissioner shall promptly inform the Developer of such noncompliance and the Developer shall, as soon as reasonably possible, require its contractor or subcontractors to remedy such noncompliance. The Commissioner may withhold payment of the RACM Grant until such corrective measures are completed and the noncompliance cured in a satisfactory manner.

## **VI. RECORDS**

A. The Developer shall keep accurate, full and complete books and accounts with respect to the cost of constructing the Improvements, consistent with the approved budget, and shall include a provision in all of its contracts requiring its contractors and their 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 Improvements.

B. The City Comptroller, on behalf of RACM, shall have the right, upon at least twenty four (24) hours prior written notice to the Developer, to examine the books, records and accounts of the Developer that relate to the Improvements, during normal hours of business.

C. After substantial completion of the Improvements, the Developer shall submit to the Commissioner a complete set of "As Built" plans and specifications as well as a copy of all approved shop drawings.

## **VII. HUMAN RESOURCES REQUIREMENTS**

In contracting for the construction of the Improvements, the Developer shall use its best efforts, and documents such efforts in a manner satisfactory to the Commissioner, to comply with a 25% City Small Business Enterprise requirement (pursuant to the terms of the Agreement attached hereto as *Exhibit F*) as established by the Commissioner in accordance with Chapter 370, Milwaukee Code of Ordinances ("MCO") and further comply with the requirement that 40% of the worker hours in connection with construction of the Improvements be performed by residents of the City of Milwaukee as provided in Section 309-41-2 of the MCO.

## **VIII. TERM**

This Agreement shall terminate upon the completion of construction of the Improvements and payment to Developer of the RACM Grant.

**IX.  
DEFAULT**

If the Developer has not substantially completed the Improvements by the Completion Deadline , and the failure to substantially complete was either the Developer's fault or was for reasons substantially within the Developer's control, RACM and the City shall have the right to reduce the amount of the RACM Grant by an amount equal to \$400 for each day, up to 90 days, substantial completion of the Riverwalk Improvement is so delayed, plus \$600 for each day beyond 90 days but less than 180 days substantial completion of the Riverwalk Improvement is so delayed and \$1,000 for each day thereafter substantial completion of the Riverwalk Improvement is so delayed.

**X.  
CONFLICT OF INTEREST**

No member, officer or employee of RACM, 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.

**XI.  
WRITTEN NOTICES**

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

For RACM:

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

For the City:

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

For the Developer:

Tomich Riverfront Properties, LLC  
N8 W22520-L Johnson Drive  
Waukesha, WI 53186  
Attention: Carl Tomich

With a copy to:

Reinhart Boerner Van Deuren s.c.  
N16 W23250 Stoneridge Drive  
Waukesha, WI 53188  
Attention: Robert W. Habich

**XII.**  
**ASSIGNMENT**

No party to this Agreement may assign any of its interest or obligations hereunder without the written consent of the other party, except that:

1. RACM and the City may each assign its respective rights hereunder to the other without the consent of Developer; and
2. The Developer may grant a collateral assignment of its rights hereunder to any lender providing construction financing for improvements located on the Property.

**[Signatures on the following page]**

In Witness Whereof, the parties have executed this Agreement on the day and year first above written.

REDEVELOPMENT AUTHORITY OF  
THE CITY OF MILWAUKEE

\_\_\_\_\_  
Executive Director/Secretary

CITY OF MILWAUKEE

By: \_\_\_\_\_  
Tom Barrett, Mayor

By: \_\_\_\_\_  
Jim Owczarski, City Clerk

COUNTERSIGNED

By: \_\_\_\_\_  
Martin Matson, Comptroller

TOMICH RIVERFRONT PROPERTIES, LLC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to form and execution  
this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Assistant City Attorney

1050-2013-122:191007



**EXHIBIT A**  
to  
Riverwalk Development Agreement  
**Legal Description of the Property at 1887 North Water Street**

**DESCRIPTION AS SURVEYED:**

**EXHIBIT B**  
to  
**Riverwalk Development Agreement**  
**Riverwalk Design Guidelines**  
**City of Milwaukee**

1. Building facades should contain architectural features such as doors and windows, which improve their appearance and provide a pleasant pedestrian environment.
2. Site features that detract from the use and redevelopment of the river's edge will be discouraged. Features such as blank walls; chain link fencing, barbed razor or concertina wire; utility doors and staircases; service drives; loading docks; parking areas; outdoor storage; electrical or mechanical equipment; trash containers or other building maintenance facilities or equipment; ventilator exhausts; and concrete road barriers and guardrails, if required by necessity shall be screened from river areas.
3. Where soft river edge still exists along the Middle River, preserve natural riverbanks and historic elements of the built environment where feasible.
4. Where historic buildings exist along the River, preserve those historic elements of the built environment.
5. Riverwalk landscaping should include native species of trees, plants, and shrubs with trees planted, in order of preference, in the ground, in box-outs with protective guards and grates, or in planters.
6. Riverwalk landscaping should emphasize plant species, which provide year-round interest.
7. Riverwalks should be on the land side of the River where feasible. To provide space for amenities such as benches, planters, light poles, trash containers, trees and railings, Riverwalks should typically be 12 feet wide at 0 to 5 percent slope with a minimum 8 foot unobstructed corridor and be open to the general public 24 hours a day at no charge.
8. If land-side Riverwalks are not feasible, walkways that float on or extend over the water may be considered if they do not obstruct navigation, and do not have permanent roofs, and match the high quality of permanent Riverwalks.
9. Special amenity/activity areas are encouraged but shall be limited to a maximum of 3,200 square feet, must be open to the general public, shall not block pedestrian movements on the Riverwalk and shall not encroach into navigable waters.
10. Riverwalks must be passable year-round and be handicapped accessible.
11. Walkways, seating areas and other high traffic areas should complement adjacent buildings and neighborhoods, be aesthetically pleasing and pedestrian-friendly, and should be paved with brick, tile, stone, decorative concrete or other attractive hard material; avoiding large expanses of slab concrete or asphalt.
12. Lighting units shall be Milwaukee Harp fixtures providing illumination in accordance with standards recommended by the Illuminating Engineering Society of North America (IES) and approved by the Commissioner of Public Works.
13. All segments of the Riverwalk shall be designed to connect to future portions of the Riverwalk system or to connect to adjacent portions of the existing Riverwalk system.
14. Structures built within 50 feet of bridges must not obstruct bridge maintenance.

15. Floating Riverwalks will be permitted under bridges if a minimum 7-foot clearance can be maintained and if the connection will not obstruct navigation or bridge operations.
16. Finger piers will only be permitted where they will not obstruct navigation or don not extend more than 40 feet from the dockline.
17. Temporary moorings (less than 4 hours) for water taxis and tour boats will be permitted riverward of any amenity/activity area subject to navigation restrictions.
18. Parking adjacent to the River is strongly discouraged. Parking areas, service drives, loading docks and outdoor storage areas shall provide an appropriate buffer of at least 5 feet in width, meeting the standards of Section 295-75 of the Code and located between said parking area and the river/ Riverwalk. Parking areas shall be set back from the dockwall at least 25 feet and shall also devote at least 3.33 percent of their area to interior landscaping.
19. Temporary Riverwalks are meant to provide connections between existing and/or proposed Riverwalks when the area of the connection is not ready for development of a full-scale Riverwalk. Such connections may be approved at a lower standard than permanent Riverwalks if the proponent can demonstrate that the proposed temporary Riverwalk is truly temporary, that the temporary Riverwalk will not provide direct pedestrian access to the property on which it is located or attached or be utilized in any manner by that property including boat moorings, docks, tables or chairs, and the design of the temporary Riverwalk is generally consistent with the intent of these design guidelines.

**EXHIBIT C**  
to  
Riverwalk Development Agreement  
**Description of Riverwalk Improvements**

**EXHIBIT D**  
To  
Riverwalk Development Agreement  
**Grant of Easement Agreement**  
(Riverwalk)

**GRANT OF EASEMENT  
AGREEMENT**  
Document Title

Document Number

**GRANT OF  
EASEMENT AGREEMENT**

**(1887 North Water Street – Riverwalk)**

Recording Area  
Name and Return Address

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Parcel Identification Number (PIN)

## GRANT OF EASEMENT AGREEMENT

This Grant of Easement Agreement is made as of \_\_\_\_\_, 2013, by and among Tomich Riverfront Properties, LLC (“Grantor”) and the City of Milwaukee (“Grantee”).

### RECITALS

A. Grantor is the owner of certain property located along the Milwaukee River in the City of Milwaukee, State of Wisconsin more particularly set forth on Exhibit 1 attached hereto (the “Property”); and

B. Pursuant to the terms of a Riverwalk Development Agreement dated \_\_\_\_\_, 2013 (“Development Agreement”) by and among Grantor, and Grantee the, a certain riverwalk improvement as identified as Exhibit C to the Development Agreement and on Exhibit 2 attached hereto (the “Riverwalk Improvement”) will be constructed on the portion of the Property and will become part of the Property; and

C. The parties hereto acknowledge that the Riverwalk Improvement is part of a comprehensive, publicly accessible Riverwalk System (the “Riverwalk System”) and that it is desirable that the components of the Riverwalk System be generally compatible in design and appearance and generally uniform in maintenance, operation and usage; and

D. The Development Agreement requires that the Grantor (i) convey to Grantee the easement rights specified in this Agreement, and (ii) agree to fully and timely perform the covenants, restrictions, undertakings and obligations set forth in this Agreement.

### AGREEMENTS

NOW THEREFORE, in consideration of the above Recitals and the terms and conditions of the Development Agreement, Grantor and Grantee agree as follows:

1. Grantor hereby conveys to Grantee, upon completion of the Riverwalk Improvement or at any time thereafter, a nonexclusive easement upon and across the Riverwalk Improvement and, subject to the limitations set forth in Paragraph 3 of this Agreement and solely to the extent reasonably necessary to carry out the activities described in Subparagraph (b) below, upon and across other portions of the Property, for the following purposes:

(a) Pedestrian access, for the benefit of the public, across the entire length of the Riverwalk Improvement in accordance with the terms of this Agreement, provided, however, that the public, pedestrian access granted herein across the designated walkways shall exclude any vendor or other commercial activities or operations not expressly permitted by Grantor; and

(b) Maintenance, repair or replacement of all or any portion of the Riverwalk Improvement by Grantee, in accordance with, and to the extent required or permitted by, the terms of this Agreement; and

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

2. Throughout the term of this Agreement, Grantor, or its permitted successors and assigns (collectively referred to herein as “Grantor”), shall maintain (a) comprehensive liability insurance, naming the Grantee and its officers, agents and employees, as additional insureds, against all claims, demands, actions for personal injury to or death in an amount not less than \$1,000,000 for each personal injury to or death of one person in any one accident; \$5,000,000 for personal injury or death of more than one person in any one accident; and in an amount not less than \$5,000,000 for damage to property in any one accident; and (b) comprehensive “all risk” insurance, insuring against fire or other casualty, vandalism and malicious mischief, with extended coverage, in an amount equal to 100% of the full replacement cost of the Riverwalk Improvement and sufficient to avoid all co-insurance provisions of the subject insurance policy. Grantor shall have the right to maintain the insurance coverage required to be maintained hereunder under umbrella or blanket insurance coverage covering other premises so long as such umbrella or blanket insurance policies expressly provide coverage for the requirements provided under this Agreement. At the option of the Grantee, the aforesaid minimum amounts may be reviewed and increased every ten (10) years, with any such adjustment being proportionate to the then current economic conditions; provided that the amount of liability insurance required by Grantee shall not be greater than the amount of liability insurance generally maintained by the owners of similar portions of the Riverwalk System. Grantor shall provide Grantee with a certificate(s) of insurance, naming the Grantee as an additional insured for purposes of this Agreement, and Grantor agrees to promptly provide Grantee with a copy of any written notice of cancellation, non-renewal, or material change Grantor receives from its insurer.

3. Grantor shall be responsible to maintain the Riverwalk Improvement in accordance with the maintenance standards set forth on Exhibit 4 attached hereto and shall undertake all necessary capital repairs and replacements when and as necessary (with the exception of repairs and replacements necessitated by defects in original workmanship or design which are covered by any construction warranty). If Grantor fails to maintain the Riverwalk Improvement in the condition required by this Agreement, Grantee may provide Grantor with a written notice setting forth the maintenance or repair work that Grantee reasonably determines has not been done. If Grantor does not commence such maintenance or repair work within thirty (30) days from the date of receipt of such written notice, and such failure to commence such maintenance or repair work is not as a result of causes beyond Grantor’s reasonable control, then Grantee may perform such work and Grantor shall reimburse Grantee for all reasonable costs incurred in performing such work. Should Grantor fail to reimburse the Grantee for such work, the Grantee shall be entitled to record a lien against the Property and the City of Milwaukee (the “City”) shall have the right to specially charge the Property under the provisions of 66.0627, Stats. Should the City need to proceed with such special charges under 66.0627 Stats., Grantor hereby waives notice and hearing on such charges. In exercising its right to maintain, repair or replace the Riverwalk Improvement, Grantee shall, to the extent both possible and practical, perform all necessary work from adjacent portions of the Riverwalk System or from the Milwaukee River and shall not unreasonably or materially disrupt or interfere with access to the Property and the operations of Grantor and any tenant, licensee or occupant on the Property. Grantee shall notify Grantor in



advance of Grantee's needs to enter upon the Property, specifying the scope and duration of such entry.

4. Grantor shall, at all times, make the nonexclusive easement area of the Riverwalk Improvement 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 than once a year and not more than 24 hours at a time) to close off the Riverwalk Improvement in order to prevent the acquisition of any adverse or prescriptive rights.

5. Grantee shall have the right to formulate reasonable rules and regulations regarding the use of the nonexclusive easement area of the Riverwalk Improvement by the public. Such rules and regulations shall be generally uniform and consistent with those applicable to riverwalks throughout the Riverwalk System and shall be effective upon delivery of a copy of same to Grantor. Grantor shall be responsible to expend reasonable efforts for the enforcement of such rules and regulations as they pertain to the Riverwalk Improvement. Grantee covenants that it shall require all grantors of riverwalk easements to Grantee to expend reasonable efforts for the enforcement of such rules and regulations. Grantor shall have the right to promulgate and enforce its own rules and regulations governing the use of the Riverwalk Improvement by the public such as the number of people present in any single location, duration of stays, noise and permissible activities; provided, however, Grantor's rules and regulations shall not be inconsistent nor conflict with the terms of Exhibit 4, with any terms or provisions set forth in the Development Agreement or any rules and regulations promulgated by Grantee. In the event of any such conflict, the terms of Exhibit 4, the Development Agreement or the rules and regulations promulgated by Grantee shall control.

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 Riverwalk Improvement to install and remove Decorations. Such installations and removals shall not unreasonably or materially interfere with the lawful use of the Property by Grantor or any tenant, licensee or occupant of the Property and shall be at Grantee's sole expense.

7. Grantor shall pay for all electricity, water and other utilities used for lighting, cleaning and watering of flowers and other plant materials on the Riverwalk Improvement (including as such may be necessary for Decorations and as such may be used for maintenance and repairs to the Riverwalk Improvement).

8. Grantor shall not make any structural alterations or modifications to the Riverwalk Improvement or make any changes to the color scheme of the Riverwalk Improvement as originally installed without the prior written consent of Grantee. Further, Grantor shall not install any Decorations or attach any fixtures to or upon the Riverwalk Improvement without the prior written consent of Grantee. Any request by Grantor for installation of Decorations must be in writing, and Grantee shall approve or disapprove such request in writing within 15 business days following receipt. Failure of Grantee 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, Grantee shall not make any changes to the Riverwalk Improvement without the prior written approval of Grantor.

9. This Agreement is a permanent, nonexclusive, public access easement which shall run with the land, and shall be binding on and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns.

10. Grantor may, at its sole discretion, assign all obligations with respect to the maintenance, repair, and insurance requirements, and funding for electricity, water, and other utilities contained in this Grant of Easement Agreement to a condominium association(s), if applicable, on the Property at any time without Grantee's consent. After such assignment, Grantor shall be released from any further liability under the Grant of Easement Agreement.

11. 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 the requirements of this paragraph.

To Grantor:

Tomich Riverfront Properties, LLC  
N8 W22520-L Johnson Drive  
Waukesha, WI 53186  
Attention: Carl Tomich

With a copy to:

Reinhart Boerner Van Deuren s.c.  
N16 W23250 Stoneridge Drive  
Waukesha, WI 52188  
Attention: Robert W. Habich

To Grantee:

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

and

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

12. This Agreement may be enforced either at law or in equity, with the nonbreaching party entitled to injunctive relief and monetary damages. If any action for enforcement of this Agreement is brought, the nonprevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees and other costs incurred in such action.

13. This Agreement may be amended only by a written instrument executed by both Grantee and by Grantor.

**[Signatures on the following page]**

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands and seals on this \_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR:  
TOMICH RIVERFRONT PROPERTIES, LLC**

By: \_\_\_\_\_

STATE OF WISCONSIN    )  
  )ss.  
MILWAUKEE COUNTY    )

This instrument was acknowledged before me on \_\_\_\_\_, 2013 by  
\_\_\_\_\_, the \_\_\_\_\_ of  
TOMICH RIVERFRONT PROPERTIES, LLC

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission: \_\_\_\_\_

**GRANTEE:  
CITY OF MILWAUKEE**

By: \_\_\_\_\_  
Tom Barrett, Mayor

By: \_\_\_\_\_  
Jim Owcarski, City Clerk

Countersigned:  
  
\_\_\_\_\_  
Martin Matson, Comptroller

Signatures of Tom Barrett, Jim Owczarski and Martin Matson authenticated this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Jeremy R. McKenzie  
Assistant City Attorney  
State Bar No. 1051310

This instrument was drafted by \_\_\_\_\_.

**EXHIBIT 1**  
to  
Grant of Easement  
**Legal Description of the Property**

**DESCRIPTION AS SURVEYED:**

**EXHIBIT 2**  
to  
Grant of Easement  
**[Description of the Riverwalk Improvement]**

**EXHIBIT 3**  
to  
Grant of Easement  
**[Description of the Riverwalk Easement Area]**

**EXHIBIT 4**  
To  
Grant of Easement  
**Maintenance Standards for the Riverwalk Improvement**

1. Open for use at all times except as it relates to adverse possession and times of maintenance and repair.
2. Keep property generally clean of litter on a daily basis. Empty trash receptacles as necessary.
3. Keep benches and other amenities in good, safe repair at all times.
4. Paint railings, benches and other amenities as necessary to maintain a pleasing aesthetic quality, consistent with approved color schemes. Remove graffiti as practical (as weather permits).
5. Properly maintain all landscaping in a manner reasonably acceptable to the Commissioner of the Department of City Development of the city of Milwaukee.
6. Keep all lights in operating condition.
7. Maintain a minimum eight foot wide clear path throughout the Riverwalk for the passage of pedestrians at all times the Riverwalk is open.



**EXHIBIT E**

to

Riverwalk Development Agreement

**Part 1 - Developer Budget and City Cost Sharing**

**EXHIBIT E**  
to  
Riverwalk Development Agreement

**Part 2 - Milestone Payment Schedule**

**Pay Request**

**Milestone**  
**(Percentage of Completion)**

**Reimbursement to Developer**


**Total**

**100%**

**\$**

**EXHIBIT F**  
To  
Riverwalk Development Agreement

**SMALL BUSINESS ENTERPRISE AGREEMENT  
FOR  
THE RIVERWALK IMPROVEMENT**