

## GRANT OF EASEMENT AGREEMENT

This Grant of Easement Agreement (this “Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_, 2013 by and among Riverbank Plaza LLC, a Wisconsin limited liability company a/k/a River Bank Plaza, LLC (“Grantor”), the Board of Business Improvement District No. 15 (“Grantee”), the City of Milwaukee, a Wisconsin municipal corporation (the “City”), and Mitchell Bank, a Wisconsin state bank (“Mortgagee”).

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, pursuant to the terms of a Riverwalk Development Agreement dated as of February 28, 1994 (the “Development Agreement”) by and between Grantor and the City of Milwaukee certain riverwalk improvements identified on *Exhibit B* attached hereto (the “Riverwalk Improvements”) were constructed on a portion of the Property to the east of the riverwall which Riverwalk Improvements became part of the Property; and

WHEREAS, the parties hereto acknowledge that the Riverwalk Improvements are part of a comprehensive, publicly accessible riverwalk system (the “Riverwalk System”), more particularly described in the Development Agreement, and that it is desirable that the components of such Riverwalk System be generally compatible in design and appearance and generally uniform in maintenance and usage; and

WHEREAS, the Development Agreement imposes upon Grantor certain responsibilities with respect to the development, maintenance and repair of the Riverwalk System of which the Riverwalk Improvements are a part; and

WHEREAS, Grantee wishes to expand and improve the Riverwalk Improvements by constructing on the Property certain additional improvements related to the accessibility of the Riverwalk System (the “Accessibility Improvements”) as described in attached *Exhibit C* and additional improvements required as a result of the Accessibility Improvements as described in the attached *Exhibit D* (the “Related Improvements”); and

WHEREAS, Grantor is willing to cooperate with the Grantee and the City by permitting the Accessibility Improvements and Related Improvements to be constructed and maintained on the Property, but also desires to protect the present and future value of the Property by minimizing the potential negative impact the Accessibility Improvements and Related Improvements might have on the future development of the Property; and

WHEREAS, the parties enter into this Agreement to provide for the construction of the Accessibility Improvements and Related Improvements and to secure for the general public pedestrian and other access to the Riverwalk Improvements and, upon completion, the Accessibility Improvements (the Accessibility Improvements, when completed, and the Riverwalk Improvements shall collectively be referred to as the “Enhanced Riverwalk Improvements”).

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

1. Grantee shall construct the Accessibility Improvements and Related Improvements according to plans and specifications, and within a construction budget, all as approved by the City, completing same no later than June 30, 2013. Thereafter, the Accessibility Improvements shall be subject to all terms and provisions affecting the Improvement (as such term is defined therein) as provided in the Development Agreement. Grantee shall be

responsible for all construction, design and engineering costs related to the Accessibility Improvements and the Related Improvements.

2. Grantor hereby conveys to Grantee a nonexclusive easement upon and across the Enhanced Riverwalk Improvements (the area over which Grantee's easement extends is depicted in *Exhibit F*) 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 walkway of the Enhanced Riverwalk Improvements in accordance with the terms of this Agreement;

(b) maintenance, repair or replacement of all or any portion of the Enhanced Riverwalk Improvements by Grantee and the City 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 and the City in accordance with the terms of this Agreement.

3. Throughout the term of this Agreement, Grantor shall maintain (a) comprehensive liability insurance, naming the Grantee and the City, their 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 Enhanced Riverwalk Improvements and sufficient to avoid all co-insurance provisions of the subject insurance policy. Grantor shall have the right to maintain the insurance coverages required to be maintained hereunder under umbrella or blanket insurance coverages covering other premises so long as such umbrella or blanket insurance policies expressly provide coverage for the requirements provided under this Agreement.

If Grantor fails to maintain the insurance described in this paragraph 3, Grantee reserves the right to secure and maintain such insurance and, in the event Grantee obtains such insurance, then the cost of same shall be for the account of Grantor and shall be specially assessed against Grantor and the Property by Grantee through the special assessment method contained in the most current Business Improvement District Operating Plan (the “Operating Plan”).

4. Grantor shall be responsible to maintain the Enhanced Riverwalk Improvements in accordance with the maintenance standards set forth on *Exhibit E* attached hereto and shall undertake all necessary capital repairs and replacements when and as necessary. If Grantor fails to maintain the Enhanced Riverwalk Improvements in the condition required by this Agreement, Grantee or the City may provide Grantor with a written notice setting forth the maintenance or repair work that such party reasonably determines has not been done. If the Grantor does not commence such maintenance or repair work within thirty (30) days from the date of receipt of the aforesaid 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 shall be reimbursed for all reasonable costs incurred in performing such work by specially assessing Grantor and the Property for the cost of such work in accordance with the special assessment method contained in the most current Operating Plan. Grantee covenants that, Grantee shall require all grantors of riverwalk easements to Grantee to agree to maintain,

repair and replace their respective riverwalk improvements to the same standards as are imposed upon Grantor herein and that Grantee shall uniformly enforce such maintenance obligations against such grantors. In exercising its right to maintain, repair or replace the Riverwalk Improvements after Grantor's default, Grantee shall, to the extent both possible and practical, attempt to perform all necessary work from adjacent portions of the Riverwalk System or from the Milwaukee River so as to cause as little disruption or interference as reasonably practical to 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 need to enter upon the Property.

5. Grantor shall, at all times, make the walkway of the Enhanced Riverwalk Improvements 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 walkway in order to prevent the acquisition of any adverse or prescriptive rights.

6. Upon the affirmative vote of at least five-sevenths of its board members, and with the prior approval of the City, Grantee shall have the right to formulate reasonable rules and regulations regarding the use of the Enhanced Riverwalk Improvements by the public. 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. Grantor shall be responsible to expend reasonable efforts for the enforcement of such rules and regulations as they pertain to the Enhanced Riverwalk Improvements. 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 Enhanced Riverwalk Improvements 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 any terms or provisions set forth in the Development Agreement or any rules or regulations promulgated by Grantee.

7. Grantee shall have the right from time to time, and upon at least 72 hours prior written notice to Grantor, to enter upon the Enhanced Riverwalk Improvements to install and remove Decorations. Such installations and removals shall not 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.

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

9. Grantor shall not make any structural alterations or modifications to the Enhanced Riverwalk Improvements or make any changes to the color scheme of the Enhanced Riverwalk Improvements as originally installed without the prior written consent of Grantee and the City. Further, Grantor shall not install any decorative elements or attach any fixtures to or upon the Enhanced Riverwalk Improvements without the prior written consent of Grantee; provided, however, Grantor or Grantor's tenants (with Grantor's consent) may install promotional materials upon the Enhanced Riverwalk Improvements without the prior written consent of Grantee so long as such materials do not interfere or obstruct any Decorations, damage the Enhanced Riverwalk Improvements, interfere with or impede the requisite public

access across the Enhanced Riverwalk Improvements or are not esthetically incompatible with the Riverwalk System. Any request by Grantor for installation of decorative elements or attachment of fixtures 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 Enhanced Riverwalk Improvements without the prior written approval of Grantor.

10. Grantor expressly acknowledges that the rights granted to Grantee hereunder are also exercisable by the City in accordance with the terms of the Development Agreement.

11. This Agreement shall run with the land, encumbering the Property with permanent easement rights of access, and shall be binding on and shall inure to the benefit of the parties hereto and to the City and their respective heirs, successors and assigns. In the event that Grantee dissolves or ceases to exist, the City may, upon written notice to Grantor, succeed to all of the interests of Grantee hereunder. In no event shall the pedestrian easement granted to the public under paragraph 2(a) of this Agreement terminate, except in accordance with section 12 and section 13 of this Agreement or as may be relocated pursuant to section 12 and section 13 of this Agreement.

12. Notwithstanding the foregoing, Grantor may terminate the easement with respect to the Accessibility Improvements at any time and demolish and remove the Accessibility Improvements (the "Removal") provided:

(a) Grantor has provided the City's Commissioner of City Development (the "Commissioner") with a notice (the "Notice") that, within the next twelve (12) months, Grantor desires to commence the further development of the Property, or has entered into a legally

binding commitment to commence the development of the Property within the next 12 months in a manner which is inconsistent with the continued utilization of the Accessibility Improvements for pedestrian access; and

(b) Grantor provides the City and Grantee with the Notice at least 90 days prior to such termination and Removal.

13. The City shall reimburse Grantor for up to 70% of the actual costs and expenses, including industry standard soft costs, such as design and engineering, associated with the construction of a riverwalk segment which replaces that which was subject to Removal (“Reimbursement”); provided, however, that the City shall have no obligation or liability hereunder, except, and only to the extent, that (a) such Reimbursement is approved by the City’s Common Council in the course of its budgetary appropriations at that time; and (b) the Commissioner has received adequate evidence and documentation to support and quantify the request for Reimbursement. Notwithstanding the foregoing, Grantor’s receipt of all necessary and applicable building permits and government approvals, and receipt of satisfactory evidence that the Reimbursement has been approved and the Reimbursement funds have been appropriated shall be conditions precedent to the Removal and development of the Property, which conditions Grantor may waive, in Grantor’s sole discretion.

14. The Commissioner shall expend all reasonable efforts to assist Grantor in obtaining Common Council approval for Reimbursement, including but not limited to placement of the Reimbursement in the Commissioner’s initial budget request.

15. Mortgagee executes this Agreement to subordinate any right, title or interest it may have in the Property as a result of the Mortgage Instruments (as hereinafter defined) or otherwise to the easement rights set forth herein. As used herein, Mortgage Instruments shall



mean the two mortgages dated March 14, 2003 and recorded April 15, 2003 as Documents Nos. 8500066 and 8500068 and the Assignment of Leases and Rents dated March 14, 2003 and recorded April 15, 2003 as Document No. 8500067.

16. 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:

Riverbank Plaza LLC  
Attn: Mr. Richard B. Mitchell  
740 North Plankinton Avenue  
Milwaukee, WI 53203

With a copy to:

Michael A. Marx, Esq.  
Mallery & Zimmerman, S.C.  
731 North Jackson Street, Suite 900  
Milwaukee, WI 53202

To Grantee:

Board of Business Improvement District No. 15  
c/o CBRE, Inc.  
Attn: Ms. Debra Patti  
777 East Wisconsin Avenue, Suite 3250  
Milwaukee, WI 53202

With a copy to:

Bruce T. Block, Esq.  
Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 1700  
Milwaukee, WI 53202

To the City:

Commissioner of City Development  
809 North Broadway  
Milwaukee, WI 53202

17. This Agreement may be enforced either at law or in equity, with the nonbreaching party entitled to injunctive relief and/or 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 attorneys' fees incurred in such action.

18. This Agreement may be amended only by a written instrument executed by both Grantee and Grantor and consented to in writing by the City.

19. Grantor may, at its sole discretion, assign all or some of its obligations with respect to the maintenance, repair and insurance requirements, and funding for reasonable electricity, water and other utilities contained in this Agreement to one or more tenants on the Property at any time without Grantee's consent. Notwithstanding such assignment, Grantor shall not be released from any liability under this Agreement but shall remain fully obligated hereunder.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first above provided.

**[Signatures appear on following pages]**



**CITY OF MILWAUKEE**

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

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

Countersigned

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

Signatures of Tom Barrett, James Owczarski, and \_\_\_\_\_ authenticated this \_\_ day  
of \_\_\_\_\_ 2013.

\_\_\_\_\_  
Jeremy R. McKenzie  
Assistant City Attorney  
SBN 1051310



**Exhibit A**

Description of the Property

## **Exhibit B**

### Existing Riverwalk Improvements

## **Exhibit C**

### Accessibility Improvements



## **Exhibit D**

### Related Improvements

## Exhibit E

### RIVERWALK Maintenance and Operation Criteria

1. Open for use at all times except as it relates to adverse possession and times of maintenance and repair.
2. Maintain a minimum of 8-foot wide clear path for through movement of pedestrians at all times the structure is open.
3. Maintain lighting during hours of darkness for security and safety (same burn time as City street lighting – minimum).
4. Remove ice and snow within 24 hours of a storm.
  - Area drains, if any, kept open at all times
5. Keep Riverwalk generally clean of litter on a daily basis.
  - Empty trash receptacles as necessary
  - Wash down Riverwalk of bird droppings/discarded forage as necessary
6. Keep benches and other amenities in good, safe repair at all times.
7. Paint railings, benches, and other amenities as necessary to maintain a pleasing aesthetic quality, consistent with approved color schemes.
  - Remove graffiti as soon as practical (as weather permits)
8. Effect deck repairs to mitigate potential injury to public.
  - Patch spalled area to minimize irregular walking surface
  - Level differential pavement joints of 1-inch or more to minimize tripping hazard
9. Inspect structural integrity of facility semi-annually and as necessary if collisions or other problems occur.

**EXHIBIT F**

Depiction of Easement Area