

Document Number	<p align="center"><b>GRANT OF EASEMENT AGREEMENT (1661 and 1665 - 1675 N. Water Street)</b></p> <p align="center">Document Title</p>
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**GRANT OF EASEMENT  
AGREEMENT**

**(1661 and 1665 - 1675 N. Water Street)**

Recording Area

Name and Return Address

Rachel S. Kennedy  
Assistant City Attorney  
City Attorney's Office  
841 N. Broadway, 7<sup>th</sup> Floor  
Milwaukee, WI 53202

See Exhibit 1

Parcel Identification Number (PIN)

## **GRANT OF EASEMENT AGREEMENT**

This Grant of Easement Agreement (“Agreement”) is made as of \_\_\_\_\_, 2017, by and among N.L. Partners, LLC and Water House, LLC (collectively, the “Grantor”) and the City of Milwaukee (“Grantee”).

### **RECITALS**

A. Grantor owns 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 and Dockwall Development Agreement dated \_\_\_\_\_, 2017 (“Development Agreement”) by and among Grantor, the Redevelopment Authority of the City of Milwaukee (“RACM”) and Grantee, a certain riverwalk improvement as identified on 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 grants to Grantee, the following easements:

(a) a non-exclusive easement for pedestrian access, for the benefit of the public, upon and 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;

(b) a non-exclusive easement of ingress and egress across such portions of the Property as may be necessary for the sole purpose of performing 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;

(c) a non-exclusive easement upon the Riverwalk Improvement for the sole purpose of the temporary 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 3 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, provided that the same do not result in any cost to Grantor. 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 3, 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 3, 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. Grantee agrees to indemnify, defend, and hold harmless Grantor, and its agents, officers, directors, employees, from and against any and all liabilities, claims, demands, costs, and expenses of every kind and nature (including reasonable attorney's fees) arising in connection with the Grantee's rights or obligations arising under this Agreement, including those arising from any injury (including death) or damage to any person or property sustained on or about the Property and resulting from (i) the negligent or intentionally wrongful act or omission of Grantee, its agents, employees, or (ii) the failure of Grantee to perform its obligations under this Agreement; provided, however, that Grantee's obligations hereunder shall not apply to the extent any such injury or damage results from the negligent or intentionally wrongful act or omission of the party seeking indemnification, its agents, officers, directors, employees.

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 Riverwalk Improvement

(including as such may be necessary for Decorations and as such may be used for maintenance and repairs to the Riverwalk Improvement).

9. 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.

10. 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.

11. 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 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 this Agreement.

12. 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

13. 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.

14. 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 as of the date first written above.

**GRANTOR: N.L. PARTNERS, LLC**

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

**GRANTOR: WATER HOUSE, LLC**

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

STATE OF WISCONSIN    )  
  )ss.  
MILWAUKEE COUNTY    )

\_\_\_\_\_ This instrument was acknowledged before me on \_\_\_\_\_, 2017 by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_.

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

**GRANTEE: CITY OF MILWAUKEE**

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

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

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

Signatures of Tom Barrett, Jim Owczarski, and Martin Matson authenticated this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Rachel S. Kennedy, Assistant City Attorney  
State Bar No. 1066459

This instrument was drafted by the City of Milwaukee, Office of the City Attorney.  
1050-2017-2058:244235

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



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

See attached plans

**EXHIBIT 3**  
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.