

Document Number

**NO BUILD EASEMENT**

(639 E. Polk Street)  
Document Title

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**Drafted By:**

Lisa Kleiner Wood, Esq.  
Davis & Kuelthau, sc  
111 E. Kilbourn Avenue, Suite 1400  
Milwaukee, WI 53202

Recording Area

Name and Return Address

Lisa Kleiner Wood, Esq.  
Davis & Kuelthau, sc  
111 E. Kilbourn Avenue, Suite 1400  
Milwaukee, WI 53202

392-2187-113

Parcel Identification Numbers

**NO BUILD EASEMENT AGREEMENT**  
(639 E. Polk Street)

THIS EASEMENT AGREEMENT is dated as of September 1, 2015, and is by and among the City of Milwaukee, a Wisconsin municipal corporation (the “City” or the “Grantor”) as Grantor, and Milwaukee World Festival, Inc., a Wisconsin not-for-profit corporation (“Festival” or “Grantee”).

**RECITALS**

City and Grantees acknowledge the following:

- A. The City owns the parcel legally described on the attached **Exhibit A** (“City Property”);
- B. The Festival owns the parcel legally described on the attached **Exhibit B** and known as 639 E. Polk Street, Milwaukee, Wisconsin 53202 (“Festival Property”).
- C. City leases the City Property to Festival under a lease dated January 1, 2001, as amended by the First Amendment to Lease Agreement dated February 1, 2005, and Second Amendment to Lease Agreement dated January 6, 2010 (collectively “Lease”).
- D. The Festival Property’s building has an east wall which abuts the property boundary of the City Property.
- E. Grantee desires to improve, renovate and reuse an existing building located on the Festival Property (the “Building”), which Building will not meet current setback requirements. Renovation of the Building will result in the east wall of the Building being located on the property line between the City Property and the Festival Property.
- F. In order to facilitate Grantee’s proposed renovation of the Building and to comply with the necessary fire, building and other codes, including Section 295-1015-3-c of the Milwaukee Code of Ordinances (collectively “Codes”), it is necessary for Grantor to grant Grantee a no-build (negative) easement on City Property in a location set forth on the attached **Exhibit C**.
- G. The City is willing to grant the desired easement over a portion of the City Property for open space purposes so as to permit the construction and maintenance of the Building on the Festival Property in compliance with the Codes.
- H. The City of Milwaukee Common Council has approved the grant of this Easement by Resolution pursuant to File No. \_\_\_\_\_.

**WITNESSETH**

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Grantor hereby declares, conveys and grants an easement (the "Easement") to the Grantee, and the Grantee hereby accepts such Easement from the Grantor all as provided herein, as follows:

1. **Purpose of Easement.** The Easement is for open-space purposes in order for the Building to satisfy the applicable Codes. Except as otherwise provided herein, (a) no improvements or structures shall be constructed or placed on, upon or within the Easement Area (as defined below), and (b) the City hereby agrees not to place or construct, and shall prohibit and restrict others, including Festival as the tenant under the Lease, from placing or constructing, any improvements or structures on, upon or within the Easement Area (as defined below). This Easement shall not, however, prohibit the placement or location of any utility-related improvements within the Easement Area, including, but not limited to, utility poles and wires.
2. **Description of Easement.** The Easement Area consists of the area located on the City Property described on **Exhibit C** attached hereto.
3. **Servitude.** This Easement shall be binding upon City, Grantee, and their respective successors and assigns. The Easement is intended to be a perpetual burden on the City Property, and a perpetual benefit to the Festival Property, which shall "run with the land" as to those parcels. The Easement benefits current and all future owners, occupants and mortgagees of the Festival Property and is intended to bind all future owners, occupants and mortgagees of the City Property.
4. **Termination.** The Easement shall automatically terminate (a) upon the termination of the Lease, as such termination date may be extended via subsequent amendments to the Lease, (b) at such time that the Building is demolished or otherwise removed from the Festival Property, or (c) at such time that the Easement is no longer needed in order to satisfy the Codes.

In further consideration of the above recitals, the foregoing grant of easement and for other good and valuable consideration, Grantee covenants and agrees with Grantor as follows:

1. Grantee hereby releases and forever discharges City from any and all claims, actions and causes of action whatsoever in any way arising out of or related to any damages to or casualty with respect to the Building at any time arising from or relating to the grant of this Easement and caused by any reason other than the willful misconduct of City.
2. The above release is intended to be perpetual, to run with the land and bind Grantee and its successors, assigns and transferees for so long as the Building or an approved successor building is located on the Festival Property.

[Signatures appear on next page]

**GRANTOR: CITY OF MILWAUKEE**

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

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

**COUNTERSIGNED:**

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

**SIGNATURE AUTHENTICATION**

Mary L. Schanning, Assistant City Attorney, and a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of each of the above City signatories in accordance with Wis. Stat. § 706.06 so this instrument may be recorded per Wis. Stat. § 706.05 (2)(b). And, Mary L. Schanning also approves per MCO § 304-21.

By: \_\_\_\_\_  
Mary L. Schanning, Assistant City Attorney  
State Bar No.: 1029016

Date of Authentication: \_\_\_\_\_, 2015

**GRANTEE:**

MILWAUKEE WORLD FESTIVAL, INC.

By: \_\_\_\_\_  
Don Smiley, President and Chief Executive Officer

STATE OF WISCONSIN    )  
  )ss  
MILWAUKEE COUNTY    )

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2015, Don Smiley, who acknowledged himself to be the President and Chief Executive Officer of Milwaukee World Festival, Inc. executed the foregoing document on behalf of said company.

\_\_\_\_\_  
Notary Public  
Milwaukee, County, State of Wisconsin  
My Commission: \_\_\_\_\_

EXHIBIT A

(City Property Legal Description)

COMBINED LEGAL OF ALL PROPERTY EAST OF NORTH HARBOR DRIVE:  
A TRACT OF LAND IN THE SOUTH 1/2 OF SECTION 28 AND THE NORTH 1/2  
OF SECTION 33, TOWN 7 NORTH, RANGE 22 EAST, IN THE CITY OF  
MILWAUKEE, COUNTY OF MILWAUKEE, STATE OF WISCONSIN, BOUNDED  
AND DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE WEST LINE OF  
NORTH HARBOR DRIVE AND THE CENTERLINE OF EAST POLK STREET;

THENCE N 85°16'47" E for a distance of 51.21 feet, TO A POINT;

THENCE N 07°45'22" E for a distance of 63.32 feet, TO A  
POINT IN THE NORTH LINE OF EAST POLK STREET AND THE EAST LINE  
OF NORTH HARBOR DRIVE AND THE POINT OF BEGINNING.

THENCE N 07°45'22" E for a distance of 827.92 feet, ALONG SAID EAST LINE,  
TO A POINT;

THENCE N 16°03'08" E for a distance of 117.01 feet, ALONG SAID EAST LINE,  
TO A POINT;

THENCE N 33°45'30" E for a distance of 116.92 feet, ALONG SAID EAST LINE,  
TO A POINT;

THENCE N 42°26'28" E for a distance of 236.94 feet, ALONG SAID EAST LINE,  
TO A POINT;

THENCE along a curve to the left having a radius of 286.11  
feet and an arc length of 165.53 feet, being subtended by a chord  
of N 25°40'51" E for a distance of 163.23 feet, ALONG SAID EAST LINE  
TO A POINT;

THENCE N 08°55'07" E for a distance of 182.61 feet, ALONG  
SAID EAST LINE, TO A POINT;

THENCE along a curve to the right having a radius of  
2827.79 feet and an arc length of 149.83 feet, being subtended by a chord of N 10°26'11"  
E for a distance of 149.81 feet, ALONG SAID EAST LINE, TO A POINT;

THENCE N 11°57'16" E for a distance of 598.07 feet, ALONG  
SAID EAST LINE, TO A POINT;

THENCE along a curve to the right having a radius of  
1407.36 feet and an arc length of 100.51 feet, being subtended by a chord of N 13°59'56"  
E for a distance of 100.49 feet, ALONG SAID EAST LINE, TO A POINT;

THENCE S 81°18'23" E for a distance of 474.25 feet;

THENCE S 09°58'50" W 41.70 feet;

THENCE S 36°02'37" W 12.87 feet;

THENCE S 08°02'21" W 144.12 feet; THENCE S 06°53'55" E 17.01 feet;

THENCE S 17°15'25" W 25.79 feet; THENCE S 07°50'14" W 57.02 feet;

THENCE S 02°13'03" W 53.06 feet; THENCE S 04°54'18" W 93.32 feet;

THENCE S 30°00'38" W 17.11 feet; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 26.93 feet AND AN ARC LENGTH OF 49.44 feet BEING SUBTENDED BY A CHORD OF S 13°49'16" W 42.78 feet; THENCE S 03°38'23" W 28.82 feet; THENCE S 12°07'31" W 36.04 feet;

THENCE S 05°34'12" W 36.85 feet; THENCE S 17°52'34" W 33.12 feet;  
THENCE S 03°00'55" W 64.12 feet; THENCE S 05°58'20" W 106.61 feet;  
THENCE S 22°08'17" W 45.62 feet; THENCE S 00°27'54" E 40.89 feet;

THENCE S 12°28'57" W 60.00 feet; THENCE S 08°33'31" W 54.69 feet;  
THENCE S 12°32'03" W 60.63 feet; THENCE S 05°46'20" W 54.67 feet;  
THENCE S 09°07'49" W 122.97 feet; THENCE S 12°59'27" W 52.31 feet;  
THENCE S 02°50'33" W 54.39 feet; THENCE S 06°41'43" W 57.65 feet;  
THENCE S 11°15'35" W 74.06 feet; THENCE S 04°53'38" W 52.56 feet;  
THENCE S 10°59'31" W 214.76 feet; THENCE S 05°05'18" W 136.46 feet;  
THENCE S 04°43'23" E 70.23 feet; THENCE S 10°23'00" E 49.89 feet;  
THENCE S 13°30'52" E 40.12 feet; THENCE S 18°29'07" E 64.97 feet;  
THENCE S 28°49'02" E 111.94 feet; THENCE S 37°57'05" E 141.91 feet;  
THENCE S 46°14'22" E 75.62 feet; TO A POINT;  
THENCE N 87°16'39" E for a distance of 373.62 feet;  
THENCE S 00°45'03" E for a distance of 1165.24 feet;  
THENCE S 87°16'39" W for a distance of 1314.30 feet,

ALONG THE BASE LINE ESTABLISHED ALONG THE FEDERAL NORTH PIER OF THE INNER HARBOR ENTRANCE, TO A POINT OF INTERSECTION WITH THE WESTERLY LINE OF SUBMERGED LANDS GRANT AS DESCRIBED IN WISCONSIN LAWS OF 1929, CHAPTER 151/516, TO A POINT;

THENCE N 09°40'29" W for a distance of 6.04 feet, ALONG THE WESTERLY LINE OF AFOREMENTIONED SUBMERGED LANDS, TO A POINT;

THENCE S 87°16'39" W for a distance of 158.89 feet, TO A POINT;

THENCE N 31°52'47" W for a distance of 302.17 feet, TO A POINT;

THENCE S 78°47'15" W for a distance of 2.74 feet, TO A POINT;

THENCE N 12°10'56" W for a distance of 50.15 feet, TO A POINT;

THENCE N 31°55'13" W for a distance of 42.50 feet, TO A POINT;

THENCE N 77°49'47" E for a distance of 85.00 feet, TO A POINT;

THENCE S 25°20'21" E for a distance of 41.08 feet, TO A POINT;

THENCE N 77°49'47" E for a distance of 73.18 feet, TO A POINT;

THENCE N 04°47'55" W for a distance of 39.91 feet, TO A

POINT;

THENCE N 81°29'00" E for a distance of 46.52 feet, TO  
A POINT;

THENCE N 85°12'05" E for a distance of 74.18 feet, TO A  
POINT;

THENCE S 09°40'29" E for a distance of 3.96 feet, TO A  
POINT;

THENCE N 85°16'47" E for a distance of 100.00 feet, TO  
A POINT;

THENCE N 09°40'29" W for a distance of 361.35 feet, TO  
A POINT;

THENCE N 85°16'39" E for a distance of 217.24 feet, TO  
A POINT;

THENCE N 04°47'55" W for a distance of 477.05 feet, TO  
A POINT;

THENCE N 85°59'10" W for a distance of 294.98 feet,  
ALONG SAID NORTH LINE, TO THE POINT OF BEGINNING. EXCEPTING  
THAT PORTION OF THE FEDERAL NORTH PIER OF THE INNER HARBOR  
ENTRANCE LYING WITHIN THE AREA HEREIN DESCRIBED.

Together with and subject to covenants, easements, and  
restrictions of record.

Said property contains 71.6661 acres more or less.

LEGAL DESCRIPTION - PARCEL NO. 2:

A tract of land in the Southwest 1/4 of Section 28, Town 7 North, Range 22 East, in the  
City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as  
follows:

Beginning at the point of intersection of the West line of North Harbor Drive and the  
South line of East Chicago Street;

THENCE South 8 degrees 55 minutes 7 seconds West for a distance of 12.00 feet,  
along the west line of North Harbor Drive, to a point;

THENCE along a curve to the right having a radius of 236.11 feet and an arc length of  
136.61 feet, being subtended by a chord of South 25 degrees 40 minutes 51 seconds West  
for a distance of 134.71 feet, along said West line, to a point;

THENCE South 42 degrees 26 minutes 28 seconds West for a distance of 372.14 feet,  
along said West line, to a point;

THENCE North 7 degrees 45 minutes 22 seconds East for a distance of 400.64 feet,  
along the Easterly line of the C. & N.W.R.R., by agreement April 9, 1913, to a point in  
the South line of East Chicago Street;

THENCE North 85 degrees 16 minutes 42 seconds East for a distance of 158.66 feet,  
along said South line, to a point;



THENCE along a curve to the right having a radius of 458.59 feet and an arc length of 99.39 feet, being subtended by a chord of South 88 degrees 45 minutes 31 seconds East for a distance of 99.20 feet, along said South line to the point of beginning.

Together with and subject to covenants, easements and restrictions of record.

Said property contains 1.4081 acres.

LEGAL DESCRIPTION - PARCEL NO. 3: (REVISED FOR STREET IMPROVEMENT)

A tract of land in the Southwest 1/4 of Section 28, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Beginning at the point of intersection of the West line of North Harbor Drive and the North line of East Chicago Street (after addition right-of-way acquired);

THENCE South 52 degrees 43 minutes 24 seconds West for a distance of 24.54 feet, along the North line of East Chicago Street, to a point;

THENCE along a curve to the left having a radius of 524.59 feet and an arc length of 98.38 feet, being subtended by a chord of North 89 degrees 33 minutes 49 seconds West for a distance of 98.24 feet, along the said North line, to a point;

THENCE South 85 degrees 16 minutes 43 seconds West for a distance of 143.77 feet, along said North line, to a point;

THENCE North 7 degrees 45 minutes 22 seconds East for a distance of 7.17 feet, along the Easterly line of the C. & N.W.R.R. by agreement April 9, 1913, to a point;

THENCE North 16 degrees 27 minutes 52 seconds East for a distance of 495.98 feet, along said Easterly line, to a point;

THENCE South 80 degrees 30 minutes 47 seconds East for a distance of 203.05 feet, to a point in the West line of North Harbor Drive;

THENCE South 11 degrees 57 minutes 16 seconds West for a distance of 191.17 feet, along said West line, to a point;

THENCE along a curve to the left having a radius of 2877.79 feet and an arc length of 152.48 feet, being subtended by a chord of South 10 degrees 26 minutes 11 seconds West for a distance of 152.46 feet, along said West line, to a point;

THENCE South 8 degrees 55 minutes 7 seconds West for a distance of 87.42 feet, along said West line, to the point of beginning.

Together with and subject to covenants, easements and restrictions of record.

Said property contains 2.4099 acres.

LEGAL DESCRIPTION - PARCEL NO. 4:

A tract of land in the Northwest 1/4 of Section 33, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commence at the intersection of the centerline of East Polk Street and the East line of North Jackson Street;

THENCE North 85 degrees 16 minutes 47 seconds East, along the centerline of East Polk Street, 331.30 feet to a point; THENCE South 9 degrees 40 minutes 29 seconds East, 40.15 feet to a point; THENCE North 85 degrees 16 minutes 47 seconds East, 35.84 feet to a point; THENCE South 4 degrees 47 minutes 55 seconds East, 8.00 feet to the point of beginning;

THENCE North 85 degrees 16 minutes 47 seconds East for a distance of 63.61 feet, along the South line of East Polk Street (extended), to a point;

THENCE South 85 degrees 16 minutes 8 seconds East for a distance of 257.18 feet, along said South line, to a point;

THENCE South 4 degrees 47 minutes 55 seconds East for a distance of 369.76 feet, to a point;

THENCE South 85 degrees 16 minutes 39 seconds West for a distance of 317.24, to a point;

THENCE North 4 degrees 47 minutes 55 seconds West for a distance of 412.00 feet, to the point of beginning.

Together with and subject to covenants, easements and restrictions of record.

Said property contains 2.8775 acres.

## EXHIBIT B

(Festival Property Legal Description)

Lots 1, 2, 3, 4, 5, 6 and 7, in Block 170, in Subdivision of Lots 1 and 2, of Section 33, Township 7 North, Range 22 East, also including, all that part of the accretions to and Easterly of the aforesaid Lots, which lies Westerly of a straight line running Southerly from a point which is 331.3 feet Easterly from the East line of N. Jackson Street, measured along the center line of E. Polk Street extended Easterly, to a point in the extended South line of Lot 3, Block 174 in said Subdivision, which is 271 feet Easterly from the Easterly line of East Erie Street, vacated, and also including, a triangular piece of land adjoining on the East, described as follows, to-wit: Commencing at a point on the intersection of the centerline of East Polk Street and the Easterly line of North Jackson Street; thence N. 85° 16' 47" E. 331.30 feet along the center line of E. Polk Street to a point, said point being on the Easterly property line of the Chicago and Northwestern Railway Company; thence S. 9° 40' 29" East, 40.15 feet to the point of beginning; thence N. 85° 16' 47" East, 35.84 feet to a point; thence S. 4° 47' 55" East, 420 feet to a point; thence N. 9° 40' 29" West. 421.58 feet to the point of beginning. Also the East ½, (33.00') of vacated N. Marshall Street and the North ½, (40.00') of vacated E. Harbor Place adjacent to said Lots. Said premises are located in the North West ¼ of Section 33, Township 7 North, Range 22 East. Containing 49,226 square feet, (1.130 Acres) of land.

For informational purposes only:

Tax Key ID: 3922187113

Address: 639 E. Polk Street, Milwaukee, Wisconsin

## **EXHIBIT C**

(Easement Area Legal Description)

Tax Key No. 4299999000

(Land adjacent to 639 E. Polk Street and 110 N. Marshall Street)

The West 20 feet of a parcel of land located in the Northwest  $\frac{1}{4}$  of Section 33, Town 7 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin and is more particularly described as follows: Begin at a point North  $83^{\circ} 48' 52''$  East, 35.88 feet from the Northeast corner of Lot 1, Block 170 in Subdivision of Lots 1 and 2 of Section 33, Town 7 North, Range 22 East; thence continue North  $83^{\circ} 48' 52''$  East, 20.29 feet; thence South  $06^{\circ} 10' 35''$  East, 223.45 feet; thence South  $83^{\circ} 48' 52''$  West, 20.29 feet; thence North  $06^{\circ} 10' 35''$  West, 223.45 feet to the point of beginning.