

Grant of Perpetual Non-exclusive Easement Agreement
(Ivory Tusk Condominium Riverwalk)

Document Number

Recording Area

Name and Return Address

Thomas O. Gartner
City Attorney's Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

Parcel Identification Number (PIN)

GRANT OF PERPETUAL NON-EXCLUSIVE EASEMENT AGREEMENT

(Ivory Tusk Condominium Riverwalk)

This Grant of Easement Agreement is made as of _____, 2015, by and between THE IVORY TUSK CONDOMINIUM ASSOCIATION, INC., a Wisconsin nonprofit, nonstock corporation (“**Grantor**”) and the City of Milwaukee (“**City**” or “**Grantee**”).

RECITALS

A. Grantor is a nonstock, nonprofit corporation that is the condominium association for the **Ivory Tusk Condominium** (the “**Condominium**”), a condominium consisting of five condominium units and common elements located on certain real property situated along the Milwaukee River in the City of Milwaukee, State of Wisconsin, as more particularly described on **EXHIBIT A** attached hereto (the “**Property**”).

B. Pursuant to the terms of that certain Bill of Sale dated as of June 1, 2015, between Grantor and Grantee, Grantee has conveyed certain riverwalk improvements adjacent to the Property to Grantor and the parties now desire to enter into this Easement Agreement which shall be applicable to those newly conveyed riverwalk improvements together with existing riverwalk elements located on the Property (collectively, the “**Riverwalk Improvements**”). The area upon which the Riverwalk Improvements are located is legally described on the attached **EXHIBIT B** hereto (the “**Riverwalk Easement Area**”) located on and adjacent to the Property.

C. The parties hereto acknowledge that the Riverwalk Improvements are 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 and usage.

AGREEMENTS

NOW THEREFORE, in consideration of the above Recitals and the terms and conditions of the Agreement, Grantor and Grantee agree to the following:

1. Grant of Easement. Effective as of the Effective Date, Grantor hereby conveys to Grantee a nonexclusive easement upon and across the Riverwalk Improvements located within the Riverwalk Easement Area and, solely to the extent reasonably necessary to carry out the activities described in subparagraph (b) below for the following purposes:

(a) pedestrian access, for the benefit of the public, across the portion of the Riverwalk Improvements consisting of walkways, sidewalks or stairways in accordance with the terms of this Agreement;

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

c. installation and removal of holiday, seasonal or thematic decorations, banners, plantings and similar items within the Riverwalk Easement Area (collectively, the “Decorations”) by Grantee in accordance with the terms of this Agreement.

2. Effective Date. This Agreement shall be effective on _____ (the “Effective Date”).

3. Insurance. Throughout the term of this Agreement, Grantor shall maintain or cause to be maintained (a) comprehensive liability insurance, naming the Grantee as an additional insured, 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 Improvements located upon the Riverwalk Easement Area, sufficient to avoid all co-insurance provisions of the subject insurance policy and, at the option of Grantee, the aforesaid minimum amounts may be reviewed and increased or decreased every ten (10) years with any such adjustment being proportionate to the then current economic conditions but any resulting increase in coverage must be commercially reasonable and prudent based on coverages provided for other owners of similar portions of the Riverwalk System. 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.

4. Maintenance; Right of Entry. Grantor shall be responsible to maintain or cause to be maintained the portion of the Riverwalk Improvements located within the Riverwalk Easement Area in accordance with the maintenance standards set forth on **EXHIBIT C** attached hereto. Grantor shall undertake all necessary capital repairs and replacements to the Riverwalk Improvements when and as necessary. If Grantor or its designee fails to maintain the Riverwalk Improvements within the Riverwalk Easement Area in the condition required by this Agreement, Grantee may provide Grantor and said designee with a written notice setting forth the maintenance or repair work that Grantee reasonably determines has not been done. If, upon receiving such written notice, Grantor and/or its designee 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, upon thirty (30) days prior written notice to Grantor and its designee may perform such work and shall be reimbursed by Grantor for all reasonable costs incurred in performing such work. In exercising its right to maintain, repair and/or replace the Riverwalk Improvements, Grantee shall, to the extent both possible and practical, attempt to perform all necessary work from adjacent portions of the Riverwalk System and/or from the Milwaukee River so as to cause as little disruption or interference as reasonably practical to the Property and the operations of Grantor and any unit owners, tenants, licensees or occupants on

the Property. Grantee shall notify Grantor in advance of Grantee's need to enter upon the Riverwalk Easement Area.

5. Public Rights. Except as expressly provided herein, Grantor shall, at all times, make the walkway of the Riverwalk Improvements on the Riverwalk Easement Area available for use by members of the public, except for such times as such walkway must be closed for construction, maintenance, repair or replacement of the Riverwalk System, or the buildings and/or improvements adjacent to the Riverwalk Easement Area, to protect against unsafe conditions 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. Grantor shall have the exclusive right to install private docks and private boat slips anywhere along the dock wall appurtenant to the Property. Such additional private boat slips may be appurtenant to public or private dock systems and may be for the exclusive use of owners/occupants of any interest in or part of the Property as may be designated by Grantor, provided such docks and slips are in compliance with applicable laws. Grantor shall have the exclusive right to permit commercial vending and similar activities, including, without limitation, the right to place kiosks, push carts and similar temporary structures, carts or other similar items within and/or along the Riverwalk Easement Area, and to charge "rent", a user or license fee or similar charge provided that such activities do not unreasonably interfere with pedestrian traffic, comply with any applicable City ordinances and comply with item no. 2 of **EXHIBIT C** attached hereto.

6. Rules and Regulations. Grantee shall have the right to formulate reasonable rules and regulations regarding the use of the Riverwalk Improvements by the public that are uniform and consistent with rules and regulations promulgated by the Board of Business Improvement District No. 15 (the "**BID**") and applicable to those components of the Riverwalk System under the jurisdiction of that BID. 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 Improvements on the Riverwalk Easement Area. 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 Improvements by the public; provided, however, Grantor's rules and regulations shall not be inconsistent nor conflict with the terms of **EXHIBIT D** or any rules and regulations promulgated by Grantee. In the event of any such conflict, the terms of **EXHIBIT D** or the rules and regulations promulgated by Grantee shall control.

7. Decorations. Grantee shall have the right from time to time, and upon at least 72 hours prior written notice to a Grantor, to enter upon the New Riverwalk Improvements within the Riverwalk Easement Area to install and/or remove Decorations. Such installations and removals shall not materially interfere with the lawful use of the Property by Grantor or any unit owners, tenants, licensees or occupants of the Property and shall be at Grantee's sole expense.

8. Utilities. Grantor shall pay or cause to be paid for all electricity, water and other utilities used for lighting, cleaning and watering of flowers and other plant materials on the

Riverwalk Improvements within the Riverwalk Easement Area, including as such may be necessary for Decorations and as such may be used for maintenance and repairs to the Riverwalk Improvements within the Riverwalk Easement Area.

9. Alterations. Grantor shall not make any material structural alterations or modifications to the Riverwalk Improvements or make any changes to the color scheme of the Riverwalk Improvements without the prior written consent of Grantee, which shall not be unreasonably withheld. Further, Grantor shall not install any decorative elements or attach any fixtures to or upon the Riverwalk Improvements or upon the Riverwalk Easement Area without the prior written consent of Grantee, which shall not be unreasonably withheld. 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 Riverwalk Improvements without the prior written approval of the Grantor or its designee(s).

10. Assignment. Grantor expressly acknowledges that the rights granted to Grantee hereunder may be assigned in whole or in part to the BID and are exercisable by the BID. Except as set forth above, Grantee shall not assign this Agreement without the written consent of Grantor. Grantor shall not assign its rights under this Agreement without the written consent of Grantee, which consent shall not be unreasonably withheld conditioned or delayed. Upon any such assignment, the assigning party shall have no further rights or obligations under this Agreement.

11. Run with the Land. This Agreement shall run with the land, encumbering the Property and shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns. So long as Grantor or a permitted assignee remains obligated hereunder after any such conveyance, any party conveying all of its ownership interest in the Property, including, without limitation, condominium unit(s), shall be released from any and all liability hereunder.

12. Notices. 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:

The Ivory Tusk Condominium Association, Inc.
c/o Irgens Partners, LLC
648 N. Plankinton Avenue, Suite 200
Milwaukee, WI 53203

To Grantee:

Commissioner of City Development
City of Milwaukee
809 North Broadway
Milwaukee, WI 53202

With a copy to:

City of Milwaukee
City Attorney's Office
200 East Wells Street, Suite 800
Milwaukee, WI 53202
Attn: _____

13. Enforcement. 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.

14. Amendment. This Agreement may be amended only by a written instrument executed by Grantee and Grantor.

15. Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

16. No Joint Venture. No provision hereof shall be deemed to constitute the parties hereto as partners of one another or joint ventures of one another or in any way obligate any party hereto for the performance of any obligation of the other party hereto.

17. Authority: Whenever in this Agreement the consent or approval of the City is required or the discretion of the City may be exercised, the City's Commissioner of Development shall have the authority to provide such consent or approval or to exercise such discretion.

[Remainder of Page Left Intentionally Blank; Signatures on Next Page]

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands and seals on this _____ day of _____, 2015.

GRANTOR:

THE IVORY TUSK CONDOMINIUM
ASSOCIATION, INC.

By _____

Its: President

GRANTEE:

THE CITY OF MILWAUKEE

Tom Barrett, Mayor

James R. Owczarski, City Clerk

Countersigned:

Martin Matson, Comptroller

Approved as to form, content and execution this
_____ day of _____, 2015.

Assistant City Attorney

State of Wisconsin)
: SS
County of Milwaukee)

This instrument was acknowledged before me on _____, 2015, by Tom Barrett as Mayor of the City of Milwaukee.

[Seal]

()
Notary Public, State of Wisconsin
My commission _____

State of Wisconsin)
: SS
County of Milwaukee)

This instrument was acknowledged before me on _____, 2015, by James R. Owczarski as City Clerk of the City of Milwaukee.

[Seal]

()
Notary Public, State of Wisconsin
My commission _____

State of Wisconsin)
: SS
County of Milwaukee)

This instrument was acknowledged before me on _____, 2015, by _____ as President of The Ivory Tusk Condominium Association, Inc.

[Seal]

()
Notary Public, State of Wisconsin
My commission _____

This document was drafted by Thomas O. Gartner, Assistant City Attorney

1050-2015-103:214757

EXHIBIT A

Legal Description of the Property

Units 1, 2, 3, 4 and 5, together with said unit's undivided percentage interest in the common elements (and the exclusive use of the limited common elements appurtenant to said unit) all in Ivory Tusk Condominium, a condominium declared and existing under and by virtue of the Condominium Ownership Act of the State of Wisconsin and recorded by a Declaration as such condominium in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on December 21, 1999, as Document No. 7850437; as amended by First Amendment to Declaration of Ivory Tusk Condominium, recorded February 10, 2000 as Document No. 7872653, and Second Amendment to Declaration of Ivory Tusk Condominium, recorded March 27, 2013 as Document No. 10231296, said condominium being located in the City of Milwaukee, County of Milwaukee, State of Wisconsin on the real estate described in said Declaration and incorporated herein by this reference thereto.

Tax Key Nos.: 397-033-1000; 397-033-2000; 397-033-3000; 397-033-4000; 397-033-5000

ADDRESS: 101 W. Wisconsin Avenue

EXHIBIT B

Legal Description of the Riverwalk Easement Area

EXHIBIT C

RIVERWALK

Maintenance and Operation Criteria First Class Facility

1. Except as expressly provided in this Agreement, open for use at all times except as it relates to adverse possession, and times of construction, maintenance and repair for the Riverwalk, the adjacent Edison Street and/or the buildings and/or improvements adjacent to Edison Street.
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).
 - Replace burned out luminaires as necessary
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 (alewives, etc.) 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, including dock wall, semi-annually and as necessary if collisions or other problems occur.

EXHIBIT D

Riverwalk Rules and Regulations

The rules and regulations shall be in a form consistent with rules and regulations promulgated for similar riverwalks located in BID 15.

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