

EXHIBIT D
AGREEMENT FOR PEDESTRIAN EASEMENT

This Easement is dated as of the _____ day of _____, _____, (this “Easement”), involving Miller Brewing Company (Miller) and the City of Milwaukee (City), a Wisconsin Municipal Corporation.

RECITALS

A. Miller is the owner of certain real property located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, more particularly described on EXHIBIT A attached hereto and made a part hereof. (Property)

B. Pursuant to City Common Council Resolution File Number 011673, adopted on _____, an easement is to be granted to the City allowing the use of sidewalk for public usage on Property of Miller Brewing Company at 4315-4429 and 4430 West State Street.

C. The sidewalk is situated on a certain portion of Property, more particularly described on EXHIBIT B and shown on EXHIBIT C attached hereto and made a part hereof (The “Easement area”).

D. It is the desire of the parties hereto that Miller grant to the City a permanent, non-exclusive easement for purposes of the public use of the sidewalk on, over and across the Easement area in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms and provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, IT IS AGREED:

I. Easement. Miller hereby grants and conveys to the City a permanent, non-exclusive easement on, over and across the Easement area for the public use of the sidewalk.

II. Construction. City, by a contractor, shall construct sign bases in the public way of West State Street on behalf of Miller. The City, by a contractor, shall construct the public sidewalk in the Easement area for public use. This sidewalk is to be installed in accordance with plans and specifications approved by the City Engineer (CE). Said sidewalk is to be available to the public at all times.

III. Maintenance.

A. Miller accepts all responsibility for the maintenance of the sidewalk in Easement area including the removal of snow and ice (Chapter 116-8 of the Milwaukee Code of Ordinances), to repair, reconstruction or replacement and removal of the sidewalk to the satisfaction of the Commissioner of Public Works (CPW).

B. The City contractor will secure all necessary permits such as, but not limited to, those issued by the Department of Public Works (DPW) and Department of City Development prior to construction activities. The sidewalk shall be designed and constructed in accordance with the construction standards and regulations approved by the CPW.

C. City reserves the right to enter upon the area adjacent to or under the sidewalk in easement for the purpose of repairing, maintaining, constructing or reconstructing any City facilities which are in said area or for any other reason dictated by public interest.

D. Any governmental agencies and utility companies having the right to install and maintain facilities within the public way shall continue to enjoy these rights.

E. City will reconstruct usual and customary portions of the sidewalk in Easement area as needed following any repair, maintenance, construction or reconstruction of the City facilities by the City.

F. Any obstructions placed within the easement area, i.e. bollards, planters, etc. are subject to the approval of the CE.

IV. Liability. Miller agrees to save the City harmless from any and all claims, demands, causes of action or obligations, whatsoever, which may or shall arise in connection with the installation, operation, maintenance, removal or use by the public of the sidewalk in easement except those claims resulting from the negligence of officers, employees or agents of the City.

V. Removal. The CPW has the authority and is directed to prepare a written notification to Miller to remove within 30 days any portion of the sidewalk that is found to be detrimental to the public use of the area. Said notice to be served only if negotiations with the to affect remedial modifications fail to resolve the detrimental conditions.

VI. Covenants – Running With Land. This Easement and the terms and provisions hereof shall be deemed “covenants running with the land” and shall be binding upon and encumber the Easement area.

VII. Assignment. City shall not assign its rights under this Easement without the prior written consent of Miller which consent may not be unreasonably withheld.

VIII. Successors and Assigns. This Easement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. This Easement is between the parties hereto, and no other persons or entities shall be entitled to enforce any of the terms, covenants or conditions of this Easement.

IX. Amendment. This Easement shall not be modified or amended except in writing, executed and delivered by each of the parties hereto.

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

In Witness Whereof, This Agreement has been executed as of the date first above written.

IN THE PRESENCE OF:

CITY OF MILWAUKEE

Mayor

City Clerk

COUNTERSIGNED

Comptroller

IN THE PRESENCE OF:

MILLER BREWING COMPANY

Martin Costello
Vice President, Engineering

Approved as to form and execution
this _____ day of _____, 2002

Special Deputy City Attorney

Approved as to content this
_____ day of _____, 2002

Special Deputy City Attorney

JJM:dle
4/8/02

(ENGINEERS/PEDESTRIAN EASEMENT-MILLER-RS)