

**306 EAST PLEASANT STREET
RIVERWALK DEVELOPMENT AGREEMENT**

This Agreement is made this ____ day of _____, 2010, by and among the City of Milwaukee (the "City"), the Redevelopment Authority of the City of Milwaukee ("RACM") and Pleasant & Commerce, Inc. (the "Developer").

WITNESSETH:

Whereas, The Developer is the owner of certain property located at 306 East Pleasant Street, Milwaukee, Wisconsin (the "Property," as more particularly described on Exhibit A); and

Whereas, The Property fronts on the Milwaukee River; and

Whereas, The Developer wishes to undertake construction of a riverwalk along the Property (the "Riverwalk Improvement") which will comply with the Milwaukee Riverwalk Design Guidelines (attached hereto as Exhibit B), a dockwall on the bank of the Milwaukee River (the "Dockwall Improvement") and a public access connection of the Riverwalk Improvement to adjacent public rights of way (the "Public Access Connection"). The Riverwalk Improvement and the Public Access Connection are more particularly described on Exhibit C attached hereto and will be adjacent to Developer's building on the Property; and

Whereas, Developer will maintain and operate the Riverwalk Improvement, including making the Riverwalk Improvement available for use by members of the general public; and

Whereas, The Riverwalk Improvement will constitute a portion of the overall riverwalk system which is intended to cover a substantial portion of the Milwaukee River extending from the harbor entrance to the former North Avenue Dam area; and because of the Developer's willingness to make the Riverwalk Improvement available to members of the public, the Riverwalk Improvement will serve the public purpose of affording members of the public the opportunity to more fully enjoy the valuable river resource; and

Whereas, Because of the public purpose served by the construction and operation of the Riverwalk Improvement, RACM is willing to make a grant to the Developer in an amount not to exceed \$1,081,765 to be used by the Developer to fund up to 70% of the cost of constructing the Riverwalk Improvement, 100% of the cost of constructing the Public Access Connection and up to 50% of the cost of constructing the Dockwall Improvement; and

Whereas, the City, via Common Council Resolution File No. _____ adopted _____, has approved this Agreement and authorized proper officials of the City to execute this Agreement; and

Whereas, RACM, via Resolution No. _____ adopted _____ has approved this Agreement and authorized proper officers of RACM to execute this Agreement on RACM's behalf; and

Whereas, the Developer has approved this Agreement;

Now, Therefore, the City, RACM and the Developer, in consideration of the premises and the mutual promises and undertakings hereinafter contained, mutually agree and covenant as follows:

**I.
RACM ACTIVITIES**

A. Subject to the terms and conditions hereinafter set forth, and provided RACM receives the City Grant (as defined below), RACM grants to the Developer an amount not to exceed 70% of the cost of construction of the Riverwalk Improvement, 100% of the cost of the Public Access Connection and 50% of the cost of construction of the Dockwall Improvement, but in no case exceeding, in the aggregate, \$1,081,765 (the "RACM Grant"). The RACM Grant is to be disbursed to the Developer, subject to satisfaction of the conditions set forth in Section B, and is to be used solely to reimburse the Developer for costs incurred in the construction of the Riverwalk Improvement, the Public Access Connection and the Dockwall Improvement (collectively, the "Improvements").

B. The RACM Grant shall be disbursed to the Developer upon the completion of the Improvements provided the following requirements set forth below at numbers 1 through 7 are met:

1. The Developer has received all federal, state and local agency approvals, including but not limited to the United States Army Corps of Engineers, the Wisconsin Department of Natural Resources, and the City's Board of Harbor Commissioners, and has complied with all applicable federal, state and local laws, including, but not limited to, the Americans with Disabilities Act, which are necessary to undertake construction of the Improvements.

2. The Commissioner of the Department of City Development ("Commissioner") has approved the final plans and specifications for the Improvements.

3. The Commissioner has approved the final construction budget for the Improvements a copy of which is attached as Exhibit E.

4. The Commissioner has approved as to form, content, terms and parties, all the contracts entered into by the Developer for the preparation of plans and specifications for the Improvements.

5. The Commissioner has approved as to form, content, terms and parties, all contracts and subcontracts entered into by the Developer to undertake the construction of the Improvements, which approval shall not unreasonably be withheld.

6. The Improvements' architect or engineer has certified in writing to the Commissioner that the Improvements have been completed in accordance with the Commissioner-approved plans and specifications and the Improvements costs have been fully substantiated by the Developer on appropriate AIA forms such as AIA Document G702.

7. RACM and the City have received a grant of an easement across the Riverwalk Improvement in a form as set forth on Exhibit D.

II. CITY ACTIVITES

A. The City shall make available to RACM an amount up to \$1,081,765 (the "City Grant") in order to allow RACM to supply the Developer with the RACM Grant for reimbursement of up to 70% of the costs of constructing the Riverwalk Improvement, 100% of the cost of constructing the Public Access Connection and 50% of the costs of constructing the Dockwall Improvement.

III. DEVELOPER ACTIVITIES

A. The Developer shall:

1. Prepare, or have prepared, final plans and specifications for the Improvements subject to the approval by the Commissioner as provided in Section I.B.2.

2. Prepare, or have prepared, a final construction budget for the Improvements for approval by the Commissioner as provided in Section I.B.3.

3. Obtain and pay for all governmental permits and approvals necessary to construct the Improvements.

4. Prepare, or have prepared, all contracts and subcontracts for the design and construction of the Improvements, subject to the approval of the Commissioner.

5. Comply with all applicable federal, state and local laws.

6. Construct the Improvements in accordance with the approved plans and specifications.

7. Execute the EBE Agreement (in the form attached as Exhibit F) and submit same to the Commissioner for approval.

8. Submit a Certificate of Insurance to the Commissioner for approval.

9. Substantially complete the Riverwalk Improvements, the Public Access Connection and the Dockwall Improvement within one year of the date hereof. The date set

forth herein for completion of the Improvements shall hereinafter be the "Completion Deadline." Notwithstanding the foregoing, in the event Developer encounters construction delays beyond the Developer's reasonable control, other than delays caused by the fault or negligence of Developer (an "Excusable Delay") and Developer provides the City and RACM with a notice describing the cause, nature and duration of the Excusable Delay, then the Completion Deadline shall automatically be extended for a period equal to the duration of the Excusable Delay.

10. Own, operate and maintain the Riverwalk Improvement, including undertaking all necessary capital repairs and replacements, as more fully provided in the Grant of Easement Agreement. The Riverwalk Improvement shall be operated and maintained in accordance with customary and recognized standards for a first class commercial facility. The minimum maintenance standards are set forth in the Grant of Easement attached as Exhibit D. The Developer reserves the right to periodically (i.e., not more than once a year for not more than 24 hours at a time) close off the Riverwalk Improvement in order to prevent the acquisition of any adverse or prescriptive rights in the Riverwalk Improvement.

11. When the Improvements are completed, provide the Commissioner with a complete set of "As Built" plans and specifications covering same.

IV. CHANGES

No material changes in the type, placement or use of construction materials, as indicated on the approved plans and specifications, shall be made by the Developer in the approved plans and specifications or in the manner in which the Developer is obligated to operate and maintain the Riverwalk Improvement, without prior written consent of the Commissioner. Any changes approved by the Commissioner shall not increase the RACM Grant unless such increase has been approved by RACM.

V. INSPECTIONS

A. Developer and its contractor or subcontractor shall be solely responsible for the completion of the Improvements. Nothing contained in this paragraph shall create or affect any relationship between the City or RACM, on the one hand, and any contractor or subcontractor employed by Developer, on the other hand, in construction of the Improvements.

B. RACM may make reasonable inspections, including but not limited to inspections on behalf of RACM by the City Department of Public Works, Department of City Development and Department of Neighborhood Services, of the Riverwalk Improvement during the period of construction thereof, provided that such inspections do not interfere with the progress of the work. In order to allow RACM and the City agencies to undertake these inspections in a meaningful fashion, the Developer shall provide RACM with a complete set of plans and specifications in respect of the Improvements as well as any change orders and shop drawings relating thereto.

C. In the event that the Commissioner determines, as a result of such inspections, that the Developer's contractor or subcontractors are not constructing any of the Improvements in accordance with the approved plans and specifications, the Commissioner shall promptly inform the Developer of such noncompliance and the Developer shall, as soon as reasonably possible, require its contractor or subcontractors to remedy such noncompliance. The Commissioner may withhold payment of the RACM Grant until such corrective measures are completed and the noncompliance cured in a satisfactory manner.

VI. RECORDS

A. The Developer shall keep accurate, full and complete books and accounts with respect to the cost of constructing the Improvements, consistent with the approved budget, and shall include a provision in all of its contracts requiring its contractors and their subcontractors to do the same. All such books and accounts shall be maintained in accordance with generally accepted accounting principles consistently applied, and shall be kept for a period of six years subsequent to the completion of the Improvements.

B. The City Comptroller, on behalf of RACM, shall have the right, upon reasonable notice to the Developer, its contractor or subcontractors, as the case may be, to examine the books, records and accounts of the Developer, its contractor or subcontractors, which relate to the Improvements, during normal hours of business.

C. After substantial completion of the Improvements, the Developer shall submit to the Commissioner a complete set of "As Built" plans and specifications as well as a copy of all approved shop drawings.

VII. HUMAN RESOURCES REQUIREMENTS

In contracting for the construction of the Improvements, the Developer shall use its best efforts, and documents such efforts in a manner satisfactory to the Commissioner, to comply with a 25% City Emerging Business Enterprise requirement (pursuant to the terms of the Agreement attached hereto as *Exhibit F*) as established by the Commissioner in accordance with Chapter 360, Milwaukee Code of Ordinances ("MCO") and further comply with the requirement that 40% of the worker hours in connection with construction of the Improvements be performed by residents of the City of Milwaukee as provided in Section 309-41-2 of the MCO.

VIII. TERM

This Agreement shall terminate upon the completion of construction of the Improvements and payment to Developer of the RACM Grant. The Grant of Easement for public access, in the form attached hereto as Exhibit D, shall be a permanent access easement running with the land on which it is granted.

IX.

DEFAULT

If the Developer has not substantially completed any Phase of the Improvements by the Completion Deadline applicable thereto, and the failure to substantially complete was either the Developer's fault or was for reasons substantially within the Developer's control, RACM and the City shall have the right to reduce the amount of the RACM Grant by an amount equal to \$400 for each day, up to 90 days, substantial completion of the Riverwalk Improvement is so delayed, plus \$600 for each day beyond 90 days but less than 180 days substantial completion of the Riverwalk Improvement is so delayed and \$1,000 for each day thereafter substantial completion of the Riverwalk Improvement is so delayed.

X. CONFLICT OF INTEREST

No member, officer or employee of RACM, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

XI. WRITTEN NOTICES

Any written notice required to be sent under this Agreement shall be sent to the following:

For RACM:

Redevelopment Authority of the City of Milwaukee
809 North Broadway
Milwaukee, WI 53202
Attn: Executive Director/Secretary

For the City:

City of Milwaukee
Department of City Development
809 N. Broadway
Milwaukee, WI 53202
Attn: Commissioner

For the Developer:

Attention:

**XII.
ASSIGNMENT**

No party to this Agreement may assign any of its interest or obligations hereunder without the written consent of the other party, except that:

1. RACM and the City may each assign its respective rights hereunder to the other without the consent of Developer; and
2. The Developer may assign its obligations with respect to the maintenance of the Riverwalk only to the condominium association on the Property at any time after the Commissioner has reviewed and approved the Condominium Association Bylaws.
3. The Developer may grant a collateral assignment of its rights hereunder to any lender providing construction financing for improvements located on the Property.

In Witness Whereof, the parties have executed this Agreement on the day and year first above written.

REDEVELOPMENT AUTHORITY OF
THE CITY OF MILWAUKEE

Executive Director/Secretary

CITY OF MILWAUKEE

By: _____
Tom Barrett, Mayor

By: _____
Ronald Leonhardt, City Clerk

COUNTERSIGNED

By: _____
W. Martin Morics, Comptroller

PLEASANT & COMMERCE, INC.

By: _____

Its: _____

Approved as to form and execution
this ____ day of _____, 2010.

Assistant City Attorney

1050-2010-2212:161728

KPS/ml

EXHIBIT A
to
Riverwalk Development Agreement
Legal Description of the Property at 306 East Pleasant Street

DESCRIPTION AS SURVEYED:

THAT PART OF LOT 2 IN SCHROEDER AND TROSTEL'S SUBDIVISION, AND THAT PART OF VACATED NORTH COMMERCE STREET, IN THE SOUTHEAST ¼ AND THE NORTHEAST ¼ OF SECTION 20 AND THE SOUTHWEST ¼ AND THE NORTHWEST ¼ OF SECTION 21, TOWNSHIP 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, COUNTY OF MILWAUKEE, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST ¼ SECTION OF SECTION 21, TOWNSHIP 7 NORTH, RANGE 22 EAST; THENCE ALONG THE WEST LINE OF THE NORTHWEST ¼ SECTION LINE OF SECTION 21, N 00°33'14" W, 25.89 FEET TO A POINT IN THE WEST LINE OF CERTIFIED SURVEY MAP NO. 6882 AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE S 48°14'16" E, ALONG THE SOUTHWESTERLY LINE OF SAID CERTIFIED SURVEY MAP 158.89 FEET; THENCE S 40°40'58" E, 123.07 FEET ALONG THE SAID SOUTHWESTERLY LINE TO THE ESTABLISHED DOCK LINE ON THE MILWAUKEE RIVER; THENCE S 30°23'57" W, 313.96 FEET ALONG SAID DOCK LINE TO NORTHEASTERLY LINE OF EAST PLEASANT STREET; THENCE ALONG SAID NORTHEASTERLY LINE OF EAST PLEASANT STREET THE FOLLOWING COURSES; N 54°46'09" W, 36.17 FEET; THENCE S 35°13'51" W, 5.65 FEET; THENCE N 54°46'09" W, 340.05 FEET THENCE N 08°36'29" W, 37.45 FEET TO THE INTERSECTION OF THE NORTHEASTERLY LINE OF EAST PLEASANT STREET AND THE SOUTH LINE OF NORTH COMMERCE STREET; THENCE ALONG SAID SOUTH LINE THE FOLLOWING COURSES: NORTHEASTERLY 94.50 FEET ALONG THE ARC OF A CURVE DEFLECTING TO THE LEFT HAVING A CHORD BEARING AND DISTANCE OF N 54°02'42" E, 94.39 FEET AND A RADIUS OF 566.00 FEET; THENCE NORTHEASTERLY 47.28 FEET ALONG THE ARC OF A CURVE DEFLECTING TO THE LEFT HAVING A CHORD BEARING AND DISTANCE OF N 43°31'00" E, 47.18 FEET AND A RADIUS OF 211.69 FEET; THENCE N 37°48'48" E, 209.61 FEET TO THE NORTHWEST CORNER OF LOT 2 OF SCHROEDER AND TROSTEL'S SUBDIVISION ALSO BEING THE NORTHWESTERLY CORNER OF CERTIFIED SURVEY MAP 6882; THENCE S 48°14'16" E, 52.18 FEET ALONG THE SOUTHWESTERLY LINE OF SAID CERTIFIED SURVEY MAP TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 124,606 SQ. FT. OR 2.86 ACRES OF LAND, MORE OR LESS.

EXHIBIT B
to
Riverwalk Development Agreement
Riverwalk Design Guidelines
City of Milwaukee

1. Building facades should contain architectural features such as doors and windows, which improve their appearance and provide a pleasant pedestrian environment.
2. Site features that detract from the use and redevelopment of the river's edge will be discouraged. Features such as blank walls; chain link fencing, barbed razor or concertina wire; utility doors and staircases; service drives; loading docks; parking areas; outdoor storage; electrical or mechanical equipment; trash containers or other building maintenance facilities or equipment; ventilator exhausts; and concrete road barriers and guardrails, if required by necessity shall be screened from river areas.
3. Where soft river edge still exists along the Middle River, preserve natural riverbanks and historic elements of the built environment where feasible.
4. Where historic buildings exist along the River, preserve those historic elements of the built environment.
5. RiverWalk landscaping should include native species of trees, plants, and shrubs with trees planted, in order of preference, in the ground, in box-outs with protective guards and grates, or in planters.
6. RiverWalk landscaping should emphasize plant species, which provide year-round interest.
7. RiverWalks should be on the land side of the River where feasible. To provide space for amenities such as benches, planters, light poles, trash containers, trees and railings, RiverWalks should typically be 12 feet wide at 0 to 5 percent slope with a minimum 8 foot unobstructed corridor and be open to the general public 24 hours a day at no charge.
8. If land-side RiverWalks are not feasible, walkways that float on or extend over the water may be considered if they do not obstruct navigation, and do not have permanent roofs, and match the high quality of permanent RiverWalks.
9. Special amenity/activity areas are encouraged but shall be limited to a maximum of 3,200 square feet, must be open to the general public, shall not block pedestrian movements on the RiverWalk and shall not encroach into navigable waters.
10. RiverWalks must be passable year-round and be handicapped accessible.
11. Walkways, seating areas and other high traffic areas should complement adjacent buildings and neighborhoods, be aesthetically pleasing and pedestrian-friendly, and should be paved with brick, tile, stone, decorative concrete or other attractive hard material; avoiding large expanses of slab concrete or asphalt.
12. Lighting units shall be Milwaukee Harp fixtures providing illumination in accordance with standards recommended by the Illuminating Engineering Society of North America (IES) and approved by the Commissioner of Public Works]
13. All segments of the RiverWalk shall be designed to connect to future portions of the RiverWalk system or to connect to adjacent portions of the existing RiverWalk system.
14. Structures built within 50 feet of bridges must not obstruct bridge maintenance.

15. Floating RiverWalks will be permitted under bridges if a minimum 7-foot clearance can be maintained and if the connection will not obstruct navigation or bridge operations.
16. Finger piers will only be permitted where they will not obstruct navigation or do not extend more than 40 feet from the dockline.
17. Temporary moorings (less than 4 hours) for water taxis and tour boats will be permitted riverward of any amenity/activity area subject to navigation restrictions.
18. Parking adjacent to the River is strongly discouraged. Parking areas, service drives, loading docks and outdoor storage areas shall provide an appropriate buffer of at least 5 feet in width, meeting the standards of Section 295-75 of the Code and located between said parking area and the river/RiverWalk. Parking areas shall be set back from the dockwall at least 25 feet and shall also devote at least 3.33 percent of their area to interior landscaping.
19. Temporary RiverWalks are meant to provide connections between existing and/or proposed RiverWalks when the area of the connection is not ready for development of a full-scale RiverWalk. Such connections may be approved at a lower standard than permanent RiverWalks if the proponent can demonstrate that the proposed temporary RiverWalk is truly temporary, that the temporary RiverWalk will not provide direct pedestrian access to the property on which it is located or attached or be utilized in any manner by that property including boat moorings, docks, tables or chairs, and the design of the temporary RiverWalk is generally consistent with the intent of these design guidelines.

EXHIBIT C

to

**Riverwalk Development Agreement
Description of Riverwalk Improvement**

- Riverwalk
- Deckwall
- Public Access (Pleasant)
- Central Court
- Public Access (Commerce)

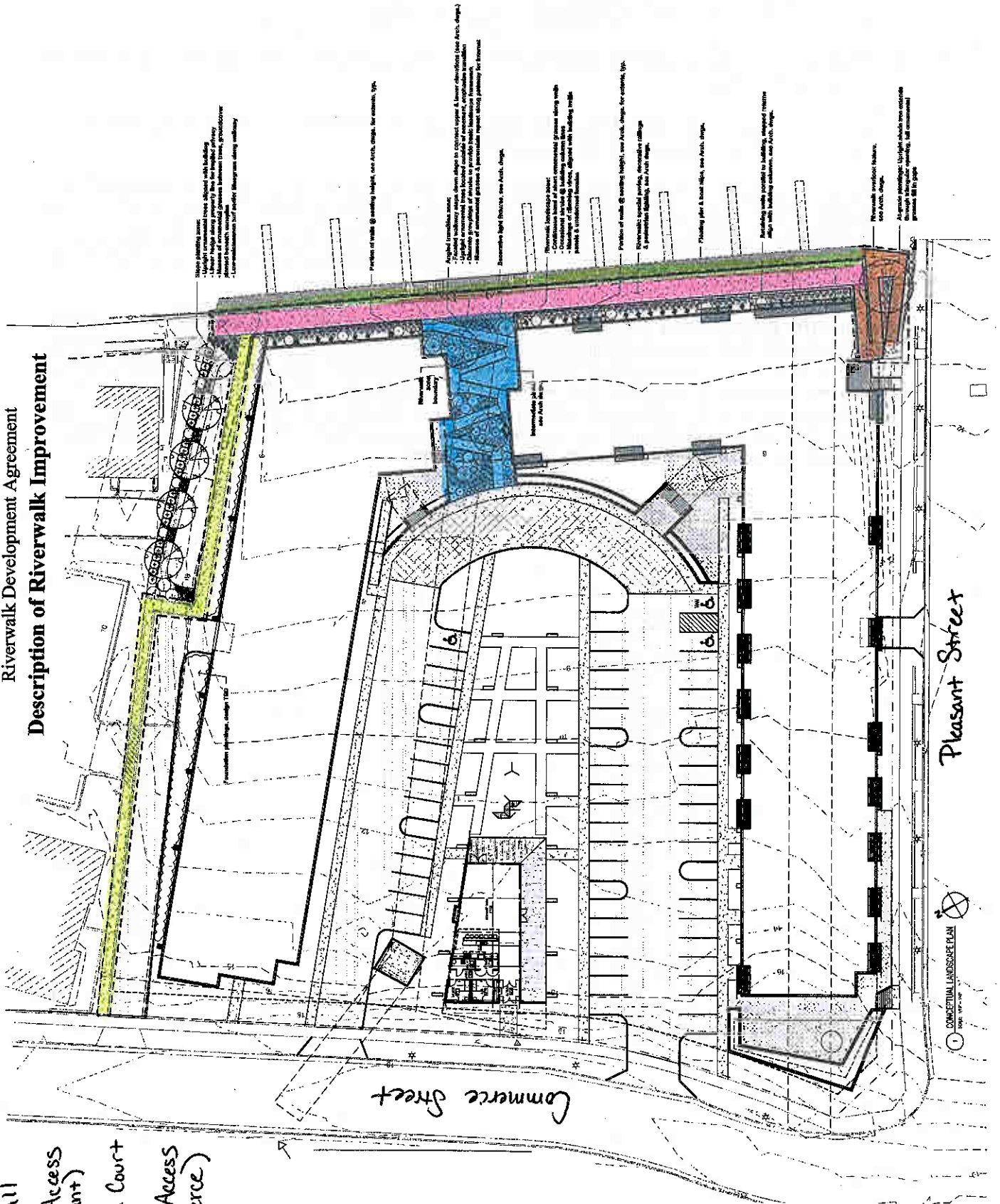


EXHIBIT D
To
Riverwalk Development Agreement
Grant of Easement Agreement
(Riverwalk)

This Grant of Easement Agreement is made as of _____, 2010, by and among Pleasant & Commerce, Inc. (“Grantor”) and the City of Milwaukee (“Grantee”).

Whereas, Grantor is the owner of 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

Whereas, Pursuant to the terms of a Riverwalk Development Agreement (“Development Agreement”) by and among Grantor and Grantee, a certain riverwalk improvement as identified as Exhibit C to the Development Agreement and on Exhibit 2 attached hereto (the “Riverwalk Improvement”) will be constructed on a portion of the Property and will become part of the Property; and

Whereas, 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

Whereas, The Development Agreement imposes upon Grantor certain responsibilities with respect to the development, maintenance and repair of the Riverwalk Improvement; and

Whereas, In consideration of payment for a portion of the construction costs of the Riverwalk Improvement, 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.

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 conveys to Grantee, upon completion of the Riverwalk Improvement or at any time thereafter, a nonexclusive easement upon and across the Riverwalk Improvement and, subject to the limitations set forth in Paragraph 3 of this Agreement 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 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 walkway shall exclude any vendor or other commercial activities or operations not expressly permitted by Grantor; and

(b) 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; and

(c) 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.

Grantor shall provide Grantee with a certificate(s) of insurance, naming the Grantee as an additional insured for purposes of this Agreement, and providing that the insurance company will furnish the Grantee with a thirty (30) days written notice of cancellation, non-renewal, or material change.

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 66.0627, Stats. provisions. 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. 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. 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).

8. 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.

9. This Agreement is a permanent 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. Either Grantee may, at its option, upon completion of the Riverwalk Improvement or at any time thereafter, assign its rights under this Agreement to the other Grantee.

10. 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 Grant of Easement Agreement to the condominium association(s) on the Property at any time without Grantee's consent. After such assignment, Grantor shall be released from any further liability under the Grant of Easement Agreement.

11. 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:

Attention:

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

12. 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.

13. This Agreement may be amended only by a written instrument executed by both Grantees and by Grantor.

In Witness Whereof, the Grantor and Grantee have hereunto set their hands and seals on this ____ day of _____, 2010.

**GRANTOR:
PLEASANT & COMMERCE, INC.**

By: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

This instrument was acknowledged before me on _____, 2010 by _____, the _____ of Pleasant & Commerce, Inc..

Notary Public, State of Wisconsin
My commission: _____

**GRANTEE:
CITY OF MILWAUKEE**

By: _____
Tom Barrett, Mayor

By: _____
Ronald D. Leonhardt, City Clerk

Countersigned:

W. Martin Morics, Comptroller

Signatures of Tom Barrett, Ronald D. Leonhardt and W. Martin Morics authenticated this ____ day of _____, 2010.

Kevin P. Sullivan
Assistant City Attorney
State Bar No. 1005718

1050-2010-2212:161728
KPS/ml

EXHIBIT 1
to
Grant of Easement
Legal Description of the Property

DESCRIPTION AS SURVEYED:

THAT PART OF LOT 2 IN SCHROEDER AND TROSTEL'S SUBDIVISION, AND THAT PART OF VACATED NORTH COMMERCE STREET, IN THE SOUTHEAST ¼ AND THE NORTHEAST ¼ OF SECTION 20 AND THE SOUTHWEST ¼ AND THE NORTHWEST ¼ OF SECTION 21, TOWNSHIP 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, COUNTY OF MILWAUKEE, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST ¼ SECTION OF SECTION 21, TOWNSHIP 7 NORTH, RANGE 22 EAST; THENCE ALONG THE WEST LINE OF THE NORTHWEST ¼ SECTION LINE OF SECTION 21, N 00°33'14" W, 25.89 FEET TO A POINT IN THE WEST LINE OF CERTIFIED SURVEY MAP NO. 6882 AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE S 48°14'16" E, ALONG THE SOUTHWESTERLY LINE OF SAID CERTIFIED SURVEY MAP 158.89 FEET; THENCE S 40°40'58" E, 123.07 FEET ALONG THE SAID SOUTHWESTERLY LINE TO THE ESTABLISHED DOCK LINE ON THE MILWAUKEE RIVER; THENCE S 30°23'57" W, 313.96 FEET ALONG SAID DOCK LINE TO NORTHEASTERLY LINE OF EAST PLEASANT STREET; THENCE ALONG SAID NORTHEASTERLY LINE OF EAST PLEASANT STREET THE FOLLOWING COURSES; N 54°46'09" W, 36.17 FEET; THENCE S 35°13'51" W, 5.65 FEET; THENCE N 54°46'09" W, 340.05 FEET THENCE N 08°36'29" W, 37.45 FEET TO THE INTERSECTION OF THE NORTHEASTERLY LINE OF EAST PLEASANT STREET AND THE SOUTH LINE OF NORTH COMMERCE STREET; THENCE ALONG SAID SOUTH LINE THE FOLLOWING COURSES: NORTHEASTERLY 94.50 FEET ALONG THE ARC OF A CURVE DEFLECTING TO THE LEFT HAVING A CHORD BEARING AND DISTANCE OF N 54°02'42" E, 94.39 FEET AND A RADIUS OF 566.00 FEET; THENCE NORTHEASTERLY 47.28 FEET ALONG THE ARC OF A CURVE DEFLECTING TO THE LEFT HAVING A CHORD BEARING AND DISTANCE OF N 43°31'00" E, 47.18 FEET AND A RADIUS OF 211.69 FEET; THENCE N 37°48'48" E, 209.61 FEET TO THE NORTHWEST CORNER OF LOT 2 OF SCHROEDER AND TROSTEL'S SUBDIVISION ALSO BEING THE NORTHWESTERLY CORNER OF CERTIFIED SURVEY MAP 6882; THENCE S 48°14'16" E, 52.18 FEET ALONG THE SOUTHWESTERLY LINE OF SAID CERTIFIED SURVEY MAP TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 124,606 SQ. FT. OR 2.86 ACRES OF LAND, MORE OR LESS.

EXHIBIT 2

to

**Riverwalk Easement Agreement
Description of Riverwalk Improvement**

Riverwalk Easement Area

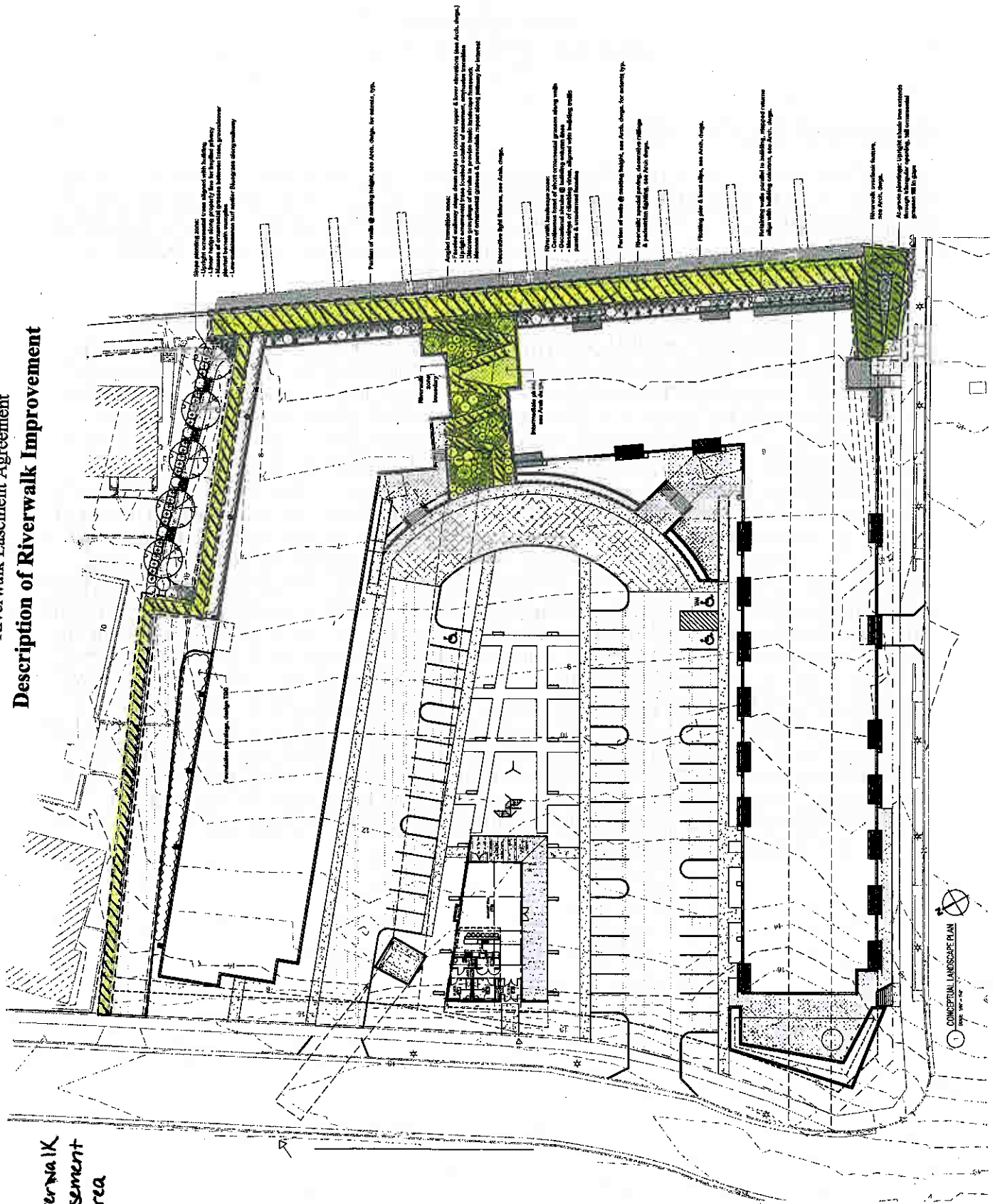


EXHIBIT 3
To
Grant of Easement
Maintenance Standards for the Riverwalk Improvement

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 an eight foot wide clear path throughout the Riverwalk for the passage of pedestrians at all times the Riverwalk is open.

EXHIBIT E

to

Riverwalk Development Agreement

Riverwalk Improvement Budget and City Cost Sharing

	Length	City Share Maximum (per linear footage)	Estimated Total Cost	Estimated City Share	Estimated City Share (%)
Riverwalk	327 linear feet	\$ 750,792	\$ 594,448	\$ 416,114	70%
Dockwall	327 linear feet	\$ 300,186	\$ 574,361	\$ 287,180	50%
Public Access (Pleasant St.)		\$ 209,011	\$ 209,011	\$ 209,011	100%
Central Court (Commerce St.)		\$ 111,335	\$ 159,050	\$ 111,335	70%
Public Access (Commerce St.)		\$ 58,125	\$ 58,125	\$ 58,125	100%
TOTAL			\$ 1,594,995	\$ 1,081,765	

EXHIBIT F
To
Riverwalk Development Agreement

**EMERGING BUSINESS ENTERPRISE AGREEMENT
FOR
THE RIVERWALK IMPROVEMENT**

This Emerging Business Enterprise Agreement is entered into by and between the CITY OF MILWAUKEE (hereinafter the "CITY"), and PLEASANT & COMMERCE, INC. (hereinafter "DEVELOPER").

WHEREAS, the aforementioned parties to this Agreement acknowledge and understand that this Agreement shall become part of any development and/or financing agreement to be signed by the aforementioned parties.

WHEREAS, DEVELOPER acknowledges that the CITY have established policies regarding the utilization of Emerging Business Enterprises ("EBEs") which are consistent with Chapter 360 of the Milwaukee Code of Ordinances (Copy available upon request).

WHEREAS, DEVELOPER agrees that the provision of the above-referenced offer was conditioned upon the DEVELOPER and its agents agreeing to reach a requirement of 18% EBE participation in the construction of said Riverwalk Improvement (hereinafter "PROJECT").

I. DEFINITIONS

A. EMERGING BUSINESS ENTERPRISE ("EBE") is a small business concern that is owned, operated and controlled by one or more individuals who are at a disadvantage, as defined in Chapter 360 of the Milwaukee Code of Ordinances. The individuals must have day-to-day operational and managerial control, interest in capital, financial risks and earnings commensurate with the percentage of their ownership. Emerging Business Enterprises are certified as such by the City of Milwaukee Certification Program. **It is important to note that those businesses that were certified under the old name (Disadvantaged Business Enterprise (DBE)) will continue to qualify for the program.**

B. JOINT VENTURE is an association of two (2) or more persons or businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and/or knowledge.

EMERGING BUSINESS ENTERPRISE PROGRAM

II. The DEVELOPER shall enter into a EBE Agreement requiring the DEVELOPER in developing and constructing the PROJECT, to utilize Emerging Business Enterprises, as defined in Chapter 360, Milwaukee Code of Ordinances, (“EBEs”) for an amount equal to 25% of the total PROJECT costs deemed eligible pursuant to EBE guidelines.

A. Demonstrable efforts, when exercised by the DEVELOPER in conjunction with the PROJECT, is defined as DEVELOPER completing the following activities:

1. Advertise in general circulation and trade association media, as well as in community newspapers regarding contracting and subcontracting opportunities. Advertising in the Daily Reporter and two other publications shall be the minimum acceptable level of performance (**Exhibit A**).

2. Provide interested EBEs and the agencies listed in **Exhibit B**, with adequate information about PROJECT plans, specifications, and contract/subcontract requirements at least two (2) weeks prior to the contract bidding process.

3. Submit **EBE Participation Form A (Exhibit 5)** to EBEP. This form must be submitted with the prime contractor’s bid.

4. Conduct pre-bid conferences and a pre- bid walk-through two (2) weeks in advance of the contract bid date.

5. Provide written notice to all pertinent construction trades and professional services EBEs listed in the current City of Milwaukee Directory, soliciting their services in sufficient time (at least 2 weeks) to allow those businesses to participate effectively in the contract bidding process. To identify EBEs for the PROJECT, utilize the current *Official City of Milwaukee EBE Directory* published by the City of Milwaukee Emerging Business Enterprise (EBE) Program. The directory can be accessed on-line at:

www.milwaukee.gov/ebe

Follow-up with EBEs who show an interest in the PROJECT during the initial solicitation process (**See Exhibit 1 EBE Solicitation Form**).

6. Select trade and professional service areas for EBE awards wherein the greatest number of EBEs exist to perform the work. Thereby, the likelihood of contracts or subcontracts being awarded to EBE businesses would increase. Include where appropriate, the breaking down of contracts or subcontracts into smaller, economically feasible units to facilitate EBE participation.

7. Negotiate in "good faith" with interested EBEs, not rejecting EBE bids as unqualified or too high without sound reasons based on a thorough review of the bid submitted and maintain documentation to support the rejection of any EBE bid. Bids that are not cost effective,

and/or time prohibitive will be considered “rejectable” bids. (See **Exhibit 2 Bid Rejection Form**).

8. Utilize the services available from public or private agencies and other organizations in identifying EBEs available to perform the work.
9. Include in PROJECT bid documents and advertisements an explanation of PROJECT requirements for EBE participation to prospective contractors and subcontractors.
10. As necessary and when ever possible, facilitate the following:
 - a) Joint ventures, limited partnerships or other business relationships intended to increase EBEs' areas of expertise, bonding capacity, credit limits, etc.
 - b) Training Relationships
 - c) Mentor/protégée Agreements

B. If the DEVELOPER completes the aforementioned activities and demonstrates “good cause” for not meeting the 25% requirement for EBE participation, it shall be deemed that the DEVELOPER has acted in “good faith” to achieve the requirement.

C. If at any point during this contract term, the DEVELOPER meets or exceeds the 25% EBE requirement in conjunction with said PROJECT, it shall be deemed that the DEVELOPER has achieved or exceeded the CITY’s EBE requirement, for the purposes of fulfilling the terms of this Agreement.

D. Contract or subcontract amounts awarded to EBE suppliers, that do not manufacture products they supply, may only be counted for up to 20% of the 18% EBE participation requirement.

III. DEVELOPER agrees to report to the City’s EBEP Manager on Developer’s utilization of EBEs in its contracting activities of the aforementioned PROJECT, pursuant to Chapter 360 of the Milwaukee Code of Ordinances. In order to monitor the Project’s EBE participation, the CITY requires, and DEVELOPER agrees to take the following steps:

A. Provide a list of all categories of work on the above-described PROJECT with budget allowances, for which bids will be solicited and highlight those categories, based upon Developer’s knowledge and experience, which are conducive to EBE participation one month prior to any bids being solicited or awarded. (See **Attachment: Example 1**)

B. Provide the City’s EBEP Office with documentation supporting efforts extended to solicit bids from EBEs. Upon request, DEVELOPER shall make information related to EBE bids available to the City’s EBEP Office.

C. Submit an EBE Monthly Report Form D to EBEP the 20th of each month on the form attached as **Exhibit 3**. Also submit EBE Subcontractor Payment Form (**Exhibit 4**) with the final Form D.

IV. The CITY may impose any or all of the sanctions set forth in Section 360-08, Milwaukee Code of Ordinances, for violation of this Agreement, namely:

- (1) Withholding of payment.
- (2) Termination, suspension or cancellation of the contract in whole or in part.
- (3) Denial to participate in any further contracts awarded by the city.

In addition, the DEVELOPER may be liable for liquidated damages to the CITY for that percentage of the total PROJECT dollars, which represent the difference between the EBE participation requirement herein defined and the actual EBE participation attained during the PROJECT. Prior to the imposition of any liquidated damages hereunder, the CITY must demonstrate that the DEVELOPER failed to undertake the actions set forth in sec. II.A. of this Agreement in attaining EBE participation in said PROJECT.

IN WITNESS WHEREOF, the parties have executed this EBE AGREEMENT

This _____ day of _____, 2010

CITY OF MILWAUKEE:

By: _____

PLEASANT & COMMERCE, INC.:

By: _____

Approved as to form and execution this _____ day of _____, 2010.

City Attorney

1050-2010-2212:161728
KPS/ml

**EXHIBIT A
EBE MARKETING PLAN**

PUBLICATIONS/ADVERTISING CONTACTS

Milwaukee Times
(Published weekly)
2216 North King Drive
Milwaukee, WI 53212
Tele. No: (414) 263-5088
Fax: (414) 263-4445
Contacted _____yes _____no
Contact Person _____
Date and Time _____

The Milwaukee Courier
(Published weekly)
2431 West Hopkins Street
Milwaukee, WI 53206
Tele No: (414) 449-4860
Fax: (414) 449-4872
Contacted _____yes _____no
Contact Person _____
Date and Time _____

Milwaukee Community Journal, Inc.
(Published twice weekly)
3612 North King Drive
Milwaukee, WI 53212
Tele No: (414) 265-5300
Fax: (414) 265-1536
Contacted _____yes _____no
Contact Person _____
Date and Time _____

Daily Reporter
(Published daily M-F)
704 West Wisconsin Avenue
Milwaukee, WI 53233
Tele No: (414) 276-0273
Fax: (414) 276-8057
Contacted _____yes _____no
Contact Person _____
Date and Time _____

EXHIBIT B
Emerging Business Enterprise (EBE)
Contact Sheet

Name of Agency	Address of Agency	Contact Person	Date of Contact	Time of Contact

**CITY OF MILWAUKEE - DEPARTMENT OF ADMINISTRATION
EMERGING BUSINESS ENTERPRISE PROGRAM
EBE PARTICIPATION FOR SUBCONTRACTORS AND/OR MATERIAL SUPPLIERS**

PRIME CONTRACTOR'S NAME: _____ CONTRACT NAME OR NUMBER: _____

START DATE: _____ TOTAL BID AMOUNT: _____ TOTAL EBE AMOUNT: _____

Please list below all proposed subcontractor(s) and/or material supplier(s) for this project.

EBE FIRM(S) NAME ADDRESS/CONTACT PERSON AND PHONE NUMBER	% OF BID	SUB-CONTRACTOR/OR SUPPLIER	WORK PERFORMED/ MATERIAL SUPPLIED	AMOUNT	OWNER/REPRESENTATIVE SIGNATURE OF ACKNOWLEDGMENT
1. _____					

2. _____					

3. _____					

4. _____					

Authorized Signature: _____ Print Name & Title: _____

**RETURN THIS FORM TO DOA-EMERGING BUSINESS ENTERPRISE PROGRAM
THIS FORM MUST BE SUBMITTED WITH THE PRIME CONTRACTORS BID.**

Reviewed By: _____ Date: _____ PROJECT MANAGER TITLE

Reviewed By: _____ (DOA) - EBE Program Date: _____

Exhibit 1
EMERGING BUSINESS ENTERPRISE (EBE)
SOLICITATION FORM

Name & Address of EBE Firm _____

Name of Individual Contacted _____ Phone Number _____

Type of Work _____ Date and Time of Contact _____

Quotation or Proposal Received _____

REMARKS: THESE SHOULD INCLUDE ANY FOLLOW UP ACTIONS. IN THE EVENT THAT THE EMERGING BUSINESS ENTERPRISE WILL NOT BE UTILIZED, INCLUDE AN EXPLANATION OF THE REASON (s) WHY THE FIRM WILL NOT BE USED. FOR EXAMPLE: IF THE ONLY REASON FOR NON-UTILIZATION WAS PRICE, THE EXPLANATION SHOULD REFLECT WHAT STEPS WERE TAKEN TO REACH A COMPETITIVE PRICE LEVEL.

REMARKS:

EXHIBIT 2
Emerging Business Enterprise (EBE)
Rejection of Bid Form

Name and Address of EBE firm	Type of Work	Bid Submitted by EBE	Actual Bid Award	Reasons for bid rejection	Approved By
1					
2					
3					
4					
5					
6					
7					
8					

**Exhibit 4
FORM D**

**CITY OF MILWAUKEE – DEPARTMENT OF ADMINISTRATION
EMERGING BUSINESS ENTERPRISE PROGRAM**

EBE SUBCONTRACTOR PAYMENT CERTIFICATION

EBE Subcontractor's Firm Name: _____

Prime Contractor Name: _____

Prime Contractor's Bid or RFP#: _____ Purchase Order or Contract # _____

This certificate is to be signed by the EBE subcontractor firm that was utilized in connection with the above contract, either for service performed, and/or as a supplier. Attach this form to the Prime Contractor's final **FORM D** (EBE Monthly Report) and return to:

Department of Administration
Emerging Business Enterprise Program
City Hall – Room 606
200 East Wells St
Milwaukee, W 53202
(or fax to 414-286-8752)

I _____ hereby certify that our firm has received
(PLEASE PRINT NAME)

\$ _____ from _____
(PRIME CONTRACTORS NAME)

for subcontract work performed and/or material supplied on the above contract.

Signature & Title _____ Date: _____

Subcontractor

Signature & Title _____ Date: _____

Prime Contractor

**NOTE: THIS FORM MUST BE ATTACHED TO PRIME CONTRACTORS FINAL FORM D
(EBE MONTHLY REPORT)**

Ref: EBE Forms/ Form E – Payment Certification Form

