

1661 NORTH WATER STREET
RIVERWALK
DEVELOPMENT AGREEMENT

IS

AMENDED AND RESTATED

TO

1661 - 1675 NORTH WATER STREET
RIVERWALK AND DOCKWALL
DEVELOPMENT AGREEMENT

Original Date of Agreement: May 31, 2000

Amended and Restated as of _____, 2017

**AMENDED AND RESTATED
RIVERWALK AND DOCKWALL DEVELOPMENT AGREEMENT**

CAO DOC #244061

This Amended and Restated Development Agreement (this “Agreement”) is made and entered into this ____ day of _____, 2017, by and among the City of Milwaukee (the “City”), the Redevelopment Authority of the City of Milwaukee (“RACM”), and N.L. Partners, LLC and Water House, LLC (collectively, the “Developer”).

WITNESSETH:

Whereas, The City and N.L. Partners, LLC and Waterhouse, LLC entered into 1661 North Water Street Riverwalk Development Agreement dated May 31, 2000 (“Original Agreement”) pursuant to which N.L. Partners, LLC and Water House, LLC would construct, maintain, and operate a Riverwalk Improvement on the Property; and

Whereas, N.L. Partners, LLC is the owner of certain property located at 1661 N. Water Street, Milwaukee, Wisconsin and Water House, LLC is the owner of certain property located at 1665-1675 N. Water Street, Milwaukee, Wisconsin (collectively, the “Property,” as more particularly described on Exhibit A); and

Whereas, The Riverwalk Improvement contemplated in the Original Agreement has been completed and the Developer now wishes to undertake the repair of the Riverwalk Improvement which will comply with the Milwaukee Riverwalk Design Guidelines (attached hereto as Exhibit B) and the construction of an approximately 245 linear foot long dockwall on the bank of the Milwaukee River immediate riverward of the Property (the “Dockwall Improvement”). The Riverwalk Improvement is more particularly described on Exhibit C hereto; and

Whereas, the Riverwalk Improvement constitutes 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 on the Property 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 and Dockwall Improvement on the Property (collectively, the “Improvements”), RACM is willing to make a grant to the Developer in an amount not to exceed \$252,840 to be used by the Developer to fund up to 50% of the cost of construction of the Dockwall Improvement, but in no case exceeding \$1,032 per linear foot; and

Whereas, The City, via Common Council Resolution File No. _____ adopted November 28, 2017 has approved a second amendment to TID No. 79 – North Water Street Riverwalk, a tax increment district created on May 21, 2013 by Common Council Resolution

File No. 130053 and first amended on June 2, 2015 by Common Council Resolution File No. 150157 (“TID 79”) and authorized proper officials of the City to execute this Agreement; and

Whereas, RACM, via Resolution No. _____ adopted November 16, 2017 has approved a second amendment to TID 79 and this Agreement and authorized proper officers of RACM to execute this Agreement on RACM’s behalf; and

Whereas, The Developer, RACM, and the City have approved this Agreement.

Now, Therefore, in consideration of the Property, and their mutual obligations, City and Developer hereby agree that the Original Agreement shall be superseded and replaced in its entirety by this Agreement and that all provisions of rights granted and covenants made in the Original Agreement are hereby superseded in their entirety and shall have no further force or effect, and the Developer, RACM and the City further agree as follows:

I. RACM ACTIVITIES

A. Subject to the terms and conditions hereinafter set forth, RACM grants to and shall pay to the Developer up to 50% of the cost of construction of the Dockwall Improvement, but in no case exceeding \$1,032 per linear foot, which equates to the sum of \$252,840 (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 Dockwall Improvement.

B. The RACM Grant shall be disbursed to the Developer within thirty (30) days of satisfying the following requirements set forth below at numbers 1 through 5:

1. The Developer has received all federal, state and local agency approvals, including but not limited to the United States Army Corps of Engineers, 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 Riverwalk Improvement and Dockwall Improvement (collectively, 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 budget for the Improvements, a copy of which is attached as Exhibit E.

4. The City has received a grant of an easement across the Riverwalk Improvement on the Property in a form as set forth on Exhibit D (the “Riverwalk Easement”). Prior to, or concurrently with, the first payment request, Developer agrees to deposit a fully executed Riverwalk Easement with the City for the City to hold in escrow until such time as the Improvements are completed. Upon completion of the Improvements, the City shall execute the

Riverwalk Easement and cause the same to be recorded with the Milwaukee County Register of Deeds.

5. The Commissioner has received a complete set of “As Built” plans and specifications of the completed Improvements.

II. CITY ACTIVITIES

The City shall make available to RACM an amount up to \$252,840 (the “City Grant”) in order to allow RACM to supply the Developer with the RACM Grant for reimbursement 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 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.

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 SBE 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 Improvements within one year of the date this Agreement is fully executed. 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 on the Property, including undertaking all necessary capital repairs and replacements, as more fully provided in the Riverwalk Easement. The Riverwalk Easement shall govern all aspect of the operation of the Riverwalk Improvement on the Property once the same is completed.

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

12. Upon request of the Commissioner, provide copies of all contracts and subcontracts entered into by the Developer, or on the Developer’s behalf for the preparation of the plans and specifications for the Improvements and construction of the Improvements.

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 Improvements, without prior written consent of the Commissioner, which consent shall not be unreasonably withheld or delayed. 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 contractors or subcontractors 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 Improvements during the period of construction thereof, provided that such inspections do not interfere with the progress of the work and RACM and/or the City provides Developer with at least twenty four (24) hours prior written notice of such inspections. In order to allow RACM and the City agencies to undertake these inspections in a meaningful fashion, upon request or otherwise pursuant to this Agreement, 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 reasonably 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 at least twenty four (24) hours prior written notice to the Developer, to examine the books, records and accounts of the Developer that relate to the construction of 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.

D. This Agreement and certain documents relating thereto are, or may be, subject to Wisconsin's Public Records Law (see Wis. Stat. Ch. 19, Subch. II, and, in particular Wis. Stat. § 19.36 (3) which includes records produced or collected under this Agreement). Developer shall and agrees to cause others under its control (including but not limited to employees, agents, contractors, and sub-tenants) to cooperate with City and RACM in the event any of them receive a request under Wisconsin's Public Records Law for this Agreement or for any record relating to, or produced or collected under this Agreement which is subject to the Public Records Law.

VII. HUMAN RESOURCES REQUIREMENTS

In contracting for the construction of the Improvements, the Developer shall use best efforts, and document such efforts in a manner satisfactory to the Commissioner, to comply with a 25% City Small Business Enterprise requirement (pursuant to the terms of the Agreement attached hereto as Exhibit E) as established by the Commissioner in accordance with Chapter 370, Milwaukee Code of Ordinances ("MCO") and further comply with the requirement that Developer shall use best efforts to have 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 to the satisfaction of RACM and the City and full payment to Developer of the RACM Grant.

IX. DEFAULT

If the Developer has not substantially completed the Improvements by the appropriate Completion Deadline, 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 Improvements is so delayed, plus \$600 for each day beyond 90 days but less than 180 days substantial completion of the Improvements is so delayed, and \$1,000 for each day thereafter substantial completion of the Improvements 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:

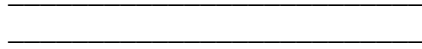
Redevelopment Authority of the City of Milwaukee
809 North Broadway
Milwaukee, WI 53202
Attn: Executive Director/Secretary

For the City:

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

For the Developer:

With a copy to:



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:

A. RACM and the City may each assign its respective rights hereunder to the other without the consent of Developer; and

B. The Developer may grant a collateral assignment of its rights hereunder to any lender providing construction financing for improvements located on the Property.

C. The Developer may assign its obligations hereunder to affiliates controlled by or under common control with the Developer.

[Signatures on the following page]

Signature Page to Riverwalk and Dockwall Development Agreement

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

REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE

By: _____
Name: _____
Its: Executive Director/Secretary

CITY OF MILWAUKEE

By: _____
Tom Barrett, Mayor

By: _____
Jim Owczarski, City Clerk

COUNTERSIGNED

By: _____
Martin Matson, Comptroller

N.L. PARTNERS, LLC

By: _____
Name: _____
Its: _____

WATER HOUSE, LLC

By: _____
Name: _____
Its: _____

Approved as to form and execution
this ____ day of _____, 2017.

Assistant City Attorney

Signatures of Tom Barrett, Jim Owczarski and Martin Matson authenticated this ____ day of _____, 2017.

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

EXHIBIT A
Legal Description of the Property

EXHIBIT B
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 don 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
Description of Improvements

See attached plans

EXHIBIT D
Grant of Easement Agreement
(Riverwalk)

EXHIBIT E
Developer Budget and City Cost Sharing

Exhibit F
SMALL BUSINESS ENTERPRISE AGREEMENT
FOR THE IMPROVEMENTS