

**SCHLITZ RIVERCENTER  
RIVERWALK DEVELOPMENT AGREEMENT**

Riverwalk Development Agreement is made this \_\_\_ day of \_\_\_\_\_, 2009, by and among the City of Milwaukee (the "City"), the Redevelopment Authority of the City of Milwaukee ("RACM") and Schlitz RiverCenter LLC, a Wisconsin limited liability Company (the "Developer").

**RECITALS:**

A. The Developer is the owner of the real property abutting the Milwaukee River described on Exhibit A, attached hereto (the "Property"). The Developer and entities affiliated with the Developer are the owners of all the real property delineated on Exhibit A-1, attached hereto (the "BID Properties"). The Developer and its affiliated entities intend to file a petition with the City of Milwaukee pursuant to Chapter 66.1109, Wis. Stat., for the purpose of forming a business improvement district that will encompass the BID Properties (the "BID").

B. The Developer expended approximately \$900,000 in 2008 on dockwall improvements in preparation for the construction of a riverwalk along the riverside portion of the Property (the "Riverwalk Improvement") which will comply with the Milwaukee River Design Guidelines (attached hereto as Exhibit B). Developer now desires to undertake and complete construction of the Riverwalk Improvement in accordance with the terms of this Agreement.

C. Upon completion of construction of the Riverwalk Improvement, the Developer will maintain and operate the Riverwalk Improvement, including making the Riverwalk Improvement available for use by members of the general public.

D. 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.

E. 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 \$596,000 to be used by the Developer to fund up to 70% of the cost of constructing the Riverwalk Improvement. Provided that the Developer and its affiliates duly file the petition to create the BID and the City approves the creation of the BID, RACM is also willing to make a loan to the BID in an amount not to exceed \$327,000 to fund the remaining cost of constructing the Riverwalk Improvement.

F. The City, via Common Council Resolution File No. \_\_\_\_\_ adopted \_\_\_\_\_, has approved this Agreement and authorized proper officials of the City to execute this Agreement.

G. RACM, via Resolution No. \_\_\_\_\_ adopted July 14, 2009 has approved this Agreement and authorized proper officers of RACM to execute this Agreement on RACM's behalf; and

H. The Developer has approved this Agreement.

## **AGREEMENTS**

In consideration of the premises and the mutual promises and undertakings hereinafter contained, the parties hereto 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 Grants (as defined below), RACM agrees to: (a) provide a grant to the Developer to pay for 70% of the cost of construction of the Riverwalk Improvement, but in no event shall such grant exceed \$596,000 (the "Riverwalk Improvement Grant"); and (b) if and when the BID is created, make a loan to the BID in an amount not to exceed \$327,000 to cover the remaining cost of construction of the Riverwalk Improvement (the "Riverwalk Loan").

B. The Riverwalk Improvement Grant and the Riverwalk Loan shall be disbursed to the Developer and the BID, respectively, during the construction of the Riverwalk Improvement provided the following requirements set forth below at numbers 1 through 7 are met.

1. The Developer and the BID have received all applicable 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 Riverwalk Improvement.

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

3. The Commissioner has approved the final construction budget for the Riverwalk Improvement.

4. The Commissioner has approved as to form, content, terms and parties, all the contracts entered into by the Developer and the BID for the preparation of plans and specifications for the Riverwalk Improvement, which approval shall not unreasonably be withheld.

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

6. Each request for payment shall be submitted on appropriate AIA forms such as AIA Document G702 and signed by the Developer's and the BID's architect certifying that the Riverwalk Improvement has been completed in accordance with the Commissioner-approved plans and specifications and the Riverwalk Improvement costs incurred to date have been fully substantiated on the draw request.

7. RACM and the City have received a Grant of an Easement across the Riverwalk Improvement in a form as set forth on Exhibit C.

C. The Riverwalk Loan shall be fully amortized over a term of ten years and bear interest at the rate of five percent (5%) per annum. The repayment obligation shall be incorporated into the operating plan for the BID.

## **II. CITY ACTIVITIES**

The City shall make available to RACM an amount up to \$596,000 to pay for the Riverwalk Improvement Grant and an amount up to \$327,000 to pay for the Riverwalk Loan (collectively, the "City Grants") in order to allow RACM to supply the Developer and the BID with the Riverwalk Improvement Grant and the Riverwalk Loan.

## **III. DEVELOPER ACTIVITIES**

A. The Developer and/or the BID, as the case may be, shall:

1. Prepare, or have prepared, final plans and specifications for the Riverwalk Improvement 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 Riverwalk Improvement 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 Riverwalk Improvement.

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

5. Construct the Riverwalk Improvement in accordance with the approved plans and specifications and substantially complete the Riverwalk Improvement by no later than June 1, 2010, subject to construction delays beyond the Developer's reasonable control and not caused by the fault or negligence of Developer (an "Excusable Delay"). If Developer and the BID provide 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.

6. Own, operate and maintain the Riverwalk Improvement, including undertaking all necessary capital repairs and replacements, during the term of this 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 C. 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.

7. Together with the Developer's affiliates, file the petition with the City for the creation of the BID so as to enable RACM to make the Riverwalk Loan.

8. When the Riverwalk Improvement is completed, as certified by the project architect, provide RACM and the City with a recordable Grant of Easement substantially in the form attached as Exhibit C.

#### **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 and the BID 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 Riverwalk Improvement Grant or the Riverwalk Loan unless such increase has been approved by RACM.

#### **V. INSPECTIONS**

A. Developer, and the BID and their contractor or subcontractor shall be solely responsible for the completion of the Riverwalk Improvement. 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 or the BID, on the other hand, in construction of the Riverwalk Improvement.

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 and the BID shall provide RACM with a complete set of plans and specifications in respect of the Riverwalk Improvement 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 and the BID's contractor or subcontractors are not constructing the Riverwalk Improvement in accordance with the approved plans and specifications, the Commissioner shall promptly inform the Developer and the BID of such noncompliance and the Developer and the BID shall, as soon as reasonably possible, require its contractor or subcontractors to remedy such noncompliance. The Commissioner may withhold payment of

any funds until such corrective measures are completed and the noncompliance cured in a satisfactory manner.

## **VI. RECORDS**

A. The Developer and the BID shall keep accurate, full and complete books and accounts with respect to the cost of constructing the Riverwalk Improvement, 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 Riverwalk Improvement.

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

C. After substantial completion of the Riverwalk Improvement, the Developer and the BID 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. EBE REQUIREMENTS**

In contracting for the construction of the Riverwalk Improvement, the Developer and the BID shall comply with an 18% City Emerging Business Enterprise requirement (attached hereto as *Exhibit D*), as established by the Commissioner in accordance with Chapter 360, Milwaukee Code of Ordinances.

## **VIII. TERM**

This Agreement shall terminate after the last to occur of the following: (i) the completion of construction of the Riverwalk Improvement; (ii) payment in full to the BID of the Riverwalk Improvement Grant; and (iii) if the BID is created, payment in full to the BID of the Riverwalk Loan. The BID's obligations for repayment of the Riverwalk Loan pursuant to its operating plan shall survive the termination of this Agreement. The Grant of Easement for public access, in the form attached hereto as Exhibit C, shall be a permanent access easement running with the land on which it is granted.

## **IX. DEFAULT**

If the Developer and the BID have not substantially completed the Riverwalk Improvement by the date specified herein, and the failure to substantially complete was either the Developer's and/or the BID's fault or was for reasons substantially within the Developer's and/or the BID's control, RACM and the City shall have the right to reduce the amount of unpaid

portions of the Riverwalk Improvement Grant and the Riverwalk Loan by an aggregate 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 and the BID:

Schlitz RiverCenter LLC  
Attn: Mr. Sam Denny  
Suite 204  
1555 North Rivercenter Drive  
Milwaukee, WI 53212

**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 or the BID; and
2. The Developer and the BID may grant a collateral assignment of their 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

By: \_\_\_\_\_  
Chair

And By: \_\_\_\_\_  
Executive Director

CITY OF MILWAUKEE

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

By: \_\_\_\_\_  
Ronald Leonhardt, City Clerk

COUNTERSIGNED

By: \_\_\_\_\_  
W. Martin Morics, Comptroller

SCHLITZ RIVERCENTER LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

THE BUSINESS IMPROVEMENT DISTRICT TO  
BE FORMED

By: Schlitz Rivercenter LLC, agent \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to form, content and execution  
this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Assistant City Attorney