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Grant of Easement Agreement
(Marine Terminal Building Riverwalk)

Document Number

Recording Area

Name and Return Address

Sarah O. Jelencic
c/o Foley & Lardner
777 East Wisconsin Avenue
Suite 3600
Milwaukee, WI 53202

Parcel Identification Number (PIN)

GRANT OF EASEMENT AGREEMENT

(Marine Terminal Building Riverwalk)

This Grant of Easement Agreement is made as of _____, 2004, by and between Mandel Riverfront Holdings I LLC (“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 as more particularly described on **EXHIBIT A** attached hereto (the “Property”); and

WHEREAS, pursuant to the terms of the Marine Terminal Building Development and Riverwalk Agreement (“Development Agreement”) by and between Grantor and Grantee, a certain riverwalk improvement as identified on **EXHIBIT C** attached hereto (the “Riverwalk Improvement”) will be constructed on a portion of the Property as generally depicted on **EXHIBIT B** attached hereto (the “Riverwalk Land”) 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 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, Grantor has reserved the right to allocate and assign its responsibility to maintain and repair the Riverwalk Improvement to and between condominium units to be created on the Property pursuant to a condominium declaration and plat to be recorded after the date hereof; and

WHEREAS, in consideration of payment by Grantee 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 the covenants, restrictions and obligations imposed by this Agreement.

Now, therefore, in consideration of the above recitals and the terms and conditions of the Development Agreement, IT IS AGREED:

1. **Grant of Easement.** 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 situated on said Grantor’s property 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 owned by said Grantor, for the following purposes:

a. Pedestrian access, for the benefit of the public, across the entire length of the Riverwalk Improvement as shown on **EXHIBIT B** attached hereto in accordance

with the terms of this Agreement, provided, however, that the public pedestrian access granted herein across the designated walkway is for pedestrian ingress and egress purposes only and expressly excludes any vendor or other commercial activities or operations not expressly permitted by said Grantor; and

b. Maintenance, repair and/or replacement of all or any portion of the Riverwalk Improvement by Grantee in accordance with the terms of this Agreement; and

c. Installation and removal of holiday, seasonal or thematic decorations, banners, plantings and similar items (collectively, the "Decorations") by Grantee in accordance with the terms of this Agreement.

2. Insurance. Throughout the term of this Agreement, Grantor, or its permitted successors and assigns (collectively referred to herein as "Grantor" or "Assignees," as appropriate), shall maintain (a) commercial comprehensive liability insurance in connection with the Riverwalk Improvement, naming the Grantee 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" or equivalent 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 coverages required to be maintained hereunder under umbrella or blanket insurance coverages covering other premises so long as such umbrella or blanket insurance policies expressly provide coverage for the requirements provided under this Agreement. At the option of the Grantee, the aforesaid minimum amounts may be reviewed and increased or decreased every ten (10) years, with any such adjustment being proportionate to the then current economic conditions.

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 thirty (30) days written notice of cancellation, non-renewal, or material change.

3. Maintenance: Right of Entry. Grantor shall be responsible to maintain the Riverwalk Improvement in accordance with the maintenance standards set forth on **EXHIBIT D** attached hereto and shall undertake all necessary capital repairs and replacements when and as necessary. 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 the aforesaid written notice, and such failure to commence such maintenance or repair work is not as a result of causes beyond Grantor's reasonable control, then Grantee may, upon five (5) business days prior written notice to Grantor, perform such work and shall be reimbursed by Grantor for all reasonable costs incurred by Grantee in performing such work. Should Grantor fail to reimburse the Grantee for such work within thirty (30) days after receipt of reasonable and detailed evidence of the costs so incurred, the payment of such costs and completion of the work

in connection with which said costs were incurred, the Grantee shall have be entitled to record a lien against the Property. In the event Grantee performs such work, Grantor hereby agrees that the City shall have the right to specially charge the Property under § 66.0627, Stats. as the same may be renumbered from time to time. Should the City need to proceed with such special charges under § 66.0627, Stats. as the same may be renumbered from time to time, Grantor hereby waives notice and hearing on such charges. In exercising its right to maintain, repair and/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 and/or from the Milwaukee River and shall not unreasonably or materially disrupt or interfere with access to the Property and the use by or operations of Grantor or any owner, tenant, licensee or occupant on the Property. Grantee shall notify Grantor in advance and in writing of Grantee's needs to enter upon the Property, specifying the scope and duration of such entry.

4. Public Rights. Grantor shall, at all times, make the nonexclusive easement area of that portion of the Riverwalk Improvement that is located on the portions of the Property owned by said Grantor available for use by members of the public, except for such times as such walkway must be closed for maintenance, repair or replacement, to protect against unsafe conditions or to avoid the acquisition of adverse or prescriptive rights. Grantor shall have the right periodically (i.e., not more than once a year and not more than 24 hours at a time) to close off its portion of the walkway in order to prevent the acquisition of any adverse or prescriptive rights.

5. Rules and Regulations. 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 that portion of the Riverwalk Improvement which is located on Property owned by said Grantor by the public; provided, however, Grantor's rules and regulations shall not be inconsistent nor conflict with the terms of **EXHIBIT D**. In the event of any such conflict, the terms of **EXHIBIT D** shall control.

6. Decorations. 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/or remove Decorations. Such installations and removals shall not damage any of the Riverwalk Improvement or any other improvements situated thereon and shall not unreasonably or materially interfere with the lawful use of the Property by Grantor or any owner, tenant, licensee or occupant of the Property and shall be at Grantee's sole expense.

7. Utilities. 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. Alterations. 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 decorative elements or attach any fixtures to or upon the Riverwalk Improvement without the prior written consent of Grantee. Any request by Grantor for installation of decorative elements or attachment of fixtures must be in writing, and the Commissioner of the Department of City Development (“Commissioner”) or his/her designee, shall approve or disapprove such request in writing within 15 business days following receipt. Failure of the Commissioner or his/her designee 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. Assignment. Grantee shall have no right to assign all or any part of its right, title and interest in, to and under this Agreement without obtaining Grantor’s prior written consent. Until completion of the construction of the Riverwalk Improvement, Grantor may assign any of its interests or obligations hereunder without the prior written consent of the Grantee to an affiliate of either of Grantor with an interest in the Property, to condominium unit owners and/or the condominium association having interest in any portion of the Property and/or to any mortgagee(s) of all or any portion of the Property.

10. Run with the Land. This Agreement is a permanent limited 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.

11. Notices. All notices to be given by one party to the other under this Agreement shall be in writing and given either by personal delivery or certified mail, postage prepaid, to the addresses set forth in this paragraph. A notice shall be deemed delivered either upon actual receipt or upon refusal by a party to accept delivery. Any 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:

Mandel Riverfront Holdings I LLC
c/o Mandel Group, Inc.
111 East Wisconsin Avenue
Suite 1700
Milwaukee WI 53202
Attn: Barry R. Mandel

To Grantee:

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

LIST OF EXHIBITS

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Riverwalk Improvement Description

EXHIBIT C: Riverwalk Land Location

EXHIBIT D: Riverwalk Maintenance Standards