

**FIRST AMENDMENT TO
GRANT OF EASEMENT
AGREEMENT**

Document Number

Document Title

Recording Area

Name and Return Address

Parcel Identification Number (PIN)

FIRST AMENDMENT TO GRANT OF EASEMENT AGREEMENT

This First Amendment is made as of this ___ day of _____, 2009 by and among Fred Usinger, Inc., a Wisconsin Corporation (“Grantor”), the Board of Business Improvement District No. 15 (“Grantee”) and the City of Milwaukee (the “City”).

Whereas, Grantor and Grantee entered into a Grant of Easement Agreement dated as of December 30, 1994 (the “Easement”) which Easement was recorded at the Milwaukee County Register of Deeds Office on _____, 1994 as Document No. _____, and which Easement covers Grantor’s real property more fully described on the attached *Exhibit A*;

Whereas, pursuant to the Easement, Grantor has granted Grantee and the City certain easement rights on and across that certain portion of the Property described thereon (the “Riverwalk Improvements”);

Whereas, Grantee wishes to expand and improve the Riverwalk Improvements by constructing on the Property certain additional improvements (the “Accessibility Improvements”) as described on the attached *Exhibit B*;

Whereas, Grantor wishes to cooperate with the Grantee and the City by permitting the Accessibility Improvements to be constructed and maintained on Grantor’s Property, but also desires to protect the present and future value of the Property and minimize the potential negative impact the Accessibility Improvements might have on the future development of the Property;

Whereas, the parties enter into this First Amendment to permit Grantee access to the Property to construct the Accessibility Improvements and to provide the general public with pedestrian and other access to the Accessibility Improvements following completion thereof; and

Whereas, the City is a party to this First Amendment to evidence the City’s limited and conditional commitment to reimburse certain of Grantor’s expenses, as hereinafter set forth, in order to induce Grantor to provide the grant of easement provided herein.

Now, therefore, the parties hereto agree as follows (terms used but not defined herein shall have the meanings set forth in the Easement):

1. As used therein, the term “Riverwalk Improvement” in the Easement shall mean and include not only those certain Riverwalk Improvements identified on *Exhibit B* attached to the Easement, but the Accessibility Improvements, as well, such that the Easement shall apply to the Accessibility Improvements in the same manner and to the same extent as if same were originally included therein.
2. As used herein, the term “Grantor” shall mean and include Fred Usinger, Inc. and its successors and/or assigns.

3. Grantor hereby conveys to Grantee a limited and non-exclusive easement on and across that portion of the southeasterly area of the Property as set forth in *Exhibit B* for the purpose of constructing the Accessibility Improvements.
4. Notwithstanding the foregoing, Grantor may terminate the Easement in respect of the Accessibility Improvements at any time and demolish and remove the Accessibility Improvements (the "Removal") provided:
 - a. Grantor has provided the City's Commissioner of City Development (the "Commissioner") with a notice (the "Notice") that Grantor desires to further develop the Property, or has entered into a legally binding commitment to develop the Property, in a manner which is inconsistent with the continued utilization of the Accessibility Improvements for pedestrian access; and
 - b. Grantor provides the City and Grantee with the Notice 90 days prior to such termination.
5. The City shall reimburse Grantor for its actual expenses incurred in connection with the Removal and up to 70% of the costs associated with the construction of a riverwalk segment which replaces that which was subject to Removal ("Reimbursement"); provided, however, that, notwithstanding the foregoing, the City shall have no obligation or liability hereunder, except, and only to the extent, that (a) such Reimbursement is approved by the City's Common Council in the course of its budgetary appropriations; and (b) the Commissioner has received adequate evidence and documentation to support and quantify the request for Reimbursement.
6. The Commissioner shall expend all reasonable efforts to assist Grantor in obtaining Common Council approval for Reimbursement, including but not limited to placement of the Reimbursement in the Commissioner's initial budget request.
7. This First Amendment to Grant of Easement Agreement shall be a covenant running with the land and shall be binding upon and inure to the benefit of all parties hereto, their successors and assigns.
8. Except as amended hereby, the Easement shall continue in full force and effect as provided therein

[Signatures appear on following page]

Exhibit A

Description of Property

PARCEL 1:

Lots 6,7,8,9 and 10 in Block 48 in plat of the Town of Milwaukee on the west side of the River, the NE $\frac{1}{4}$ of Section 29, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, together with those lands lying between said lots and the dock line of the Milwaukee River as established by the Board of Harbor Commissioners of the City of Milwaukee.

PARCEL II:

The South 20.00 FT of Lot 3 and all of Lots 4 and 5 in Block 48 in the plat of the Town of Milwaukee on the west side of the River, the NE $\frac{1}{4}$ of Section 29, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, together with those lands lying between said lots and the dock line of the Milwaukee River as established by the Board of Harbor Commissioners of the City of Milwaukee, together with the vacated alley lying between Lots 5 and 6.

Exhibit B

Accessibility Improvements

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1047-2008-1254

