

**RIGHT OF ENTRY AGREEMENT
AND ASSIGNMENT**

THIS AGREEMENT, is made and entered into as of this _____ day of _____, 2014, (the “Effective Date”) and is by and between **THE CITY OF MILWAUKEE** (hereinafter “CITY”) and **BEINTWEEN, LTD** (hereinafter “**BEINTWEEN**”).

RECITALS

- A. CITY entered into a Lease Agreement dated _____, 2014, (the “Lease”) with Glendale Redevelopment, LLC, for property owned by Glendale Redevelopment, LLC, and located at 3521-R North Richards Street in Milwaukee, Wisconsin, more particularly described in **Exhibit A** and more commonly referred to as the former Wisconsin & Southern Railroad right of way running from its southeastern boundary just north of the intersection of North Richards Street and East Keefe Avenue northwest to West Capitol Drive (the “Property”);
- B. CITY would like to assign to BEINTWEEN through this Agreement CITY’s authority and obligations under the Lease for installing and maintaining on the Property temporary improvements including, but not limited to metal storage containers, outdoor seating and other amenities related to use of the Property for public performances, educational activities and art installations and for organizing and facilitating performances and events that are open to the public; and
- C. BEINTWEEN is willing to accept the assignment from CITY on the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY and BEINTWEEN agree as follows:

- 1. **Recitals.** The parties agree to the above recitals and incorporate them herein.
- 2. **Assignment / Use.** CITY assigns to BEINTWEEN and BEINTWEEN accepts assignment of CITY’s authority and obligations under the Lease for installing and maintaining temporary improvements on the Property including, but not limited to metal storage containers, outdoor seating and other amenities related to use of the Property for public performances, educational activities and art installations and for organizing and facilitating performances and events that are open to the public on the Property. CITY gives BEINTWEEN a non-exclusive right of entry to enter onto the Property to carry out the obligations and authority assigned herein. BEINTWEEN understands and acknowledges that CITY intends to obtain ownership of the Property for use as a recreational trail. None of the Improvements (as defined below) or activities or events held or conducted on the Property by BEINTWEEN may interfere with the CITY’s use of the Property as a recreational trail or otherwise.

3. **Fixtures and Personal Property on Property.** Subject to the terms of this Agreement, BEINTWEEN may install and affix to the Property such temporary fixtures, moveable equipment and personal property as CITY and BEINTWEEN agree are desirable for public use of the Property, including but not limited to items described in Section 2 of this Agreement (collectively the "Improvements"). The specific location of Improvements on the Property must be approved by CITY before installed. The Improvements shall remain the property of BEINTWEEN. CITY shall have the right at any time, upon 30 days written notice, to order BEINTWEEN to remove, relocate or change any of the Improvements under the terms of this Agreement. CITY shall obtain no ownership rights over the Improvements and the Improvements shall not be considered to be part of the Property.

4. **Liability, Insurance and Indemnification.**

- A. **CITY's Liability.** Although CITY has no ownership interest in the Improvements, CITY recognizes the public benefit derived from BEINTWEEN's installation of the Improvements on the Property and; therefore, except where property damage is caused by BEINTWEEN's own negligence or malicious conduct, CITY agrees to hold BEINTWEEN harmless and to accept liability for any property damage that occurs to the Improvements as a result of the Improvements' presence on the Property and use of the Improvements by CITY or the public.
- B. **BEINTWEEN's Liability.** BEINTWEEN agrees to hold CITY and Glendale Redevelopment, LLC, harmless and to accept liability for any personal injury or other damages that occur on the Property during events, performances or other public activities held on the Property and facilitated by BEINTWEEN. While this Agreement is effective, BEINTWEEN shall maintain a comprehensive general liability insurance policy insuring BEINTWEEN's use of the Property including liability for public events or activities organized and held at the Property. Such policy shall include limits of \$1,000,000 per occurrence and \$2,000,000 aggregate and shall name CITY and Glendale Redevelopment, LLC as additional insureds. CITY shall be provided with 30 days written notice of any cancellation or change in any insurance policy required under this subsection.
- C. **Third Party Liability.** BEINTWEEN shall require any contractor providing services or materials at the Property to maintain a comprehensive general or commercial general policy of insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate and naming CITY and Glendale Redevelopment, LLC as additional insureds on said policies. BEINTWEEN shall also require any contractor providing work or materials to the Property to maintain worker's compensation coverage at the statutory limits. This Section shall not apply to individual volunteers providing services on the Property.

- D. Glendale Redevelopment. In the event that CITY obtains ownership of the Property, any requirements in this Section to name Glendale Redevelopment, LLC, as an additional insured shall terminate. Any language in this Section indemnifying Glendale Redevelopment, LLC, shall apply only to injuries, damages or losses that occur on the Property while Glendale Redevelopment, LLC, is the owner of the Property.
- E. Negligence of Others. No acceptance of liability contained in this Section shall prohibit CITY or BEINTWEEN from pursuing damages or claims against third parties whose negligence or willful misconduct caused or contributed to the injuries, damages or losses contemplated in this Section.

5. Recreational Immunity Under §895.52.

- A. CITY and BEINTWEEN intend on each being protected by recreational immunity pursuant to Wis. Stat. §895.52 (and any successor statute thereto) to the greatest extent possible.
- B. BEINTWEEN may not charge any admission fee for spectators at any event on the Property.
- C. The parties agree to comply with any duty they may have under Wis. Stat. §101.11 related to the Property.

6. Permits for Events. Nothing in this Agreement shall be construed to be a waiver of any of the CITY's standard or customary permits or licenses required for public events. BEINTWEEN shall obtain all required and customary permits from the CITY for events held at the Property.

7. Compliance with Laws and Regulations.

- A. BEINTWEEN shall, at its sole cost and expense, comply with any and all laws, statutes, ordinances and regulations, federal, state, county, or municipal, now or hereafter enforced, or applicable to its existence at, or use, occupancy, or improvement (including repair or maintenance) of, any part of the Property and the Improvements.
- B. BEINTWEEN shall not, with respect to its use of the Property or Improvements, discriminate against any person on the basis of race, sex, sexual orientation, creed, national origin or identity, color, religion, marital status, age or handicap.

8. Termination. Either party may terminate this Agreement at anytime by providing the other party with 60 days written notice of such termination. This Agreement shall automatically terminate upon termination of the Lease, unless such Lease termination is due to CITY acquiring ownership of the Property.

9. **Notices.** Any notice required or permitted under this Lease may be personally served or given and shall be deemed sufficiently given or served if sent by United States mail, with postage prepaid thereon, to the respective addresses set forth below, or if sent by e-mail to the respective e-mail address set forth below. Either party may by like notice at any time, and from time to time, designate a different address or e-mail to which notices shall be sent. Notices given in accordance with these provisions shall be deemed given and received (a) when personally served, or (b) if e-mailed during business days when City Hall is open for business during business hours (8:30 a.m.- 4:30 p.m.), when e-mailed, or (c) if mailed, three days after the postmark on such notice, in accordance with this section.

To CITY:

Ghassan Korban
Commissioner of Dept. of Public Works
City of Milwaukee
841 North Broadway, Room 501
Milwaukee, WI 53202
Phone: (414) 286-3301
Email: ghassan.korban@milwaukee.gov

To BEINTWEEN:

Keith Hayes, President
Beintween, LTD
161 West Wisconsin Avenue
Milwaukee, WI 53202
Phone:
Email:

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and may not be amended or altered in any manner except in writing signed by both parties.

BEINTWEEN, LTD

CITY OF MILWAUKEE

By: _____
Keith Hayes, President

By: _____
Ghassan Korban, Commissioner
Dept. of Public Works

1047-2014-969:203290

EXHIBIT A

Description of the Property