

Document Number	Document Title
	ERIE STREET PLAZA LEASE
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Recording Area	
Name and Return Address	
Ms. Elaine Miller, Real Estate Officer City of Milwaukee 809 N. Broadway, 2 <sup>nd</sup> Floor Milwaukee, WI 53202	
Tax Key Number:	

**Drafted By:**  
**Danielle M. Bergner**  
**Assistant City Attorney**  
**City of Milwaukee**

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EXHIBIT A: Map and Legal Description of Premises

EXHIBIT B: Insurance Requirements

EXHIBIT C: Description of Sidewalk Improvements at Milwaukee and Erie Streets

## **ERIE STREET PLAZA LEASE**

**THIS LEASE**, is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2010, (the “Effective Date”) and is by and between **THE CITY OF MILWAUKEE** (hereinafter “City”) and **THE BOARD OF BUSINESS IMPROVEMENT DISTRICT NO. 2** (hereinafter the “Board”).

### **RECITALS**

- A. The Board is the governing body of Business Improvement District No. 2 (BID-2) created per Wis. Stat. §66.608 (1997-98), now §66.1109 (2001-02). City’s Common Council approved creation of BID-2 in Resolution File No. 870501, adopted October 6, 1987.
- B. CITY owns certain real estate and improvements located in Milwaukee, Wisconsin (the “Premises”), more particularly described in **Exhibit A** attached hereto, and more commonly referred to as “Erie Street Plaza.”
- C. The Premises is comprised of a pedestrian mall and its improvements under the City’s jurisdiction pursuant to Sec. 113-20, Milwaukee Code of Ordinances.
- D. The Board wants to lease the Premises from CITY per the terms hereof, so the Board can put the Premises to use for the purposes set forth in this Lease which, the Board believes, will, among other things, promote Business Improvement District No. 2 and enhance urban green space consistent with promoting the general welfare of the CITY and its citizens; and
- E. CITY is willing to lease the Premises to the Board on the terms and conditions set forth herein.
- F. The CITY authorized CITY entry into this Lease by CITY Common Council Resolution File No. 100263, passed \_\_\_\_\_, 2010.

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

- 1. **Recitals**. The recitals above are hereby agreed to.
- 2. **Leased Premises**. Subject to the terms hereof, the CITY does hereby lease the Premises, which is legally described on **Exhibit A**, to the Board.

- A. **Recording of Lease.** In its discretion, City may record this Lease (or evidence thereof) in the Milwaukee County Register of Deeds Office; and the Board agrees to cooperate with City in that regard.
- B. **City Leases to the Board.** Subject to all the terms and conditions in this Lease, City hereby leases to the Board, and the Board hereby leases from City, on an **AS-IS, WHERE-IS BASIS**, and with all faults and defects, known or unknown, discovered or to be discovered, the real property, improvements and appurtenances located in Milwaukee and herein called the Premises.
- C. **Exclusivity/Nonexclusivity.** The Premises are being leased to the Board on a non-exclusive basis subject to the Board's limited rights as specified in ¶¶ 7 and 8 of this Lease.
3. **Term.** The term of this Lease (the "Term") shall be 25 years, commencing on July 1, 2010 (the "Commencement Date") and terminating on June 30, 2025, unless sooner terminated as herein provided.
4. **Termination of Lease.** Upon the expiration or earlier termination of this Lease, the Board shall peaceably and quietly deliver, yield up, and surrender possession of the Premises to City. The Board shall remove from the Premises upon expiration or termination, and be responsible for, all personal property situated thereon, and leave the Premises in a broom-clean condition. Any property not so removed shall, at City's option, either become the sole property of City or be stored on-site or off-site at the Board's expense.
5. **Termination for Convenience.** Notwithstanding anything to the contrary contained herein (including, but not limited to, any provision in the "condemnation" section below), City may, in its sole discretion, and without cause, and for any reason, including no reason, terminate this Lease at any time upon one year's advance written notice to the Board. This ¶5 is a material provision without which, City would not have entered into this Lease.
6. **Rent/Additional Consideration.** The Board shall pay an annual rental of One Dollar (\$1), payable on the first day of the Term, without demand therefor and without setoff or deduction. Rent shall be payable to the City of Milwaukee, and shall be tendered to the Commissioner of the Department of City Development ("Commissioner") at the notice address for the Commissioner set forth below. As additional consideration for the City's lease of the Premises to the Board, the Board further agrees it shall assume responsibility for routine maintenance of the landscaped areas adjacent to the Milwaukee Street and Erie Street intersection pursuant to ¶16 of this Lease, and for the Catalano Square park, pursuant to a lease agreement for that property.
7. **Use; Including Provisions Relating to Recreational Activities Under §895.52.** Subject to shared use with the general public for a pedestrian mall open to the public, the Board shall have the right to use and occupy the Premises solely for the operation of:

- (1) “recreational activities:” (a) as defined in Wis. Stat. §895.52(1)(g) (as the same may be amended from time to time); and (b) that are consistent with activities generally associated with other pedestrian malls in Milwaukee County and other open green space in the City; and (c) that are in compliance with federal, state, and local law, regulations, and ordinances (herein called “Recreational Activities”).
- (2) activities that are controlled and supervised by the Board (herein called “Board-Controlled Activities”). The Board-Controlled Activities may include activities that are not “recreational activities” as defined in Wis. Stat. §895.52(1)(g) and may include exclusive use of a portion of the Premises by the Board for a temporary period (not to exceed 12 hours).
- (3) use of the Premises shall be limited to pedestrian users and to emergency, maintenance and utility related transportation vehicles.
- (4) the Riverwalk improvements adjacent to the Premises shall remain open to the public at all times and may not be closed for exclusive use by the Board or its permittees.

Board uses of the Premises (including the Board-Controlled Activities) must, in any event, be lawful and in compliance with all applicable federal, state, and local laws, regulations, and ordinances (including laws, regulations or ordinances requiring permits and/or licenses), and must be conducted so as not to unreasonably interfere with neighbors. No other uses may be permitted without City’s prior written consent.

8. **Board Permitting Rights for the Plaza.** To promote the orderly use and enjoyment of the Premises by the general public, the Board may, in its discretion, adopt a permit system whereby members of the general public apply to the Board for a permit to exclusively use a designated area of the Premises, for a temporary, specified period, for a lawful “Recreational Activity” or “Board-Controlled Activity” as allowed in section 7 above. Any use for which the Board issues a permit (while temporarily exclusive) must otherwise be in compliance with this Lease, including the provisions in section 7 above. If the Board does elect to engage in such permitting, then:

- A. The Board shall not charge for the issuance of permits any amount beyond an amount sufficient to cover The Board’s reasonable expenses associated with the Board’s permitting process and with the issuance of the particular permit;
- B. the permit shall only allow the permittee the right to exclusively use a designated portion of the Premises for a temporary period (in all cases, less than 72 hours, and for periods longer than 12 hours, the Board shall notify the Commissioner of the Department of Public Works of said event in advance), and the Board may not allow anything that is unlawful or concerning which the Board has no authority;

- C. the permit may only allow use for a “Recreational Activity” or a “Board-Controlled Activity” as defined in Section 7 above;
- D. the Riverwalk improvements adjacent to the Premises must remain open to the public at all times.
- E. The Board’s permit process shall provide written notice to applicants advising applicants and permittees: (i) that use is limited to “Recreational Activities” and “Board-Controlled Activities” as defined in Section 7; (ii) that they must comply with all federal, state, and local laws, regulations, and ordinances; (iii) that the Board may not authorize applicants or permittees to possess or consume alcoholic beverages on the Premises; and (iv) that they may not store, use, discharge, or dispose of any hazardous or toxic substances, pollutants, or contaminants on any part of the Premises; and
- F. The Board may require permit applicants and/or recipients: (i) to sign waivers and releases; (ii) to assume financial and legal responsibility for their and their guests’ acts, omissions, damages, etc.; and/or (iii) to provide evidence of insurance that the Board may specify – in which case any waiver or release or acceptance of responsibility or insurance that the Board requires shall also expressly run to the City’s benefit and protect and cover City to the same extent as the Board.

9. **Compliance with Laws and Regulations; Environmental; Nondiscrimination.**

- A. The Board 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 respective existence at, or use, occupancy, or improvement (including repair or maintenance) of, any part of the Premises.
- B. The Board shall not store, use, discharge or dispose of any hazardous or toxic substances, pollutants or contaminants (“Contaminants”) on any part of the Premises other than conventional household items such as cleaning materials which must nonetheless be stored, used, discharged, and disposed of in strict compliance with all applicable federal, state, and local laws, rules, and regulations.
- C. The Board is leasing the Premises on an “**AS IS, WHERE IS**” basis.
- D. The Board shall be responsible (i) for remediating any Contaminants or environmental pollution on any part of the Premises caused by the Board or its permittees, and (ii) for repairing any damage (environmental, physical, structural, or otherwise) to the Premises caused by the Board or its permittees.
- E. The Board must obtain City’s prior written approval before conducting any environmental testing or investigation on or at any part of the Premises.

- F. The Board shall not, with respect to its use and occupancy of the Premises, and the Board-Controlled Activities thereat, and with respect to its issuance of permits for the Premises to members of the public, discriminate against any person on the basis of race, sex, sexual orientation, creed, national origin or identity, color, religion, marital status, age, or handicap.

**10. Recreational Immunity Under §895.52.**

- A. City and the Board intend on each of City and THE BOARD being protected by Wis. Stat. §895.52 (and any successor statute thereto) to the greatest extent possible.
- B. The Board may not charge any admission fee for spectators at any event on the Premises unless the event is a Board-Controlled Activity.
- C. The Board agrees to comply with any duty it may have under Wis. Stat. §101.11.

**11. Insurance.** The Board shall obtain and maintain in place during the entire Term, at its expense (as additional rent hereunder), insurance as described in strict compliance herewith:

- A. **General Liability, Property, and Other Coverage.** General liability insurance that protects exposures associated with the operations of the Board and its use of the Premises and its maintenance operations at the Milwaukee/Erie Street intersection pursuant to ¶ 16 of this Lease - including, but not limited to: liability for Board-Controlled Activities at the Premises; contractual liability protection for the risks assumed by the Board in this Lease; and property insurance for Board-owned property. The Board shall also obtain and maintain in place during the entire Term: workers compensation insurance, employers liability insurance, and other insurance coverage in the types and amounts set forth in **Exhibit B** attached hereto.
- B. **Policies.** All policies shall be endorsed to protect City and the Board as their interests may appear. All policies shall be obtained by the Board under valid and enforceable standard form policies issued by responsible insurance companies licensed to do business in the State of Wisconsin. Certificates and actual policies evidencing insurance coverage shall be provided to City. The insurance company shall be required to provide City with 60-day written notice of any cancellation, non-renewal, or material change in the coverage required or provided hereunder.
- C. **City Must Be Named As Additional Insured On All Contractor and Subcontractor Policies.** The Board shall require, and any contractor or subcontractor providing work or materials to the Premises shall provide, the minimum types and limits of insurance set forth on **Exhibit B** and shall name the City of Milwaukee as additional insured on said policies.



12. **Indemnification; Waiver of Subrogation.** In addition to any liability the Board may have to City as a result of the Board breach of any of its duties hereunder, notwithstanding anything to the contrary contained herein, the Board also agrees to indemnify and save City harmless from and against any and all loss or claims, or damage or injury to persons (including death), property, or business, sustained in or about, or to, the Premises, and resulting from or attributable to:
- A. the intentional or negligent acts or omissions of the Board, its officers, directors, employees, agents, or contractors. Providing, however, that – subject to subparagraph B below - the City is not hereby imposing any contractual liability on the Board to indemnify City for any loss, claim, damage, or injury caused or suffered by members of the public engaged in public use of the Premises, or by persons who are members of the public at events for which the Board has issued a permit under section 7 of this Agreement; and/or
  - B. a Board-Controlled Activity (including, but not limited to, activities that only involve the Board, its officers, directors, employees, agents or contractors).
- City hereby waives, however, any and all rights of recovery against the Board for any loss or damage to the extent, and only to the extent, City actually receives payment from the Board's insurer toward the particular loss or damage. If the amount City collects from the Board's insurer is less than the total loss or damage to City, then City's waiver shall only be a partial one.
13. **The Board's Annual Report to Commissioner.** On or before each July 31 during the Term of this Lease, the Board shall provide a written report to the Commissioner concerning the Board's use and activities at the Premises during the preceding 12-month period ending on the March 31 prior to that July 31 deadline. That Report shall identify and explain the Board-Controlled Activities during the preceding year, and also, with respect to section 7 above, identify all permits issued, to whom, for what area, and for what purpose, and permit fee (if any) charged. The Report shall also contain a report as to revenues and expenses associated with the Premises for the Report Year.
14. **Public Records.** The Board acknowledges that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. The Board further acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the Board must defend and hold the City harmless from liability under that law. Except as otherwise authorized under Wisconsin's Public Records Law, Board records regarding this Agreement and administration of the Lease shall be retained for 7 years.
15. **Possible Restrictions/Encumbrances.**

- A. **No Title Report.** City is, as indicated, leasing the Premises to the Board on an “AS IS, WHERE IS” basis (except as otherwise provided herein). City has not obtained or provided to the Board any title insurance commitment or title insurance policy with respect to the Premises. If the Board wants such, it can acquire such on its own at its expense.
- B. **Other.** City retains the right to devote portions of the Premises to uses for utilities and other easements necessary for public welfare and convenience, as determined by the Commissioner.

**16. Maintenance of Premises; Maintenance of Landscaping Improvements at Milwaukee and Erie Streets; Notice of Damage.**

- A. **Maintenance of Premises by the Board.** The Board shall be responsible, at its expense, for all routine or non-routine, capital or non-capital, repair, husbandry and maintenance of the Premises and improvements thereat. The foregoing includes, but is not limited to, the Board being responsible for, at its expense:
  - (1) Picking up and removing litter, trash, and rubbish at the Premises on a routine basis so as to keep the same clean and litter-free.
  - (2) Removing snow and ice from the entire width of sidewalks and Riverwalk improvements along the perimeter of the Premises, and from walkways at the Premises in accordance with Milwaukee Code of Ordinances §§116-8 and 116-16.
  - (3) Promptly removing graffiti from the Premises and improvements thereat.
  - (4) Mowing the grass, including grass between the curb and sidewalk, on a regular basis.
  - (5) Removing weeds and pruning trees, bushes, and vegetation at the Premises, and fertilizing, on an as-needed basis. **Note:** CITY will care for the newly planted trees during the first year of this Lease.
  - (6) Repairing and restoring any damage to the Premises or improvements thereat, as practicable and within a reasonable time.
  - (7) Electrical and plumbing repairs and maintenance work typically associated with reasonable husbandry.
  - (8) Properly preparing structures and fixtures for winterization, weather and change of seasons.
  - (9) Keeping the Premises, structures and fixtures in good and clean condition.

- B. **Maintenance of Sidewalk Improvements at Milwaukee and Erie Streets by the Board.** As additional consideration for the City's granting of this Lease, the Board shall also be responsible for routine maintenance of the landscaping located adjacent to the intersection of Milwaukee and Erie Streets, as described on **Exhibit C**, attached hereto (the "Sidewalk Area"). The foregoing includes the Board being responsible for, at its expense:
- (1) Picking up litter, trash, and rubbish at the Sidewalk Area on a routine basis so as to keep the same clean and litter-free.
  - (2) Removing weeds and pruning trees and shrubs located upon the Sidewalk Area on an as-needed basis.
  - (3) Mowing the grass, including grass between the curb and sidewalk, on a regular basis.
  - (4) Removing snow and ice from the entire width of the Sidewalk Area, in accordance with Milwaukee Code of Ordinances §§116-8 and 116-16.
- C. **Notice of Damage/Repair to City.** The Board shall provide prior written notice to City of any repair or maintenance work required of the Board above that is estimated to cost over \$10,000 or that may materially affect the structure or appearance of any structure at the Premises and obtain City's prior written approval before undertaking any such repair or maintenance work.
17. **Special Trash Pick-Up Provisions.** The Board shall be solely responsible for all trash and litter pick-up and removal from the Premises. City shall bear no expense or obligation associated with trash removal from the Premises.
18. **Improvements by the Board.** With the exception of maintenance and repair work required of the Board under the "maintenance" section above, the Board shall not make any alterations or additions to the Premises without City's prior written consent and without first having obtained all other necessary approvals and permits. (See ¶ 32 regarding approval by City).
19. **Leasehold Mortgages; Construction Liens.** The Board has no right to mortgage, pledge as collateral, or hypothecate its interest in this Lease, or in any part of the Premises, or in any buildings, improvements, or fixtures at the Premises. The Board shall take all actions and precautions required to ensure that the Premises do not become attached by, or with, any lien, including, but not limited to, any construction lien, or lien of or by any laborer, contractor, subcontractor, materialman, or supplier (including any lien under Subch. I of Wis. Stat. Ch. 779) relating directly or indirectly to any work that the Board (or anyone claiming by, through, or under the Board) may perform or have done at the Premises. The Board shall indemnify, defend, and hold harmless City and the Premises of, from, and against, any such lien which may attach, or be asserted against, the Premises, together with all costs in connection therewith.

20. **Utilities; Police and Fire Protection.** The Board is responsible for all utility costs associated with use of the Premises during the Term of this Lease including sewer, water, and electricity for the lighting on the Premises. City shall provide police and fire protection to the Premises to the same extent and on the same basis it provides same to other citizens of the City.
21. **Property Taxes, Assessments, Fees and Charges.**
- A. In that the Premises are owned by City, the Premises are property-tax exempt under Wis. Stat. §70.11(2). See, especially, last sentence of §70.11(2), “[l]easing the property exempt under this subsection, regardless of the lessee and the use of the leasehold income, does not render that property taxable.” If the Premises subsequently become, under state law, in the City Assessor’s opinion, subject to general property taxes during the Term hereof, however, the Board shall be responsible for, and timely pay, such taxes, with the understanding that the Board may dispute such by following the procedure set forth in Wis. Stat. § 74.35(2m).
  - B. Unless otherwise entitled to lawful exemption, the Board shall pay all taxes, assessments, charges, and fees levied or assessed upon the Premises or its own personal property and its own trade fixtures on, or at, the Premises.
  - C. The Board shall pay any special charge, special assessment, special tax, or fee that may be levied against the Premises at any time during the Term. Said charges, assessments, taxes and fees expressly include those both known and unknown as of the effective date of this Lease.
22. **City Entry Rights.** City has the right, without notice, to enter the Premises at any time. And, notwithstanding the foregoing, City (and its contractors) shall have the right to be on the Premises at any time without notice to inspect, maintain, repair, replace or reconstruct any City utilities or improvements now or hereafter at the Premises. City’s entry, in any event, shall be conducted in such a way so as to minimize interference or disruption of the Board’s (or anyone claiming by, through, or under the Board) lawful use and occupancy of the Premises. In addition to the foregoing, City also expressly retains (and does not waive) all rights available to it at law to enter and inspect the Premises (or any part thereof) (including, but not limited to, all legal rights of City’s building inspectors, health inspectors, fire inspectors, electrical inspectors, assessors, fire and police personnel, etc. to enter and inspect).
23. **City Audit Rights.** The Board shall keep accurate and complete books, records, and accounts with respect: (i) to the Board’s finances; (ii) to the Premises (and the parts thereof), and the Lease (iii) to use and occupancy of and events at the Premises; and (iv) to maintenance and repair undertaken by the Board with respect to the Premises. Those books, records and accounts shall be made available to City for its review and inspection upon City’s request. The Board shall provide to City, at the Board’s expense, and upon City’s demand, copies of any:

- (a) of the aforementioned books, records and accounts;
- (b) agreement, permit, or license with respect to special events at or use of the Premises (or any part thereof);
- (c) invoices or contracts relating to the Board repair or maintenance work;
- (d) articles of incorporation or bylaws of the Board (or any amendment to the same);
- (e) Insurance policy the Board has or had in place hereunder.

City has the right to have an auditor (whether an employee of City's Comptroller Office or an independent auditor) review and audit any of the above.

**24. Defaults and Remedies.** The Board shall be in default hereunder:

- A. if the Board fails to perform any of its covenants or duties under this Lease and such failure is not cured by the Board (i) with all due dispatch after written notice from City to the Board if the failure jeopardizes health, safety or welfare and poses a substantial immediate threat of danger or injury; and (ii) in all other cases, within 30 days after written notice from City to the Board (or if such failure is not of a type that can reasonably be corrected within 30 days, then if the Board fails to commence promptly and proceed with due diligence to correct such failure);
- B. if the Board is adjudged bankrupt, or if the Board files a petition or answer seeking bankruptcy, insolvency status, or reorganization of the Board under federal or state bankruptcy or insolvency law, or if the Board consents to the appointment of a receiver to administer the Board or its affairs, or if the Board dissolves or institutes any proceeding for dissolution or termination;
- C. if the Board makes any sublease, assignment, transfer, hypothecation, conveyance, or other disposition of its interest in the Premises (or any part thereof) without City's prior written consent;

In the event of any default by the Board hereunder, the Board hereby authorizes and empowers City to exercise any right or remedy available to City under Wisconsin law, or in equity, or hereunder, including, without limitation, (i) the right to terminate this Lease or take possession of the Premises (or any part of it) without terminating this Lease, (ii) the right to have a receiver appointed by the Court to manage the Premises (or parts of it), (iii) the right to evict the Board and anyone claiming by, through, or under the Board, from the Premises (or parts of it), (iv) the right, if City evicts or removes the Board (or anyone claiming by, through, or under the Board) from the Premises (or any part of it), to store personal property of the Board (or anyone claiming by, through, or under the Board) in a storage facility or public warehouse at the sole cost of the Board.

**25. Condemnation or Damage of Premises.**

- A. **Condemnation or Damage That Terminates Lease.** If the Premises (or a significant part thereof) are at any time during the Term condemned by any public

authority with the power of eminent domain (or are voluntarily transferred in lieu of, or under threat of, condemnation), or if the Premises are damaged by fire or some other cause so as to render - in City's reasonable opinion (which shall be reached by City within 100 days of the condemnation, transfer, or damage, and after consultation with the Board) – all or any significant portion of the Premises untenable or unfit for the continued use and purpose of the Board, and for the carrying out of the Board's operations and use at the Premises, this Lease shall be deemed terminated as of the date of the condemnation or transfer or loss. In such event, the proceeds from any condemnation award or insurance shall be payable to City, providing, however, that the Board shall be entitled to any award or insurance directly relating to the Board's personal property (including the Board's trade fixtures and moveable equipment), to the Board's leasehold interest, and/or to any tenant-relocation award or benefit that the condemning authority or insurer may award or pay to the Board.

- C. **Waiver; Participation.** In the event of any condemnation or damage pursuant to subpara. A. above, the Board waives any claim for damage or compensation from City. The Board shall have the right, to the extent of its tenant-interest, or insurable interest, as the case may be, to participate in any condemnation proceedings or the settlement of any insurance claim.
26. **No Beneficial Interest.** No provision herein calling for sharing in insurance or condemnation proceeds, and no other provision of this Lease, shall constitute, or be deemed to be evidence of: The Board having any beneficial ownership of the Premises (or any part thereof, or in any land, fixtures, improvements, or buildings thereat); or any partnership or agency relationship between the Board and City. The sole relationship hereunder between the Board and City is merely that of tenant (the Board) and landlord (City).
27. **Right to Assign and Sublet.** The Board may NOT assign this Lease or sublet any portion of the Premises without City's prior written consent, providing, however, that, subject to the terms and conditions of this Lease, the Board may use the Premises for Board-Controlled Activities and the Board, under ¶7, may issue permits.
28. **Fixtures and Personal Property on Premises.** The Board shall not install or affix to the premises any trade fixtures without the approval of CITY. Subject to the terms hereof, the Board may place moveable equipment and personal property at the Premises as the Board may deem desirable, which shall remain the Board's sole property. The Board shall have the right at any time during the Term of this Lease, to remove or change, at the Board's sole expense, any of its moveable equipment and personal property at the Premises, providing, however, that (with the exception of temporary repairs, maintenance, upgrades and replacements) the Board shall not remove any such item that would compromise any structure or utility at, constituting, or serving any structure on the Premises (including, but not limited to, any HVAC, plumbing or electrical system), and providing further that, in all cases, the Board shall, at its expense, promptly repair any

damage caused by or attributable to any removal or change by the Board of its trade fixtures, equipment or personal property.

29. **Waiver.** No delay, waiver, omission or forbearance on the part of either party to exercise any right, option, duty or power arising out of any breach or default by the other party of any of the terms, provisions or covenants contained herein, shall be deemed a waiver by that party of such right, option, or power, as against the other party for any subsequent breach or default by that party.
30. **Governing Law.** This Lease shall be construed according to the laws of the State of Wisconsin.
31. **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 fax or e-mail to the respective fax number or e-mail address set forth below. Either party may by like notice at any time, and from time to time, designate a different address, fax, 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 faxed or e-mailed during business days when City Hall is open for business during business hours (8:30 a.m.- 4:30 p.m.), when faxed or e-mailed, or (c) if mailed, three days after the postmark on such notice, in accordance with this section.

**To City:**

Commissioner of Dept. of City Development  
City of Milwaukee  
809 North Broadway, Second Floor  
Milwaukee, WI 53202  
Phone: (414) 286-5800  
Fax: (414) 286-5467

**Copy to:**

Danielle M. Bergner  
City Attorney's Office  
800 City Hall  
200 East Wells Street  
Milwaukee, WI 53202  
Phone: (414) 286-2620  
Fax: (414) 286-8550

**To THE BOARD:**

Board of Business Improvement District No. 2  
c/o President, Historic Third Ward Association, Inc.  
Phone: (414) 273-1173  
Fax: (414) 273-2205

32. **Commissioner.** Unless otherwise provided for herein, all submissions to City, and all approvals or consents required to be obtained from City, hereunder, as landlord, shall, respectively, be submitted to, or obtained from, as the case may be, City's Commissioner of the Department of Public Works and City's Commissioner of the Department of City Development, or their respective designees.
33. **Severability of Provisions.** If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions and conditions of this Lease, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.
34. **Captions.** The captions in this Lease are for convenience and reference, and in no way define or limit the scope or intent of the various provisions, terms, or conditions hereof.
35. **Entire Agreement.** This Lease 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.
36. **Signage; Brochures.** Any signage at the Premises must first be approved by each of the Board and City. The Board also agrees to include on any of its brochures or pamphlets advertising or concerning the Board's operations or programs at the Premises evidence of City ownership of the Premises.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease as of the day and year first above written.

**BOARD:**  
**BOARD OF BUSINESS IMPROVEMENT**  
**DISTRICT NO. 2**

**CITY:**  
**CITY OF MILWAUKEE**

By: \_\_\_\_\_  
Ronald S. San Felippo  
Chair

By: \_\_\_\_\_  
Elaine M. Miller,  
Special Deputy Commissioner



Signed per MCO § 304-49-9

## **BOARD NOTARIES**

[illegible]

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2010, the above named Ronald S. San Felippo, Chair of the Board of Business Improvement District No. 2, to me known to be such person who executed the foregoing instrument and acknowledged the same in such capacity.

Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

## Milwaukee City Attorney Approval and Authentication

Danielle M. Bergner, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the Milwaukee representatives above, and also authenticates the signatures of each of the above Milwaukee representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

By: \_\_\_\_\_  
DANIELLE M. BERGNER

Assistant City Attorney  
State Bar No. 1049359

Date: \_\_\_\_\_

1050-2010-1510:158679

DRAFT

## **EXHIBIT A**

### **Description of The Premises**

Description of a portion of East Erie Street at the harbor entrance to be designated as Pedestrian Mall, in the 4th Aldermanic District of the City of Milwaukee.

That part of East Erie Street in the Northwest 1/4 of Section 33, Township 7 North, Range 22 East described as follows: Commencing at the southeast corner of Lot 3 of Certified Survey Map No. 7370; thence South  $33^{\circ}19'02''$  East, along the southeasterly extension of the easterly line of Lot 3 aforesaid, 21.67 feet to a point lying 20.00 feet southeasterly of, as measured normal to, the southerly line of Lot 3, said point being the point of beginning of the land to be described; thence South  $34^{\circ}16'47''$  West, parallel to said southerly line, 110.57 feet to a point in the westerly line of said Certified Survey Map, said westerly line also being the established dock line of the east bank of the Milwaukee River; thence South  $33^{\circ}18'29''$  East, along said westerly line and said established dock line, 11.45 feet to a point; thence South  $67^{\circ}20'57''$  East, along said westerly line and said established dock line, 47.50 feet to a point in the southerly line of said Certified Survey Map; thence North  $85^{\circ}48'29''$  East, along said southerly line, 86.59 feet to a point in the southeasterly extension of the easterly line of Lot 3; thence North  $33^{\circ}19'02''$  West, along said southeasterly extension, 135.09 feet to the point of beginning.

The above described parcel contains 8,420 square feet or 0.1933 acres of land.

## Exhibit B

### **Insurance Requirements**

Insurance certificates must be sent for inspection and approval prior to the tenant's occupancy of the Premises and prior to any work being performed at the Premises by contractors or subcontractors of the tenant. Certificates should be sent to: Manager of Real Estate Services, City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202-3617 or by facsimile to (414) 286-0395.

#### TYPE OF INSURANCE

#### LIMITS

##### Worker's Compensation

Statutory limits

##### Employers Liability

Bodily Injury by Accident  
Bodily Injury by Disease

Each Accident: \$100,000  
Each Employee: \$100,000  
Policy Limit: \$500,000

##### Public Liability

A Comprehensive General or Commercial General  
Policy Insuring Tenant's Use of the Premises that provides:

- Premises/Operations Protection
- Products/Completed Operations Protection
- Independent Contractor Protection (owners, contractors protective coverage)
- Contractual Liability Coverage
- Non-owned Automobile Liability Coverage
- Bodily Injury/Property Damage

**NOTE:** If claims made coverage is provided, the policy must be amended so all protected occurrences are covered regardless of when the claim is made.

Each Occurrence: \$1,000,000  
General Aggregate: \$2,000,000  
Products/Comp. Operations  
aggregate: \$2,000,000

**THE CITY OF MILWAUKEE MUST BE NAMED AS ADDITIONAL INSURED PARTY  
ON THE BOARD'S POLICY AND ANY CONTRACTOR OR SUBCONTRACTOR  
POLICIES OF INSURANCE.**

## **EXHIBIT C**

### **Description of Sidewalk Area**

(See attached)

DRAFT