

Redevelopment Authority of the City of Milwaukee

Resolution No.: 10554
Adopted on: May 21, 2015
Project/Area: TID No. 37/Grand Avenue Redevelopment
Aldermanic District: 4th

Resolution authorizing execution of a bill of sale and permanent public access easement for a portion of the Ivory Tusk riverwalk, and approving Amendment No. 1 to a Loan Agreement between the Redevelopment Authority of the City of Milwaukee and Ivory Retail/Office Operating Company, LLC.

Whereas, In 1999, TID No. 37 (Grand Avenue Redevelopment) was amended to provide a \$2.4 million loan to Ivory Retail/Office Investors, LLC to assist with redevelopment of the former Marshall Field's building ("Ivory Tusk") at the southeast corner of West Wisconsin Avenue and North Plankinton Avenue into hotel, office and retail uses; and

Whereas, The Ivory Tusk building requires over \$2 million in repairs to the terra cotta façade, courtyard, parking ramp and riverwalk that cannot be funded by current building cash flow; and

Whereas, Ivory Retail/Office Operating Company, LLC, the successor to Ivory Retail/Office Investors, LLC has requested a modification to their loan to allow sufficient cash flow to fund the necessary improvements; and

Whereas, Mayor Tom Barrett formed a West Wisconsin Avenue Task Force to promote redevelopment and activity along West Wisconsin Avenue and the Redevelopment Authority of the City of Milwaukee ("RACM") and the City of Milwaukee ("City") wish to encourage reinvestment along West Wisconsin Avenue; and

Whereas, Being one of the earliest riverwalk segments in the riverwalk system, a portion of the riverwalk adjacent to Ivory Tusk is still owned by the City; and

Whereas, In exchange for a loan modification, Ivory Tusk Retail/Office Investors, LLC is willing to accept ownership of the City portion of the riverwalk and provide a permanent public access easement; now, therefore, be it

Resolved, By the Redevelopment Authority of the City of Milwaukee that Amendment No. 1 to a Loan Agreement between RACM and Ivory Retail/Office Operating Company, LLC, a copy of which is attached to this resolution, is approved; and, be it

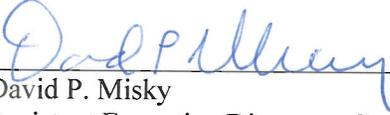
Further Resolved, That the bill of sale and permanent public access easement for a portion of the Ivory Tusk riverwalk, a copy of which are attached to this resolution, are authorized; and, be it

Further Resolved, That the proper officials are authorized to take such actions as may be necessary to carry out the intent of this resolution.

CERTIFICATION

I certify that the forgoing is a true and exact copy of a resolution adopted by the Redevelopment Authority of the City of Milwaukee, WI on the date set forth above.

(seal)



David P. Misky
Assistant Executive Director – Secretary

**FIRST AMENDMENT
TO
RACM RETAIL/OFFICE
LOAN AGREEMENT**

**First Amendment
to
RACM RETAIL/OFFICE
LOAN AGREEMENT**

THIS AGREEMENT is made and entered into as of the 1st day of June, 2015, by and between the REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE, a public body corporate and politic organized and existing under the laws of the State of Wisconsin (“Lender”) and IVORY RETAIL/OFFICE OPERATING COMPANY, LLC, a Wisconsin limited liability company (“Borrower”).

WITNESSETH:

WHEREAS, Lender and Ivory Retail/Office Investors, LLC, Borrower’s predecessor, entered into that certain RACM Retail/Office Loan Agreement dated as of the 1st day of March, 2000 (the “Loan Agreement”), a copy of which is attached as EXHIBIT “A”; and

WHEREAS, Lender and Borrower desire to enter into this First Amendment in order to acknowledge the change of name of Borrower, to modify certain terms of the Loan and to incorporate corresponding changes into the Collateral Security Documents; and

WHEREAS, The current principal balance of the Loan is \$2,291,468.27; and

WHEREAS, All capitalized terms included in this First Amendment shall have the meanings set forth in the Loan Agreement.

NOW, THEREFORE, in consideration of the mutual premises and covenants herein contained and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree that the Loan Agreement is amended as follows:

1. **Borrower.** The parties acknowledge that Ivory Retail/Office Investors, LLC was merged into Ivory Retail/Office Operating Company, LLC pursuant to Articles of Merger filed with the State of Wisconsin Department of Financial Institutions on September 1, 2011 and that Ivory Retail/Office Operating Company, LLC is the Borrower under the Loan Agreement and the Collateral Security Documents.

2. **The Note.** In order to evidence the parties agreement to modify the terms of the Loan by, among other things, holding payments of principal and interest in abeyance for a period of five (5) years commencing May 1, 2015, Borrower shall execute and deliver an Amended and Restated Note in the form attached as EXHIBIT “B.” Upon receipt of the Amended and Restated Note, Lender shall deliver the original Note, dated March 1, 2000, to Borrower for cancellation.

3. **The Collateral Security Documents.** The Collateral Security Documents, including the Amended and Restated RACM Retail/Office Nonrecourse Mortgage Note, remain in full force and effect and shall continue to secure the Loan.

4. All terms and conditions of the Loan Agreement are hereby incorporated herein and are hereby to be modified to conform herewith, but in all other respects shall continue in full force and effect.

5. In the event of any conflict between the terms of the First Amendment and the terms of the Loan Agreement, the terms of this First Amendment shall control.

IN WITNESS WHEREOF, RACM and Borrower have executed this First Amendment as of this day and year first above written.

**REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE**

By: _____
William Schwartz, Chair

By: _____
David P. Misky
Assistant Executive Director

**IVORY RETAIL/OFFICE OPERATING
COMPANY, LLC**

By: Williams Development Corporation,
a Managing Member

By: _____
William Orenstein, President

By: Irgens Partners, LLC,
a Managing Member

By: _____
Mark F. Irgens, CEO/Manager

EXHIBIT "A"

(RACM Retail/Office Loan Agreement)

RACM RETAIL/OFFICE

LOAN AGREEMENT

**RACM RETAIL/OFFICE
LOAN AGREEMENT**

THIS AGREEMENT is made and entered into as of the 1st day of March, 2000, by and between the REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE, a public body corporate and politic organized and existing under the laws of the State of Wisconsin ("Lender") and IVORY RETAIL/OFFICE INVESTORS, LLC, a Wisconsin limited liability company ("Borrower").

WITNESSETH:

WHEREAS, Lender has agreed to make a second mortgage loan of \$2,400,000.00 to Borrower to finance the renovation of the improvements located on the Real Estate.

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

1. Definitions. The following definitions shall apply to this Loan Agreement:
 - 1.1 Architect means Kahler Slater Architects, Inc.
 - 1.2 Assignment of Leases and Rents. The Assignment of Leases and Rents is the RACM Retail/Office Assignment of Leases and Rents executed by Borrower in favor of Lender on a date even herewith.
 - 1.3 Business Day means any day except a Saturday, Sunday or a day on which banks in Milwaukee, Wisconsin are authorized or required by law to close.
 - 1.4 City means the City of Milwaukee, Wisconsin.
 - 1.5 Collateral Security Documents means the following documents, each of which has been executed by Borrower in favor of Lender and dated as of an even date herewith, unless otherwise noted:
 - 1.5.1. The Note.
 - 1.5.2. The Mortgage.
 - 1.5.3. The Assignment of Leases and Rents.
 - 1.5.4. UCC Financing Statements.

THE OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATED TO OBLIGATIONS TO FIRSTAR BANK, N.A. IN ACCORDANCE WITH THE TERMS OF A SUBORDINATION AGREEMENT HELD BY SAID BANK.

1.5.5. The Collateral Security Documents shall also include all other documents and instruments, at any time executed, which state, expressly or impliedly, that they evidence or secure the Loan.

1.5 Development Agreement means the Development Agreement – Ivory Tusk Building Project by and among Lender, Ivory Tusk, LLC, and the City of Milwaukee, Wisconsin dated as of the same date as this Loan Agreement.

1.6 Ivory Hotel Operating Company means Ivory Hotel Operating Company, LLC, a Wisconsin limited liability company.

1.7 Leases means all leases for all or any portion of the Real Estate.

1.8 Loan means the \$2,400,000.00 loan evidenced by the Note and the proceeds of which are to be applied in accordance with terms of the Multi-Party Funding Agreement.

1.9 Loan Documents the Note, the Mortgage, the Collateral Security Documents, the Multi-Party Funding Agreement and this Loan Agreement.

1.10 Mortgage means the RACM Retail/Office Mortgage and Security Agreement executed by Borrower in favor of Lender on a date even herewith.

1.11 Multi-Party Funding Agreement means the Multi-Party Funding Agreement by and among Lender, Borrower, Firststar Bank, N.A., Ivory Tusk, LLC, Ivory Hotel Investors, LLC and the City of Milwaukee, Wisconsin dated as of the same date as this Loan Agreement.

1.12 Note means the \$2,400,000.00 RACM Retail/Office Nonrecourse Mortgage Note executed by Borrower in favor of Lender on a date even herewith.

1.13 Permitted Liens and Encumbrances means (i) the Permitted Encumbrances defined in the Mortgage, (ii) any leases, and (iii) any Primary Financing Documents.

1.14 Plans and Specifications means the plans for the Project in the form on file with Lender on the date of this Loan Agreement.

1.15 Primary Debt means the loan from Primary Lender to Borrower and related entities in the amount of \$49,115,000.00.

1.16 Primary Financing Documents means all documents evidencing and/or securing the Primary Debt.

1.17 Primary Lender means Firststar Bank, N.A. and thereafter, any person or entity providing Primary Debt.

1.18 Project means the renovation of the improvements located on the Real Estate, which shall be completed in accordance with the Plans and Specifications.

1.19 Real Estate means the real property described on EXHIBIT "A" attached hereto.

1.20 Substantially Completed shall have the same meaning as set forth in Article IX of the Development Agreement.

1.21 Terms and Conditions means the Restated and Amended Term Sheet, City of Milwaukee - Ivory Tusk Project attached hereto as EXHIBIT "B".

1.22 Title Commitment means the Title Commitment referenced in Section 2.7.

1.23 Title Insurance Company means Chicago Title Insurance Company.

1.24 UCC means the Wisconsin Uniform Commercial Code as the same may from time to time be in effect.

2. Conditions Precedent. The Loan will be disbursed to Borrower on the date all of the following conditions have been satisfied, (the "Disbursement Date").

2.1 Loan Documents. Borrower shall have executed and delivered, and caused other applicable parties to execute and deliver, each of the Loan Documents. Each of the Loan Documents must be in form and content reasonably acceptable to Lender.

2.2 Primary Financing Documents. Borrower shall have furnished Lender copies of the Primary Financing Documents at closing.

2.3 Insurance. Borrower shall have furnished to Lender copies of the policies, or certificates evidencing such policies, of insurance required in Section 4 of the Mortgage.

2.4 Title Insurance. Borrower shall have furnished to Lender a commitment for an ALTA form of mortgagee title policy and attached endorsements, as reasonably requested by Lender, issued by the Title Insurance Company, in form and content satisfactory to Lender to the effect that the Title Insurance Company will issue its mortgagee's title policy in the amount of \$2,400,000.00, insuring that Borrower owns fee simple title to the Real Estate subject only to the Permitted Liens and Encumbrances and insuring that the Mortgage constitutes a valid lien on the Real Estate, subject only to such Permitted Liens and Encumbrances.

2.5 Multi-Party Funding Agreement. Borrower shall have complied with all other terms and conditions of the Multi-Party Funding Agreement required for funding of loans and grants by Lender.

3. Disbursements.

3.1 Disbursement. The Loan proceeds shall be disbursed in accordance with the Multi-Party Funding Agreement.

3.2 Additional Conditions as to Loan Disbursements.

3.2.1 Completion of Construction. Construction of the Project shall be completed in an orderly manner, but in any event, on or before January 25, 2002, subject to matters of force majeure.

3.2.2 Status of Disbursements. Borrower agrees that all RACM moneys disbursed on behalf of Borrower pursuant to the Multi-Party Funding Agreement shall (i) constitute loans made to Borrower under this Agreement (ii) shall be evidenced by the Note and (iii) that interest shall be computed thereon as prescribed by the Note from the date Lender transfers such funds in accordance with the Multi-Party Funding Agreement.

3.2.3 Inspections. Borrower shall be responsible for making inspections of the Project during the course of construction and shall determine to its own satisfaction that the work done or material supplied by the contractors have been properly done or supplied in accordance with applicable contracts with such contractors. Lender and its agents may conduct such inspections of the Project and the Real Estate as Lender shall deem necessary for the protection of its interests.

3.2.4 No Liability of Lender. It is expressly understood and agreed that Lender assumes no liability or responsibility for the satisfactory completion of the Project, nor for the adequacy of funds advanced by it pursuant hereto to complete the Project, nor for inspection during construction, nor for any other acts on the part of Borrower or the contractors to be performed in the construction of the Project. Any inspections or reviews conducted by or for Lender shall be solely for its own benefit, and shall not lessen or modify any of Borrower's obligations or responsibilities hereunder.

4. Representations and Warranties of Borrower. Borrower represents and warrants to Lender that, to the best of its knowledge, as of the date hereof and throughout the term of the Loan:

4.1 Execution of Loan Documents. The Loan Documents have been duly executed and delivered by Borrower so that such documents constitute the legally enforceable obligations of such entities in accordance with their respective provisions.

4.2 Financial Statements. All financial statements, information and other data regarding Borrower and furnished by Borrower or any other individual or entity to Lender are complete and correct in all material respects. Such financial statements, information and other data accurately and fairly represent Borrower's financial condition and operating results as of such date and since such date there has been no material change in its financial condition or results of operations sufficient to materially impair Borrower's ability to repay the Loan.

4.3 Operation of Real Estate and Project. To the undersigned's knowledge, the present and proposed operation and use of the Real Estate, the business conducted thereon and the Project do not violate any applicable law, ordinance, code, rule, regulation, order or any restrictive covenant or any similar land use restriction binding on the Real Estate or the Project.

4.4 Ownership of Real Estate. As of the date hereof Borrower is the fee simple owner of the Real Estate, free and clear of all liens, encumbrances, claims and charges, except as may be approved in writing by Lender, except for the Permitted Liens and Encumbrances and except for liens and encumbrances permitted under the Terms and Conditions.

4.5 No Default. Borrower is not in default under any agreement to which it is a party, the effect of which would adversely affect the performance of its obligations pursuant to the provisions of the Loan Documents. Neither the execution and delivery of the Loan Documents nor any other document executed and delivered by Borrower in connection with the Loan, nor the consummation of the Loan, nor compliance with the provisions thereof, violate any presently existing order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality or constitutes a default under any indenture, mortgage, deed of trust, agreement or contract of any kind to which Borrower may be bound. Neither the execution and delivery of the Loan Documents nor any other document executed and delivered by Borrower in connection with the Loan, nor the consummation of the Loan, nor compliance with the terms and provisions thereof violates any existing law.

4.6 No Legal Proceedings. There are no actions, suits or proceedings pending or, to the undersigned's knowledge, threatened against Borrower or Real Estate before any court or any governmental, administrative, regulatory, adjudicatory or arbitral body or agency of any kind which will adversely affect performance by Borrower of its obligations pursuant to the provisions of the Loan Documents.

4.7 Insurance. Borrower has not received any notice from any insurer of any defects or inadequacies in the Real Estate or the Project which would adversely affect the insurability of the Real Estate or the Project.

4.8 Insolvency. Borrower has not filed any petition nor has any petition been filed against it in bankruptcy or insolvency for reorganization or for the appointment of a receiver or trustee or for the arrangement of debts, Borrower or Real Estate have not been the subject of such action, nor has such action been threatened by or against Borrower, or Real Estate. Borrower is not insolvent nor will it be rendered insolvent by the consummation of the Loan.

4.9 Plans and Specifications. The Project will be constructed in substantial accordance with the Plans and Specifications. Borrower does not know of any inadequacies or deficiencies in the Plans and Specifications or the proposed Project.

4.10 Governmental Approvals. Borrower has obtained, or will obtain when required, all approvals from all governmental and quasi-governmental authorities necessary or required to proceed with the development and operation of the Project.

4.11 Leases. The Leases are in full force and effect. No default has occurred pursuant to the Leases and Borrower knows of no event which, but for the passage of time or the giving of notice, or both, would constitute an event of default by the tenant or

Borrower pursuant to the Leases. No right of set off, deduction or abatement of rent exists pursuant to the Leases.

5. Covenants of Borrower. While this Loan Agreement is in effect, and until the Loan has been repaid in full, Borrower shall comply with the covenants set forth below:

5.1 Modification to Project and Real Estate. Except as contemplated herein, Borrower shall not make any material modifications or additions to the Project or the Real Estate without the prior express written consent of Lender's Executive Director, which consent shall not be unreasonably withheld or delayed. Interior finishing of tenant space in the ordinary course of business shall not be deemed a material modification or addition.

Notwithstanding the foregoing, Lender acknowledges that Borrower has granted to American Society for Quality, Inc. ("ASQ") an option to purchase ("Option") that portion of the North Office Unit of the Ivory Tusk Condominium located on the second floor of the building ("Option Space") and that Lender will release such Option Space from the lien of the Mortgage at the closing of the conveyance of the Option Space under the Option; provided that the purchase money proceeds payable to Borrower under the Option are first applied, to the extent necessary, to reduce the total outstanding principal balance due under the Primary Debt and this Loan so that after release of the Option Space the combined outstanding principal balance due under the Primary Debt and this Loan does not exceed 80% of the then fair market value of the Real Estate (after release of the Option Space). Lender further acknowledges and agrees that Borrower may make alternations to the Project and/or Real Estate and any fixtures, furniture, improvements, machinery and equipment therein, to the extent necessary to accommodate a transfer of the Option Space, without the necessity of obtaining the consent of Lender's Executive Director.

5.2 Liens. Without Lender's Executive Director's consent, which consent may be withheld in the sole discretion of Lender's Executive Director, Borrower shall not create or permit to be outstanding any mortgage, encumbrance, or lien on the Real Estate except for the Permitted Liens and Encumbrances and shall not secure any extensions of credit or additional loans secured by a mortgage superior to the Mortgage which are not permitted pursuant to Section 7.3.

5.3 Insurance. Borrower shall at all times maintain in effect and furnish Lender with certificates, insurance policies and proof of payment of premiums, insurance coverages as required in Section 4 of the Mortgage.

5.4 Taxes, Assessments and Liens. Notwithstanding anything contained herein to the contrary, Borrower shall pay and discharge, prior to delinquency, all taxes, assessments, condominium assessments and other government charges upon the Real Estate as well as claims for labor and materials which, if unpaid, might by law become a lien or charge upon the Real Estate; provided, that any such taxes, assessments, condominium assessments, government charges or construction lien claims need not be paid so long as Borrower is contesting such payment in good faith by appropriate proceedings which will avoid foreclosure of liens securing such items and sufficient funds are deposited with Lender to assure prompt disposition of the claim.

5.5 Compliance with Laws. Borrower will comply with all applicable environmental, health, safety and sanitation laws, rules, regulations and orders of regulatory and administrative authorities.

5.6 Prohibition against Fundamental Changes. Borrower shall not enter into any transaction of merger, consolidation or amalgamation; liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or a substantial part of its business, without the prior express written consent of Lender's Executing Director, which consent shall not be unreasonably withheld or delayed.

5.7 Financial Statements. Throughout the term of this Loan Agreement, Borrower shall furnish or cause to be furnished to Lender, subject to Lender's pledge to maintain the confidentiality of such information to the greatest extent permitted by law, the following:

5.7.1 Annual Financial Statements. As soon as available, and in any event within one hundred twenty (120) days after the close of each fiscal year of Borrower, a copy of an audited financial statement of Borrower and of Ivory Retail/Office Operating Company, as prepared by an independent certified public accountant of recognized standing selected by Borrower and satisfactory to Lender. Such financial statements shall be further certified by the managing members of each entity, confirming that, to the best of such member's knowledge, the financial statements provided to Lender are true and accurate accountings of the financial condition of the respective entities. Borrower shall also furnish Lender with financial statements and records in accordance with Section 13 of the Mortgage.

5.7.2 Additional Information. Borrower shall cause to be furnished to Lender such additional information concerning the financial condition of Borrower as Lender may reasonably request from time to time. All financial statements to be provided pursuant to this Section shall be prepared in accordance with generally accepted accounting principles. Borrower will permit representatives of Lender to have free access to the Real Estate and to inspect all books, records and contracts of Borrower relating to the Real Estate, including all notices to and from the Primary Lender, the Project and the business conducted on the Real Estate by Borrower.

5.8 Leases. Upon and after any default hereunder, Borrower shall immediately provide Lender with a copy of all notices sent or received by Borrower pursuant to the Leases. Lender shall have the right, but not the obligation, to cure any default by Borrower pursuant to the provisions of the Leases immediately, and without notice to Borrower, upon receipt of any notice from Borrower. Any amounts expended by Lender, including, but not limited to, reasonable attorneys' fees, to cure any default pursuant to the Leases shall be immediately due and payable to Lender. Interest shall accrue on all amounts expended by Lender to cure any defaults by Borrower pursuant to the Leases at the highest rate stated in the Note from the date of their expenditure.

5.9 Compliance with Primary Financing Documents. Borrower and related entities have obtained a commitment from the Primary Lender to make a loan to Borrower and related entities in the amount of \$49,115,000.00. Borrower agrees to comply, in all

material respects, with the terms and conditions of the Primary Financing Documents and promptly to give written notice to Lender of any amendments or modifications to the Primary Financing Documents. Borrower either agrees to give immediate written notice to Lender of the occurrence of an Event of Default (as defined in the Primary Financing Documents) or the issuance to Borrower of a notice of default under the Primary Financing Documents, and to keep Lender fully advised in respect to status of any such Event of Default.

6. Defaults.

6.1 Any of the following events shall constitute an Event of Default under this Loan Agreement:

6.1.1 Default Pursuant to Note. Borrower shall default in the payment of principal or interest due under the Note and such default shall continue for a period of ten (10) days following Borrower's receipt of written notice of such default from Lender the due date of such payment.

6.1.2 Default Pursuant to Loan Documents. There shall be a default in the performance or observance of any covenants or conditions required to be performed or observed by Borrower under the terms of the Loan Documents, other than the Note, and such breach shall continue for a period of thirty (30) days after written notice to Borrower specifying such breach; provided, however, if such default cannot reasonably be cured within such thirty (30) days, Borrower shall not be deemed to be in default if Borrower commences curing such breach within ten (10) days after written notice and thereafter diligently completes the curing of such breach, provided that Lender's security for the Loan, in Lender's sole opinion, is not materially impaired by such delay.

6.1.3 Breach of Warranty or Representation. Any representation or warranty made by Borrower in the Loan Documents, as part of the Loan or in any certificate or document furnished as part of the Loan shall prove untrue in any material respect on the date as of which they were made or as of the date on which they were to be effective.

6.1.4 Insolvency. Borrower shall admit in writing its inability to pay its debts or shall make an assignment for the benefit of its creditors; or shall be adjudicated a bankrupt; or shall file a voluntary petition in bankruptcy or to effect a plan or other arrangement with creditors, or to liquidate its assets under court supervision; or shall have applied for the appointment of a receiver, trustee or custodian for the Real Estate or any of its real or personal property; or a trustee, receiver or custodian shall have been appointed for the Real Estate or any of their real or personal property and such trustee, receiver or custodian shall not have been discharged within sixty (60) days after the date of his appointment.

6.1.5 Damage to Real Estate. If the improvements on the Real Estate are, in the reasonable judgment of Lender, materially injured or destroyed and Borrower and the condominium association both decide not to restore such damage.

6.1.6 Warrants and Attachments. Any warrant, attachment, execution or other writ shall be issued or levied upon the Real Estate and shall remain undischarged, unstayed or unbonded for a period in excess of sixty (60) days and after thirty (30) days written notice from Lender to Borrower.

6.1.7 Primary Financing. The occurrence of an event of default (as defined in the Primary Financing Documents).

6.2 Occurrence of Default. Upon the occurrence of an Event of Default, unless such Event of Default is subsequently waived in writing by Lender, Lender shall be entitled, at the option of Lender, to exercise any or all of the following rights and remedies:

6.2.1 Accelerate Payments. Lender may declare the entire unpaid principal balance due pursuant to the Note to be immediately due and payable, together with accrued and unpaid interest, without further notice to or demand on Borrower. Notwithstanding the foregoing, if Borrower (i) becomes insolvent, (ii) makes an assignment for the benefit of its creditors, (iii) becomes the subject of an "order for relief" within the meaning of the U.S. Bankruptcy Code, (iv) files a petition in bankruptcy or for reorganization, (v) is adjudged bankrupt, (vi) has filed against it an involuntary petition pursuant to the U.S. Bankruptcy Code (and such involuntary petition is not dismissed within twenty (20) days after filed), or (vii) has a receiver, trustee, custodian or a liquidator appointed to take control of any of the Real Estate (and such receiver, trustee, custodian or liquidator shall not have been discharged within sixty (60) days after his appointment), then the entire unpaid principal balance due pursuant to the Note and all accrued and unpaid interest thereon shall automatically and without the option of Lender become immediately due and payable.

6.2.2 Other Remedies. Lender may exercise all enforcement remedies specified or permitted in the Collateral Security Documents or any remedy available to Lender at law or in equity.

7. Additional Matters.

7.1 Due on Sale. Upon sale of the Project or the Real Estate, the Loan shall become due and payable. The term "Sale" as used herein shall mean the transfer of legal or equitable title to the Project or the Real Estate to an unrelated and unaffiliated third party or the transfer of a controlling interest in Borrower to an unrelated and unaffiliated third party. Except as provided in Section 5.1, upon sale of a portion of the Project or the Real Estate, a portion of the outstanding principal balance of the Loan and all unpaid and accrued interest shall become due and payable. The amount of principal to become due and payable shall be calculated by multiplying the then outstanding principal balance of the Loan by a figure the numerator of which is the number of improved square feet of building improvements within the Real Estate transferred by Borrower and the denominator of which is the total number of improved square feet of building improvements within the Real Estate. Lender shall not unreasonably withhold its consent to one transfer and assumption of the Project and Real Estate during the first ten (10) years of the term of the Loan, provided that: (i) the transferee and its principals are reputable, experienced owners of commercial real estate capable of performing Borrower's obligations hereunder, (ii) the

holder of the Primary Debt has also consented to the conveyance and assumption of the Primary Debt or the Mortgage or the Primary Debt is satisfied and a new First Mortgage Loan obtained by the transferee which complies with the refinancing limitations set forth in the Terms and Conditions, (iii) the debt coverage ratio for the Project and Real Estate (annual net operating cash flow divided by annual debt service) is equal to or greater than 1.07 (or, if a tenant or affiliate of tenant of the Project or the Real Estate is the purchaser, Lender is reasonably satisfied with the creditworthiness of the purchaser), and (iv) an assumption fee equal to one percent (1%) of the then outstanding principal balance due on the Loan is paid to Lender. If the Project or the Real Estate is conveyed to a tenant or affiliate of a tenant of the Project or the Real Estate, and the Loan is assumed as provided above, Lender shall not unreasonably withhold its consent to one further transfer of the Project and the Real Estate, consistent with the provisions of the immediately preceding clause.

7.2 Loan Due in the Event of Exemption From Property Taxes. In the event that all or any part of the Project shall become exempt from the payment of general real estate property taxes then, at the option of Lender and upon written notice to Borrower from Lender, the whole principal amount of the Loan shall be and become immediately due and payable; provided, however, that Lender shall not have such option if, prior to such written notice, Borrower shall make or cause to be made by a party reasonably acceptable to Lender a legally binding agreement in form and substance acceptable to Lender to pay annually an amount equal to the general real estate property taxes which would be payable upon said real property but for such exemption.

7.3 Refinancing Primary Debt. Borrower shall have the right to refinance the Primary Debt from time to time during the term of the Loan in accordance with the Terms and Conditions and Lender agrees to execute such agreements evidencing the subordination of the Loan to such refinanced Primary Debt and/or modify the Collateral Security Documents as may be reasonably requested by the holder of the first mortgage, including, without limitation, a subordination and standstill agreement.

7.4 Consistent Documentation. The parties agree to modify the Collateral Security Documents, from time to time, as reasonably necessary to maintain consistency with the Primary Financing Documents.

7.5 Successors, Assigns, Waiver, Etc. The provisions of this Loan Agreement shall inure to the benefit of and be binding upon Borrower and Lender, and their respective legal representatives, successors and assigns; provided, however, that this Loan Agreement, except as provided herein, may not be assigned by Borrower without the prior written consent of Lender. No delay on the part of Lender in exercising any right, power or privilege shall operate as a waiver thereof. The rights and remedies of Lender specified in this Loan Agreement shall be in addition to and not exclusive of any other rights and remedies which Lender, by operation of law, would otherwise possess.

7.6 Survival of Representations and Warranties. All agreements, representations, and warranties made in this Loan Agreement shall survive the execution of the Loan Documents and shall continue until the Note is repaid in full.

7.7. Governing Law. This Loan Agreement shall be governed by the laws of the State of Wisconsin.

7.8. Amendment of Loan Agreement. This Loan Agreement may not be changed orally, but only by an agreement in writing signed by the parties hereto.

7.9. Indemnification. Borrower hereby agrees to hold and save Lender harmless and indemnify it against and from all claims, liabilities, damages, losses or expenses (including reasonable attorney fees) of any kind incurred by Lender and arising from or out of the use, occupancy or possession of the Real Estate or otherwise in any way connected to the Loan; provided, however, Borrower shall not be required to hold and save Lender harmless and indemnify Lender for any claims, liabilities, damages, losses or expenses incurred by Lender as a sole result of Lender's active negligence or malicious act.

7.10. Notices. Any notice to be given hereunder shall be in writing, addressed to the party at the address stated below and shall be (i) delivered in person to the receiving party by the other party, his agent or a professional courier service, (ii) sent by United States certified or registered mail, postage prepaid, return receipt requested, or (iii) sent by telecopy to the receiving party at the telecopy phone number stated below. Any such notice shall be deemed effective upon the earlier of the actual receipt of the notice or (i) if delivered in person, then when such notice is delivered to an individual at the receiving party's address who is apparently authorized to accept deliveries, (ii) if sent by United States certified or registered mail, then one day after such notice or election is deposited with the United States Postal Service, or (iii) if sent by telecopy, then at the time sent and confirmed by the sender's transmitted copy of such notice.

Lender: Redevelopment Authority of the
 City of Milwaukee
 809 North Broadway
 Milwaukee, WI 53202
 Attn: Executive Director
 Telecopy No.: 414-286-5467

Borrower: Ivory Retail/Office Investors, LLC
 735 North Water Street, Suite 729
 Milwaukee, WI 53202
 Attn: William Orenstein

7.11. Severability. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

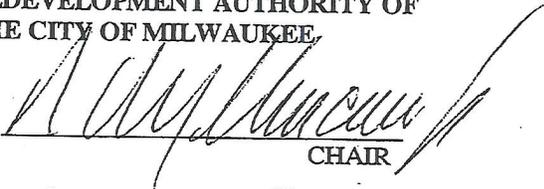
7.12. Terms and Conditions. In the event of a conflict between the provisions of this Loan Agreement and the Terms and Conditions attached as EXHIBIT "B", the Terms and Conditions shall govern.

7.13. Headings. Section and subsection headings in this Agreement are included herein for convenience only and shall not constitute a part of this Agreement for any purpose.

7.14 Nonrecourse. Notwithstanding anything to the contrary contained herein: (i) all obligations under the Loan Documents are nonrecourse obligations of the Borrower; (ii) Borrower is not liable for payment of any amounts beyond the amount realized upon the security granted therefor; (iii) the payment of any amounts due under the Loan Documents shall not be enforced by any action or proceeding whereby any damages or personal money judgment shall be sought against Borrower; and (iv) Lender's sole remedy shall be against the Real Estate.

IN WITNESS WHEREOF, the undersigned have executed this Loan Agreement on the day, month and year first above written.

**REDEVELOPMENT AUTHORITY OF
THE CITY OF MILWAUKEE**

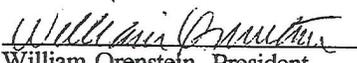
By: 
CHAIR

By: 
EXECUTIVE DIRECTOR

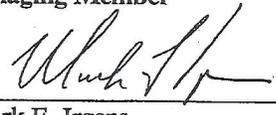
IVORY RETAIL/OFFICE INVESTORS, LLC

By: Ivory Retail/Office Operating Company, LLC,
Managing Member

By: Williams Development Corporation,
A Managing Member

By: 
William Orenstein, President

By: Irgens Development Partners, LLC
A Managing Member

By: 
Mark F. Irgens
Manager/President

TOG/kg
02-24-00
28613

BILL OF SALE
(Ivory Tusk Condominium Riverwalk)

KNOW ALL MEN BY THESE PRESENTS THAT:

THE CITY OF MILWAUKEE, WISCONSIN, a Wisconsin municipal corporation (the "City") in consideration of the execution and delivery of that certain Grant of Perpetual Non-exclusive Easement Agreement (Ivory Tusk Condominium Riverwalk) dated as of May 1, 2015 between City and the Ivory Tusk Condominium Association, Inc., a nonstock, nonprofit corporation that is the condominium association for the Ivory Tusk Condominium ("Condominium").

BY THESE PRESENTS DOES HEREBY GRANT, SELL, TRANSFER AND CONVEY unto Condominium all of its right, title and interest in and to the Ivory Tusk Riverwalk Improvements consisting of piles, decking, railings and related improvements more particularly described in **Exhibit "A"** attached hereto, and located in the area more particularly described in **Exhibit "B"** attached hereto.

TO HAVE AND TO HOLD the same unto the Condominium, its successors and assigns forever.

IN WITNESS WHEREOF, the City has caused this Bill of Sale to be executed by its Mayor and City Clerk and countersigned by its Comptroller as of the 1st day of May, 2015.

CITY OF MILWAUKEE

TOM BARRETT, Mayor

JAMES R. OWCZARSKI, City Clerk

COUNTERSIGNED:

MARTIN MATSON, Comptroller

Grant of Perpetual Non-exclusive Easement Agreement
(Ivory Tusk Condominium Riverwalk)

Document Number

Recording Area

Name and Return Address

Thomas O. Gartner
City Attorney's Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

Parcel Identification Number (PIN)

GRANT OF PERPETUAL NON-EXCLUSIVE EASEMENT AGREEMENT

(Ivory Tusk Condominium Riverwalk)

This Grant of Easement Agreement is made as of _____, 2015, by and between THE IVORY TUSK CONDOMINIUM ASSOCIATION, INC., a Wisconsin nonprofit, nonstock corporation (“Grantor”) and the City of Milwaukee (“City” or “Grantee”).

RECITALS

A. Grantor is a nonstock, nonprofit corporation that is the condominium association for the **Ivory Tusk Condominium** (the “**Condominium**”), a condominium consisting of five condominium units and common elements located on certain real property situated along the Milwaukee River in the City of Milwaukee, State of Wisconsin, as more particularly described on **EXHIBIT A** attached hereto (the “**Property**”).

B. Pursuant to the terms of that certain Bill of Sale dated as of June 1, 2015, between Grantor and Grantee, Grantee has conveyed certain riverwalk improvements adjacent to the Property to Grantor and the parties now desire to enter into this Easement Agreement which shall be applicable to those newly conveyed riverwalk improvements together with existing riverwalk elements located on the Property (collectively, the “Riverwalk Improvements”). The area upon which the Riverwalk Improvements are located is legally described on the attached **EXHIBIT B** hereto (the “Riverwalk Easement Area”) located on and adjacent to the Property.

C. The parties hereto acknowledge that the Riverwalk Improvements are 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.

AGREEMENTS

NOW THEREFORE, in consideration of the above Recitals and the terms and conditions of the Agreement, Grantor and Grantee agree to the following:

1. Grant of Easement. Effective as of the Effective Date, Grantor hereby conveys to Grantee a nonexclusive easement upon and across the Riverwalk Improvements located within the Riverwalk Easement Area and, solely to the extent reasonably necessary to carry out the activities described in subparagraph (b) below for the following purposes:

(a) pedestrian access, for the benefit of the public, across the portion of the Riverwalk Improvements consisting of walkways, sidewalks or stairways in accordance with the terms of this Agreement;

(b) maintenance, repair and/or replacement of all or any portion of the Riverwalk Improvements 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 within the Riverwalk Easement Area (collectively, the “Decorations”) by Grantee in accordance with the terms of this Agreement.

2. Effective Date. This Agreement shall be effective on _____ (the “Effective Date”).

3. Insurance. Throughout the term of this Agreement, Grantor shall maintain or cause to be maintained (a) comprehensive liability insurance, naming the Grantee as an additional insured, 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” 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 Improvements located upon the Riverwalk Easement Area, sufficient to avoid all co-insurance provisions of the subject insurance policy and, at the option of 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 but any resulting increase in coverage must be commercially reasonable and prudent based on coverages provided for other owners of similar portions of the Riverwalk System. 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.

4. Maintenance; Right of Entry. Grantor shall be responsible to maintain or cause to be maintained the portion of the Riverwalk Improvements located within the Riverwalk Easement Area in accordance with the maintenance standards set forth on EXHIBIT C attached hereto. Grantor shall undertake all necessary capital repairs and replacements to the Riverwalk Improvements when and as necessary. If Grantor or its designee fails to maintain the Riverwalk Improvements within the Riverwalk Easement Area in the condition required by this Agreement, Grantee may provide Grantor and said designee with a written notice setting forth the maintenance or repair work that Grantee reasonably determines has not been done. If, upon receiving such written notice, Grantor and/or its designee 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, upon thirty (30) days prior written notice to Grantor and its designee may perform such work and shall be reimbursed by Grantor for all reasonable costs incurred in performing such work. In exercising its right to maintain, repair and/or replace the Riverwalk Improvements, Grantee shall, to the extent both possible and practical, attempt to perform all necessary work from adjacent portions of the Riverwalk System and/or from the Milwaukee River so as to cause as little disruption or interference as reasonably practical to the Property and the operations of Grantor and any unit owners, tenants, licensees or occupants on

the Property. Grantee shall notify Grantor in advance of Grantee's need to enter upon the Riverwalk Easement Area.

5. Public Rights. Except as expressly provided herein, Grantor shall, at all times, make the walkway of the Riverwalk Improvements on the Riverwalk Easement Area available for use by members of the public, except for such times as such walkway must be closed for construction, maintenance, repair or replacement of the Riverwalk System, or the buildings and/or improvements adjacent to the Riverwalk Easement Area, 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 the walkway in order to prevent the acquisition of any adverse or prescriptive rights. Grantor shall have the exclusive right to install private docks and private boat slips anywhere along the dock wall appurtenant to the Property. Such additional private boat slips may be appurtenant to public or private dock systems and may be for the exclusive use of owners/occupants of any interest in or part of the Property as may be designated by Grantor, provided such docks and slips are in compliance with applicable laws. Grantor shall have the exclusive right to permit commercial vending and similar activities, including, without limitation, the right to place kiosks, push carts and similar temporary structures, carts or other similar items within and/or along the Riverwalk Easement Area, and to charge "rent", a user or license fee or similar charge provided that such activities do not unreasonably interfere with pedestrian traffic, comply with any applicable City ordinances and comply with item no. 2 of EXHIBIT C attached hereto.

6. Rules and Regulations. Grantee shall have the right to formulate reasonable rules and regulations regarding the use of the Riverwalk Improvements by the public that are uniform and consistent with rules and regulations promulgated by the Board of Business Improvement District No. 15 (the "BID") and applicable to those components of the Riverwalk System under the jurisdiction of that BID. 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 Improvements on the Riverwalk Easement Area. 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 the Riverwalk Improvements by the public; provided, however, Grantor's rules and regulations shall not be inconsistent nor conflict with the terms of EXHIBIT D or any rules and regulations promulgated by Grantee. In the event of any such conflict, the terms of EXHIBIT D or the rules and regulations promulgated by Grantee shall control.

7. Decorations. Grantee shall have the right from time to time, and upon at least 72 hours prior written notice to a Grantor, to enter upon the New Riverwalk Improvements within the Riverwalk Easement Area to install and/or remove Decorations. Such installations and removals shall not materially interfere with the lawful use of the Property by Grantor or any unit owners, tenants, licensees or occupants of the Property and shall be at Grantee's sole expense.

8. Utilities. Grantor shall pay or cause to be paid for all electricity, water and other utilities used for lighting, cleaning and watering of flowers and other plant materials on the

Riverwalk Improvements within the Riverwalk Easement Area, including as such may be necessary for Decorations and as such may be used for maintenance and repairs to the Riverwalk Improvements within the Riverwalk Easement Area.

9. Alterations. Grantor shall not make any material structural alterations or modifications to the Riverwalk Improvements or make any changes to the color scheme of the Riverwalk Improvements without the prior written consent of Grantee, which shall not be unreasonably withheld. Further, Grantor shall not install any decorative elements or attach any fixtures to or upon the Riverwalk Improvements or upon the Riverwalk Easement Area without the prior written consent of Grantee, which shall not be unreasonably withheld. Any request by Grantor for installation of decorative elements or attachment of fixtures must be in writing, and Grantee shall approve or disapprove such request in writing within 15 business days following receipt. Failure of Grantee 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 Improvements without the prior written approval of the Grantor or its designee(s).

10. Assignment. Grantor expressly acknowledges that the rights granted to Grantee hereunder may be assigned in whole or in part to the BID and are exercisable by the BID. Except as set forth above, Grantee shall not assign this Agreement without the written consent of Grantor. Grantor shall not assign its rights under this Agreement without the written consent of Grantee, which consent shall not be unreasonably withheld conditioned or delayed. Upon any such assignment, the assigning party shall have no further rights or obligations under this Agreement.

11. Run with the Land. This Agreement shall run with the land, encumbering the Property and shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns. So long as Grantor or a permitted assignee remains obligated hereunder after any such conveyance, any party conveying all of its ownership interest in the Property, including, without limitation, condominium unit(s), shall be released from any and all liability hereunder.

12. 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. Either 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:

The Ivory Tusk Condominium Association, Inc.
c/o Irgens Partners, LLC
648 N. Plankinton Avenue, Suite 200
Milwaukee, WI 53203

To Grantee:

Commissioner of City Development
City of Milwaukee
809 North Broadway
Milwaukee, WI 53202

With a copy to:

City of Milwaukee
City Attorney's Office
200 East Wells Street, Suite 800
Milwaukee, WI 53202
Attn: _____

13. Enforcement. This Agreement may be enforced either at law or in equity, with the nonbreaching party entitled to injunctive relief and/or monetary damages. If any action for enforcement of this Agreement is brought, the nonprevailing party in such action shall reimburse the prevailing party for its reasonable attorneys' fees incurred in such action.

14. Amendment. This Agreement may be amended only by a written instrument executed by Grantee and Grantor.

15. Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

16. No Joint Venture. No provision hereof shall be deemed to constitute the parties hereto as partners of one another or joint ventures of one another or in any way obligate any party hereto for the performance of any obligation of the other party hereto.

17. Authority: Whenever in this Agreement the consent or approval of the City is required or the discretion of the City may be exercised, the City's Commissioner of Development shall have the authority to provide such consent or approval or to exercise such discretion.

[Remainder of Page Left Intentionally Blank; Signatures on Next Page]

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands and seals on this _____ day of _____, 2015.

GRANTOR:

THE IVORY TUSK CONDOMINIUM
ASSOCIATION, INC.

By _____

Its: President

GRANTEE:

THE CITY OF MILWAUKEE

Tom Barrett, Mayor

James R. Owczarski, City Clerk

Countersigned:

Martin Matson, Comptroller

Approved as to form, content and execution this
_____ day of _____, 2015.

Assistant City Attorney

EXHIBIT A

Legal Description of the Property

Units 1, 2, 3, 4 and 5, together with said unit's undivided percentage interest in the common elements (and the exclusive use of the limited common elements appurtenant to said unit) all in Ivory Tusk Condominium, a condominium declared and existing under and by virtue of the Condominium Ownership Act of the State of Wisconsin and recorded by a Declaration as such condominium in the Office of the Register of Deeds for Milwaukee County, Wisconsin, on December 21, 1999, as Document No. 7850437; as amended by First Amendment to Declaration of Ivory Tusk Condominium, recorded February 10, 2000 as Document No. 7872653, and Second Amendment to Declaration of Ivory Tusk Condominium, recorded March 27, 2013 as Document No. 10231296, said condominium being located in the City of Milwaukee, County of Milwaukee, State of Wisconsin on the real estate described in said Declaration and incorporated herein by this reference thereto.

Tax Key Nos.: 397-033-1000; 397-033-2000; 397-033-3000; 397-033-4000; 397-033-5000

ADDRESS: 101 W. Wisconsin Avenue

EXHIBIT B

Legal Description of the Riverwalk Easement Area

EXHIBIT C

RIVERWALK

Maintenance and Operation Criteria First Class Facility

1. Except as expressly provided in this Agreement, open for use at all times except as it relates to adverse possession, and times of construction, maintenance and repair for the Riverwalk, the adjacent Edison Street and/or the buildings and/or improvements adjacent to Edison Street.
2. Maintain a minimum of 8-foot wide clear path for through movement of pedestrians at all times the structure is open.
3. Maintain lighting during hours of darkness for security and safety (same burn time as City street lighting - minimum).
 - Replace burned out luminaires as necessary
4. Remove ice and snow within 24 hours of a storm.
 - Area drains, if any, kept open at all times
5. Keep Riverwalk generally clean of litter on a daily basis.
 - Empty trash receptacles as necessary
 - Wash down Riverwalk of bird droppings/discarded forage (alewives, etc.) as necessary
6. Keep benches and other amenities in good, safe repair at all times.
7. Paint railings, benches and other amenities as necessary to maintain a pleasing aesthetic quality, consistent with approved color schemes.
 - Remove graffiti as soon as practical (as weather permits)
8. Effect deck repairs to mitigate potential injury to public
 - Patch spalled area to minimize irregular walking surface
 - Level differential pavement joints of 1-inch or more to minimize tripping hazard
9. Inspect structural integrity of facility, including dock wall, semi-annually and as necessary if collisions or other problems occur.

EXHIBIT D

Riverwalk Rules and Regulations

The rules and regulations shall be in a form consistent with rules and regulations promulgated for similar riverwalks located in BID 15.

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