

DEED
Storm Sewerage Easement Agreement

Parcel ID Number: WAKC 1333 136

After recording return to:
Brian E Running, City Attorney
City of Waukesha
201 Delafield St Ste 206
Waukesha WI 53188-3646

The Grantor, **Carroll University, Inc.**, for a good and valuable consideration, hereby conveys to the Grantee, the **City of Waukesha, Wisconsin**, a Storm Sewerage Easement, across and upon the following-described real property in Waukesha County, Wisconsin, referred to as the Easement Area, subject to all of the terms stated below:

All that part of the Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of Section 10, Town 6 North, Range 19 East, City of Waukesha, Waukesha County, Wisconsin and being part of Pine Grove Subdivision, Plat of Laffin's Second Addition to the Village of Waukesha (now City) and vacated Jackson Street, Hudson Street and Harvey Avenue. A 20-foot-wide storm sewerage easement lying 10 feet to either side of, and adjacent to, the following-described center line: Commencing at the Southeast corner of Lot 50 of Pine Grove Subdivision A Redivision of Laffin's Second Addition; thence South 88°12'15" West 155.93 feet along the South line of said Pine Grove Subdivision and the North right-of-way line of Newhall Avenue to the Point of Beginning; thence North 26°14'09" East 783.20 feet to an existing storm-sewer manhole referenced as Point A; thence South 89°48'52" East 54.47 feet to the Westerly limits of Harvey Avenue and the Point of Termination.

Also a 20-foot-wide storm sewerage easement lying 10 feet to either side of, and adjacent to, the following-described center line: Commencing at the above-described reference Point A; thence North 06°07'30" West 219.56 feet to the Southeasterly right-of-way line of the Wisconsin Central Ltd. railroad and the Point of Termination.

As further described in the attached Exhibit A.

Terms of Easement

1. **Grant of Easement.** The Grantor grants to the Grantee a perpetual easement and right-of-way over, upon and beneath the surface of the Easement Area to construct, operate, inspect, maintain, repair, improve, supplement, reconstruct, and remove stormwater sewerage facilities; along with a right of ingress and egress across the real property which the Easement Area burdens, as reasonably required for the Grantee and the Grantee's contractors to perform such work. During times at which such work is being done, Grantee and Grantee's contractors may also place equipment and materials within the Easement Area as reasonably required to perform such work. The size, type and quantity of the sewerage facilities shall be as reasonably determined by the Grantee. All sewerage facilities shall be located at or below grade.
2. **Restrictions within Easement Area.** Grantor, and any persons or entities under contract with Grantor or subject to Grantor's direction or control, shall not do any of the following within the Easement Area without the expressed, written, prior approval of the Grantee:
 - a. Place or construct any buildings or other permanent structures.
 - b. Change the grade elevations.
 - c. Excavate.
 - d. Plant trees or bushes that would reasonably be expected to grow to more than four feet in height.
 - e. Drive posts, drive stakes longer than 12 inches, drive pilings, drive helical footings, or bore holes of any size.

- f. Place pavement, curbs or sidewalks, except as specifically approved in writing by the Grantee.
 - g. Place any items or do any acts which reasonably should be expected to interfere with Grantee's rights granted in section 1.
3. **Removal of Items from Easement Area.** In order to perform any activities authorized in section 1, Grantee may remove any items from the Easement Area which are in violation of the restrictions in section 2, and Grantee shall not be liable for damage to such items resulting from removal. However, Grantee shall provide advance notice of work to be performed in the Easement Area, and shall cooperate with Grantor to minimize damage to items to be removed from the Easement Area.
 4. **Easement Area Crosses Athletic Field.** The Grantor acknowledges that the Easement Area lies partially within an athletic field, and that the work authorized in section 1 may result in damage to the athletic field and interruption of the use of the field. Grantor acknowledges that it bears the risk of damage by such authorized work to specialized field grasses and turfs, synthetic field surfaces, striping, numbering, graphics, and other treatments of the athletic field surface, and that Grantor shall bear the expense of restoring the athletic field after Grantee or Grantee's contractors perform authorized work within the Easement Area. Grantee shall give Grantor no less than 30 days advance notice of any work to be done within the Easement Area that might cause damage to the surface of the athletic field (unless an emergency does not allow 30 days advance notice, in which case Grantee shall give notice as soon as possible after the necessity of the work is determined), and shall cooperate in good faith with Grantor to identify ways in which the required work could be done without the necessity of damaging the athletic field surface, for example, by re-location of the Easement Area outside of the athletic field boundary or lining the pipes in-place, and Grantee shall not unreasonably refuse to use such alternative means, provided Grantor bears all additional costs associated with such alternative means.
 5. **Consistent Uses Allowed.** The Grantor reserves the right to use the Easement Area for purposes that will not interfere with the rights granted to Grantee by this instrument.
 6. **Indemnification.** The Grantee shall indemnify the Grantor from and against all damages, liabilities and losses, including those arising from personal injury, death, and property damage, and including reasonable attorney fees, arising as a proximate result of Grantee's presence upon, use of, installation of improvements on or in, or exercise of the rights granted by this instrument on or in, the Easement Area; except those liabilities, damages or losses arising from the acts or omissions of the Grantor or Grantor's permittees, licensees, employees, agents, or contractors.
 7. **Restoration of Surface.** Except with respect to the athletic field areas referred to in section 4, Grantee shall restore the surface of the Easement Area and the parcel across which the Easement Area lies, disturbed by any of Grantee's acts permitted under section 1, as nearly as is reasonably possible to its condition before the disturbance. The Grantee shall not be required to replace pavement, trees, or bushes.
 8. **Covenants Run with Land.** All of the terms and conditions of this instrument shall run with the land, shall be binding upon and inure to the benefit of, all of Grantor's and Grantee's successors in interest.
 9. **No Waiver by Non-Use.** Neither non-use nor limited use of the rights granted by this instrument shall constitute a waiver or partial waiver of later exercise and enforcement of such rights.
 10. **Governing Law.** This instrument shall be construed and enforced in accordance with the laws of the State of Wisconsin.
 11. **Entire Agreement.** This instrument sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and recorded in the office of the Register of Deeds of Waukesha County, Wisconsin.
 12. **Notices.** All notices to either party to this instrument shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known, the party giving notice may use the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.
 13. **Severability.** If any term or condition of this instrument is deemed invalid or unenforceable by a court of competent jurisdiction, such invalid or unenforceable provision shall be severed and the remainder shall remain fully enforceable.

- 14. **Waiver.** Waivers of the right to exercise any right granted by this instrument shall not be deemed, inferred or construed by the acts or inactions of the parties, and shall only be effective if expressly stated, in writing, by the waiving party.
- 15. **Costs of Enforcement.** If a lawsuit is commenced to enforce this instrument, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees.
- 16. **No Public Dedication.** The rights granted by this instrument shall not be deemed to be a public dedication of any fee interest in the Easement Area.

Conveyance made this _____ day of _____, 2015.

Grantor: Carroll University, Inc.

 By: _____
 Title: _____

 By: _____
 Title: _____

State of Wisconsin }
 } ss.
 Waukesha County }

_____ and _____ personally came before me this _____ day of _____, 2015, and are known to me to be the persons who executed this instrument in the indicated capacities and acknowledged the same.

 _____, Notary Public,
 Waukesha County, Wisconsin
 My commission (is permanent)(expires _____)

Grantee: City of Waukesha

 By Shawn N. Reilly, Mayor

 Attest: Gina L. Kozlik, City Clerk

State of Wisconsin }
 } ss.
 Waukesha County }

Shawn N. Reilly and Gina L. Kozlik personally came before me this _____ day of _____, 2015, and are known to me to be the persons who executed this instrument in the indicated capacities and acknowledged the same.

 _____, Notary Public,
 Waukesha County, Wisconsin
 My commission (is permanent)(expires _____)

This instrument was drafted by Brian E. Running, City Attorney, Waukesha, Wisconsin.