

## Utility Easement Agreement

Document No.

THIS UTILITY EASEMENT AGREEMENT ("Agreement") is granted by Ramco-Gershenson Properties, L.P., a Delaware limited partnership (the "Grantor") to the City of Waukesha (the "Grantee").

### R E C I T A L S :

A. The Grantor is the fee holder of certain real property in the City of Waukesha, Waukesha County, State of Wisconsin, as more particularly described on the attached and incorporated Exhibit A (the "Property").

B. The Grantee has requested that the Grantor grant a permanent, non-exclusive easement (the "Easement") over certain portions of the Property as such portions are described and depicted on the attached and incorporated Exhibit B (the "Utility Easement Area").

Upon Recording Return to:  
Engineering Department  
City of Waukesha  
130 Delafield Street  
Waukesha, WI 53188

Part of WAKC 1332-001-005  
Parcel Identification Number

### AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**1. Grant of Easement.** The Grantor grants to the Grantee, and its licensees, a perpetual easement and right-of-way to reconstruct, maintain, operate, supplement, and/or remove public storm sewer facilities, and other related and appurtenances that may from time to time be required, with the right of ingress and egress for the purpose of this grant, over the Utility Easement Area. All improvements shall be located below grade. During any period of reconstruction or maintenance, the Grantee shall keep the area safe, neat and orderly. Upon completion of reconstruction or maintenance, the Grantee shall remove all materials and equipment from the Property.

**2. Indemnification.** The Grantee shall indemnify the Grantor from and against all loss, costs (including reasonable attorney fees), injury, death, or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with the Grantee's activities conducted on the Property, including the operation of the public storm sewer facilities, regardless of the cause of the injury, except to the extent caused by the recklessness or misconduct of the Grantor or its agents or employees. Grantee shall, at its expense, obtain and maintain commercial general liability and property damage insurance insuring claims, loss, costs, injury, death or

damage arising from or related to Grantee's exercise of its rights hereunder in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

**3. Consistent Uses Allowed.** The Grantor reserves the right to use the Utility Easement Area for purposes that will not interfere with the Grantee's full enjoyment of the Easement rights granted in this Agreement. Grantee's activities shall not interfere with Grantor's use of or ingress or egress to the Property. No trees or bushes which would grow to more than four (4) feet in height shall be planted within said Utility Easement Area without approval of the Grantee. Grantor shall not make grade changes exceeding one (1) foot in the Utility Easement Area without prior written approval of the Grantee. Grantor shall not place any buildings, fences or structures in the Utility Easement Area, provided that Grantor may install and maintain pavement and other utilities and allow pedestrians and vehicles to traverse over the Utility Easement Area. Grantor also reserves the right to relocate the Utility Easement Area, at Grantor's expense, with the prior consent of Grantee, which consent shall not be unreasonably withheld, conditioned or delayed. Upon Grantor's relocation and reconstruction in accordance with the foregoing sentence and upon thirty (30) days written notice, the Grantee agrees to enter into an amendment to this Agreement to identify the relocated easement area and release and extinguish all of its rights to the Utility Easement Area set forth in this Agreement. Grantee shall not interfere with the normal use of the Property by Grantor, its employees, officers and agents.

**4. Restoration of Surface/Maintenance.** The Grantee shall restore the surface of the Property disturbed by any reconstruction or maintenance as nearly as is reasonably possible to the condition existing prior to disturbance by any reconstruction or maintenance activities. The Grantee shall not be required to replace pavement, trees, bushes or other items existing on or within the Utility Easement Area. Grantee shall maintain, repair and replace all public storm sewer facilities in the Utility Easement Area, at its sole cost. The Grantee shall keep the public storm sewer facilities in the Utility Easement Area in good condition and repair at its sole cost and expense. Except in the event of an emergency, Grantee shall give Grantor at least ten days' notice before beginning any work in the Utility Easement Area which notice shall specify the work to be performed and the anticipated date when work will be complete.

**5. Covenants Run with Land.** All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Grantor and the Grantee and their respective successors and assigns. The party named as Grantor in this Agreement and any successor or assign to the Grantor as fee simple Grantor of the Property shall cease to have any liability under this Agreement with respect to facts or circumstances arising after the party has transferred its fee simple interest in the Property.

**6. Non-Use.** Non-use or limited use of the Easement rights granted in this Agreement shall not prevent the benefiting party from later use of the Easement rights to the fullest extent authorized in this Agreement.

**7. Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

**8. Entire Agreement.** This Agreement 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 duly recorded in the office of the Register of Deeds of Waukesha County, Wisconsin.

**9. Notices.** All notices to either party to this Agreement 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 to the party desiring to send a notice, the party sending the 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.

**10. Invalidity.** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

**11. Waiver.** No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

**12. Enforcement.** Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party. The Grantee shall take all reasonable action to prevent the attachment of any construction liens on the Property as a result of its construction activities. In the event such a lien attaches, the Grantee shall take all necessary action to discharge the lien.

**13. No Public Dedication.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the Easements granted under this Agreement to the general public or for any public purpose whatsoever.

**(Signatures appear on the following pages)**



**EXECUTED BY the City of Waukesha on \_\_\_\_\_, 2015**

\_\_\_\_\_  
Shawn N. Reilly, Mayor

\_\_\_\_\_  
Gina Kozlik, City Clerk

STATE OF WISCONSIN                    )  
  ) ss.  
COUNTY OF WAUKESHA                )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 the above named Shawn N. Reilly, Mayor, and Gina Kozlik, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin

(Print Name)\_\_\_\_\_

My commission expires:\_\_\_\_\_

This document was drafted by  
Leah R. Harrand, Esq.  
Reinhart Boerner Van Deuren s.c.  
1000 N. Water Street, Suite 1700  
Milwaukee, WI 53202

EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY

Lot Two (2) of CERTIFIED SURVEY MAP NO. \_\_\_\_\_, a re-division of all of Lot One (1) and Outlot One (1) of Certified Survey Map No. 11221, and all of Lot One (1) of Certified Survey Map No. 11220, all in a part of part of the Northwest One-quarter (1/4) and Southwest One-quarter (1/4) of the Southeast One-quarter (1/4) of Section Nine (9), in Town Six (6) North, Range Nineteen (19) East, in the City of Waukesha, County of Waukesha, State of Wisconsin, recorded in the Office of the Register of Deeds for Waukesha County on \_\_\_\_\_, 2015, in Volume \_\_\_\_\_ of Certified Survey Maps on Pages \_\_\_\_\_ to \_\_\_\_\_ inclusive, as Document No. \_\_\_\_\_.

EXHIBIT B - PAGE 1  
LEGAL DESCRIPTION AND DEPICTION OF UTILITY EASEMENT AREA

The Utility Easement Area is described as follows:

That part of Lot 1 of Certified Survey Map No. 11220, in the Northwest 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 9, Town 6 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin, described as follows:

Commencing at the Northwest corner of said Lot 1; thence North 89°33'49" East along the North line of Lot 1 aforesaid 82.29 feet to the point of beginning of the lands hereinafter described; thence continue North 89°33'49" East along said North line 17.54 feet to a point; thence South 78°35'27" East 327.57 feet to a point; thence North 89°33'49" East 6.77 feet to a point on the East line of said Lot 1; thence South 00°26'11" East along said East line 16.00 feet to a point; thence South 89°33'49" West 8.43 feet to a point; thence North 78°35'27" West 90.62 feet to a point; thence South 23°27'41" East 64.23 feet to a point; thence South 66°32'19" West 22.00 feet to a point; thence North 23°27'41" West 58.53 feet to a point; thence North 78°35'27" West 234.76 feet to a point; thence North 00°26'11" West 30.31 feet to the point of beginning. Lands contain 11,165 square feet or 0.2563 acres.

ALSO:

Commencing at the Northwest corner of said Lot 1; thence South 00°12'17" East along the West line of Lot 1 aforesaid 1014.83 feet to a point on the North line of Spring City Lane, a 50 foot Private Road; thence South 82°35'02" East, along said North line 4.42 feet to the point of curvature; thence easterly on said North 13.61 feet along the arc of a curve with its center lying to the North, having a radius of 185.00 feet whose bearing is South 84°41'29" East 13.61 feet to the point of beginning of the lands hereinafter described; thence North 00°41'28" West 13.78 feet to a point; thence North 11°08'01" East 312.58 feet to a point; thence North 10°34'24" East 364.87 feet to a point; thence North 79°37'08" East 207.66 feet to a point; thence North 00°36'36" East 22.41 feet to a point; thence South 89°23'24" East 24.00 feet to a point; thence South 00°36'36" West 42.20 feet to a point; thence South 79°37'08" West 210.94 feet to a point; thence South 10°34'24" West 348.48 feet to a point; thence South 11°08'01" West 310.22 feet to a point; thence South 00°41'28" East 11.72 feet to a point on said North line; thence South 89°18'32" West along said North line 11.44 feet to a point of curvature; thence westerly on said North line 15.37 along the arc of a curve with its center lying to the North, having a radius of 185.00 feet whose bearing is North 88°44'42" West 12.57 feet to the point of beginning. Lands contain 22,142 square feet or 0.5083 acres.

The Utility Easement Area is depicted as follows:

