

EASEMENT
Sanitary Sewerage Easement Agreement

Parcel ID Number:

After recording return to:

Chris Langemak
City of Waukesha Engineering Division
130 Delafield St
Waukesha WI 53188

The Grantor, **Briarwood at Fiddler's Creek Condominium Association, Inc.**, for a good and valuable consideration, hereby conveys to the Grantee, the **City of Waukesha, Wisconsin**, a Permanent Sanitary Sewerage Easement and a Temporary Construction Easement as described below, across and upon the following-described real property in Waukesha County, Wisconsin, subject to all of the terms stated below:

Subject Parcel:

Briarwood at Fiddler's Creek Condominium, being a condominium created under the Condominium Ownership Act of the State of Wisconsin by a "Declaration of Condominium for Briarwood at Fiddler's Creek Condominium," dated the 6th day of September and recorded the 12th day of September, 2000 in the Office of the Register of Deeds for Waukesha County, Wisconsin, as Document No. 2590073 and by a Condominium Plat therefor.

Permanent Sanitary Sewerage Easement Area:

Part of Lot 3 of Certified Survey Map No. 8963 of the Southeast 1/4 of Section 31, Township 7 North, Range 19 East in the City of Waukesha, Waukesha County, Wisconsin.

Commencing at the Southwest corner of said Lot 3; thence North 88° 49' 13" East along the South line of said Lot 3 for a distance of 83.69 feet to the Point of Beginning "A"; thence North 48° 05' 32" East 614.24 feet to a point; thence North 40° 07' 39" East 253.96 feet to a point; thence North 43° 19' 04" East 169.14 feet to a point in the Northerly line of said Lot 3; thence South 53° 50' 23" East along aforesaid Northerly line 20.16 feet to a point; thence South 43° 19' 04" West 171.09 feet to a point; thence South 40° 07' 39" West 254.79 feet to a point; thence South 48° 05' 32" West 592.40 feet to a point in said South line; thence South 88° 49' 13" West along the aforesaid South line 30.65 feet to the Point of Beginning "A".

Containing 20,556 sq. ft. or 0.4719 acres.

ALSO

Part of Lot 3 of Certified Survey Map No. 8963 of the Southeast 1/4 of Section 31, Township 7 North, Range 19 East in the City of Waukesha, Waukesha County, Wisconsin.

Commencing at the Southwest corner of said Lot 3; thence North 88° 49' 13" East along the South line of said Lot 3 for a distance of 2.13 feet to the Point of Beginning "B"; thence North 09° 31' 45" East 2.69 feet to a point in the Northerly line of said Lot 3; thence North 43° 36' 36" East along the aforesaid Northerly line 35.69 feet to a point; thence South 09° 31' 45" West 28.47 feet to a point in said South line; thence South 88° 49' 13" West along the aforesaid South line 20.35 feet to the Point of Beginning "B".

Containing 312 sq. ft. or 0.0071 acres.

Temporary Construction Easement Area:

Part of Lot 3 of Certified Survey Map No. 8963 of the Southeast 1/4 of Section 31, Township 7 North, Range 19 East in the City of Waukesha, Waukesha County, Wisconsin.

Commencing at the Southwest corner of said Lot 3; thence North 88° 49' 13" East along the South line of said Lot 3 for a distance of 114.34 feet to the Point of Beginning "C"; thence North 48° 05' 32" East 592.40 feet to a point; thence North 40° 07' 39" East 254.79 feet to a point; thence North 43° 19' 04" East 171.09 feet to a point in the Northerly line of said Lot 3; thence South 53° 50' 23" East along the aforesaid Northerly line 20.16 feet to a point; thence South 43° 19' 04" West 173.05 feet to a point; thence South 40° 07' 39" West 255.63 feet to a point; thence South 48° 05' 32" West 570.56 feet to a point in said South line; thence South 88° 49' 13" West along the aforesaid South line 30.65 feet to the Point of Beginning "A".

Containing 20,175 sq. ft. or 0.4631 acres.

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 sanitary sewerage facilities; along with a right of ingress and egress across the Subject Parcel, as reasonably required for the Grantee and the Grantee's contractors to perform such work. The Grantee shall utilize the asphalt pathway within and adjacent to the easement for access as a service road for the activities listed above. 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. The Grantee shall inventory the existing trees within and adjacent to the Permanent Sanitary Sewerage Easement Area and the Temporary Construction Easement Area prior to the removal. The Grantee and Grantor shall agree to the replacement of any trees affected by the installation of the sanitary sewer by a separate memorandum between the Grantee and Grantor.
4. **Consistent Uses Allowed.** The Grantor reserves the right to use the Easement Area for all uses and purposes that will not interfere with the rights granted to Grantee by this instrument.
5. **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.

6. **Restoration of Surface.** 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 trees or bushes, except as agreed upon in section 3. The Grantee shall replace the existing asphalt pathway from the southerly property line to the northerly property line, including the fork located easterly of the sanitary sewer (approximately 1100 linear feet), per the plans and specifications for the construction of the sanitary sewer (dated February 2020) to be utilized by the Grantee as a service road for the maintenance of the sanitary sewer. The Grantor shall assume responsibility of the routine maintenance of the asphalt pathway such as crack filling, sealcoating, etc. except any damage caused by the Grantee's activities in the maintenance of the sanitary sewer. If it becomes necessary to replace all or a portion of the asphalt pathway due to structural failure (cosmetic blemishes and typical cracking are not considered structural failures) as determined by an engineering review, the Grantee shall replace the asphalt pathway to ensure it is suitable to support the maintenance activities of the sanitary sewer.
7. **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.
8. **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.
9. **Governing Law.** This instrument shall be construed and enforced in accordance with the laws of the State of Wisconsin.
10. **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.
11. **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.
12. **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.
13. **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.
14. **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.
15. **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 18 day of September, 2020.

Grantor: Briarwood at Fiddler's Creek Condominium Association, Inc.

Dennis Hebein
By: Dennis Hebein
Title: Board Member

Kenneth Kleinke
By: KENNETH KLEINKE
Title: PRESIDENT

Kevin Malloy
By: KEVIN MALLOY
Title: —

State of Wisconsin }
Waukesha County } ss.

Dennis Hebein and Kevin Malloy and Kleinke ^{Kenneth} personally came before me this 18 day of September, 2020, and are known to me to be the persons who executed this instrument in the indicated capacities and acknowledged the same.

Ellen Sweitzer
Ellen Sweitzer, Notary Public,
Waukesha County, Wisconsin
My commission (is permanent)(expires 11/19/22)



Grantee: City of Waukesha

By Shawn N. Reilly, Mayor

Attest: Gina L. Kozlik, City Clerk

State of Wisconsin }
Waukesha County } ss.

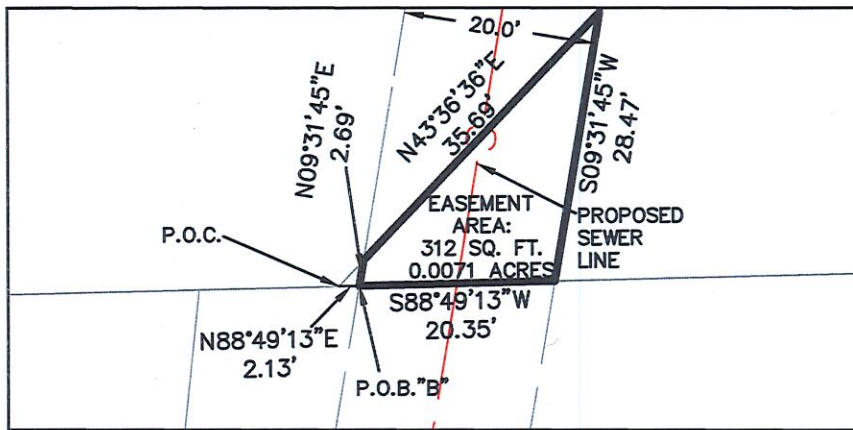
Shawn N. Reilly and Gina L. Kozlik personally came before me this _____ day of _____, 2020, and are known to me to be the persons who executed this instrument in the indicated capacities and acknowledged the same.

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

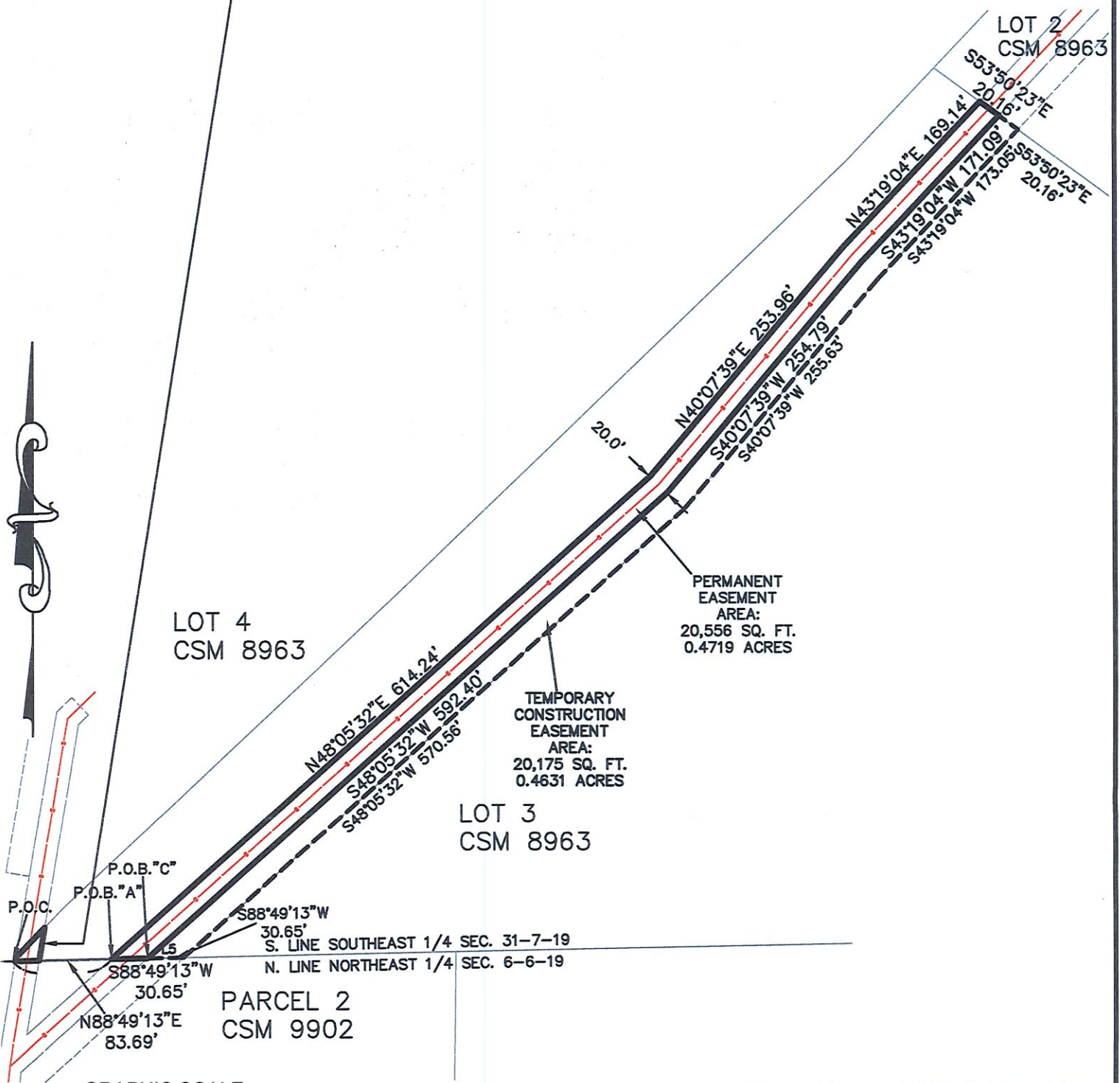
This instrument was drafted by City of Waukesha Department of Public Works.

EASEMENT EXHIBIT

TAX PARCEL ID # WAKC 0988062



EASEMENT DETAIL - SCALE 1" = 20'



GRAPHIC SCALE



(1" = 120')

raSmith
CREATIVITY BEYOND ENGINEERING

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