

## Right of Way Encroachment Agreement

This Agreement is by and between the City of Waukesha, referred to herein as the City; and Waukesha Civic Theater, referred to herein as WCT. The City and WCT are referred to herein as the Parties.

### Recitals

WCT proposes to build a new façade on a building at 270 Main Street in downtown Waukesha that will incorporate a large plate-glass window that will extend approximately three feet into the Main Street right of way from the second story of the building.

Municipal Code §6.06(2) allows the encroachment of such structures into City right of way with the Common Council's consent.

The City is willing to grant consent for the construction of the new façade, upon certain conditions. WCT is willing to agree to such conditions.

Now, therefore, in consideration of the mutual covenants contained herein, the Parties agree and contract as follows:

- 1. Permission to Encroach.** In consideration of WCT's promises and covenants herein, WCT is granted permission pursuant to Waukesha Municipal Code §6.06(2) to encroach into the Main Street right of way at 270 Main Street, strictly according to the plans and specifications submitted by WCT and approved by the City.
- 2. Indemnification.** WCT and its successors in interest shall indemnify, defend, and hold the City harmless from all damages, claims, lawsuits, causes of action, judgments, and any and all other liabilities, including court costs and reasonable attorney fees, arising in any way from or caused by the presence of the encroachment into the Main Street right of way, including but not limited to property damage, personal injury, or death.
- 3. Insurance.** WCT and its successors in interest shall, at all times the encroachment into the Main Street right of way exists, maintain in force a policy of public-liability insurance, including plate-glass coverage, naming the City as an additional insured, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Certificates of insurance showing such coverage shall be provided to the City annually, each January 1, and as reasonably requested.
- 4. Breach; No Waiver.** A material breach of this Agreement by the WCT or its successors shall result in a revocation of the permission granted under section 1, at the City's option. The applicable provisions of Municipal Code §6.06 remain in effect with respect to the encroachment.
- 5. Other Permits.** This Agreement gives permission for encroachment under Municipal Code §6.06 only, and WCT is responsible for obtaining all other required permits for construction and occupancy of the building.

6. **Binding Effect.** This Agreement is binding on WCT and all of its successors in interest, and all subsequent purchasers of the property at 270 Main Street. It shall be recorded with the Register of Deeds against the property at 270 Main Street and shall run with the land. WCT shall pay the cost of recording.
7. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
8. **Effective Date.** This Agreement is effective as of the last date of execution shown below.

**City of Waukesha**

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

\_\_\_\_\_  
 Gina L. Kozlik, Clerk-Treasurer  
 Date: \_\_\_\_\_

Shawn N. Reilly and Gina L. Kozlik personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2021, signed their names in my presence, and acknowledged the same.

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

**Waukesha Civic Theater**

\_\_\_\_\_  
 (name and title) \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 (name and title) \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_ personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2021, signed their names in my presence, and acknowledged the same.

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

This instrument was drafted by the City of Waukesha Department of Community Development.