

Document No.

**UTILITY EASEMENT
AGREEMENT**

Return to:

City of Waukesha

130 Delafield Street

Waukesha, WI 53188

WAKC1339972

Parcel Numbers

THIS UTILITY EASEMENT AGREEMENT (*Agreement*) is granted by WT Corporation (the owner) to 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 easement (the *Easement*) and temporary construction easement (the *Temporary Construction Easement*) over certain portions of the Property as such portions are described on the attached and incorporated Exhibit B (the *Utility Easement Area*).

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 construct, reconstruct, maintain, operate, supplement, and/or remove 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. The Grantee agrees to construct the storm sewer.

2. Temporary Construction Easement. During the period of construction or installation of improvements within the Property, the Grantee shall have a Temporary Construction Easement over those portions of the property located within 20 feet of the Utility Easement Area for the purpose of transporting equipment and materials in connection with the construction or installation of improvements within the Property. The Temporary Construction Easement shall expire on completion of the installation as contemplated in Section 1, above.

3. 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 Grantor's activities conducted on the Property, regardless of the cause of the injury, except to the extent caused by the gross negligence or misconduct of the Grantor or its agents or employees.

4. Consistent Uses Allowed. The Grantor reserves the right to use the Easement and the Temporary Construction Easement for purposes that will not interfere with the Grantee's full enjoyment of the Easement rights granted in this Agreement. No trees or bushes which would grow to more than four (4) feet in height shall be planted within said easement without approval of the Grantee. Grantor, however, 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 Easement Area.

5. Restoration of Surface. The Grantee shall backfill the utility trench located within the Easement as nearly as is reasonably possible after construction. The Grantor shall install base course and asphalt pavement within the Easement. The Grantee shall not be required to replace pavement, trees, bushes or other items existing on or within the Utility Easement Area.

6. 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 owner 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.

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

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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 nonprevailing 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 reasonable action to discharge the lien.

14. 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.

Dated: (Date)

 WT Corporation (Grantor)

By:

Name:

Title:

 City of Waukesha (Grantee)

By:

Name:

Title:

ACKNOWLEDGMENT

STATE OF WISCONSIN
COUNTY OF Waukesha

This instrument was acknowledged before me on _____ by _____.

Notary Public, State of Wisconsin
My commission expires: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN
COUNTY OF Waukesha

This instrument was acknowledged before me on _____ by _____.

Notary Public, State of Wisconsin
My commission expires: _____

CONSENT OF MORTGAGEE

The undersigned, being the holder of a mortgage against the Property, consents to the grant of the easement and temporary construction easement set forth above and agrees that its interest in the Property shall be subject to the easement.

Dated: _____

By:

Name:

Title:

ACKNOWLEDGMENT

STATE OF WISCONSIN
COUNTY OF _____

This instrument was acknowledged before me on _____ by _____, the _____ of _____.

Notary Public, State of Wisconsin

My commission expires: _____

This document was drafted by
City of Waukesha

EXHIBIT A

PARCEL 1:

All that part of the Southwest $\frac{1}{4}$ of Section 11, Town 6 North, Range 19 East, City of Waukesha, County of Waukesha, State of Wisconsin, bounded and described as follows: Commencing at the Southwest corner of said Section 11; thence North $0^{\circ} 03' 15''$ West along the West line of said Section 11, 280.02 feet; thence North $88^{\circ} 30'$ East, 33.02 feet to the East right-of-way line of South East Avenue (C.T.H. "F"); said point being the point of beginning of the lands herein to be described; thence continuing North $88^{\circ} 30'$ East, 140.00 feet; thence South $0^{\circ} 03' 15''$ East, 220.00 feet to the North right-of-way line of Sunset Drive (C.T.H. "A"); thence North $88^{\circ} 30'$ East along said North right-of-way line, 828.00 feet; thence North $0^{\circ} 03' 15''$ West, 562.06 feet to the former South line of the City of Waukesha School property; thence South $88^{\circ} 19' 04''$ West along said South line and South line extended, 968.08 feet to the East right-of-way line of South East Avenue (C.T.H. "F"); thence South $0^{\circ} 03' 15''$ East along said East right-of-way line 338.98 feet to the point of beginning.

PARCEL 2:

Non-exclusive easement for the benefit of Parcel 1, created by cross easement agreement entered into by and between W. T. Corporation, a Wisconsin corporation, and Marion August, as Trustee of Trust No. 108, dated August 4, 1969 and recorded October 22, 1969 in Volume 1175 of Deeds on Page 644, as Document No. 749972, as amended by Document No. 1142201 and Document No. 1325590 and Document No. 1979306 and Document No. 1980394, for ingress and egress as provided for therein.

EXHIBIT B

Sheet 1 of 2

City Storm Sewer Easement

Located in the Southwest $\frac{1}{4}$ of Section 11, Town 6 North, Range 19 East in the City of Waukesha, Waukesha County, Wisconsin, bounded and described as follows: Commencing at the Southwest corner of said $\frac{1}{4}$ Section; thence North $88^{\circ} 27' 25''$ East along the South line said $\frac{1}{4}$ Section, 229.46 feet; thence North $00^{\circ} 13' 48''$ East, 60.03 feet to a point on the North line of Sunset Drive and the point of beginning of this easement; thence North $00^{\circ} 13' 48''$ East, 53.12 feet; thence North $88^{\circ} 32' 33''$ East, 736.87 feet; thence North $00^{\circ} 06' 09''$ West, 509.94 feet; thence North $88^{\circ} 16' 29''$ East, 34.01 feet; thence South $00^{\circ} 06' 09''$ East, 562.06 feet to a point on the North right-of-way line of Sunset Drive; thence South $88^{\circ} 27' 25''$ West along the North right-of-way line of Sunset Drive, 30.00 feet; thence North $00^{\circ} 06' 09''$ West, 32.00 feet; thence South $88^{\circ} 32' 33''$ West, 720.98 feet; thence South $00^{\circ} 13' 48''$ West, 33.08 feet to a point on the North right-of-way line of Sunset Drive; thence South $88^{\circ} 27' 25''$ West along said North line, 20.01 feet to the point of beginning.

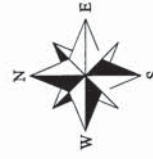


Exhibit

City Storm Sewer Easement

Located in the Southwest 1/4 of Section 11, Town 6 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin, bounded and described as follows: Commencing at the Southwest corner of said 1/4 Section; thence North 88° 27' 25" East along the South line said 1/4 Section, 229.45 feet; thence North 00° 13' 48" East, 60.03 feet to a point on the North line of Sunset Drive and the point of beginning of this easement; thence North 00° 13' 48" East, 53.12 feet; thence North 88° 32' 33" East, 736.87 feet; thence North 00° 06' 09" West, 509.94 feet; thence North 88° 16' 29" East, 34.01 feet; thence South 00° 06' 09" East, 562.06 feet to a point on the North right-of-way line of Sunset Drive; thence South 88° 27' 25" West along the North right-of-way line of Sunset Drive, 30.00 feet; thence North 00° 06' 09" West, 32.00 feet; thence South 88° 32' 33" West, 720.98 feet; thence South 00° 13' 48" West, 33.08 feet to a point on the North right-of-way line of Sunset Drive; thence South 88° 27' 25" West along said North line, 20.01 feet to the point of beginning.

EXHIBIT B
SHEET 2 OF 2



SCALE : 1" = 100'

