

4050429  
2/3/14

Document No.

4050429

REGISTER OF DEEDS  
WAUKESHA COUNTY, WI  
RECORDED ON

October 25, 2013 09:00 AM  
James R Behrend  
Register of Deeds

9 PGS  
TOTAL FEE: \$30.00  
TRANS FEE: \$0.00  
Book Page -



EASEMENT AGREEMENT

Return to:  
J. Steven Tikalsky  
Raasch & Tikalsky, SC  
300 Wisconsin Ave., #200  
Waukesha, WI 53186

PL  
135299

WAKT 1352998004  
WAKC 1352999  
Parcel Numbers

THIS EASEMENT AGREEMENT (the *Agreement*) is between A. W. Bryant (*Parcel A Owner*) and City of Waukesha, a Municipal Corporation (*Parcel B Owner*).

R E C I T A L S :

A. Parcel A Owner is the owner of certain real property located in Waukesha County, Wisconsin, as described on the attached Exhibit A and referred to on the exhibit and in this Agreement as *Parcel A*.

B. Parcel B Owner is the owner of certain real property located in Waukesha County, Wisconsin, as described on the attached Exhibit B and referred to on the exhibit and in this Agreement as *Parcel B*.

C. Parcel A Owner and Parcel B Owner wish that a pedestrian walkway (the *Walkway*) be constructed on that portion of Parcel B more particularly described on the attached Exhibit C and referred to on the exhibit and in this Agreement as the

*Easement Property.*

D. Parcel B Owner is willing to create an easement over the Easement Property to enable Parcel A Owner and the general public to use the Walkway, under the terms of this Agreement.

**AGREEMENT**

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

**1. Grant.** Parcel B Owner grants a nonexclusive easement to Parcel A Owner and Parcel A Owner's successors and assigns as the owner of Parcel A, and the general public, to use the Walkway and the Easement Property as a pedestrian walkway to and from Parcel A, Parcel B, parcels and public roads adjacent to Parcel A and Parcel B. The easement shall be for a pedestrian walkway and shall further allow the use of the trees and foliage in the easement as a location for placing or hanging pieces of art. As a pedestrian walkway, the easement shall be limited to the use as an area for the general public to walk, run or otherwise traverse without the use of motorized vehicles or equipment except for motorized wheel chairs and related equipment. Notwithstanding the above the parties and their designees, not the general public, may access the pedestrian walkway with small vehicles (i.e. vehicles not generally considered public highway legal and equipment it may transport for maintenance purposes).

**2. Permitted Users.** The easement granted in Section 1, above, may be used by the Parcel A Owner and the general public in common with Parcel B Owner and its invitees. Parcel A Owner and Parcel B Owner may establish and impose reasonable restrictions on the use of the easement by the general public.

**3. Initial Construction Costs.** Parcel A Owner shall construct the Walkway at its sole expense.

**4. Maintenance Costs.** Parcel A Owner shall bear all of the expenses of maintaining and repairing the Walkway. Repair

and maintenance shall be performed at such times and in such a manner as are mutually agreeable to the parties.

5. **Indemnity.** Parcel A Owner shall indemnify and defend Parcel B Owner from all liability, suits, actions, claims, costs, damages, and expenses of every kind and description, including court costs and legal fees, for claims of any character, including liability and expenses in connection with the loss of life, personal injury, or damage to property, brought because of any injuries or damages received or sustained by any person, persons, or property on account of or arising out of the use of Parcel C by Parcel A Owner.

6. **Insurance.** Parcel A Owner shall maintain in effect at all times during the term of this Agreement a policy of general liability insurance naming Parcel B Owner as the insured, to insure against injury to property, person, or loss of life arising out of Parcel A Owner's use, occupancy, or maintenance of the Easement Property with limits of coverage that are at levels customarily maintained by businesses in the community in which the Easement Property is located.

7. **Rights of Use.** Parcel A Owner, Parcel B Owner and the general public shall have the equal rights to use of the pedestrian Walkway and shall take no action to prevent the other party's enjoyment of such rights. Parcel A Owner and Parcel B Owner may at any time, by agreement, temporarily or permanently limit or restrict the use of the easement by the general public.

8. **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 Parcel A Owner and Parcel B Owner and their respective successors and assigns. The easement granted under Section 1 of this Agreement is an easement appurtenant to Parcel A and may not be transferred separately from, or severed from, title to Parcel A. The specific parties named as Parcel A Owner and Parcel B Owner in this Agreement, and each of their respective successors and assigns as fee simple owners of Parcel A and Parcel B, respectively, or any portion of Parcel A or Parcel B, shall cease to have further liability under this Agreement with respect to facts or circumstances first arising after the party

has transferred its fee simple interest in Parcel A or Parcel B, respectively, except, however, for obligations that accrued during the party's period of ownership of title.

**9. Non-Use.** Non-use or limited use of the easement rights granted in this Agreement shall not prevent Parcel A Owner and the public from later use of the easement rights to the fullest extent authorized in this Agreement.

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

**11. 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.

**12. 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.

**13. 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.

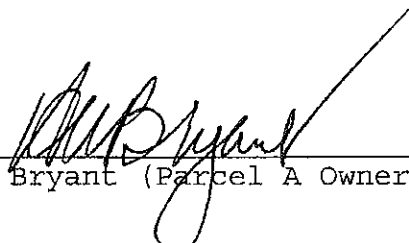
**14. Waiver.** No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a

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.

**15. 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.

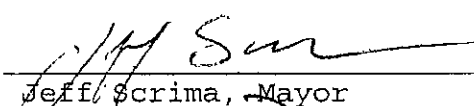
**16. No Public Dedication.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the easement granted under this Agreement to the general public or for any public purpose whatsoever. Parcel A Owner and Parcel B Owner agree to cooperate with each other and to take such measures as may be necessary to prevent the dedication to the public of the Walkway, whether by express grant, implication, or prescription, including, without limitation, the posting of signs. Such measures shall not, however, unreasonably interfere with the easement rights granted under this Agreement. Notwithstanding the above, it is the parties' intent that the pedestrian Walkway shall be available for the use of the general public subject to restrictions imposed by the parties.

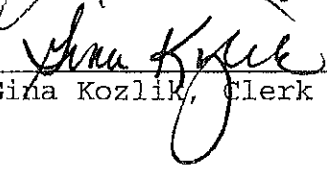
Dated: Oct 22, 2013

  
\_\_\_\_\_  
A.W. Bryant (Parcel A Owner)

Dated: Oct 9, 2013

The City of Waukesha (Parcel B Owner)

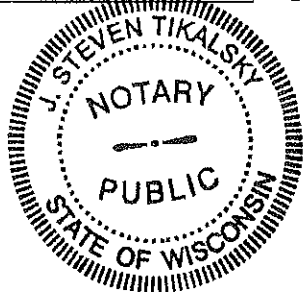
By:   
\_\_\_\_\_  
Jeff Scrima, Mayor

By:   
\_\_\_\_\_  
Gina Kozlik, Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on  
Oct 22, 2013 by A.W. Bryant, Parcel A Owner.

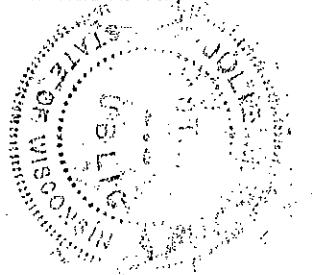


J. Steven Tikalsky  
Notary Public, State of Wisconsin  
My Commission: Permanent

ACKNOWLEDGMENT

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on  
October 9, 2013 by Jeff Scrima, Mayor of the City of  
Waukesha, Parcel B Owner.



Julie M. Gay  
Notary Public, State of Wisconsin  
My Commission: is permanent

ACKNOWLEDGMENT

STATE OF WISCONSIN  
COUNTY OF WAUKESHA

This instrument was acknowledged before me on  
October 9, 2013 by Gina Kozlik, Clerk of the City of  
Waukesha, Parcel B Owner.

Sandra L. Policello  
Notary Public, State of Wisconsin  
My Commission: expired 6-8-2014

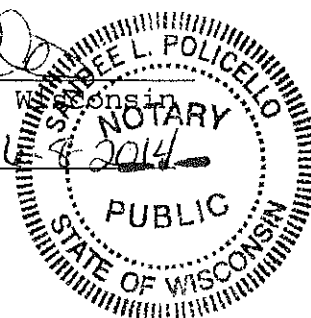


EXHIBIT A

LEGAL DESCRIPTION

Lot 3 Deerfield Estates, being a part of the Southeast 1/4, Southwest 1/4 & Northwest 1/4 of the Southeast 1/4 of Section 14, Town 6 North, Range 19 East, Town of Waukesha (now part of the City of Waukesha), County of Waukesha, State of Wisconsin.

EXHIBIT B  
LEGAL DESCRIPTION

All that part of the Northeast 1/4 of the Southeast 1/4 of Section 14, Town 6 North, Range 19 East, in the City of Waukesha, County of Waukesha, State of Wisconsin, bounded and described as follows:  
Beginning at the Northeast corner of the Southeast 1/4 of Section 14; thence South  $01^{\circ} 31' 08''$  West along the East line of the Northeast 1/4 of said Southeast 1/4 and the centerline of Milky Way Road, 1341.50 feet to the Southeast corner of the Northeast 1/4 of the aforementioned Southeast 1/4; thence South  $89^{\circ} 44' 07''$  West along the South line of the Northeast 1/4 of the Southeast 1/4 of Section 14, 1342.01 feet to the Southwest corner of the Northeast 1/4 of said Southeast 1/4; thence North  $01^{\circ} 35' 13''$  East along the West line of the Northeast 1/4 of the aforementioned Southeast 1/4 1335.40 feet to the Northwest corner of the Northeast 1/4 of the Southeast 1/4 of Section 14; thence North  $89^{\circ} 28' 27''$  East along the North line of the Northeast 1/4 of said Southeast 1/4 1340.63 feet to the place of beginning.

Reserving therefrom a strip of land 33 feet in width lying West of and adjacent to the above described centerline of Milky Way Road for public road purposes.

Also, excepting therefrom those lands conveyed to the State of Wisconsin Department of Transportation recorded May 9, 2005 as Document No. 3274139.

Tax Key No: WAKC 1352.999



EXHIBIT C

15' WIDE EASEMENT LEGAL DESCRIPTION

Part of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 14, Township 6 North, Range 19 East, in the City of Waukesha, County of Waukesha, State of Wisconsin, bounded and described as follows:

Commencing at the Northeast  $\frac{1}{4}$  corner of the Southeast  $\frac{1}{4}$  of Section 14; thence S  $01^{\circ}31'08''$  W along the East line of said Southeast  $\frac{1}{4}$  and the centerline of Milky Way Road, 1341.50 feet; thence S  $89^{\circ}44'07''$  W along the North line of Deerfield Estates 644.72 feet to the Northwest corner of Lot 2 of Deerfield Estates and the point of beginning; thence continuing S  $89^{\circ}44'07''$  W along the North line of Deerfield Estates 697.29 feet to the Northwest corner of Lot 3 of Deerfield Estates; thence N  $01^{\circ}35'13''$  E 15.01 feet; thence N  $89^{\circ}44'07''$  E 696.81 feet; thence S  $00^{\circ}15'53''$  E 15.00 feet to the point of beginning.

# City of Waukesha Parkland

