

**ACCESS EASEMENT
AGREEMENT**

Document Number

Document Title

Recording Area

Name and Return Address:

PIN:

See attached Exhibits

This Access Easement Agreement (this “**Agreement**”) is made and entered into as of this 31st day of July, 2023, by and between 707 Executive Place Holdings LLC, a Wisconsin limited liability company (“**Grantor**”) and the City of Waukesha (“**Grantee**”). Grantor and Grantee are sometimes referred to herein as a “**Party**” and collectively the “**Parties**.”

RECITALS

A. Grantor is the fee simple owner of that certain real property located at 707 Executive Place, Waukesha, Wisconsin and as legally described on Exhibit A attached hereto and incorporated herein (the “**Grantor Parcel**”).

B. Grantee is the fee simple owner of that certain real property known as Outlot 1 of Certified Survey Map No. 12021, Waukesha, Wisconsin as legally described on Exhibit B attached hereto and incorporated herein (the “**Grantee Parcel**”). The Grantor Parcel and Grantee Parcel are sometimes collectively referred to herein as the “**Parcels**.”

C. The Grantor Parcel has direct access to Executive Place.

D. Grantee desires to obtain an access easement over a portion of the Grantor Parcel for vehicular access to and from the Grantee Parcel and Executive Place, and Grantor desires to grant such access easement to Grantee, pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Easement. Subject to the terms and conditions set forth in this Agreement, Grantor hereby grants to Grantee, and its agents, employees, contractors, invitees, guests, invitees or licensees (collectively, the “**Permitees**”), a permanent non-exclusive easement for vehicular access (the “**Easement**”) use over, across and above the portions of the Grantor Parcel in the location as depicted and legally described on Exhibit C, attached hereto and incorporated herein (the “**Easement Area**”) to access the Grantee Property for inspections, maintenance and repairs to the storm water pond located on the Grantee Property.

2. Use of Easement Area. The use of the Easement Area shall be limited to vehicular travel (specifically excluding heavy machinery and heavy trucks) and such use shall be in common with all other persons entitled to use the Easement Area. There shall be no parking or storage of vehicles or other property within the Easement Area. The Parties intend for the Easement Area to be open and unobstructed at all times. Accordingly, no curbs, barriers, fences, dividers, or other obstructions may be placed on or across all or any portion of the Easement Area that prevents, prohibits, or discourages the free and uninterrupted flow of vehicular traffic; provided however, that Grantor reserves the right to use its Parcel in any manner and for any purpose that does not unreasonably frustrate the purposes intended hereby and may temporarily obstruct or interfere with the use of the Easement Area for reasonable repair or maintenance, to install speed bumps, to prevent a dedication or the acquisition of prescriptive rights, or to relocate the Easement Area.

3. Maintenance of the Easement Area. Grantor shall at all times keep the Easement Area in good, usable condition and repair. Such maintenance shall include, but shall not be limited to: (a) maintenance, repair and replacement of the surface and subsurface materials originally constructed thereon or such other materials as may be required to maintain the Easement Area; (b) removal of papers, debris, ice, snow, refuse and other hazards to persons using the Easement Area; and (c) such painting or sealing as may be required to maintain the Easement Area in high quality condition.

4. Damage to Easement Area. Notwithstanding anything set forth in this Agreement to the contrary, in the event that maintenance, repair, replacement or rebuilding of any portion of the Easement Area is required as a result of the actions of Grantee or its Permitees causing damage to any portion of the Easement Area in excess of ordinary wear and tear, Grantee shall be solely responsible for such maintenance, repair, replacement and rebuilding and/or prompt payment for such work. In the event that the damage to the Easement Area is not repaired by Grantee within a reasonable amount of time, Grantor may, upon advance written notice to Grantee, make such repairs on behalf of Grantee, and the full amount of the sum expended by Grantor pursuant to this Section (which shall include, without limitation, interest, collection costs and attorney’s fees) shall be immediately due and payable to Grantor by Grantee. Notwithstanding anything set forth herein to the contrary, Grantee’s failure to make timely repairs and/or payments as required herein may, at Grantor’s option, result in termination of the Easement and this Agreement.

5. Insurance. Grantee shall maintain in effect at all times a policy or policies of comprehensive general liability insurance with coverage in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate and naming Grantor and, at Grantor’s request, any mortgagee of Grantor, as additional insureds and insuring against injury to property, person, or loss of life arising out of use, occupancy, or maintenance of the Easement Area (collectively, “**Policy**”). The Policy may be maintained as part of any

other insurance policy maintained by Grantee. Upon written request from Grantor, Grantee shall provide Grantor with proof the Policy is in full force and effect. Insurance required under this Agreement shall be written by companies duly qualified to do business in the State of Wisconsin and with a Best's Insurance rating of "A" VII or better. Grantee shall provide a certificate of insurance to Grantor. Grantor shall not be responsible or liable to Grantee for any event, act, or omission to the extent the same is covered by insurance required to be obtained and maintained by Grantee under this Agreement with respect to the Easement Area and the use thereof. Grantee shall cause its policy or policies of insurance to contain effective waivers of subrogation for the benefit of Grantor.

6. Indemnity. Grantee shall indemnify Grantor for any damages, claims, costs, expenses or losses, including reasonable attorneys' fees, to any person or real or personal property, that Grantor may incur arising out of or relating to Grantee's or the Permittees' use of the Easement Area.

7. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses are as follows:

If to GRANTOR:

707 Executive Place Holdings LLC
S23W33374 Sutton Ridge Ct
Dousman, WI 53118
Attn: Josh Kozinski
Phone: 262-259-0417
Email: josh@skyhighmarketing.com

If to GRANTEE:

City of Waukesha

201 Delafield Street
Waukesha, WI 53188
Attn: _____
Phone: _____
Email: _____

8. MISCELLANEOUS.

(a) No Grant of Easement to the Public. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Easement Area to the general public, or for the benefit of the general public.

(b) Entire Agreement; Amendments. This Agreement represents the entire agreement between the Parties with respect to the matters set forth herein and may not be modified, amended or terminated except by the execution and recording of an instrument signed by the Parties.

(c) Easements Run with Land. All of the terms, conditions, covenants, easements and agreements set forth herein shall run with the land and shall inure to the benefit of and be binding upon the Parties, and their heirs, successors, transferees and assigns in ownership to the Parcels, as easements appurtenant to such land and may not be transferred separately from, or severed from, title to the land.

(d) 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. No delay or omission by any Party in exercising any right or power accruing upon any default, non-compliance or failure of performance of any of the provisions of this Agreement shall be construed to be a waiver thereof. 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, covenants or conditions of this Agreement.

(e) 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.

(f) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Wisconsin with venue in Waukesha County.

(g) Equitable Remedies. In the event of any breach or threatened breach of any of the agreements, terms or conditions contained in this Agreement, it is understood and agreed that such violations of this Agreement may cause irreparable harm and that damages may be difficult to ascertain and that, therefore, in addition to all remedies available at law, the non-defaulting Party shall be entitled to obtain a declaratory judgment, an injunction, either prohibitive or mandatory, or other equitable relief to prevent the breach of, or to mandate the enforcement or observance of, the agreements, terms or conditions set forth in this Agreement.

(h) Attorneys' Fees. In the event either Party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing Party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

(i) No Agency. Nothing in this Agreement shall be deemed or construed by either Party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the Parties.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

[Signatures Appear on the Following Pages]

IN WITNESS WHEREOF, the Grantor has executed this Agreement as of the day and year above set forth.

GRANTOR:

707 Executive Place Holdings LLC,
a Wisconsin limited liability company

By: Joshua R. Kozinski
Name: Joshua R. Kozinski
Title: Managing Partner

STATE OF Wisconsin)
) SS
COUNTY OF Waukesha)

Personally came before me this 31st day of July, 2023, the above-named Joshua Kozinski as managing Partner of 707 Executive Place Holdings LLC, to me known to be the person who executed the foregoing instrument in such capacity and acknowledged the same.

Name: Caitlin Susan Lajoie
Notary Public, State of Wisconsin
My Commission: 02/09/2024

<p>CAITLIN SUSAN LAJOIE Notary Public State of Wisconsin</p>

IN WITNESS WHEREOF, the Grantee has executed this Agreement as of the day and year above set forth.

GRANTEE:

City of Waukesha

By: _____

Name: _____

Title: _____

STATE OF _____)
) SS
COUNTY OF _____)

Personally came before me this __ day of _____, 2023, the above-named _____, as _____ of the City of Waukesha, to me known to be the person who executed the foregoing instrument in such capacity and acknowledged the same.

Name: _____

Notary Public, State of _____

My Commission: _____

This instrument was drafted by:

Lisa Kleiner Wood, Esq.
Amundsen Davis, LLC
111 East Kilbourn Avenue, Suite 1400
Milwaukee, WI 53202
Telephone: 414.225.1416

EXHIBIT A

Legal Description of the Grantor Parcel

Lot 1 of Certified Survey Map No. 12021 recorded with the Waukesha County Register of Deeds on June 17, 2020 as Document No. 4484369, Book 122 Pages 163-166, being a redivision of Lot 3 of Certified Survey Map No. 9455, being a part of the Northwest ¼ of Section 22, Township 6 North, Range 19 East, in the City of Waukesha, County of Waukesha, State of Wisconsin.

EXHIBIT B

Legal Description of the Grantee Parcel

Outlot 1 of Certified Survey Map No. 12021 recorded with the Waukesha County Register of Deeds on June 17, 2020 as Document No. 4484369, Book 122 Pages 163-166, being a redivision of Lot 3 of Certified Survey Map No. 9455, being a part of the Northwest ¼ of Section 22, Township 6 North, Range 19 East, in the City of Waukesha, County of Waukesha, State of Wisconsin.

EXHIBIT C

Easement Area (depiction and legal description)

Commencing at the West corner of Northwest 1/4 of Section 22, Township 6 North, Range 19 East; thence North 87°55'40" East along south line of said Northwest 1/4 section, 1944.88 feet to the southeast corner of Outlot 1 of Certified Survey Map No. 12021; thence North 00°02'19" West along the east line of said Outlot 1, 341.04 feet to the northeast corner of said Outlot 1; thence South 88°15'24" West along the north line of said Outlot 1, 48.05 feet to the point of beginning.

Thence continuing South 88°15'24" West along the north line of said Outlot 1, 26.01 feet; thence North 00°02'06" West, 410.31 feet; thence North 27°52'24" West, 20.08 feet; thence North 55°42'41" West, 286.72 feet; thence North 27°51'20" West, 24.13 feet; thence Due North, 18.21 feet to the south right-of-way line of Executive Place and a point on a curve; thence northeasterly 27.57 feet along said south right-of-way line and along the arc of said curve to the left, whose radius is 65.00 feet and whose chord bears North 71°50'47" East, 27.36 feet; thence Due South, 20.29 feet; thence South 27°51'20" East, 11.23 feet, thence South 55°42'41" East, 286.72 feet; thence South 27°52'24" East, 32.97 feet; thence South 00°02'06" East, 415.98 feet to the point of beginning.

