

EASEMENT
Public Utilities Easement Agreement

Parcel ID Number: Part of WAKC 1342 998

After recording return to:
City Attorney
Waukesha City Hall
201 Delafield St Ste 206
Waukesha WI 53188-3646

The Grantor, **Waukesha RE, LLC**, grants to the **City of Waukesha**, a Wisconsin municipal corporation, referred to herein as the City, a permanent Utilities Easement, as hereinafter described, on and across the following-described Property, within the following-described Easement Area:

Legal description of the Property:

Lot 1 of Certified Survey Map No. @@, recorded by the Register of Deeds for Waukesha County on @@, at Volume @@ of Certified Survey Maps, pages @@ to @@, as Document No. @@.

Legal description of the Easement Area on the Property:

Part of the Northeast 1/4 of the Northwest 1/4 of Section 12, Town 6 North, Range 19 East, City of Waukesha, County of Waukesha, State of Wisconsin, bounded and described as follows:

Commencing at the North 1/4 corner of said Section 12; thence South 00°07'48" East, along the North 1/4 line of said Section, 48.01 feet to the South line of County Trunk Highway "D"; continue thence South 00°07'48" East, 17.00 feet along said 1/4 section line to the Northeast corner of Lot 1 of Certified Survey Map No. @@; thence South 88°55'06" West, 195.65 feet along the North line of said Lot 1 to the point of beginning of this description; thence South 02°15'19" East, 194.62 feet; thence South 51°34'38" East, 56.82 feet; thence South 01°01'56" East, 292.43 feet to the South line of said Lot 1; thence South 88°49'39" West, 20.00 feet along said South line; thence North 01°01'56" West, 10.00 feet; thence South 88°49'39" West, 379.51 feet to the Easterly line of State Trunk Highway "59" and the beginning of a non-tangent 3021.95 foot radius curve to the left whose chord bears North 00°28'27" East, 20.01 feet; thence Northerly 20.01 feet along the arc of said curve and said Easterly line; thence North 88°49'39" East, 29.67 feet; thence North 02°02'30" West, 53.19 feet; thence North 87°57'30" East, 20.00 feet; thence South 02°02'30" East, 53.50 feet; thence North 88°49'39" East, 300.46 feet; thence North 43°49'39" East, 27.08 feet; thence North 01°05'39" West, 224.11 feet; thence North 89°54'53" West, 7.26 feet; thence North 00°05'07" East, 10.75 feet; thence North 51°34'38" West, 47.30 feet; thence North 02°15'19" West, 209.00 feet to the aforesaid North line of Lot 1; thence North 88°55'06" East, 30.01 feet along said North line to the point of beginning.

Containing 24,874 square feet or 0.571 acres of land, more or less.

Also see the attached Exhibit A.

Grantor is the owner in fee of the above-described Property. As a condition of approval of development plans for the Property, the City has requested that Grantor grant a perpetual water and sanitary sewer utilities easement, referred to herein as the Easement, over the above-described Easement Area, and Grantor has agreed to do so. Therefore, Grantor agrees as follows:

- 1. Grant of Easement.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor grants to the City a perpetual easement and right-of-way over, upon, and beneath the surface of the Easement Area to install, construct, operate, inspect, maintain, repair, improve, supplement, reconstruct, replace, and remove water and sanitary sewer utility facilities, referred to herein as the Facilities, which include but are not limited to mains, laterals, manholes, collectors, valves, and other items deemed necessary in the City's sole discretion; along with a right of ingress and egress across the Property that the Easement Area burdens, as reasonably required for the City and the City's contractors to perform such

activities. During times at which such activities are being done, City and City's contractors may also place equipment and materials within the Easement Area as reasonably required to perform such activities. The size, type, and quantity of the Facilities shall be as reasonably determined by the City.

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 City:
 - a. Place or construct any buildings or other permanent structures.
 - b. Change the grade elevations by more than 12 inches.
 - c. Excavate.
 - d. Plant trees or bushes that would reasonably be expected to grow to more than four feet in height.
 - e. Drive posts (including fence posts), drive stakes longer than 12 inches, drive pilings, drive helical footings, or bore holes of any size.
 - f. Place any items or do any acts which reasonably should be expected to interfere with the Facilities or the City's rights granted in section 1.
3. **Pavement and Amenities within Easement Area.** Grantor may place pavement within the Easement Area for roads, sidewalks, parking areas, and site amenities such as fire pits, patios, and pickle ball courts, however, Grantor bears the risk that City may have to excavate the areas in which the pavement and site amenities are located to perform work allowed by this Agreement, and Grantor shall be responsible at Grantor's expense for repair and restoration of such areas within the Easement Area disturbed by the City.
4. **Removal of Items from Easement Area.** In order to perform any activities authorized in section 1, City may remove any items from the Easement Area which are in violation of the restrictions in section 2, and charge to Grantor the expenses incurred in doing so. The expenses may be charged to the Grantor as a special charge pursuant to Wis. Stats. §66.0627. City shall not be liable for damage to such items resulting from removal. However, City shall provide reasonable 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.
5. **Consistent Uses Allowed.** The Grantor reserves the right to use the Easement Area for purposes that will not interfere with the rights granted to City by this instrument.
6. **City Not Responsible for Maintenance of Grantor Improvements.** The City shall not be responsible for the maintenance, repair, or replacement of any improvements placed within the Easement Area by the Grantor, whether the improvements are above or below grade.
7. **Restoration of Surface.** City shall restore the surface of the Easement Area and the parcel across which the Easement Area lies, disturbed by any of City's acts permitted under section 1, as nearly as is reasonably possible to its condition before the disturbance, except for the items described in section 3. The City shall not be required to replace pavement (including curbs), trees, or bushes, or any items prohibited in section 2.
8. **Covenants Run with Land.** The Utilities Easement shall run with the land, shall be binding upon the Grantor's and the City's successors in interest, and shall inure to the benefit of and be enforceable by the Grantor, the City and their successors and assigns. References to Grantor in this Agreement also include all of Grantor's successors in interest. Grantor and Grantor's successors in interest shall not have liability under this Agreement for with respect to facts or circumstances arising after they have conveyed their fee simple interest in the Property to another successor.
9. **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.

- 10. **Governing Law.** This instrument shall be construed and enforced in accordance with the laws of the State of Wisconsin.
- 11. **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.
- 12. **Notices.** All notices to Grantor shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the address shown on the property tax bill for the Property. Notices shall be deemed delivered when delivered in person or deposited into the mail.
- 13. **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.
- 14. **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.

Dated the _____ day of February, 2019.

Grantor: Waukesha RE, LLC

By (sign above, print name below)

Title: _____

STATE OF WISCONSIN }
 } ss.
WAUKESHA COUNTY }

@@ personally came before me this _____ day of February, 2019, and is known to me to be the person who executed this instrument on behalf of the Grantor in the indicated capacity and acknowledged the same.

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

City of Waukesha

Shawn N. Reilly, Mayor

Gina L. Kozlik, City Clerk-Treasurer

STATE OF WISCONSIN }
 } ss.
WAUKESHA COUNTY }

Shawn N. Reilly and Gina L. Kozlik personally came before me this ____ day of February, 2019, and are known to me to be the persons who executed this instrument on behalf of the City of Waukesha in the indicated capacity and acknowledged the same.

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

This instrument was drafted by Brian E. Running, City Attorney.

DRAFT