

Document Number

**PUBLIC PEDESTRIAN ACCESS
AGREEMENT**
(City of Milwaukee)

Document Title

Recording Area

Name and Return Address

Part of 392-297-1110

Parcel Identification Number (PIN)

This document was drafted by:

Lucas N. Roe, Esq.
Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 600
Madison, WI 53703

PUBLIC PEDESTRIAN ACCESS AGREEMENT

(City of Milwaukee)

THIS PUBLIC PEDESTRIAN ACCESS AGREEMENT (the "License") is dated as of _____, 2022, by and between DEER DISTRICT LLC, a Delaware limited liability company ("GRANTOR") and the CITY OF MILWAUKEE, a Wisconsin municipal corporation ("CITY").

RECITALS

A. Grantor leases the real property described on **EXHIBIT A** attached hereto (the "**Grantor Property**") from the Wisconsin Center District, a local exposition district created and existing pursuant to Chapter 229 of the Wisconsin Statutes, pursuant to that certain Arena Lease, Management, and Operations Agreement dated as of April 13, 2016, as amended (the "Arena Lease"). The Grantor Property includes the vacated portion of West Highland Avenue located directly east of North 6th Street.

B. GRANTOR desires to grant and CITY desires to accept, a non-exclusive license for pedestrian access over the sidewalks located within the Grantor Property as depicted in **EXHIBIT B** (the "**License Area**") pursuant to the terms set forth in this License.

AGREEMENTS

In consideration of the Recitals, which are incorporated herein, and the mutual agreements that follow, GRANTOR and CITY agree as follows:

1. Grant of License. Subject to the terms and conditions set forth in this License, GRANTOR hereby grants and conveys to CITY a nonexclusive license for public pedestrian ingress and egress over and across the License Area.

2. Term of License. This License shall extend from the date hereof and continue through the expiration of the Arena Lease, as the same may be extended from time to time (the "Term"). In the Event that the Arena Lease (and/or the License Area) is assigned, subleased or otherwise transferred, Grantor shall notify the City in writing of the same, and shall cause this License to be recognized by such successor or assign, and the License shall continue to be in full force and effect. This License is not revocable by Grantor (or its successors or assigns) during the Term. In the event that GRANTOR or an affiliated entity acquires the Grantor Property, GRANTOR shall notify the City in writing of the same, and GRANTOR agrees to grant to the CITY following written request therefore, a perpetual, non-exclusive easement for public pedestrian ingress and egress over the License Area on the same terms and conditions set forth herein.

3. Use of Licenses. Subject to the terms of this License, CITY and members of the public may use the sidewalks and other pedestrian areas within the License Area (in common with GRANTOR and its tenants, invitees, employees, licensees, customers, successors and assigns) for

pedestrian ingress and egress to and from North 6th Street, as well as for access to and from any property adjacent to the License Area. The use of the License Area shall be for normal and customary pedestrian access by CITY and the public in accordance with all applicable federal, state and local laws, statutes, ordinances, codes and regulations. The rights of CITY and the public to use the License Area shall not extend to any unusual uses such as loitering, canvassing, soliciting or other types of uses that may constitute a public or private nuisance. GRANTOR reserves the right to grant to third parties additional rights for access and/or utilities affecting the License Area or other adjacent properties. Subject to GRANTOR's rights in this License, no party's use of the License Area shall unreasonably interfere with the use of the License Area by the other parties.

4. Construction of Improvements. GRANTOR, at GRANTOR's expense, shall have the right to construct any and all improvements in the License Area deemed necessary by GRANTOR, provided that such improvements shall not unreasonably interfere with rights granted to CITY herein. For the avoidance of doubt, this License does not grant permission from the City to GRANTOR to construct any improvements not otherwise explicitly permitted under the zoning regulations. Such improvements may include hard-surfaced ground covering materials (such as asphalt and/or concrete), sidewalks, lighting, signage, streetscaping and/or landscaping. In addition, GRANTOR shall have the right to install and maintain (or to allow third parties to install and maintain) on the License Area any and all drive aisles, parking improvements and/or utilities (including, without limitation, any electrical, gas, sanitary sewer, water, storm sewer, telephone, fiber optic and cable television lines or cables), provided that GRANTOR shall secure all necessary permits including, but not limited to, those issued by CITY's Department of Public Works and Department of Neighborhood Services prior to undertaking any construction activities. CITY shall not have any rights or obligations to construct any new improvements or utilities on the License Area without first obtaining approval from Grantor in writing, which shall not be unreasonably conditioned, withheld or delayed. Further, GRANTOR and CITY agree that no buildings shall be constructed on the License Area, provided that the foregoing shall not prevent the installation of balconies or other projections within the License Area above ground level. GRANTOR hereby reserves the right to allow vehicular access and/or parking on the Grantor Property for GRANTOR, its tenants, invitees, employees, licensees, customers, successors and assigns, provided the same does not unreasonably interfere with the rights created hereunder (and subject to the limitations set forth paragraph 6 herein regarding "Permitted Closures").

5. Maintenance. As between GRANTOR and CITY, GRANTOR (at GRANTOR's expense) shall maintain the License Area in a condition at least comparable to the condition in which CITY maintains surrounding public sidewalks. If GRANTOR fails to maintain the License Area in the condition required by this License, CITY may provide GRANTOR with a written notice setting forth the maintenance or repair work that CITY reasonably determines has not been done. If GRANTOR does not commence such maintenance or repair work within 30 days from the date of receipt of the aforesaid written notice, then CITY may, after the 30-day written notice to GRANTOR, perform such work and shall be reimbursed by GRANTOR for all reasonable costs incurred in performing such work. Should GRANTOR fail to reimburse CITY for such work within 30 days after written demand therefor, GRANTOR hereby agrees that CITY shall have the right to assess the costs for such work as a special charge against the property, under the provisions of Sec. 66.0627, Stats., and as the same may be renumbered from time to time. Should CITY need to proceed with such special charges under the provisions of Sec. 66.0627, Stats., GRANTOR hereby waives notice and hearing on such charges.

6. Public Access and Closures. The License Area shall be available for the uses described herein at all times (24/7-7 days a week), except for closures permitted as follows (each a "Permitted Closure"):

(a) at such times as all or a portion of the License Area is closed for maintenance or repair. In the event that such closure is anticipated to extend for more than forty-eight (48) hours, GRANTOR shall provide CITY not less than seven (7) days' advance notice of any such anticipated closure, except in the event of an emergency or life-safety condition, in which case notice shall be given as soon as reasonably practicable;

(b) for construction, maintenance, or repair, construction and/or construction staging for the development of adjacent parcels. GRANTOR shall provide CITY not less than ten (10) days' advance written notice of such closure and provide a temporary, comparable relocation of the License Area in the event that such closure is expected to prevent access to any portion of the License Area for longer than five (5) days; the duration and access areas of any such temporary relocation to be mutually agreed upon in writing by the parties;

(c) only with respect to that certain portion of the License Area identified as the "Short Term Interruption Area" on Exhibit B, for special events benefiting the public. GRANTOR shall provide CITY twenty-four (24) hours' advance notice if such closure is expected to occur for six (6) or more hours; or

(d) only with respect to the Short Term Interruption Area, as necessary for safe and secure use of adjacent properties (including vehicular traffic associated with loading and unloading trucks and trailers and pedestrian queuing). GRANTOR shall provide CITY twenty-four (24) hours' advance notice if such closure is expected to occur for more than sixteen (16) hours.

GRANTOR shall be responsible for posting all signage necessary to notify the public in advance of any closures. GRANTOR may, from time to time, vary or relocate the paved areas within the License Area, after providing CITY sixty (60) days' prior notice of the same.

7. Rules and Regulations. GRANTOR may, at all times, exclude any vendors or other commercial activities from the License Area. Further, GRANTOR shall have the right to promulgate and enforce rules and regulations governing the use of the License Area, provided that the CITY is provided prior written notice thereof, and such rules and regulations do not unreasonably interfere with the rights created hereunder.

8. Insurance. GRANTOR shall maintain a policy of comprehensive general liability insurance with respect to the License Area consistent with that held by the owners of similarly situated properties in the City of Milwaukee.

9. CITY's Access to Existing Facilities. The parties acknowledge that to the extent that CITY has any existing facilities (such as sewer or water mains) currently located in the License Area as set forth in written easement agreements benefiting CITY and recorded against the License Area, CITY may continue to access, use and maintain such facilities in accordance with such agreements.

10. Binding Agreement. The License rights granted herein and the other provisions of this License shall be binding upon and inure to the benefit of GRANTOR and CITY and their respective successors and assigns.

11. Force Majeure. If any party is delayed or interrupted in the performance or completion of any of its obligations hereunder by any cause beyond its control, including, but not limited to, any act, neglect or default of another party or any agent or employee of another party (including any delay requested by another party), embargo, war, fire, flood, concealed conditions, cyclone, earthquake, pandemic, epidemic, quarantine or other calamity, act of God or of the public enemy, riots, insurrection or any strike, illegal walkout or secondary boycott, then the delay shall be excused and the time of performance specified in this License shall be extended for a period equal to the time lost as a consequence of the delay or interruption.

12. Applicable Law. This License shall be interpreted and construed in accordance with the laws of the State of Wisconsin.

13. Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this License.

14. Counterparts. This License may be executed in any number of counterparts, and each counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

15. Notices. All notices to be given by one party to the other under this License shall be in writing and given either by personal delivery or certified mail, postage prepaid, to the addresses set forth in this paragraph. A notice shall be deemed delivered either upon actual receipt or upon refusal by a party to accept delivery. Any party may change its address for purposes of receiving notice by delivering written notice thereof in accordance with the requirements of this paragraph.

To Grantor:

MKE BLK23 LLC
1543 North 2nd Street, 6th Floor
Milwaukee, WI 53212
Attn: Peter Feigin

With a copy to:

Bruce T. Block, Esq. and Lucas N. Roe, Esq.
Reinhart Boerner Van Deuren s.c.
1000 N. Water Street, Suite 1700
Milwaukee, WI 53202

To City:

Commissioner
City of Milwaukee
Department of Public Works
841 North Broadway, Fifth Floor
Milwaukee, WI 53202

16. Enforcement. This License may be enforced either at law or in equity, with the nonbreaching party(ies) entitled to injunctive relief and/or monetary damages. If any action for enforcement of this License is brought, the nonprevailing party(ies) in such action shall reimburse the prevailing party(ies) for reasonable attorneys' fees incurred in such action. No persons other than the parties hereto shall be entitled to enforce any of the terms, covenants or conditions of this License.

17. Integration, Modification and Waiver. All of the terms and provisions of this License and the understanding of the parties pertaining to the subject matter thereof are set forth in this License and no prior understanding or obligation not expressly set forth herein shall be binding upon the parties. No subsequent modification of this License shall be binding upon the parties unless in writing, executed by the parties hereto. None of the provisions of this License shall be considered waived by any party except when such waivers are given in writing. No such waiver shall be construed to be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of this License except as expressly stipulated therein.

18. Amendment. This License may be amended only by a written instrument executed by GRANTOR and CITY or their successors or assigns.

19. No Joint Venture. No provision hereof shall be deemed to constitute the parties hereto as partners of one another or joint venturers of one another or in any way obligate any party hereto for the performance of any obligation of another party hereto.

[SIGNATURE PAGES FOLLOW]

SIGNATURE PAGE - PUBLIC PEDESTRIAN ACCESS AGREEMENT

Dated this ____ day of _____, 2022.

CITY OF MILWAUKEE

Cavalier Johnson, Mayor

James R. Owczarski, City Clerk

COUNTERSIGNED:

Aycha Sawa, Comptroller

Signatures of Cavalier Johnson, Mayor, and James R. Owczarski, City Clerk, and Aycha Sawa, Comptroller, authenticated this ____ day of _____, 2022.

_____, _____ City Attorney
State Bar No. _____

SIGNATURE PAGE - PUBLIC PEDESTRIAN ACCESS AGREEMENT

MKE BLK23 LLC

By: _____
Peter Feigin, President

STATE OF WISCONSIN)
) ss:
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2022, Peter Feigin, the President of the above-named MKE BLK23 LLC, to me known to be the person who executed the foregoing instrument and to me known to be such President of such limited liability company and acknowledged that he executed the foregoing instrument as such officer.

Name: _____
Notary Public, State of Wisconsin
My Commission _____

EXHIBIT A

Legal Description of Grantor Property

Record Description:

That part of vacated West Highland Avenue, in the Northeast 1/4 and Northwest 1/4 of Section 29, Township 7 North, Range 22 East, described as follows: Commencing at the northeast corner of Certified Survey Map No. 4822, thence North $89^{\circ}52'20''$ West, along the north line of said Certified Survey Map, 299.81 feet to the point a point on a curve and the point of beginning of the land to be described; thence Southwesterly, 99.75 feet along the arc of said curve which has a radius of 63.50 feet with its center lying to the northwest having a central angle of $90^{\circ}00'00''$ and whose chord bears South $45^{\circ}07'40''$ West, 89.80 feet to the south line of vacated West Highland Avenue and a point of tangency; thence, North $89^{\circ}52'20''$ West, along said south line, 54.70 feet; thence, South $00^{\circ}07'40''$ West, along said south line, 16.50 feet to a point; thence Westerly, along said south line, to the northwest corner of Lot 11 in Block 45 of Plat of the East Half, a recorded subdivision, in said Northwest 1/4 Section; thence Northerly to the southwest corner of Certified Survey Map No. 8799; thence Easterly, along the north line of vacated West Highland Avenue, to the point of beginning.

As surveyed and described as:

That part of vacated West Highland Avenue, in the Northeast 1/4 and Northwest 1/4 of Section 29, Township 7 North, Range 22 East, described as follows: Commencing at the southeast corner of Certified Survey Map No. 8799, recorded as document number 10564545 at the Milwaukee County Register of Deeds Office; thence $N89^{\circ}30'33''W$ coincident with the south line of said Certified Survey Map, 299.69 feet to the point on a curve and the point of beginning of the land to be described; thence southwesterly, 99.74 feet coincident with the arc of said curve to the right which has a radius of 63.50 feet, and a chord bearing $S44^{\circ}30'37''W$, 89.80 feet to the south line of vacated West Highland Avenue and a point of tangency; thence $S89^{\circ}30'33''W$, coincident with said south line 54.70 feet; thence $S00^{\circ}29'27''E$ coincident with said south line 16.50 feet; thence $S89^{\circ}30'33''W$, 262.67 coincident with said south line to the northwest corner of Lot 11 in Block 45 of Plat of the East Half, a recorded subdivision in said Northwest 1/4 Section; thence $N00^{\circ}53'16''W$, 80.00 feet to the to the southwest corner of said Certified Survey Map number 8799; thence $N89^{\circ}30'33''E$, along the north line of said vacated West Highland Avenue, 381.42 feet to the point of beginning.

EXHIBIT B

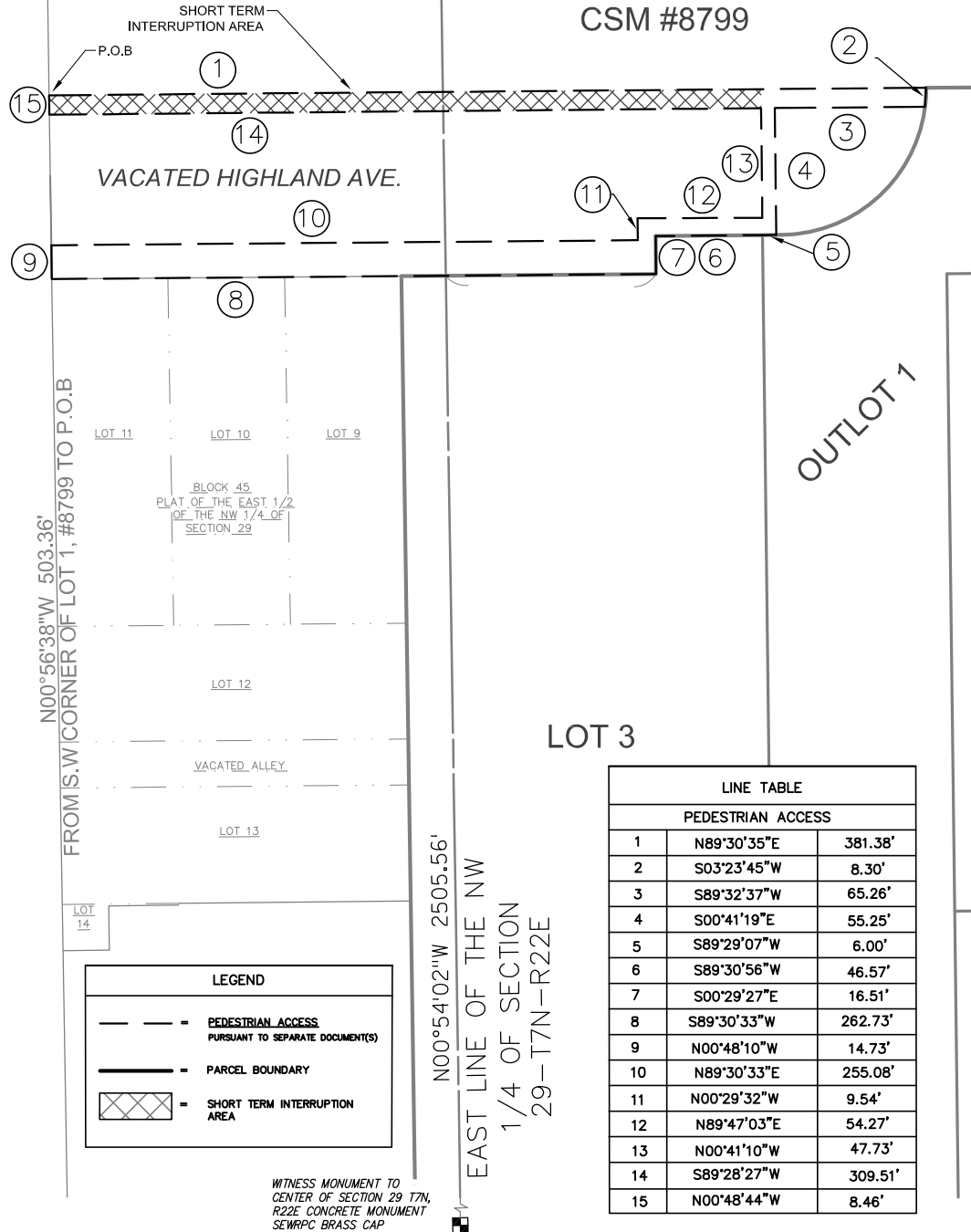
License Area (including Short Term Interruption Area)

HORIZONTAL DATUM IS THE WISCONSIN
STATE PLANE COORDINATE SYSTEM SOUTH
ZONE NAD27. NORTH IS REFERENCED TO
THE W. LINE OF THE NE 1/4 OF SECTION
29-7-22 PUBLISHED BY SEWRPC AS
N00°54'02"E. ALL DISTANCES ARE
GROUND MEASURED. (DEC. 2013 DATUM)

EXHIBIT B

N 1/4 CORNER, SECTION 29 T7N,
R22E CONCRETE MONUMENT
SEWRPC BRASS CAP

LOT 1
CSM #8799



LINE TABLE		
PEDESTRIAN ACCESS		
1	N89°30'35"E	381.38'
2	S03°23'45"W	8.30'
3	S89°32'37"W	65.26'
4	S00°41'19"E	55.25'
5	S89°29'07"W	6.00'
6	S89°30'56"W	46.57'
7	S00°29'27"E	16.51'
8	S89°30'33"W	262.73'
9	N00°48'10"W	14.73'
10	N89°30'33"E	255.08'
11	N00°29'32"W	9.54'
12	N89°47'03"E	54.27'
13	N00°41'10"W	47.73'
14	S89°28'27"W	309.51'
15	N00°48'44"W	8.46'

PEDESTRIAN ACCESS

1001 VEL R. PHILLIPS AVE.
MILWAUKEE, WI 53203

DRAWN:

BS

REVISIONS:

DATE:	10/17/2022
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SCALE: 1" = 60'

SHEET NUMBER:	
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1 of 1