

BEERLINE TRAIL EASEMENT AGREEMENT  
(EAST VIENNA AVENUE)

Document Number

Document Title

This Easement Agreement (“**Agreement**”) is made as of \_\_\_\_\_, 20\_\_ (“**Effective Date**”) by and between the CITY OF MILWAUKEE, a municipal corporation (“**City**”) and MILWAUKEE STORAGE SOLUTIONS LLC, a Wisconsin limited liability company (“**Grantor**”). City and Grantor are each a “**Party**”; together, they are the “**Parties**.”

RECITALS

- A. WHEREAS, City and Grantor are the owners of adjacent properties located in the City of Milwaukee, County of Milwaukee, State of Wisconsin, as legally described on the attached **Exhibit A** and referred to in such exhibit and herein as the “**City Property**” and “**Grantor Property**”, respectfully.
- B. WHEREAS, City has requested that City have an easement of ingress and egress on a non-exclusive basis in common with Grantor over and across a portion of land on the Grantor Property for public access to and from the City Property.
- C. WHEREAS, Grantor is willing to grant such easement on the terms and conditions as set forth herein.

Recording Area

Name and Return Address

Jordan M. Schettle, Esq.  
Milwaukee City Attorney’s Office  
841 North Broadway, 10th Floor  
Milwaukee, WI 53202

See Exhibit A

Parcel Identification Number (PIN)

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties agree as follows:

1. GRANT OF PUBLIC EASEMENT. Grantor hereby grants to City a perpetual non-exclusive easement over, on, and across the easement area graphically depicted on the attached **Exhibit B** (“**Easement Area**”) for the purpose of providing bicycle and pedestrian access to and from the City Property.

2. USE OF PUBLIC EASEMENT. Subject to the terms of this Agreement, City and members of the public may use the Easement Area (in common with Grantor and its tenants, invitees, employees, licensees, customers, successors and assigns) for pedestrian and bicycle ingress and egress to and from East Vienna Avenue to and from the Beerline Trail and for access to and for ingress and egress to and from any property adjacent to the Easement Area, subject to the provisions herein, except for City maintenance vehicles, Riverworks Development Corporation maintenance vehicles, and emergency service vehicles which may use the Easement Area for vehicular ingress and egress to and from East Vienna Avenue to and from the Beerline Trail and for access to and for ingress and egress to and from any property adjacent to the Easement Area.

The use of the Easement Area shall be for normal and customary 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 Easement Area shall not extend to any unusual uses such as loitering, vehicle use (except for City maintenance vehicles, Riverworks Development Corporation maintenance vehicles, and emergency vehicles) or other types of uses that may constitute a public or private nuisance. Grantor reserves the right to grant to third parties additional easements for access and/or utilities affecting the Easement Area or portions thereof. Notwithstanding anything herein to the contrary, neither Party's use of the Easement Area shall unreasonably interfere with the use of the Easement Area by the other Party and its respective tenants, invitees, employees, licensees, customers, successors and assigns.

3. INTENTIONALLY DELETED.

4. PUBLIC ACCESS. The Easement Area shall be available for public use at all times, except for such times as the Easement Area must be closed for maintenance or repair, to avoid the acquisition of adverse or prescriptive rights or for special events benefiting the public. Grantor shall have the right periodically to close off the Easement Area for any of these purposes, provided that Grantor obtain any and all permits required for same. Further, Grantor may, from time to time, vary or relocate the paved areas on the Easement Area available for use by the public and Grantor may, from time to time, restrict use of portions of the Easement Area by members of the public in favor of Grantor or its lessees, or Grantor's successors' or assigns' exclusive use; provided that, the prior written consent is obtained from the City.

5. MAINTENANCE AND REPAIR. City shall be solely responsible at its expense for the maintenance of the 12-foot wide concrete and asphalt portion of the Easement Area as reasonably determined by City in its discretion, which maintenance may include and not be limited to, sealing, striping, repaving, and snow removal, as determined by City in its discretion. Grantor shall be solely responsible at its expense for the maintenance of the remaining adjacent landscaping portions of the Easement Area not covered by concrete and asphalt.

6. CITY'S ACCESS TO EXISTING FACILITIES. The Parties acknowledge that City has and may maintain any existing facilities (such as sewer or water mains) currently located in the Easement Area as set forth in other written easement agreements benefiting City and recorded against the Grantor's Property. City has the right to reasonably access such facilities for maintenance upon reasonable notice to Grantor, provided that City's access does not unreasonably interfere with Grantor's use or occupancy of Grantor's Property.

7. INDEMNIFICATION. City shall save Grantor harmless from any loss, damage, injury or liability resulting from negligence on the part of City in connection with the exercise of any rights of City hereunder; provided, however, that these provisions are subject to the legal defenses which, under law, City is entitled to raise.

8. INSURANCE. Grantor shall maintain a policy of comprehensive general liability insurance with respect to Grantor Property the Easement Area consistent with that held by the owners of similarly situated properties subject to public easements in the City of Milwaukee.

9. RULES AND REGULATIONS. Grantor may, at all times, exclude any vendors or other commercial activities from the Easement Area. Further, Grantor shall have the right to promulgate and enforce rules and regulations governing the use of the Easement Area by the public, including any and all rules relating to parking in and on the Easement Area.

10. NON-USE. Non-use or limited use of the Easement Area and the rights granted herein shall not deprive City from later use of such Easement Area and City's exercise of such rights to the fullest extent authorized under this Agreement.

11. GOVERNING LAW; VENUE. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the Circuit Court of Milwaukee County for matters arising under state law and in federal district court in the eastern district of Wisconsin for matters arising under federal jurisdiction.

12. ENTIRE AGREEMENT; AMENDMENTS. This Agreement sets further the entire understanding of the Parties with respect to the subject matter hereof and may not be changed, modified, or amended, except by a written document executed and acknowledged by both Parties to this Agreement, which shall only become effective upon its recordation in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

13. NOTICES. Any notice provided for herein or given pursuant to this Agreement, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, electronic mail ("e-mail"), or by receipted personal delivery to the Parties as follows:

To Grantor:

Milwaukee Storage Solutions LLC  
33 Whitehall Street, 17<sup>th</sup> Floor  
New York, NY 10004  
Attn: Israel Friedman

with a copy to:

WilliamsMcCarthy LLP  
120 W. State St., Suite 400  
Rockford, IL 61101  
Attn: Carl A. Ecklund

To The City:

Department of Public Works – City of Milwaukee  
Frank P. Zeidler Municipal Building  
841 N Broadway, 5th Floor  
Milwaukee, WI 53202

with a copy to:

City Attorney's Office – City of Milwaukee  
Frank P. Zeidler Municipal Building  
841 N Broadway, 7th Floor  
Milwaukee, WI 53202

14. FORCE MAJEURE. If either 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 the other Party or any agent or employee of the other Party (including any delay requested by the other Party), embargo, war, fire, flood, concealed conditions, cyclone, earthquake, epidemic or other calamity, act of God or of the public enemy, riots, insurrection or any strike, illegal walkout or secondary boycott, pandemic, or epidemic, then the delay shall be excused and the time of performance specified in this Agreement shall be extended for a period equal to the time lost as a consequence of the delay or interruption.

15. RECORDING. This Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County.

16. HEADINGS. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

17. WAIVER. One or more waivers of any covenant or condition by either Party shall not be construed as a waiver of a subsequent breach of the same covenant or condition. No breach of a covenant or condition of this Agreement shall be deemed to have been waived by either Party unless such waiver is in writing signed by both Parties. Wherever in this Agreement a Party's consent is required, such consent shall not be unreasonably withheld or delayed.

18. SEVERABILITY. If any term or provision of this Agreement is held invalid or unenforceable, then the remaining terms and provisions of this Agreement shall be affected thereby, but each remaining term and provision shall be valid.

19. ENFORCEMENT. Enforcement of this Agreement may be at law or equity against any person or persons violating or attempting or threatening to violate any provision hereof, either to restrain or prevent such violation or obtain other relief. In any suit or other action brought to enforce this Agreement, the prevailing Party in such or other action shall be entitled to recover its costs, including reasonable attorneys' fees, as are incurred by the prevailing Party from the non-prevailing Party in such suit or action. Nothing in this Agreement shall be deemed to be a waiver of the City's governmental immunity rights as stated under Wisconsin Statutory Law or under the laws of the City of Milwaukee.

20. ENCUMBRANCES. This Agreement is expressly made subject to all legal encumbrances including all recorded easements and restrictions.

21. NO JOINT VENTURE. No provision hereof shall be deemed to constitute the Parties hereto as partners of one another or joint ventures of one another or in any way obligate any Party hereto for the performance of any obligation of the other Party hereto.

22. ASSIGNMENT. This Agreement shall run with the land and shall be binding upon the parties hereto and their respective successors and assigns. Neither Party shall assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Provided, however, upon any transfer or conveyance of the Grantor Property, no consent shall be required and the transferor shall be released from any liability under this Agreement accruing after the date of such transfer relative to the real estate so transferred or conveyed and the transferee shall be bound by and deemed to have assumed the obligations of his transferor arising after the date of such transfer or conveyance.

23. GRANTOR IMMUNITY. Under the terms and conditions of this Agreement, the Grantor is recognized as meeting the definition of an owner providing recreational opportunities in sec. 895.52, Wis. Stats., which limits the Grantor's liability to members of the recreating public.

24. PUBLIC RECORDS. The Parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Grantor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Agreement.

25. NONDISCRIMINATION. The City hereby agrees that in its use of the Easement Area and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

26. COUNTERPARTS. This Agreement may be signed and executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

27. APPROVAL. The City of Milwaukee Department of Public Works approved this Agreement and authorized its execution, subject to approval by Milwaukee's Common Council, at its meeting on \_\_\_\_\_, 20\_\_\_\_. Milwaukee's Common Council approved this Agreement and authorized its execution on \_\_\_\_\_, 20\_\_\_\_, by passage of Resolution No. \_\_\_\_\_.

*[Signature Page Follows]*

The Parties have executed this Agreement effective as of the Effective Date.

**MILWAUKEE STORAGE SOLUTIONS LLC**

a Wisconsin limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN                    )  
  )SS.  
COUNTY OF MILWAUKEE            )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_,  
the \_\_\_\_\_ of Milwaukee Storage Solutions LLC, who by their authority  
and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Name:  
Notary Public, State of Wisconsin  
My Commission Expires:

**CITY OF MILWAUKEE**

a Wisconsin municipal company

By: \_\_\_\_\_

Jerrel Kruschke, Commissioner  
Dept. of Public Works

And By: \_\_\_\_\_

James R. Owczarski, City Clerk

**Countersigned:**

By: \_\_\_\_\_

Aycha Sawa, Comptroller

**City Common Council Resolution File Number:** \_\_\_\_\_

STATE OF WISCONSIN                    )  
  )SS.  
COUNTY OF MILWAUKEE            )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, Jerrel Kruschke, the Commissioner of the City of Milwaukee Department of Public Works, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Name:  
Notary Public, State of Wisconsin  
My Commission Expires:

### **CITY ATTORNEY APPROVAL/AUTHENTICATION**

Jordan M. Schettle, a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City representatives above per M.C.O. 304-21, and also authenticates the signatures of those City representatives/signatories per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).

By:\_\_\_\_\_

Jordan M. Schettle, Asst. City Attorney  
State Bar No. 1104571

Date:\_\_\_\_\_



## **EXHIBIT A**

### **Legal Description of Grantor Property:**

Beginning at a point along the Easterly line of the Northeast 1/4 of Section 8, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commencing at a point on a line drawn East and West through said 1/4 Section 1,283.86 feet South of and parallel to the North line of said 1/4 Section and 785.48 feet, more or less, West of the East line of said 1/4 Section, being a point on the Eastern Boundary line of Chicago, Milwaukee and St. Paul Railway; running thence East on a line parallel to the North line of said 1/4 Section 750.48 feet more or less to the West right-of-way line of North Richards Street; thence South along the said right-of-way line and parallel to the East line of said 1/4 Section 435.00 feet; thence West 431.11 feet along a line parallel to North line of said 1/4 Section to the Eastern boundary line of the Chicago, Milwaukee and St. Paul Railway Company and thence Northwesterly along said Eastern boundary line of said Railway boundary to the place of beginning.

EXCEPTING Therefrom that part conveyed to the City of Milwaukee by Quit Claim Deed recorded in Volume 2722 of Deeds, Page 128, as Document No. 2926333.

Commonly known as: 3745-3775 North Richards Street Milwaukee, Wisconsin 53212

PIN: 273-9989-110

### **Legal Description of City Property:**

Lands in Northeast 1/4 Section 8-7-22. Former railroad ROW Thru said 1/4 Section except part beginning west line ROW line & the existing south line of W Capitol Drive - Thence east 69.61' - Thence southeastern parcel to west line of ROW 105' - Thence south 91.19' to a point on west line said ROW - Thence northwesterly along ROW 331.99' to beginning of BID 25

## **EXHIBIT B**

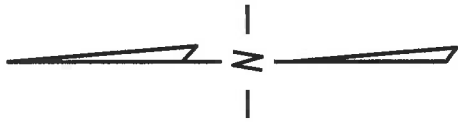
### **Easement Area:**

#### **Description**

Description of public access easement for a pedestrian and bicycle way proposed to be acquired from the westerly terminus of East Vienna Avenue west to the Beerline Trail, in the 6th Aldermanic District of the City of Milwaukee.

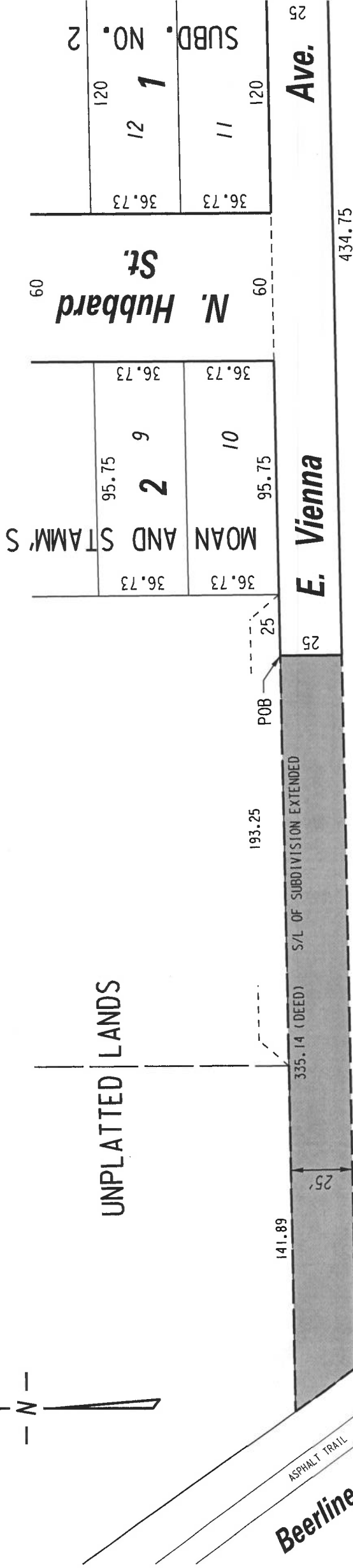
Commencing at the southwest corner of Lot 10, Block 2 of Moan and Stamm's Subdivision No. 2, a recorded subdivision, in the Northeast 1/4 of Section 8, Township 7 North, Range 22 East, said point also lying in the south line of said subdivision; thence Westerly, along the westerly extension of said south line, 25.00 feet to the point of beginning of the land to be described; thence Westerly, continuing along said south line extended, to a point in the easterly line of the Beerline Trail, formerly known as the Wisconsin and Southern Railroad Company right-of-way; thence Southeasterly, along said easterly line, to a point lying 25.00 feet south of, as measured normal to, said south line extended; thence Easterly, and parallel to said south line extended, to a point in the present west line of East Vienna Avenue; thence North, along said west line, to the point of beginning.

#### **Map of Easement Area**



N.E. 1/4 SEC. 8, T.7N., R.22E.

273



TAX KEY NO.  
273-9989-110

UNPLATTED LANDS

PROPOSED PUBLIC ACCESS EASEMENT  
FOR PEDESTRIAN AND BICYCLE WAY

# FILE NO. INFRASTRUCTURE SERVICES DIVISION

MILWAUKEE, WISCONSIN

ASSIGNED TO: W. FUCHS

CH'K'D. BY: W. FUCHS

DRAWN BY: W.F.

DATE: OCT 20, 2022

PROJECT/GRANT NO.: WK52360094

SCALE: 1" = 50'

APPROVED BY:

*W. Fuchs*

*W. Fuchs*

CENTRAL DRAFTING & RECORDS MANAGER

CITY ENGINEER