

	INTERIM EASEMENT (Westlawn Gardens - ROW)
Document Number	Document Title

**INTERIM EASEMENT
(Westlawn Gardens - ROW)**

Drafted by:
 Gregg Hagopian, Milwaukee City Attorney’s Office

 CAO 244203 (10/22/17)

Recording Area
 Name and Return Address:

 Gregg Hagopian
 Assistant City Attorney
 841 North Broadway, 7th Floor
 Milwaukee, WI 53202

See EXHIBIT A
 Parcel Identification Number

THIS INTERIM EASEMENT (the “**Agreement**”) is dated as of _____, 2017, and is between the Housing Authority of the City Of Milwaukee, a public body corporate and public created and existing under the laws of the State of Wisconsin (“**HACM**”) and City of Milwaukee, a Wisconsin municipal corporation (“**City**”).

RECITALS

- A. HACM is the sole fee simple owner of land located south of West Silver Spring Drive, West of North 64th Street and East of North 68th Street in the City of Milwaukee, Milwaukee County, Wisconsin, which is legally described on **EXHIBIT B (“Westlawn Gardens - West”)**.
- B. Within and at Westlawn Gardens – West is existing public right-of-way (including streets and sidewalks) as shown on the Map attached as **EXHIBIT C (“Existing ROW”)**.
- C. HACM is in the process of a comprehensive redevelopment of the Westlawn Gardens – West that requires:
 - the demolition of all existing structures located at Westlawn Gardens – West

- the vacation and demolition of all Existing ROW at Westlawn Gardens – West
 - the re-subdivision of Westlawn Gardens – West as depicted on the Westlawn West Subdivision Plat, a portion of which is attached as **EXHIBIT D** (the “**Plat**”)
 - the construction and dedication of new ROW, substantially as depicted on the Plat (the “**New ROW**”), and in accordance with the terms of an Out of Program Agreement (Westlawn Gardens – West) between HACM and City dated as of _____, 2017 (the “**2017 OOPA**”)
 - the construction of other infrastructure at Westlawn Gardens – West per the 2017 OOPA and
 - the ultimate redevelopment of Westlawn Gardens – West as a new residential development.
- D. City approval of the Plat under Milwaukee Code of Ordinances (“**MCO**”) Ch. 119 will accomplish re-subdivision of the Westlawn Gardens – West and dedication of the New ROW.
- E. City approval of vacation of the Existing ROW under MCO 308-28 will accomplish vacation of the Existing ROW and the cessation of those areas being public ROW.
- F. Construction of the New ROW and infrastructure per the 2017 OOPA and the completion of Westlawn Gardens – West are intended to take place over a period of five or more years.
- G. As used in this Agreement, “**Gap Time**” means the time period from the date hereof to the date when construction has been completed under the 2017 OOPA, including construction of **(i)** New ROW, and **(ii)** new infrastructure.
- H. This Agreement is intended to allow – during and until the end of the Gap Time (or until sooner terminated by the parties) – City, the public and utility companies the right to continued use of the Existing ROW as those areas are currently being used.
- I. HACM, City, Westlawn Renaissance LLC (“**WR**”), Victory Manor LLC (“**VM**”), WG Scattered Sites LLC (“**SS**”), and the Westlawn Gardens Property Owners’ Association Inc. (“**Association**”) are parties to a Storm Water Management Facility and Mews Maintenance and Easement Agreement, dated _____, 2017 (the “**2017 Maintenance Easement**”).

AGREEMENT

1. **Recitals**. The recitals above are hereby accepted and agreed to.

2. **Grant of Easement – Existing ROW**.
 - A. HACM grants and conveys a temporary, interim easement, during the Gap Time:
 - to City for the benefit of the general public to continue to use Existing ROW and public infrastructure within Existing ROW, in particular presently existing street and alley segments, for pedestrian and vehicular ingress, egress and travel, and municipal purposes

 - to City and to private utility companies that have utility facilities within Existing ROW (“**Existing Utility Companies**”) the continued access to and right to operate, use and maintain above and below grade public and private infrastructure and utilities located within Existing ROW. This is in addition to easement rights City and Existing Utility Companies have under Wis. Stat. 66.1005.

 - B. The streets and sidewalks within the Existing ROW shall remain available for public use at all times, except for such times as they must be closed for demolition, construction, maintenance or repair. HACM, with the approval of City’s Commissioner of Public Works (“**Commissioner**”), shall have the right periodically to close off portions of the Existing ROW for these purposes, provided that HACM obtains all necessary permits for any planned street, alley or sidewalk closure, and otherwise complies with City ordinances and requirements for obstructing or closing public ways.

3. **Maintenance and Control of Existing ROW During Gap Time, Subject to Early Termination by Amendment & Termination**.
 - A. **Maintenance**. During the Gap Time, unless otherwise agreed by the parties by written amendment, the Existing ROW shall continue to be plowed, salted, maintained, repaired, controlled and regulated by City consistent with the standards City employs for public ROW, and in accordance with applicable law. City is not responsible, however, for salting or shoveling sidewalks.

HACM may, in its discretion and at its expense, undertake maintenance of and capital repairs to streets and sidewalks within Existing ROW at a greater frequency or at a higher standard than would generally be undertaken by City on

public streets and sidewalks. Any such maintenance and repair, however, shall be in accordance with plans and specifications first approved by the Commissioner.

- B. **Partial termination.** Notwithstanding the foregoing, however, when segments of New ROW adequately replace Existing ROW for travel and use purposes, as determined by the Commissioner and as reasonably agreed to by HACM, then City and HACM shall enter into and record with the Register of Deeds (“**ROD**”) an amendment to this Agreement to terminate the easement for ingress, egress and travel use of that particular segment of Existing ROW.
 - C. **Final termination.** At the end of the Gap Time, City and HACM shall also enter into and record with the ROD a termination of this Agreement.
 - D. **Private utilities.** Private utility companies (including Existing Utility Companies) remain responsible for maintaining their own facilities.
4. **Other Utility Easements in Existing ROW.** Notwithstanding para. 3, and subject to City’s and public’s and Existing Utility Companies’ continued use of Existing ROW per paragraph 2 and per Wis. Stat. 66.1005, after Existing ROW has been vacated per MCO 308-28, HACM may grant easements within Existing ROW to private utility companies and to City for utility and infrastructure purposes.
5. **New ROW, License to Install; Maintenance.** Per the 2017 Maintenance Easement, City granted HACM a license in New ROW, among other things, to install, in accordance with the 2017 OOPA, street and sidewalk within New ROW.
- Until the street and sidewalk improvements within New ROW are completed per the 2017 OOPA and available for public use as determined by the Commissioner, HACM shall be responsible for and maintain the New ROW areas unless the Commissioner directs otherwise.
6. **Construction of Improvements.** HACM shall comply with the 2017 OOPA and design and construct the New ROW and other improvements required to be constructed thereunder.
7. **Liability.** HACM and City retain all rights under applicable law including Wis. Stat. 893.80. This Agreement is executed to facilitate subdivision of Westlawn Gardens – West and establishment of the New ROW. While City maintains, controls and regulates the Existing ROW hereunder, City will be responsible for same to the same extent and in the same manner as if it had not been subject to vacation and as if it had remained public ROW under City’s jurisdiction. Notwithstanding the foregoing,

HACM remains responsible for HACM's acts and omissions. While HACM maintains the New ROW hereunder, HACM will be responsible for same.

8. **Recording.** This Agreement, and any amendment hereto or termination hereof, shall be recorded in the ROD Office at HACM's expense.
9. **Binding Effect.** This Agreement is binding upon the parties hereto. HACM may not assign its rights or duties hereunder without City's prior written approval.
10. **Enforcement.** This Agreement may be enforced at law and in equity, with the non-breaching party entitled to injunctive relief and/or monetary damages. The parties retain any respective rights they have under Wis. Stat. 893.80.
11. **Governing Law; Amendment.** This Agreement is governed by Wisconsin law, and may only be amended by written instrument signed by the parties hereto.
12. **Drafter-Doctrine Not Applicable; Headings.** The contract-interpretation doctrine of "construing against the drafter" shall not apply to interpretation of this Agreement. Headings are for convenience only.
13. **Open Records.** This Agreement and records kept or maintained hereunder or as a result hereof are subject to Wisconsin Open Records Law, Wis. Stat. Chapter 19, and the parties hereto agree to cooperate regarding duties under such law, including providing copies of records required to comply with such law.
14. **Notice.** Notices required or desired to be given with respect to this Agreement shall be in writing, addressed to the respective party as per the contact information below, and shall be **(i)** delivered personally, **(ii)** sent by United States mail, postage prepaid, or **(iii)** sent by email provided no error or inability to send message is generated in response. Contact information may be changed by providing notice to all parties per this "notice" section.

If to CITY: Commissioner, Dept. of Public Works City of Milwaukee 841 N. Broadway, Room 501 Milwaukee, WI 53202 Phone: 4147-286-3301 Email: gkorba@milwaukee.gov	If to HACM: Executive Director Housing Authority of the City of Milwaukee 809 N. Broadway, 3 rd Floor Milwaukee, WI 53202 Phone: 414-286-5824
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<p>With copy to:</p> <p>Gregg Hagopian City Attorney's Office 841 N. Broadway, 7th Floor Milwaukee, WI 53202 Phone: 414-286-2620 Email: ghagop@milwaukee.gov</p>	<p>Email: tony.perez@hacm.org</p> <p>With copy to:</p> <p>Danielle Bergner Michael Best & Friedrich LLP 100 E. Wisconsin Ave., Suite 3300 Milwaukee, WI 53202 Phone: 414-270-2735 Email: dmbergner@michaelbest.com</p>
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15. **Counterparts.** This Agreement may be signed in counterparts. Facsimile or email signatures shall be accepted as originals.

IN WITNESS WHEREOF, the parties sign and enter this document as of the date first written above.

<p>CITY: CITY OF MILWAUKEE</p> <p>By: _____ Ghassan Korban, Commissioner Dept. of Public Works</p> <p>Countersigned:</p> <p>By: _____ Martin Matson, Comptroller</p> <p>City Common Council Resolution File No. 171022, adopted on _____, 2017. See, also, File Numbers 170502 and 171000.</p> <p>CITY ATTORNEY APPROVAL/AUTHENTICATION</p> <p>The undersigned, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of City representatives above per MCO 304-21, and also authenticates the signatures of those City representatives per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____ Gregg Hagopian, Asst. City Attorney State Bar No. 1007373 Date: _____</p>	<p>HACM: HOUSING AUTHORITY OF THE CITY OF MILWAUKEE</p> <p>By: _____ Antonio M. Perez, Sec./Exec. Director</p> <p>HACM Board Resolution _____, adopted on _____, 2017.</p> <p>HACM AUTHENTICATION</p> <p>The undersigned, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signature of the HACM representative above per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).</p> <p>By: _____ Thomas O. Gartner State Bar No. 1003072 Date: _____</p>
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