

Document Number

**PUBLIC ACCESS EASEMENT OVER
VACATED WEST HIGHLAND
AVENUE**

Document Title

Recording Area

Name and Return Address

Name and Return Address
Atty. Mary Schanning
City of Milwaukee
200 N Wells Street, 8th Floor
Milwaukee, WI 53202

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Parcel Identification Number (PIN)

This document was drafted by:

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Milwaukee, WI 53202

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PUBLIC ACCESS EASEMENT OVER VACATED WEST HIGHLAND AVENUE

THIS PUBLIC ACCESS OVER VACATED WEST HIGHLAND AVENUE EASEMENT (the "Easement") is dated as of _____, 2018, by and between WISCONSIN CENTER DISTRICT, a local exposition district created and existing pursuant to Chapter 229 of the Wisconsin Statutes, ("**WCD**"); DEER DISTRICT LLC, a Delaware limited liability company, ("**DD**") (collectively WCD and DD are the "**GRANTOR**"); and the CITY OF MILWAUKEE, a Wisconsin municipal corporation, ("**CITY**").

RECITALS

A. By passage of Resolution No. 180166 approved July 31, 2018, CITY vacated a portion of West Highland Avenue located directly east of North 6th Street, as further described in **EXHIBIT A**, ("**Vacated ROW**") in order to facilitate a truck loading area to be utilized by DD as part of its development and operation of a new arena for the Milwaukee Bucks basketball team, a franchise in the National Basketball Association.

B. WCD is the owner of the Vacated ROW and the real estate where the new arena is located (collectively the "**WCD Property**").

C. Pursuant to Sec. 229.461, Wis. Stats., the WCD Property will be or has been leased to DD for development and operation of sports and entertainment arena facilities which will include the truck loading area to be located in a portion of the Vacated ROW (the "**Loading Dock**").

D. DD, CITY and the Redevelopment Authority of the City of Milwaukee entered into a Cooperation, Contribution and Development Agreement dated as of the 22nd day of December, 2015, and amended on the 20th day of September, 2016, (as amended, the "**Development Agreement**") which, among other things, requires DD to provide a deed for public right-of-way to CITY for the establishment of North 5th Street between the Vacated ROW on the north and West State Street on the south (the "**5th Street ROW**") unless this requirement is waived by CITY.

E. As a condition to the vacation of the Vacated ROW by CITY, CITY required that this Easement be executed by GRANTOR so that the Vacated ROW would remain open to the public for vehicular, pedestrian and bicycle access in the event that the 5th Street ROW is established as required by the Development Agreement.

F. This Easement will be held in escrow and shall have no force or effect until such time as the 5th Street ROW is established and this Easement will then be recorded by CITY. In the event that CITY waives the requirement that the 5th Street ROW be established under the Development Agreement, this Easement shall be terminated and have no force or effect.

EASEMENT

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

1. Grant of Public Easement. GRANTOR hereby grants and conveys to CITY a permanent, perpetual, nonexclusive public easement for pedestrian, bicycle and vehicular ingress and egress over, across and upon the Vacated ROW. GRANTOR reserves the right to construct or allow others to construct additional access points on the Vacated ROW to and from any adjacent property, provided the same are consistent with all applicable regulations and laws.

2. Use of Public Easement. Subject to the terms of this Easement, CITY and members of the public may use the Vacated ROW (in common with GRANTOR and their tenants, invitees, employees, licensees, customers, successors and assigns) for vehicular, bicycle and pedestrian ingress and egress to and from the 5th Street ROW, to and from North 6th Street and for access to and from any property adjacent to the Vacated ROW, subject to the provisions herein, provided however that vehicular access over the Vacated ROW may be limited by GRANTOR as needed to accommodate safe, secure and efficient use of the Loading Dock. The use of the Vacated ROW 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 Vacated ROW shall not extend to any unusual uses such as loitering, heavy truck traffic (by trucks weighing more than three tons other than customary truck traffic for deliveries to adjoining properties) 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 WCD Property or other adjacent properties. Subject to Grantor's rights under paragraph 5, no party's use of the Vacated ROW shall unreasonably interfere with the use of the Vacated ROW by the other parties and their respective tenants, invitees, employees, licensees, customers, successors and assigns.

3. Construction of Improvements. GRANTOR, at GRANTOR's expense, shall construct any and all improvements on the Vacated ROW deemed necessary by GRANTOR to facilitate use of the Vacated ROW by the public pursuant to this Easement. Such improvements shall include hard-surfaced ground covering materials (such as asphalt and/or concrete), street striping and lighting adequate for vehicular, bicycle or pedestrian use of the Vacated ROW. Such improvements may, at GRANTOR's sole option and expense, also include, but shall not be limited to, 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 Vacated ROW any and all 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) intended to benefit the Vacated ROW or any nearby properties, 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. GRANTOR shall not install any obstructions modifying or restricting access over the Vacated ROW (i.e., bollards, planters, etc.) without the prior written approval of CITY, which shall not be unreasonably withheld or delayed. CITY shall not have any rights or obligations to construct any new improvements or utilities on the Vacated

ROW. Further, GRANTOR and CITY agree that no buildings shall be constructed on the Vacated ROW. GRANTOR hereby reserves the right to allow parking on the Vacated ROW or in the Vacated ROW for GRANTOR, its tenants, invitees, employees, licensees, customers, successors and assigns, provided the same does not unreasonably interfere with the rights created hereunder.

4. Maintenance. GRANTOR, at GRANTOR's expense, shall maintain the Vacated ROW in a condition at least comparable to the condition in which CITY maintains surrounding public streets. If GRANTOR fails to maintain the Vacated ROW in the condition required by this Easement, 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, and such failure to commence such maintenance or repair work is not as a result of causes beyond GRANTOR's reasonable control, 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 WCD Property, under the provisions of Sec. 66.0627, Stats., and as the same may be renumbered from time to time, against GRANTOR, jointly and severally. 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.

5. Public Access. The Vacated ROW shall be available for public use at all times, except for such times as the Vacated ROW must be closed for maintenance or repair, to avoid the acquisition of adverse or prescriptive rights, for special events benefiting the public or as necessary for GRANTOR's safe and secure use of the Loading Dock. GRANTOR shall have the right periodically to close off the Vacated ROW, as reasonably necessary, for any of these purposes, provided that GRANTOR obtain any and all permits that may be required and limit such closure to the minimum amount of time and area reasonably needed for the allowed purpose. GRANTOR shall notify CITY's Commissioner of Public Works (i) at least 15 calendar days prior to any planned closure of the Vacated ROW expected to last between 30 minutes and 24 hours in duration and (ii) at least 30 calendar days prior to any planned closure of the Vacated ROW expected to last longer than 24 hours. GRANTOR shall be responsible for posting all signage necessary to notify the public of closures. Further, GRANTOR may, from time to time, vary or relocate the paved areas on the Vacated ROW available for use by the public provided that, in all cases, such variation or relocation does not unreasonably interfere with the rights granted under this Easement. GRANTOR may, from time to time, restrict use of portions of the Vacated ROW by members of the public in favor of GRANTOR or its lessees, or GRANTOR's successors' or assigns' exclusive use.

6. Rules and Regulations. GRANTOR may, at all times, exclude any vendors or other commercial activities from the Vacated ROW. Further, GRANTOR shall have the right to promulgate and enforce rules and regulations governing the use of the Vacated ROW by the public, including any and all rules relating to parking on the Vacated ROW.

7. Insurance. GRANTOR shall maintain a policy of comprehensive general liability insurance with respect to the Vacated ROW consistent with that held by the owners of similarly situated private roadways in the City of Milwaukee.

8. 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 Vacated ROW as set forth in other written easement agreements benefiting CITY and recorded against the Vacated ROW.

9. Binding Agreement. The easement rights granted herein and the other provisions of this Easement shall run with the WCD Property and be binding upon and inure to the benefit of GRANTOR and CITY and their respective successors and assigns.

10. 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, epidemic 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 Easement shall be extended for a period equal to the time lost as a consequence of the delay or interruption.

11. Recording. This Easement shall be recorded in the office of the Register of Deeds of Milwaukee County by CITY upon the establishment of the 5th Street ROW. This Easement shall have no force or effect until the establishment of the 5th Street ROW.

12. Applicable Law. This Easement 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 Easement.

14. Counterparts. This Easement 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 others under this Easement 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 WCD:
Wisconsin Center District

Attn:

To DD:

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

With a copy to:

Bruce T. Block, Esq.
Reinhart Boerner Van Deuren s.c.
1000 N. Water Street, Suite 2100
Milwaukee, WI 53202

To CITY:

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

16. Enforcement. This Easement 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 Easement 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 Easement.

17. Integration, Modification and Waiver. All of the terms and provisions of this Easement and the understanding of the parties pertaining to the subject matter thereof are set forth in this Easement and no prior understanding or obligation not expressly set forth herein shall be binding upon the parties. No subsequent modification of this Easement shall be binding upon the parties unless in writing, executed by the parties hereto. None of the provisions of this Easement 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 Easement except as expressly stipulated therein.

18. Amendment. This Easement may be amended only by a written instrument executed by WCD, DD and CITY or their successors or assigns.

19. Assignment. No party shall assign its rights or obligations under this Easement without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed.

20. 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.

Dated this ____ day of _____, 2018.

CITY OF MILWAUKEE

Tom Barrett, Mayor

James R. Owczarski, City Clerk

COUNTERSIGNED:

Martin Matson, Comptroller

Signatures of Tom Barrett, Mayor and James R. Owczarski, City Clerk and Martin Matson, Comptroller authenticated this ____ day of _____, 2018.

Mary L. Schanning, Deputy City Attorney
State Bar No. 1029016

WISCONSIN CENTER DISTRICT

By: _____

STATE OF WISCONSIN)
) ss:
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2018, _____, the _____ of the above-named Wisconsin Center District, to me known to be the person who executed the foregoing instrument and to me known to be such _____ of such Wisconsin Center District, and acknowledged that he/she executed the foregoing instrument as such officer.

Notary Public, State of Wisconsin
My Commission _____

DEER DISTRICT LLC

By: _____
Peter Feigin, President

STATE OF WISCONSIN)
) ss:
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2018, Peter Feigin, the President of the above-named Deer District LLC, to me known to be the person who executed the foregoing instrument and to me known to be such President of such Deer District LLC, and acknowledged that he executed the foregoing instrument as such officer.

Notary Public, State of Wisconsin
My Commission _____

EXHIBIT A
Legal Description of the Vacated ROW

Description of West Highland Avenue from North 6th Street east to its terminus, which was vacated by the City of Milwaukee by passage of Resolution No. _____ on _____, 2018:

All of West Highland Avenue, in the Northeast ¼ and Northwest ¼ of Section 29, Township 7 North, Range 22 East, from the east line of North 6th Street extended easterly to its point of terminus.

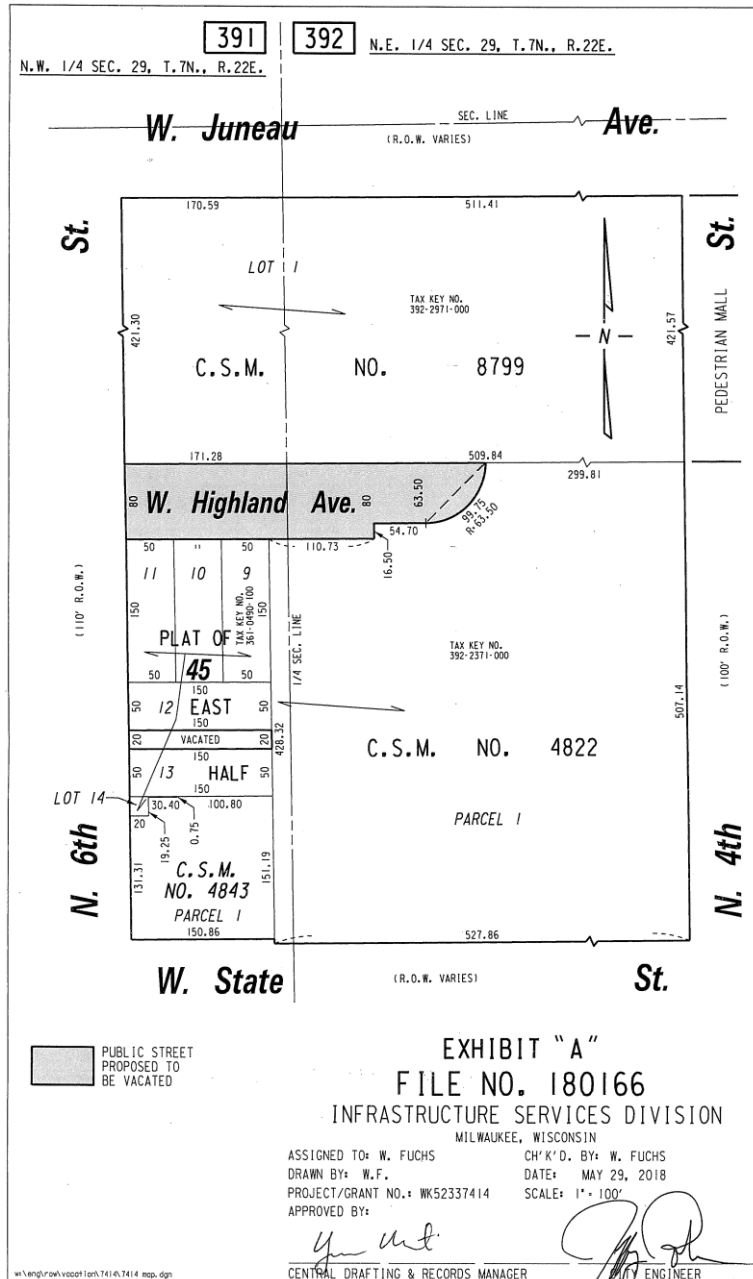


EXHIBIT B

Legal Description of the Arena Parcel

Lot 1 of Certified Survey Map 8799