

Document Number

**PUBLIC PEDESTRIAN AND
EMERGENCY VEHICLE ACCESS
EASEMENT**
(City of Milwaukee)

Document Title

Recording Area

Name and Return Address

Part of 392-237-1110

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 AND EMERGENCY VEHICLE ACCESS EASEMENT

(City of Milwaukee)

THIS PUBLIC PEDESTRIAN AND EMERGENCY VEHICLE ACCESS EASEMENT (the "Easement") is dated as of _____, 2022, by and between MKE BLK23 LLC, a Delaware limited liability company ("GRANTOR") and the CITY OF MILWAUKEE, a Wisconsin municipal corporation ("CITY").

RECITALS

A. GRANTOR is the owner of certain property in the City of Milwaukee, Milwaukee County, Wisconsin as further described in **EXHIBIT A** (the "**Grantor Property**"). The Grantor Property includes portions of West Highland Avenue and 5th Street which were previously vacated by CITY.

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

C. GRANTOR further desires to grant and CITY desires to accept, a non-exclusive emergency services access easement across a portion of the Grantor Property as depicted in **EXHIBIT B** (the "**Emergency Access Easement Area**"), pursuant to the terms set forth in this Easement.

D. The Pedestrian Easement Area and Emergency Access Easement Area are hereinafter collectively referred to as the "**Easement Area**".

EASEMENTS

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

1. Grant of Easements. Subject to the terms and conditions set forth in this Easement, GRANTOR hereby grants and conveys to CITY the following easements: (a) a nonexclusive easement for public pedestrian ingress and egress over and across the Pedestrian Easement Area; and (b) a nonexclusive easement for the purpose of providing emergency services, including fire truck access, over and across the Emergency Access Easement Area.

2. Use of Easements. Subject to the terms of this Easement, CITY and members of the public may use the sidewalks and other pedestrian areas within the Pedestrian Easement Area (in common with GRANTOR and its tenants, invitees, employees, licensees, customers, successors and assigns) for pedestrian ingress and egress to and from North Vel R. Phillips Avenue and W. State Street, as well as for access to and from any property adjacent to the Pedestrian Easement Area. The use of the Pedestrian Easement 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 Pedestrian Easement 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. Use of the Emergency Access Easement Area shall be limited to the provision of emergency services by CITY. GRANTOR reserves the right to grant to third parties additional easements for access and/or utilities affecting the Easement Area or other adjacent properties. Subject to GRANTOR's rights in this Easement, no party's use of the Easement Area shall unreasonably interfere with the use of the Easement Area by the other parties.

3. Construction of Improvements. GRANTOR, at GRANTOR's expense, shall have the right to construct any and all improvements on the Easement Area deemed necessary by GRANTOR, provided that such improvements shall not unreasonably interfere with rights granted to CITY herein. 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 Easement 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 Easement 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 Easement Area, provided that the foregoing shall not prevent the installation of balconies or other projections within the Easement 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 in paragraph 5 regarding "Permitted Closures"). For the avoidance of doubt, this Easement does not grant permission from the CITY to GRANTOR to construct any improvements not otherwise explicitly permitted under the zoning regulations.

4. Maintenance. As between GRANTOR and CITY, GRANTOR (at GRANTOR's expense) shall maintain the Easement Area in a condition at least comparable to the condition in which CITY maintains surrounding public sidewalks or public streets, as applicable. If GRANTOR fails to maintain the Easement Area 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, 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.

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

(a) at such times as all or a portion of the Easement 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 such 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 Pedestrian Easement Area in the event that such closure is expected to prevent access to any portion of the Pedestrian Easement 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 Pedestrian Easement 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 more than forty-eight (48) 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 of the Easement Area. During any closures of the Easement Area, Grantor shall ensure that alternate pedestrian pathways remain open on the sidewalk located directly opposite of such closure. GRANTOR may, from time to time, vary or relocate the paved areas within the Easement Area, after providing CITY sixty (60) days' notice of the same.

6. 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.

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

8. 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 Easement Area as set forth in other written easement agreements benefiting CITY and recorded against the Easement Area, CITY may continue to access, use and maintain such facilities in accordance with such agreements.

9. Binding Agreement. The easement rights granted herein and the other provisions of this Easement shall run with the 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, 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 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 GRANTOR.

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 other 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 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 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 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 AND EMERGENCY VEHICLE
ACCESS EASEMENT**

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 AND EMERGENCY VEHICLE ACCESS
EASEMENT**

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

Outlot 1 of Certified Survey Map No. _____ Recorded in the Office of the Register of Deeds
for Milwaukee County, Wisconsin on _____, 2022 as Document No. _____.

EXHIBIT B
Pedestrian Easement Area (including Short Term Interruption Area) and Emergency Access
Easement Area



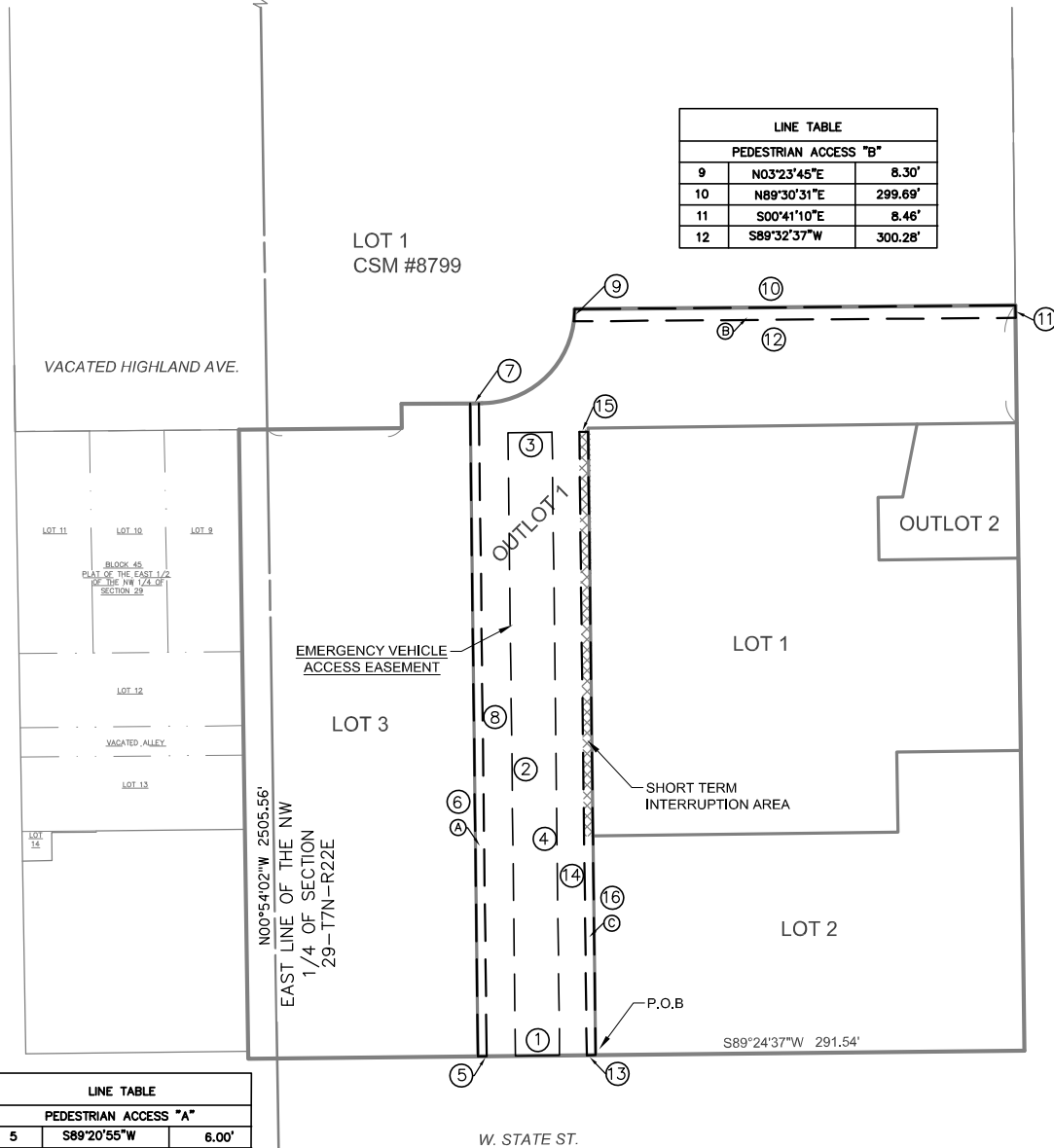
HORIZONTAL DATUM IS THE WISCONSIN
STATE PLANE COORDINATE SYSTEM SOUTH
ZONE NAD27. NORTH IS REFERENCED TO
THE W. LINE OF THE NE 1/4 OF SECTION
29-7-22 PUBLISHED BY SEWRPC AS
N00°54'02"E. ALL DISTANCES ARE
GROUND MEASURED. (DEC. 2013 DATUM)

EXHIBIT B

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

LEGEND	
	PEDESTRIAN ACCESS PURSUANT TO SEPARATE DOCUMENT(S)
	EMERGENCY VEHICLE ACCESS EASEMENT PURSUANT TO SEPARATE DOCUMENT(S)
	PARCEL BOUNDARY
	SHORT TERM INTERRUPTION AREA

LINE TABLE		
PEDESTRIAN ACCESS "B"		
9	N03°23'45"E	8.30'
10	N89°30'31"E	299.69'
11	S00°41'10"E	8.46'
12	S89°32'37"W	300.28'



LINE TABLE		
PEDESTRIAN ACCESS "A"		
5	S89°20'55"W	6.00'
6	N00°41'10"W	444.30'
7	N89°29'07"E	6.00'
8	S00°41'10"E	444.29'

LINE TABLE		
EMERGENCY VEHICLE ACCESS EASEMENT		
1	S89°29'02"W	30.00'
2	N00°41'10"W	424.03'
3	N89°19'52"E	30.00'
4	S00°41'11"E	424.11'

LINE TABLE		
PEDESTRIAN ACCESS "C"		
13	S89°26'41"W	6.00'
14	N00°41'09"W	424.11'
15	N89°21'26"E	6.00'
16	S00°41'10"E	424.12'

WITNESS MONUMENT TO
CENTER OF SECTION 29 T7N,
R22E CONCRETE MONUMENT
SEWRPC BRASS CAP

Kapur
400 E. WISCONSIN AVE.
MILWAUKEE, WI 53202
kapurinc.com

PEDESTRIAN ACCESS & EMERGENCY VEHICLE ACCESS EASEMENT

1001 VEL R. PHILLIPS AVE.
MILWAUKEE, WI 53203

DRAWN:

BS

REVISIONS:	DATE: 10/17/2022
	SCALE: 1"=100'
	SHEET NUMBER:
	1 of 1