

Document Number

**NON-EXCLUSIVE PUBLIC  
ACCESS EASEMENT AND  
MAINTENANCE AGREEMENT**  
Document Title

**NON-EXCLUSIVE  
PUBLIC ACCESS EASEMENT  
AND  
MAINTENANCE AGREEMENT**

**(Granville Station-Ring Road Lighting)**

Recording Area

Name and Return Address

Department of City Development  
(Casanova)  
809 N. Broadway, 2<sup>nd</sup> Floor  
Milwaukee, WI 53202

Tax Identification Number (TIN)  
032-0172-000

**NON-EXCLUSIVE  
PUBLIC ACCESS EASEMENT AND  
MAINTENANCE AGREEMENT**

**(Granville Station-Ring Road Lighting)**

THIS NON-EXCLUSIVE PUBLIC ACCESS EASEMENT (the "Agreement") is dated as of \_\_\_\_\_, 2014, by and between PNR2, LLC ("Grantor") and the City of Milwaukee a Wisconsin municipal corporation ("Grantee").

**RECITALS**

Grantor and Grantee acknowledge the following:

A. Grantor is the fee simple owner of real property located at 8180 W. Brown Deer Road. in the City of Milwaukee, Milwaukee County, Wisconsin, as more particularly described on **Exhibit A** attached hereto (the "Property").

B. Grantor and Grantee desire to enter into this Agreement to provide for an access easement over a portion the Property, and that the easement be open to the public at all times.

C. Grantor desires to provide to Grantee, and Grantee desires to obtain from Grantor, a public access easement over portions of the Property, on the terms set forth below.

D. Grantor and Grantee are parties to a Maintenance Agreement regarding the Property which outlines certain maintenance responsibilities that Grantee has taken on for the Property.

**AGREEMENTS**

In consideration of the Recitals and the mutual agreements that follow, Grantor, RACM and Grantee agree as follows:

1. Grant of Easement: Grantor hereby grants and conveys to Grantee a nonexclusive easement for pedestrian and vehicular ingress and egress over, across and upon a portion of the Property depicted in **Exhibit B**, (the "Easement Area").

2. Use: Subject to the terms of this Agreement, Grantee 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 vehicular access and ingress and egress from Grantee's public streets adjacent to the Property, i.e. North 76<sup>th</sup> Street, West Brown Deer Road, West Beatrice Court, and North 85<sup>th</sup> Street. The use of the Easement Area shall be for normal and customary pedestrian and vehicular access by Grantee and the public in accordance with all applicable federal, state and local laws, statutes, ordinances, codes and regulations. The rights of Grantee and the public to use the Easement Area shall not extend to

uses inconsistent with Grantor's use and operation of the Property such as loitering or other types of uses that may constitute a public or private nuisance or uses prohibited by rules and regulations promulgated under paragraph 5. Grantor reserves the right to grant to third parties additional easements within the Easement Area for access and/or utilities serving the Property or portions thereof. Grantor shall have the right to install and maintain (or to allow third parties to install and maintain) within the Easement Area any and all such utilities (including, without limitation, any electrical, gas, sanitary sewer, water, storm sewer, telephone, fiber optic and cable television lines or cables or other utilities) required to benefit the Property. Notwithstanding anything herein to the contrary, no party's use of the Easement Area shall unreasonably interfere with the use of the Easement Area by the other parties and their respective tenants, invitees, employees, licensees, customers, successors and assigns.

3. Maintenance of Improvements: The Easement Area is currently improved with a road, landscaping and lighting (the "Improvements"). Grantee shall be responsible for upgrading the lighting on the Property to standards typical for temporary lighting installed on public streets and sidewalks in the City of Milwaukee (the "Lighting Upgrades") in accordance with the lighting plan attached as **Exhibit C**. Grantee shall also perform maintenance to the Light Upgrades. Grantee shall continue to perform its obligations under the Maintenance Agreement. Such obligations include, plowing and shoveling of snow, filling of potholes, and replacement of bulbs in light fixtures. In addition, Grantee shall be responsible for electric and other utility charges incurred in conjunction with the operation and maintenance of the Easement Area.

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 construction, maintenance or repair or to avoid the acquisition of adverse or prescriptive rights. Either Grantor or Grantee shall have the right periodically to close off the Easement Area for any of these purposes; provided, however, that all necessary permits for any planned closure are obtained, and City of Milwaukee ordinances and requirements for obstructing or closing public ways are observed.

5. 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 reasonable rules and regulations governing the use of the Easement Area by the public.

6. Indemnity: Each party (the "Indemnifying Party") shall at all times indemnify and hold the other parties harmless from any claim, loss, damage, injury, action, or liability, in any way related to, or arising out of, any failure of the Indemnifying Party to satisfy any of its obligations listed in this Agreement and the attached exhibits. Provided, however, that these provisions are subject to the legal defenses which, under law, any party is entitled to raise. The agreement by each indemnifying party to indemnify, defend, and hold harmless the other parties, shall survive the termination of this Agreement.

7. Binding Agreement: The easement rights granted herein and the other provisions of this Agreement shall run with the Easement Area and be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns.

8. 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 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, 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.

9. Recording: This Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County by Grantee.

10. Applicable Law: This Agreement shall be interpreted and construed in accordance with the laws of the State of Wisconsin.

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

12. Counterparts: This Agreement 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.

13. Notices: All notices to be given by one party to the other under this Agreement 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. Either 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: \_\_\_\_\_

To Grantee: City of Milwaukee  
Department of City Development  
809 North Broadway-2<sup>nd</sup> Floor  
Milwaukee, WI 53202  
Attn: Commissioner

With copy to: Office of the City Attorney  
841 North Broadway-7<sup>th</sup> Floor  
Milwaukee, WI 53202

14. Enforcement: This Agreement may be enforced either at law or in equity, with the nonbreaching party entitled to injunctive relief and/or monetary damages. If any action for enforcement of this Agreement is brought, the nonprevailing party in such action shall reimburse the prevailing party for its 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 Agreement.

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

16. Amendment: This Agreement may be amended only by a written instrument executed by Grantor and Grantee.

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

18. 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 the other party hereto.

19. Term: The term of this Agreement shall commence as of September 15, 2014 and shall terminate on September 15, 2016 or upon the dedication of the Property as public right of way, whichever shall first occur.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and date first set forth above by their duly authorized officers.

**GRANTOR:**

**PNR2, LLC**

By: \_\_\_\_\_  
[typed name]

Its: \_\_\_\_\_

**GRANTEE:**

**CITY OF MILWAUKEE**

\_\_\_\_\_  
Tom Barrett, Mayor

\_\_\_\_\_  
James R. Owczarski, City Clerk

Countersigned:

\_\_\_\_\_  
Martin Matson, Comptroller

This instrument was drafted by:  
City of Milwaukee, Office of the City Attorney

Signatures of Tom Barrett, Mayor; James R. Owczarski, City Clerk; and Martin Matson, Comptroller, authenticated this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
\_\_\_\_\_, Assistant City Attorney  
State Bar No. \_\_\_\_\_

Approved as to form, content and execution  
execution this \_\_\_\_ day of March, 2012.

\_\_\_\_\_  
Assistant City Attorney

State of Wisconsin )  
  )SS  
Milwaukee County )

Personally came before me this \_\_\_\_ day of \_\_\_\_ 2014, \_\_\_\_\_, \_\_\_\_\_ of the  
above named \_\_\_\_\_, to me known to be the person who executed the foregoing  
instrument and acknowledged the same on behalf of \_\_\_\_\_.

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

**EXHIBIT A**  
**Legal Description**

**Exhibit B**  
**Description of Easement Area**



**Exhibit C**  
**Lighting Plan**