

EASEMENT

This WATER UTILITY EASEMENT AGREEMENT (“Easement”) is granted by the City of Manitowoc, Wisconsin, a municipal corporation, whose principal address is 900 Quay Street, Manitowoc Wisconsin 54220 (“Grantor”) to Sack Realty, LLC, a Wisconsin limited liability company, whose principal address is 4603 Laurie Lane, Two Rivers, Wisconsin 54241 (“Grantee”).

RECITALS

WHEREAS, Grantor is the owner of real estate located on York Street, Manitowoc, Manitowoc County, Wisconsin, Tax Parcel ID 000-165-040, more particularly described as “All of Lot 4 & West 25’ of Lot 9 & East 35’ of Lots 5 & 8, Block 165, Original Plat (“the Property”); and,

WHEREAS Grantee has requested Grantor grant a permanent water utility easement for that certain portion of the Property as shown on the attached Exhibit A, which is attached and incorporated (the “Easement Area”).

Return To: Mackenzie Reed-Kadow, City Clerk
900 Quay Street
Manitowoc, WI 54220

Parcel Tax ID No: 000-165-040

NOW, THEREFORE, the undersigned parties agree as follows:

1. Grant of Easement. For good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor grants to Grantee a perpetual easement for the subgrade connection to a City installed 6” subterranean, PVC drainage pipe depicted in Exhibit A in order to channel all rooftop stormwater from Grantee’s building under and through Grantor’s property; and for any roof overhang necessary to effectuate adequate roof drainage. Said overhang shall not encroach more than 24” over the lot line onto Grantor’s property. The subgrade connection shall be reviewed and approved by the Grantor prior to installation. The overhang shall be constructed and installed in conformance with engineering specifications. Grantor agrees not to construct any building, or structure that would interfere with Grantee’s use of the Easement Area for the purposes for which the Easement described is being granted.

2. Grantor Responsibilities. Grantor shall be solely responsible for the design, installation, maintenance, repair and removal of Grantor’s improvements as depicted in Exhibit A

3. Grantee Responsibilities. Grantee shall be solely responsible for the design, installation, maintenance, repair and removal of Grantee’s improvements and for the payment of all fees, charges, and expenses related. Grantee shall be responsible for registering with Digger’s Hotline (One-Call System) for locating underground utilities. Grantee and Grantor shall coordinate installation of the PVC pipe and the subgrade connection to ensure installation occurs before

Grantor's parking lot is paved. Should any excavation be needed after installation, Grantee shall restore the excavation site to its condition before the disturbance at Grantee's expense. Grantee shall not connect anything to the PVC pipe except connections necessary for rooftop stormwater drainage created by the west half of the building under the current roof design condition.

3. Representations. Grantor warrants that it possesses sufficient title to execute this Easement, and to convey this Easement free and clear of all encumbrances that would prevent the use of the Easement Area as contemplated.

Grantee warrants that at the time and date of execution of this Easement, the Grantee has the power, authority and legal right to execute and enter into said Easement, and further that the person signing this Easement is duly authorized to do so, and their signature binds the Grantee in accordance with the terms of this Easement.

4. Standard Utility Easement Agreement. The Easement shall be subject to the "Standard Utility Easement Conditions" ("SUEC") recorded at the Manitowoc County Register of Deeds Office on November 2, 1997 in Volume 1252, Pages 498-504 of Records, Document Number 798738 and which are incorporated by reference. The undersigned Grantee shall be defined as a Grantee under Section 1.(c) of the SUEC. In the event there is a conflict between SUEC and this Easement, this Easement shall control.

5. Indemnification and Insurance. Grantee shall defend, indemnify and hold Grantor harmless from and against any and all claims, liens, losses, liabilities, costs and expenses of any type and kind incurred in connection with any negligent act of Grantee or any of Grantee's agents, employees and invitees expressly related to Grantee's use of the Easement Area. Grantor shall defend, indemnify and hold Grantee harmless from and against any and all claims, liens, losses, liabilities, costs and expenses of any type and kind incurred in connection with any negligent act of Grantor or any of Grantor's agents, employees and invitees expressly related to use of the Easement Area.

Grantee shall maintain in effect at all times during the term of this Easement a policy or policies of comprehensive general liability insurance naming the Grantor as an additional insured and insuring against injury to property, person or loss of life arising out of the use, occupancy or maintenance of the Easement Area by the Grantee. All insurance policies required under this Section shall be purchased and maintained with insurance companies authorized to do business in the State of Wisconsin. Each such policy of insurance shall contain a provision that the insurance company shall give the Grantor at least 10 consecutive calendar days prior written notice of amendment, extension, alteration, cancellation, non-renewal or material change during the term of this Easement. In the event of a proposed cancellation or non-renewal of any such policy by an insurance company, Grantee shall secure adequate replacement insurance policies prior to the effective date of such cancellation or non-renewal. For the duration of this Easement, Grantee's insurance carrier shall provide the Grantor with a certificate of insurance evidencing that the Grantee's policy is in full force and effect.

6. Covenant Running With Land. This Easement is a covenant running with the

land and is binding upon and inures to the benefit of and is enforceable by the parties, their heirs, successors and assigns. The Easement is appurtenant to Grantor's public right-of-way, and Grantee's interest in the Easement may not be transferred, assigned or sublet separately from the Easement Area.

7. As Is With All Faults. Grantee specifically acknowledges that Grantor, pursuant to the Easement, has granted rights to Grantee for utilization of Grantor's property on an "as is with all faults" basis regarding the quality, nature, adequacy and physical condition of the Easement Area, including but not limited to soils, geology, groundwater, constructability, stability or suitability of said property for any particular purpose.

8. Termination. This Easement shall remain in full force and effect until the first occurrence of one of the following events and without necessity for further documentation: (a) effective an agreed upon date of termination in writing signed by both undersigned parties; or (b) effective the date the Grantee notifies Grantor in writing that it no longer needs the Easement.

Grantee shall, if required by Grantor to do so, remove all Grantee improvements and complete all restoration activities required by the Grantor within 90 calendar days after the effective date that this Easement is terminated, unless this 90-day period is extended, waived or modified by the mutual agreement of the undersigned parties. After the 90-day period has lapsed, Grantor shall become the owner of all Grantee improvements remaining on Grantor's property, shall dispose of Grantee improvements through any means acceptable to the Grantor including, but not limited to sale, lease or license, and shall utilize any remedies at law or at equity to recover any outstanding financial fees, charges, assessments or damages related to the Easement Area from the Grantee.

9. Recordation. This Easement, and any subsequent modifications or additions shall, upon being duly executed, be recorded by Grantee at the Grantee's sole expense, at the Register of Deeds for Manitowoc County, Wisconsin. Grantee shall, at Grantor's request and at Grantee's sole expense upon termination of the Easement, cause the preparation, filing, recording and execution by the Grantor and Grantee, of an instrument(s) at the Register of Deeds for Manitowoc County terminating this Easement.

10. Entire Agreement. This Easement represents the entire agreement of the parties and can only be modified or changed in writing executed by the undersigned parties.

11. Assignment or Sublease. Grantee shall not assign or sublease all, or any part of the Easement Area, without the prior written consent of the Grantor.

12. Notice and Demand. A notice, demand or other communication shall be deemed to have been sufficiently given by any party to another party under this Easement when personally delivered, faxed, mailed by first class, registered, or certified mail, postage prepaid, addressed to Grantor or the Grantee, as the case may be, and:

A. In the case of the Grantor, addressed or delivered personally to:

City of Manitowoc
ATTN: City Clerk
900 Quay Street
Manitowoc Wisconsin 54220-4543

With a copy to: City of Manitowoc – City Engineer. In the case of Grantee, addressed or delivered personally to:

SACK Realty, LLC
Scott Wachowski
4603 Laurie Lane
Two Rivers, WI 54241

The above addresses may be changed at any time by the parties by notice given in the manner provided above. The parties further agree that electronically reproduced signatures are valid for execution or amendment of this Easement, and that electronic transmission/facsimile is an authorized form of notice as that term is used in this Easement.

13. Invalidity. If any term or condition of this Easement or the application of this Easement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and such term and condition shall be valid and enforceable to the fullest extent permitted by law.

14. No Public Dedication. Nothing in this Easement shall be deemed to be a gift or dedication of any portion of the easements granted under this Easement to the general public or for any public purpose whatsoever.

15. Other Agreements. If the provisions of the Easement conflict with the provisions of any other agreement related to the Easement Area, the provisions of the Easement shall control.

16. No Encumbrances Permitted. The undersigned parties agree that on and after the effective date of this Easement, no mortgage, or any other kind or type of security interest, lien or other recordable encumbrance, shall be permitted to be placed by Grantee or any other party (excepting Grantor), against the Easement Area. It is expressly understood that Grantor will not permit its fee simple interest in the Easement Area to become encumbered, subordinate to, or subject to any lien or security interest of any lender's mortgage or creditor's security interest, and that the undersigned parties agree that Grantor's property described in this Easement shall not be considered additional collateral to secure any debt or obligation of the Grantee.

17. Default. Any default or material breach under this Easement shall entitle the non-defaulting party to any rights or remedies at law or at equity. In the event that either party shall default in the performance of any of its obligations under the terms of the Easement, the non-defaulting party shall forward written notice to the defaulting party outlining such default or material breach. The defaulting party shall cure such default within 30 calendar days after the

giving of such notice, except that the cure period shall be extended to a reasonable time to cure any default or material breach that cannot be cured with the 30-day period, provided the defaulting party has commenced to cure within the 30-day period and diligently pursues a cure at all times until the default or material breach is cured. In the event of any litigation between the parties regarding the Easement, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party.

18. Third-Party Beneficiary. Nothing in this grant of Easement nor any act of the undersigned parties shall be deemed or construed to create any relationship of third-party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties.

19. Construction. The undersigned parties have contributed to the drafting of this Easement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Easement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against any party by virtue of that party having drafted this Easement or any portion thereof.

20. Severability. If any provision of this Easement shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Easement shall not be affected and shall remain in full force and effect.

21. Venue. This Agreement shall be construed and enforced in accordance with the laws of Manitowoc County and the State of Wisconsin. Any litigation regarding Easement shall occur in Manitowoc County Circuit Court.

22. Date. This Agreement shall be dated and effective and binding as of the date of the last execution.

SACK Realty, LLC

By: _____
Scott Wachowski, Registered Agent

Date

STATE OF WISCONSIN)
)ss.
MANITOWOC COUNTY)

EXHIBIT A

