RIGHT OF WAY EASEMENT FOR PUBLIC RECREATIONAL TRAIL

In consideration of mutual benefits, this Right of Way Easement for Public Recreational Trail ("Easement") is granted this ___day of _____, 2019, by Stoughton Redevelopment Authority, ("RDA"), to the City of Stoughton, Wisconsin, a municipal corporation ("City").

Return to:
City of Stoughton City Clerk
381 E. Main Street
Stoughton, WI 53589

Parcel identification numbers:
281/0511-081-4328-7
281/0511-081-6713-6

RECITALS

A. RDA is the sole owner of certain real property in the City of Stoughton, County of Dane, State of Wisconsin and more particularly described on Exhibit A attached hereto and made a part hereof (hereinafter, the "Property").

B. City has requested that RDA grant a permanent easement over a portion of the Property for the purposes of constructing, operating and maintaining a public recreational trail known as the Mandt Park and City Trail Extension ("Trail").

C. RDA is willing to grant an easement over that part of the Property legally described and depicted in Exhibit B attached hereto and incorporated by reference ("Easement Area").

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party for itself, the parties hereby agree as follows:

1. RDA hereby grants to City, its successors and assigns, the perpetual right and easement to construct, maintain, repair, replace, modify and operate the Trail across and through the Easement Area. RDA hereby further grants the general public a perpetual right of access over the Easement Area for bicycling, walking, and other public uses subject to such rules as the City may adopt.

2. In addition, RDA hereby grants to City and its designees, agent, or assigns, the following rights, privileges and duties:

a. The right to use motorized machinery for the construction and maintenance of the Trail within the Easement Area.

b. The right to erect signs and kiosks approved by RDA (which approval shall not be unreasonably withheld) at City's sole expense, necessary to identify the boundaries and uses of the Easement Area; and

c. The right to improve the Easement Area with lighting, plantings and landscaping at City's sole expense, which in City's sole discretion may be necessary for the construction, operation and maintenance of the Trail.

3. City shall maintain the Easement Area in good condition and repair. The surface of the Trail shall be crushed stone, blacktop or another hard surface as determined at City's sole discretion. All routine maintenance, repair and replacement costs associated with the Trail shall be done at City's sole expense.

4. No buildings, parking lots, or above-ground structures may be built or erected by RDA within or on the Easement Area. If a structure or other obstructions are built and the operation, repair, replacement or maintenance of the Easement Area requires the partial or complete removal or demolition of the obstruction, RDA shall be fully responsible for the expense of such removal or demolition and will not be entitled to any reimbursement from City for repair or replacement of such structure or obstruction.

5. In the event and to the extent that the Trail is discontinued or abandoned by affirmative action by the City, this Easement shall terminate and the City will execute and deliver to the RDA such document(s) as may be requested for the purpose of further evidencing the termination of the rights granted hereby.

6. RDA shall not park motorized equipment on the Easement Area and shall not block the Easement Area with equipment unless prior arrangements have been made with the City. RDA shall repair any damage to the Easement Area that was caused by its actions or the actions of its agents, employees, contractors, or customers.

7. RDA, or its successor, reserves the right to post, at its sole expense, signage along the Easement Area that prohibits possession or consumption of alcoholic beverages or the consumption of tobacco on RDA grounds.

8. City shall defend, protect and hold RDA harmless from and against, any and all loss, costs (including reasonable attorneys' fees), injury, death or damage to persons or property which at any time during the term of this Easement may be suffered or sustained by any person or entity in connection with any City authorized activities conducted upon the Easement Area or which result from City's negligence in maintaining the Easement Area. "City authorized activities" are those activities associated with any use of the Easement Area but excluding non-recreational use of the Easement Area by RDA and RDA's agents, employees, contractors, or customers. As between City on one hand, and RDA, tenant or lessee, successor or assign of the Property on the other hand, the RDA, tenant or lessee, successor or assign, as the case may be, remains solely

liable for any and all loss, costs (including reasonable attorneys' fees), injury, death or damage to persons or property which at any time during the term of this Easement may be suffered or sustained by any person or entity in connection with activities other than City authorized activities conducted upon the Property unless the same result from City's negligence in maintaining the Easement Area. RDA claims all rights and immunities against liability for injury to the public to the fullest extent of the law under the Wisconsin Recreational Use Act, § 895.52 of the Wisconsin Stats., as amended, and successor provisions, and under any other applicable provision of law and equity.

9. All of the terms, conditions, covenants and other provisions contained in this Easement, including the benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of and be enforceable by RDA and City and their respective successors and assigns.

10. This Easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

11. This Easement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Easement and duly recorded in the Office of the Register of Deeds of Dane County, Wisconsin.

12. All notices to either party to this Easement shall be delivered in person or sent by certified mail, postage prepaid, to the following addresses. Either party may change its address for notice by written notice to the other party.

City of Stoughton Attn: City Clerk 381 E. Main Street Stoughton, WI 53589	Stoughton Redevelopment Authority Attn: Chair 381 E. Main St. Stoughton, WI 53589

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

14. No delay or omission by any party in exercising any right or power accruing upon any default, non-compliance or failure of performance of any of the provisions of this Easement shall be construed to be a waiver thereof. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms, covenants or conditions of this Easement.

15. Enforcement of this Easement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any covenant herein, either to restrain or prevent such violation or to obtain any other relief. In the event a suit should be

brought to enforce this Easement, the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees from the non-prevailing party.

16. If a party determines that a violation of the terms of this Easement has occurred or is threatened, that party shall give written notice to the other party of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Property, to restore the area so injured to its prior condition. If the party fails to cure the violation within thirty (30) days after receiving written notice, the non-offending party may pursue any and all remedies available at law or in equity.

IN WITNESS WHEREOF, the undersigned have entered into this Easement as of the date first set forth above.

STOUGHTON REDEVELOPMENT AUTHORITY

By:_____
Name:_____
Title:_____

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

Personally came before me this ___ day of _____, 2019, the above-named STOUGHTON REDEVELOPMENT AUTHORITY, , by_____ known to me to be the person who executed the above and foregoing instrument and acknowledged that he executed the foregoing instrument an such officer of such entity, by its authority.

_____
Notary Public
State of Wisconsin
My commission is permanent.

CITY OF STOUGHTON

By:_____
Tim Swadley, Mayor

Attest:_____
Holly Licht, City Clerk

STATE OF WISCONSIN)
) SS

COUNTY OF DANE)

Personally came before me this ___ day of _____, 2018, the above-named Tim Swadley and Holly Licht, known to me to be the persons who executed the foregoing instrument, and acknowledged the same.

_____

Notary Public
State of Wisconsin
My commission is permanent.

ATTACHMENTS:

Exhibit A – Legal Description of Property

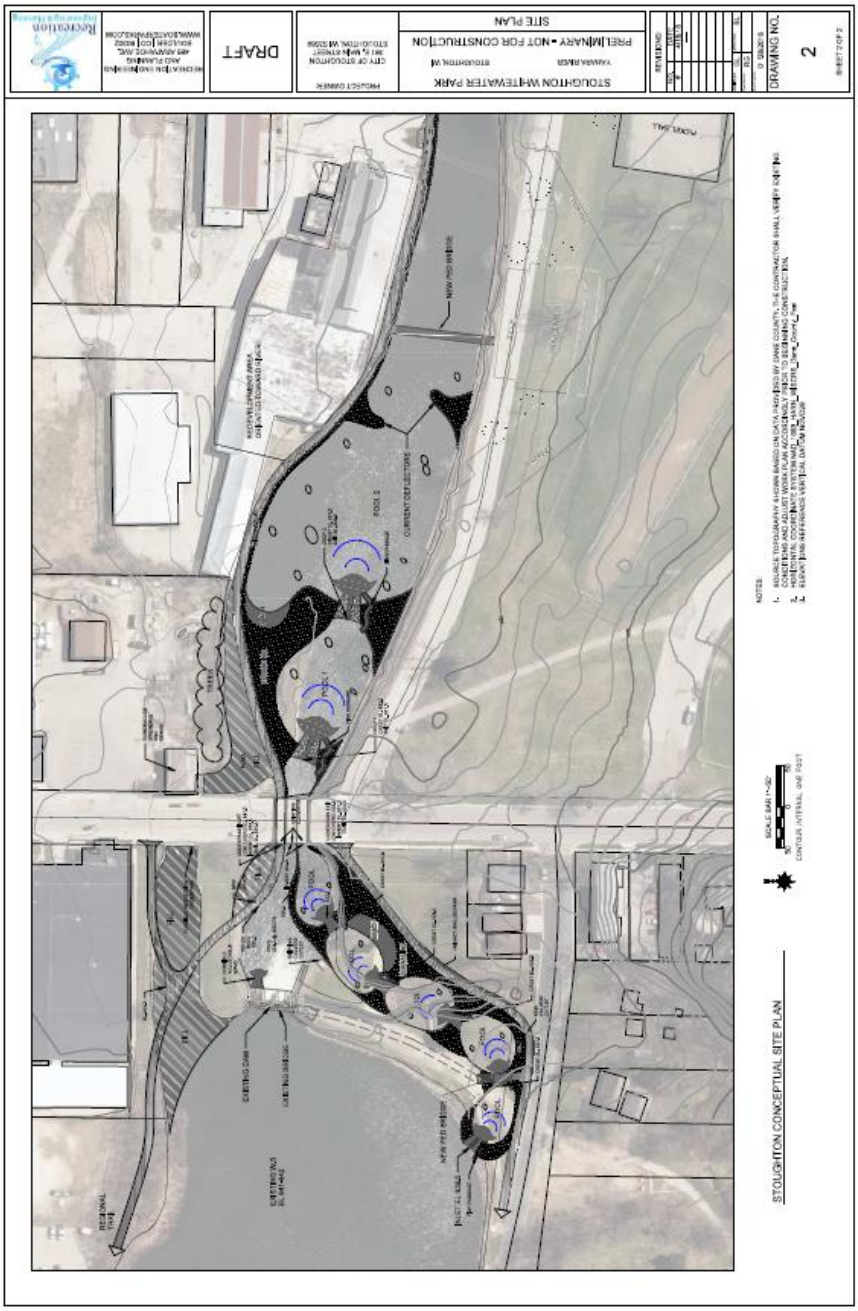
Exhibit B - Legal Description and Depiction of Easement Area

This instrument was drafted by:
Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784

Exhibit A

ORIGINAL PLAT BLOCK 35 PRT OF LOTS 8, 9, 10, AND LOT 11 DESCR AS COM AT NE COR OF LOT 1 BLOCK 35 ORIG PLAT TH N89DEG58'51"W 726.00 FT ALG N LN OF BLOCK 35 TO NW COR OF LOT 11 TH S 132.00 FT ALG W LN OF LOT 11 TO POB TH S89DEG58'51"E 99.00 FT TH N44DEG02'47"E 29.49 FT TH S 10.50 FT TH N44DEG37'13"E 64.77 FT TH S 15.42 FT TH S41DEG52'36"E 49.46 FT TO PT ON E LN OF LOT 9 TH E 66.00 FT TO E LN OF LOT 8 TH S 290.50 FT ALG SD E LN TH N88DEG24'00"W 1.60 FT TH S89DEG55'54"W 100.00 FT TH S13DEG18'09"W 96.00 FT TH N62DEG40'52"W 157.93 FT TO W LN OF LOT 11 TH N 307.00 FT ALG SD W LN TO POB

PCL A CSM 1454 CS6/141&143-6/13/74 F/K/A ORIGINAL PLAT BLOCK 35 PRT LOTS 2, 3, 4, 5, 6, 7, 8, 9 DESCR AS SEC 8-5-11 PRT SE1/4NE1/4 & PRT SW1/4NE1/4 TOG WITH R/W OVER PRTS OF LOTS 7 & 8 BLK 35 TOG WITH R/W OVER SE 18 FT OF LAND DESC AS PRT LOTS 7, 8 & 9 BLK BEG NW COR E1/2 LOT 9, S 90.6 FT S41DEG20'E 49.7 FT N49DEG15'E 137.2 FT N 38 FT TO N LN LOT 7 W 136.6 FT TO POB EXC PCL R541/740

EXHIBIT B
Legal Description of Easement Area

[To be provided by surveyor]