

This Instrument Prepared By  
and Return to:

Jason E. Brokaw  
Giffin Winning Cohen &  
Bodewes, P.C.  
900 Community Drive  
Springfield, Illinois 62703  
(217) 525-1571

FOR RECORDER'S USE ONLY

### **EASEMENT AGREEMENT**

This EASEMENT AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, 2024, is entered into by and between **NEW BERLIN COMMUNITY SCHOOL DISTRICT #16** ("Grantor"), and **VILLAGE OF NEW BERLIN, an Illinois municipal corporation** ("Grantee"); and together with Grantor sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties").

### **RECITALS**

A. Grantor is the owner of a certain parcel of land in the Village of New Berlin, County of Sangamon and State of Illinois, legally described in **Exhibit A** attached hereto (the "Subject Parcel");

B. Grantee is the recipient of grant funding pursuant to the Safe Routes to School Program for the purpose of installing and improving sidewalk access to and between the school buildings in the Village of New Berlin.

C. Grantor's Subject Parcel is the ideal location for such installation and improvement of sidewalk(s);

D. Grantee desires to receive from Grantor and Grantor desires to grant to Grantee certain easement rights with respect to a portion of the Subject Parcel for the purposes described in this Agreement, and subject to the terms and conditions of this Agreement.

### **AGREEMENTS**

NOW, THEREFORE, for and in consideration of Grantee's payment of Ten and 00/100 Dollars (\$10.00) to Grantor, the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Easement. Grantor, for itself and its officers, trustees, personal representatives, successors and assigns, hereby grant and convey unto Grantee a perpetual, non-exclusive easement (the "Permanent Easement") over, upon, across, in, through, and under that portion of the Subject Parcel legally described on Exhibit B, attached hereto (the "Permanent Easement Property"). The Permanent Easement shall also be referred to as the "Easement".

2. Permitted Use. The Easement shall be used by Grantee solely for the purpose of installing and maintaining a sidewalk(s) along the west 15' of the property.

3. Covenants. It is further covenanted between the Grantor and the Grantee, as follows:

a. During the term of the Easement, the Grantor shall not place, erect, construct or permit a building, structure or other above or below ground obstruction that may interfere with the purposes for which the respective Easement is granted.

b. That all sidewalks, equipment, systems, and other facilities, installed on or under the above-described lands at the Grantee's expense, shall remain the property of the Grantee, removable at the option of the Grantee.

c. That the Grantor covenants that it is the sole owner of the Subject Parcel; that Grantor is seized of and has the right to convey the Easement, rights, and privileges herein granted; and that the Grantee shall have quiet and peaceable possession, use, and enjoyment of the Easement, rights, and privileges herein granted.

d. That the Grantee shall make reasonable efforts to preserve any driveway or driveway improvements, parking area, crops, fence, lawn, trees, shrubbery, or other items of landscaping or natural foliage which the Grantors desire to have preserved while installing, excavating, operating, repairing, maintaining, improving, modifying, relocating and replacing of said sidewalk(s) whether above or below ground, on the Permanent Easement Property provided, however, the Grantee shall have the right to remove any such improvements, landscaping, or natural foliage located on the Permanent Easement Property where such removal is reasonably necessary and economical to install, excavate, operate, repair, maintain, improve, modify, relocate and replace the sidewalk(s) or to access equipment located on the Permanent Easement Property.

e. No use of the Easement by Grantee and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, and assigns shall violate any applicable law, rule or regulation relating to the Easement.

f. To the extent allowed by law, the Grantee shall indemnify and hold the Grantor harmless against any claim of liability or loss from personal injury or property damages resulting from or arising out of the negligence or willful misconduct of the Grantee and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers,

successors, and assigns, except to the extent such claims or damages may be due to or caused in whole or in part by the negligence or willful misconduct of Grantor, its contractors or agents.

g. In the event that the terms of this Agreement are violated by Grantor, Grantor's agents or employees, then, upon written notice by Grantee to Grantor, Grantor shall promptly correct the violation at Grantor's expense.

h. Grantor reserves all rights attendant to its ownership of the Permanent Easement Property, including, but not limited to, the use and enjoyment of the Permanent Easement Property for all purposes not inconsistent with the terms and conditions of this Agreement.

i. Grantor may grant, create, or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Subject Parcel (each, an "Encumbrance") so long as such Encumbrance is subject to this Agreement and the Easement granted herein.

j. Grantee shall cause all work conducted with respect to the Easement to be completed free from mechanic's liens and actions filed against the Easement to foreclose on the Easement through a recorded *lis pendens*.

4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, personal representatives, successors and assigns. It is the intention of the Parties that this Agreement and all of the various rights, obligations, restrictions and Easement created in this Agreement shall run with the land and shall inure to the benefit of and be binding upon all future owners, users of any of the Subject Parcel and the Easement, assignees of Grantee and lessees of the Subject Parcel and all persons claiming under them. The Easement is appurtenant to the Subject Parcel.

5. Notices. All notices required to be given by any of the provisions of this Agreement to a Party, unless otherwise stated, shall be in writing and delivered in person or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate Party at the address set forth below (or at such other address designated in prior writing to the other Party):

To Grantor:        New Berlin Community School District #16  
                              %Superintendent  
                              600 Cedar Street  
                              New Berlin, IL 62670

To Grantee:        Village of New Berlin  
                              P. O. Box 357  
                              New Berlin, IL 62670

Each Party shall promptly deliver notice to the other Party of changes in address or ownership of the Subject Parcel or ownership interest in this Agreement, as appropriate.

6. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

7. Recording. This Agreement shall be recorded by Grantee at its sole cost and expense.

8. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without reference to its conflict of laws rules. Each Party hereby irrevocably submits to the exclusive jurisdiction of any federal or state court located in Sangamon County, Illinois in connection with any dispute arising out of or in connection with this Agreement. The non-prevailing Party in any litigation in connection with this Agreement shall be responsible for the prevailing Party's reasonable legal fees and expenses. EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

9. Captions and Headings; Exhibits. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement. The Exhibits hereto (i) are incorporated in this Agreement by reference in their entirety, and (ii) unless expressly otherwise provided herein, shall be prepared by Grantor and shall be subject to Grantee's prior written approval.

10. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to either Party by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to such Party.

11. Counterparts. This Agreement may be executed in one or more counterparts, and by the Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

12. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the Easement either void or voidable, Grantor agrees that upon the written request of Grantee, Grantor and Grantee shall convert the Easement to a ground lease between Grantor, as lessor, and Grantee, as lessee, which ground lease shall (i)

permit uses consistent with those set forth in Section 2 hereof, and (ii) otherwise include only those terms and conditions consistent with this Agreement.

13. Entire Understanding and Amendment. This Agreement constitutes the entire understanding between the Parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement signed by both Parties. No waiver of any breach of any terms of this Agreement shall be effective unless made in writing signed by the waiving Party, and no such waiver shall be construed as a waiver of any subsequent breach of that term or of any other term of the same or different nature. The failure of either Party to object to any breach of any term or condition of this Agreement shall not be deemed a waiver of any term or condition of this Agreement and shall not be deemed a waiver of any right or remedy the nonbreaching party may have arising out of the breach, nor shall it be deemed a waiver of its right to subsequently enforce the term or condition.

14. Further Acts. Grantor shall cooperate with Grantee in executing any documents reasonably necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easement and to take such commercially reasonable action as Grantee may reasonably request in writing to effect the intent of this Agreement. All costs associated with obtaining and maintaining all government approvals by Grantee or Grantee's contractors or agents shall be the sole responsibility of Grantee.

15. Relationship of Parties; No Sale. Grantee's status shall be strictly construed as a holder of easements on the Subject Parcel limited to its express rights granted herein. Nothing herein shall be construed to render Grantee a fee interest owner of the Subject Parcel, nor as an actual or constructive transfer of ownership of or a fee interest in the Subject Parcel to Grantee. The Parties expressly intend that for all times and for all purposes, Grantor shall be and remain the sole and exclusive owner of the Subject Parcel during its lawful fee ownership thereof with the full benefits and rights of ownership thereof, subject only to the rights expressly granted to Grantee herein for the duration of the Easement.

16. Singular/Plural Form. It is further understood, whenever necessary, words used in this instrument in the singular shall be construed to read in the plural and that words used in the masculine gender shall be construed to read in the feminine or words used in the neutral gender shall be construed to be read in the masculine or feminine gender, whichever is appropriate.

17. Homestead. The undersigned waives any and all rights under the Homestead Exemption laws of the State of Illinois.

IN WITNESS WHEREOF, the undersigned has set her hand and seal, this \_\_\_\_ day of \_\_\_\_\_, 2024.

NEW BERLIN COMMUNITY SCHOOL  
DISTRICT #16

By \_\_\_\_\_  
Jilinda Larson, Superintendent

STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF SANGAMON )

I, \_\_\_\_\_, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Jilinda Larson, who is, personally known to me to be the Superintendent of New Berlin Community School District #16, and who is also known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Superintendent she signed, sealed and delivered said instrument, pursuant to authority of the Board, as their free and voluntary act and as the free and voluntary act and deed of said Board as aforesaid, for the uses and purposes therein set forth.

Given under my hand and notarial seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the Village of New Berlin, an Illinois municipal corporation, pursuant to authority given by the \_\_\_\_\_ of said Village at a regular meeting of the council.

VILLAGE OF NEW BERLIN, an  
Illinois municipal corporation

ATTEST:

By \_\_\_\_\_  
Mike Krall, Village President

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Village Clerk

EXEMPT UNDER THE PROVISIONS OF 35 ILCS 200, SEC. 31-45  
Para. (b)(1) Real Estate Tax Transfer Tax law.

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Date	Buyer, Seller or Representative
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## **EXHIBIT A**

Part of the East half of the Southeast quarter of Section 19, Township 15 North, Range 7 West of the Third Principal Meridian, Sangamon County, Illinois described as follows:

From the Northwest corner of the Southeast quarter of the Southeast quarter of said Section 19, thence North on the quarter quarter section line 264.89 feet; thence deflecting to the right 90 degrees 53 minutes 25 seconds, 30.00 feet to the point of beginning; thence continuing along said line 439.80 feet; thence deflecting to the right 89 degrees 10 minutes 20 seconds, 594.72 feet; thence deflecting to the right 90 degrees 49 minutes 37 seconds, 439.15 feet; thence deflecting to the right 89 degrees 06 minutes 38 seconds, 594.74 feet to the point of beginning.

Subject to easements, covenants and restrictions of record and highways as now located.

Property Address: 600 N. Cedar Street, New Berlin, IL 62670

P.I.N. 20-19-426-001



## **EXHIBIT B**

### **PERMANENT EASEMENT DESCRIPTION FOR VILLAGE OF NEW BERLIN**

The West 15 feet of the following described property:

Part of the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Nineteen (19), Township Fifteen (15) North, Range Seven (7) West of the Third Principal Meridian, Sangamon County, Illinois described as follows:

From the Northwest corner of the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of said Section Nineteen (19), thence North on the quarter quarter section line 264.89 feet; thence deflecting to the right  $90^{\circ}53'25''$  30.00 feet to the point of beginning; thence continuing along said line 439.80 feet; thence deflecting to the right  $89^{\circ}10'20''$  594.72 feet; thence deflecting to the right  $90^{\circ}49'37''$  439.15 feet; thence deflecting to the right  $89^{\circ}06'38''$  594.74 feet to the point of beginning.