

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 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”) and depicted on **Exhibit C**, attached hereto (“Plat of Easement”). 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, excavating, operating, repairing, maintaining, improving, modifying, relocating and replacing over, upon, across, in, through, and under that portion of the Permanent Easement Property (and, all lots, streets, roads, or highways abutting the Subject Parcel) pipes and distribution lines and systems for the transport of sanitary sewer, water, and by-products of the treatment of water, together with all necessary facilities and appurtenances incident to installing, excavating, operating, repairing, maintaining, improving, modifying, relocating and replacing said pipes and distribution lines, including, without limitation, all pipe, valves, fittings, flanges, utility tracers, markers, and hydrants and other hardware required to convey water and by-products of the treatment of water, together with the perpetual right of pedestrian and vehicular access, ingress and egress at all reasonable times to and from the Permanent Easement Property. Grantee agrees to access the Easements via the shortest and most direct route utilizing the public road, to the extent practical..

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 pipes, 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 Grantor desires to have preserved while installing, excavating, operating, repairing, maintaining, improving, modifying, relocating and replacing of said pipes, lines, and distribution systems, 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 sanitary sewer or water pipes and distribution systems 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*.

k. To the extent possible, the Grantee will, following its activities consistent with the purposes described in Section 2 hereof, restore the condition of the surface of the Permanent Easement Property with soil of like kind and quality of that which existed at the commencement of work.

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.

Date Buyer, Seller or Representative

EXHIBIT A

(Legal Description of Subject Parcel)

EXHIBIT B

(Legal Description of Sewer & Water Easement for Village of New Berlin)

Part of the Southeast Quarter of Section 19, Township 15 North, Range 7 West of the Third Principal Meridian, New Berlin, Sangamon County, Illinois, more particularly described as follows:

Commencing at a pipe found at the Southeast corner of Lot 1 of Hatfield's Addition, recorded in Book 9 on Page 73 in the Sangamon County Recorder's Office, said point lying on the West right of way line of Benton Street; thence North 01 degrees 04 minutes 54 seconds West on said West right of way line, a distance of 199.94 feet to a pipe found on the North right of way line of a Vacated Alley; thence South 88 degrees 56 minutes 52 seconds West on said North right of way line of said Vacated Alley, a distance of 631.00 feet; thence South 89 degrees 47 minutes 12 seconds West on said North right of way line, a distance of 376.68 feet to the point of beginning.

From said point of beginning; thence continuing South 89 degrees 47 minutes 12 seconds West on said North right of way line, a distance of 40.00 feet; thence North 00 degrees 29 minutes 33 seconds West, a distance of 224.57 feet; thence North 44 degrees 41 minutes 36 seconds East, a distance of 39.51 feet; thence North 00 degrees 29 minutes 33 seconds West, a distance of 11.38 feet; thence North 89 degrees 30 minutes 27 seconds East, a distance of 15.00 feet; thence South 00 degrees 29 minutes 33 seconds East, a distance of 17.62 feet; thence South 44 degrees 41 minutes 36 seconds West, a distance of 4.27 feet; thence South 00 degrees 29 minutes 33 seconds East, a distance of 243.36 feet to the point of beginning. Containing 9,904.640 square feet (0.227 acres), more or less.

EXHIBIT C

(PLAT OF EASEMENT)