

PUBLIC ACCESS EASEMENT

Document Number

Document Title

Recording Area

Name and Return Address:

Engineering Department
City of West Allis
7525 W Greenfield Ave
West Allis, WI 53214

439-9006-000

Parcel Identification Number (PIN)

This document was drafted by:

Atty. Kail Decker
City Attorney's Office
7525 W Greenfield Ave
West Allis, WI 53214

PUBLIC ACCESS EASEMENT
Over 1070 South 70th Street, West Allis, Wisconsin

THIS PUBLIC ACCESS EASEMENT over certain real property located at 1070 South 70th Street, West Allis, Wisconsin (the "Easement") is dated as of November 21, 2024, by and between **LXL THE APIARY, LLC**, a Wisconsin limited liability company, (the "**GRANTOR**"); and the CITY OF WEST ALLIS, a Wisconsin municipal corporation, ("**CITY**").

RECITALS

- A. GRANTOR is the owner of the real property located at 1070 South 70th Street, West Allis, Wisconsin (the "**Owner Property**") and wishes to grant this Easement for public access over a certain portion of the Owner Property, more particularly described in **EXHIBIT A** under the terms and conditions stated herein (the "**Easement Area**").
- B. CITY is the owner of the right-of-way adjacent to and west of the Owner Property and wishes to accept this Easement for public access over the Easement Area under the terms and conditions stated herein.

EASEMENT

In consideration of the Recitals, which are incorporated herein, and the mutual agreements that follow, GRANTOR and CITY agree as follows:

- 1. Grant of Public Easement. GRANTOR hereby grants and conveys to CITY a permanent, perpetual, nonexclusive public easement for pedestrian and bicycle ingress and egress over, across and upon the Easement Area.
- 2. Use of Public Easement. Subject to the terms of this Easement, CITY and members of the public may use the Easement Area (in common with GRANTOR and their tenants, invitees, employees, licensees, successors and assigns) for pedestrian ingress and egress from CITY's public sidewalks and streets adjacent to the Easement Area, subject to the provisions herein. The use of the Easement Area shall be for normal and customary access by CITY and the public in accordance with all applicable federal, state and local laws, statutes, ordinances, codes and regulations. The rights of CITY and the public to use the Easement Area shall not extend to any unusual uses such as loitering or other types of uses that may constitute a public or private nuisance.
- 3. Construction of Improvements. GRANTOR, at GRANTOR's expense, shall construct any and all improvements on the Easement Area deemed necessary by GRANTOR to facilitate use of the Easement Area by the public pursuant to this Easement. Such improvements shall include lighting adequate for pedestrian use of the Easement Area. Such improvements may, at GRANTOR's sole option and expense, also include, but shall not be limited to, signage, streetscaping and/or landscaping. GRANTOR may install additional improvements that serve the

Owner Property only if those improvements do not obstruct or restrict public access over the Easement Area. CITY shall not have any rights or obligations to construct any new improvements or utilities on the Easement Area.

4. Maintenance. GRANTOR, at GRANTOR's expense, shall maintain the Easement Area in a condition that is free of ice and snow, free of defects, and safe for pedestrian use. If GRANTOR fails to maintain the Easement Area in the condition required by this Easement, CITY may perform such work upon the Easement Area to the same extent as it performs such work on any public sidewalk and may collect the cost of that work in the same manner as it does for any public sidewalk.
5. 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 maintenance or repair. Either GRANTOR or CITY shall have the right periodically to close off the Easement Area, as reasonably necessary, for any of these purposes, provided that any and all permits that may be required are obtained and limit such closure to the minimum amount of time and area reasonably needed for the allowed purpose. Applicable ordinances and requirements for obstructing or closing public ways must be observed.
6. Indemnity. GRANTOR shall at all times indemnify and hold CITY harmless from any claim, loss, damage, injury, action, or liability, in any way related to, or arising out of, any failure of the GRANTOR to satisfy any of its obligations listed in this Easement. Provided, however, that these provisions are subject to the legal defenses which, under law, any party is entitled to raise. The agreement by GRANTOR to indemnify, defend, and hold harmless the CITY, shall survive the termination of this Easement.
7. CITY's Access to Existing Facilities. The parties acknowledge that CITY may maintain any existing facilities (such as sewer or water mains) currently located in the Easement Area as set forth in other written easement agreements benefiting CITY and recorded against the Easement Area.
8. Binding Agreement. The easement rights granted herein and the other provisions of this Easement shall run with the Owner Property and be binding upon and inure to the benefit of GRANTOR and CITY and their respective successors and assigns.
9. 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 another party or any agent or employee of another party (including any delay requested by another 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 Easement shall be extended for a period equal to the time lost as a consequence of the delay or interruption.

10. Recording. This Easement shall be recorded in the office of the Register of Deeds of Milwaukee County by CITY.
11. Applicable Law. This Easement shall be interpreted and construed in accordance with the laws of the State of Wisconsin.
12. Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Easement.
13. Counterparts. This Easement 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.
14. Notices. All notices to be given by one party to the others under this Easement 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. Any 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:

LxL The Apiary LLC
638 Milwaukee Street
Delafield, WI 53018

To CITY:

City Engineer
7525 W. Greenfield Avenue
West Allis, WI 53214

15. Enforcement. This Easement may be enforced either at law or in equity, with the nonbreaching party entitled to injunctive relief and/or monetary damages. No persons other than the parties hereto shall be entitled to enforce any of the terms, covenants or conditions of this Easement.
16. Integration, Modification and Waiver. All of the terms and provisions of this Easement and the understanding of the parties pertaining to the subject matter thereof are set forth in this Easement and no prior understanding or obligation not expressly set forth herein shall be binding upon the parties. No subsequent modification of this Easement shall be binding upon the parties unless in writing, executed by the parties hereto. None of the provisions of this Easement 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 Easement except as expressly stipulated therein.

17. Amendment. This Easement may be amended only by a written instrument executed by GRANTOR and CITY or their successors or assigns.
18. Assignment. No party shall assign its rights or obligations under this Easement without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed.
19. 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 another party hereto.

IN WITNESS WHEREOF, THE PARTIES HERETO caused this Easement to be executed by their authorized signatories as of the date first written above.

GRANTOR: LXL THE APIARY LLC

By: _____

Name Printed: _____

State of Wisconsin)
)ss
_____ County)

Before me personally appeared the above signatory, _____, to me known to be such person(s) who signed this document and acknowledged the same.

Date: _____

Notary Public

Name Printed: _____

My commission expires: _____

[notarial seal]

IN WITNESS WHEREOF, THE PARTIES HERETO caused this Easement to be executed by their authorized signatories as of the date first written above.

CITY: CITY OF WEST ALLIS

By: _____

City Engineer

Countersigned:

By: _____

Jason Kaczmarek, Comptroller