

ENCROACHMENT EASEMENT AGREEMENT

THIS ENCROACHMENT EASEMENT AGREEMENT (“**Agreement**”) is entered into by and between OSCAR MAYER CREDIT UNION N/K/A HERITAGE CREDIT UNION (“**Grantor**”), and the County of Dane (“**County**”), as of this ____ day of _____, 2020.

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property situated in the City of Madison, Dane County, Wisconsin, located at 1212 Huxley Street, as more particularly described on Exhibit A attached hereto and made a part hereof (the “**Grantor Property**”);

WHEREAS, the County is the owner of real property adjacent to and contiguous with the Grantor Property, located at 1819 Aberg Avenue, and more particularly described on Exhibit B (“**County Property**”); and

WHEREAS, Grantor desires to grant County an easement in connection with the encroachment of certain driveway improvements serving the County Property and located on the Grantor Property.

Drafted by and after recording return to:

Attorney Katherine R. Rist
Foley & Lardner LLP
P.O. Box 1497
Madison, WI 53701-1497

See Exhibits.

Parcel Identification Number(s)

AGREEMENT

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and County hereby agree as follows:

1. Recitals. The above recitals are hereby incorporated by reference.
2. Easement. Grantor, as the owner of the Grantor Property hereby grants to the County, as the owner of the County Property, a non-exclusive easement (the “**Encroachment Easement**”) to access and use the driveway encroachment area located on the Grantor Property as shown on the attached Exhibit C (the “**Encroachment Easement Area**”) for the purpose of vehicle ingress and egress from the County Property to Stephen Street by the County, its employees, customers, invitees, successors and assigns. The owner of the County Property shall be responsible for the repair, maintenance and general upkeep of the Encroachment Easement Area and shall keep the Encroachment Easement Area in good order and condition. All costs related to the construction, maintenance and repair of the improvements within the Encroachment Easement Area shall be the sole responsibility of the owner of the County Property. The County shall not, by reason of this Agreement, be obligated to pay any real estate taxes or special assessments levied against the Encroachment Easement Area or the Grantor Property.

3. Term. If either party hereto, or its successors and assigns, desires to terminate this Agreement, the termination must be consented to by the owners of the County Property and the Grantor Property.

4. Covenants Running with the Land. This Agreement shall constitute a covenant running with the land, shall be appurtenant to the 1818 Property and Lot 4 and shall be binding upon all future owners of the County Property and the Grantor Property.

5. Notices. All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier or facsimile transmission; or (c) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows (or such other addresses as Grantor and County or their respective successors or assigns may designate by like notice):

If to Grantor:	If to County:
1212 Huxley Street	Attn: Real Estate Coordinator
Madison, Wisconsin 53704	5201 Fen Oak Drive, #208
	Madison, WI 53718

6. Insurance. County shall maintain in effect at all times a policy of commercial general liability insurance against injury to property, person, or loss of life arising out of this Agreement, including without limitation, the use, occupancy, or maintenance of the Encroachment Easement with limits of coverage not less than Two Million and 00/100 Dollars (\$2,000,000.00). For each year in which this Agreement is in effect, County shall provide Grantor with evidence of the insurance coverage required hereunder. Insurance required under this Agreement shall be written by companies duly qualified to do business in the State of Wisconsin and shall be satisfactory in all respects to Grantor and the holders of any mortgages against the Property. No such policy shall be cancelable or subject to reduction of coverage or modification except after 10 days' prior written notice to Grantor and the holders of any mortgages against the Grantor Property. At least 10 days before the expiration of any policies, County shall furnish Grantor with evidence of a renewal or replacement policy. From time to time, the policy limits shall be increased to reflect the effects of inflation and changes in normal commercial insurance practices

7. Liens. Grantor retains the right to encumber the Grantor Property, but any such encumbrance created after the effective date hereof shall be subject to this Agreement. County shall not allow any liens to be made against the Grantor Property.

8. Indemnification. Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, and representatives with respect to the Encroachment Easement Area and the rights granted under this Agreement and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations of joint liability with respect to the Encroachment Easement Area, each party shall be responsible for the consequences of its own acts,

errors, or omissions and those of its employees, agents, boards, commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes.

9. Choice of Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

10. Waiver. No waiver of, acquiescence in or consent to any breach of any term, covenant, or condition hereof shall be construed as, or constitute, a waiver of, acquiescence in or consent to any other, further or succeeding breach of the same or any other term, covenant or condition.

11. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of the Agreement shall not be affected thereby, and each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by law.

12. Not a Public Dedication. Nothing herein contained shall be deemed a gift or dedication of any portion of the Encroachment Easement Area to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities hereunder shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained herein.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

COUNTY:

By: _____
Name: Scott McDonell
Title: County Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this _____ day of _____, 20__, by _____, the _____ of Dane County, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity as such officer of said limited liability company, as his free act and deed, and as the free act and deed of said limited liability company.

Name: _____
Notary Public, Dane County, Wisconsin

My commission: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

GRANTOR:

OSCAR MAYER CREDIT UNION
N/K/A HERITAGE CREDIT UNION

By: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this _____ day of _____, 20____, by _____, the _____ of _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her authorized capacity as such officer of said corporation, as her free act and deed, and as the free act and deed of said company.

Name: _____
Notary Public, Dane County, Wisconsin
My commission: _____

EXHIBIT A

Legal Description of Grantor Property

Lot Two (2), Certified Survey Map No. 1539 recorded in Volume 6 of Certified Survey Maps, pages 262, 263 and 264 as Document No. 1411327, in the City of Madison, Dane County, Wisconsin.

Tax Parcel No. 251/0810-313-0079-2

EXHIBIT B

Legal Description of County Property

A part of Outlot One (1), Burke Assessor's Plat No. 1, in the City of Madison, Dane County, Wisconsin, more fully described as follows: Beginning at the West quarter corner of Section 31, which is the intersection of the centerlines of Sherman Avenue and Aberg Avenue; thence South 0 degrees 35 minutes East along the centerline of Sherman Avenue for a distance of 33.0 feet; thence North 89 degrees 28 minutes East for a distance of 443.7 feet to an iron stake and the point of beginning of this description; thence South 0 degrees 32 minutes East for a distance of 443.92 feet; thence North 89 degrees 23 minutes East for a distance of 151.64 feet; thence South 0 degrees 30 minutes East for a distance of 12.13 feet to an iron stake; thence North 89 degrees 20 minutes East for a distance of 305.66 feet to an iron stake; thence North 0 degrees 32 minutes West for a distance of 455.12 feet to an iron stake; thence South 89 degrees 28 minutes West for a distance of 457.30 feet to the point of beginning.

TAX ROLL PARCEL NUMBER: 251-0810-313-0088-3

Encroachment Easement Area

