

## **SIDEWALK LICENSE AND MAINTENANCE AGREEMENT**

THIS SIDEWALK LICENSE AND MAINTENANCE AGREEMENT ("**Agreement**") is made and entered into this 24 day of July, 2025, by and between the city of Mankato, a Minnesota municipal corporation ("**City**"), and Warren Richard Michels and Theresa A. Michels (collectively, the "**Owner**"). The City and the Owner may be referred to herein individually as a "party" or collectively as the "parties."

### **RECITALS**

- A. The Owner is fee owner of the real property located at 418 West 7<sup>th</sup> Street and legally described in the attached Exhibit A ("**Property**");
- B. The Property abuts a public sidewalk as depicted on the map attached hereto as Exhibit B ("**Sidewalk**");
- C. The City has the authority and the desire to remove the Sidewalk, but the Owner has requested that the Sidewalk remain for its use; and
- D. The City and Owner agree that the Sidewalk is temporary and will not remain beyond the reasonable life of the existing improvements; and
- E. The City is willing to forego its present plans to remove the Sidewalk in exchange for the Owner's willingness to adhere to the terms and conditions contained in this Agreement.

### **AGREEMENT**

On the basis of the foregoing, and upon the mutual undertakings and promises contained herein, the parties hereto hereby agree as follows:

1. Incorporation of Recitals and Exhibits. The recitals set forth above and the exhibits attached hereto are incorporated herein and made part of this Agreement.
2. Non-Removal; Grant of License. In consideration of the covenants and agreements herein to

be performed by the Owner, and further subject to the limitations contained herein, the City agrees to forego its present intent to remove the Sidewalk and hereby grants to the Owner a nonexclusive license to retain and use the Sidewalk in accordance with the terms and conditions contained herein. The Owner understands and agrees that the Sidewalk will remain open for use by the public during the entire term of this Agreement. The City makes no agreement with the Owner with respect to any other portions of sidewalk in the area, on that block or on an adjacent block. Owner understands and agrees that the City considers the Sidewalk temporary in nature and agrees to allow the Sidewalk to remain until the Sidewalk requires significant maintenance or replacement, as defined in paragraph 3 below, at which time the Owner agrees to remove the Sidewalk in its entirety at Owner's cost and restore the boulevard area.

3. Term and Termination. The term of this Agreement shall be 20 years from the date it is executed by both parties unless it is terminated earlier as provided in this section. At the end of the initial term this Agreement shall automatically renew for subsequent 10 years terms unless terminated as provided herein. Either party may terminate this Agreement by providing the other party 90 days written notice of termination, including when the City deems it necessary for utilization by the City of the right of way. The City may terminate this Agreement immediately if it determines the Owner has violated any material term or condition of this Agreement by providing the Owner written notice of termination, or when the City determines the Sidewalk requires significant maintenance or replacement. For purposes of this Agreement, significant maintenance or replacement means replacement of 2 or more individual panels or other improvements greater than 50% of the cost to replace the Sidewalk. Minor repairs such as patching and sealing are not considered significant maintenance.
4. Opportunity to Cure. The City may, but is not required to, allow the Owner an opportunity to cure the breach by setting out in the termination notice what must be done by a date certain in order to correct the situation. If such an opportunity to cure is provided and the Owner fails to take the corrective steps by the date indicated, the City may notify the Owner of the immediate termination of this Agreement. Upon termination of this Agreement by any method the City may remove the Sidewalk at its discretion with no compensation to the Owner.
5. Maintenance and Repair; Snow Removal. During the term of this Agreement the Owner shall be required to, at its own cost, keep and maintain the Sidewalk in a safe and serviceable condition. As such, the Owner shall be responsible for any improvements or repairs necessary to the Sidewalk to ensure its suitability for pedestrian traffic. All allowable maintenance or repairs of the Sidewalk shall be done in strict accordance with the City's standards. The Owner shall also be solely responsible for the removal of all ice and snow from the Sidewalk that they deem necessary or is required by City ordinance or other regulation. The Owner agrees to not prohibit use of the Sidewalk by the Public or place objects or other obstruction making the Sidewalk inaccessible to the Public.
6. Permits. The Owner agrees to properly apply for and retain any and all permits necessary to carry out any maintenance or repairs that are required under this Agreement. The Owner

shall be solely responsible for determining and adhering to the proper boundaries of the Sidewalk and shall be liable to any other property owners for trespass onto their property.

7. City's Right to Maintain and Repair. If the Owner fails to maintain or repair the Sidewalk in accordance with this Agreement, the City may provide the Owner written notice of the failure to maintain or repair that identifies the work needing to be done and the date by which such work must be completed. If the Owner does not complete maintenance or repair by the date indicated in the notice, the City may either terminate the Agreement or perform the required work and invoice the Owner for all costs it incurs, including contractor costs and all reasonable staff time, engineering and legal costs, and other reasonable costs and expenses incurred by the City. If the Owner, or its successors or assigns, fail to reimburse the City for its costs and expenses in maintaining the Sidewalk within 30 days of receipt of an invoice for such costs, the City shall have the right to assess the full cost thereof against the Property and collect the same in single or multiple payments as in the case of special assessments for public improvements pursuant to Minnesota Statutes, Chapter 429. The assessments shall bear interest at the rate determined by the City. The Owner, on behalf of itself and its successors and assigns, acknowledges that the maintenance work performed by the City regarding the Sidewalk benefits the Property in an amount which exceeds the assessment and hereby waives any right to hearing or notice and the right to appeal the assessments otherwise provided by Minnesota Statutes, Chapter 429.

The City has the right but not a contractual obligation to perform maintenance or repair of the Sidewalk. The City intends to exercise this authority only if the condition of the Sidewalk is so poor, in the reasonable exercise of the City's discretion, as to pose a hazard to the health, safety and welfare to those using the Sidewalk.

8. Right of Entry. In addition to any rights expressly afforded to the City under this Agreement, the City shall retain all rights that it is otherwise entitled to under state and local right-of-way laws. Nothing in this Agreement shall create liability on behalf of the City for future removal or alteration of the Sidewalk, and the Owner shall have no right to recover any damages, in money or equity, for the removal or alteration of same or the exercise of any other rights afforded to the City.
9. Liens and Encumbrances. The Owner agrees that during the term of this Agreement it shall not permit or suffer any liens or encumbrances to be placed against the Sidewalk, nor shall it during such term engage in any activity that would cause or result in the placement of any liens or encumbrances against the Sidewalk.
10. Liability; Indemnification. Notwithstanding anything to the contrary in this Agreement, the City, its officers, agents, and employees shall not be liable or responsible in any manner to the Owner, the Owner's successors or assigns, or to any other person or persons for any claim, demand, damage, or cause of action of any kind or character arising out of or by reason of the execution of this Agreement or the performance of this Agreement, nor will the Owner make any claim against the City for or on account of any injury, loss or damage resulting from the Sidewalk or use thereof.

The Owner shall indemnify, hold harmless and defend the City, its officials, employees,

contractors and agents from and against any and all liability, loss, costs, damages, expenses, claims, actions or judgments, including reasonable attorneys' fees which the Owner, its officers, employees, agents or contractors may hereinafter sustain, incur, or be required to pay, arising out of by reason of any act or failure to act by the Owner, its employees, agents or contractors or arising out of or by reason of this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes, Chapter 466, or otherwise.

11. Agreement to Run with the Land. This Agreement shall be recorded among the land records of Blue Earth, Minnesota. The provisions of this Agreement shall run with the Property and be binding upon the Owner, its successors and assigns.
12. No Damages; No Relocation Benefits. The Owner understands and acknowledges that the City is willing to enter into this Agreement and carry out its obligations hereunder only because the Owner has agreed that it will make no claim for damages or relocation benefits upon termination of this Agreement or pursuant to any other agreement with the City. Specifically, and without limitation of the foregoing, the Owner understands that upon termination of this Agreement, the City has no obligation to provide the Owner with any compensation or any other rights or privileges.
13. No Property Interest. This instrument is not an easement or a lease, creates no landlord-tenant relationship, and nothing in this Agreement will be deemed to create any property interest other than as expressed in this Agreement.
14. Waiver. The waiver by either party of any breach of any term of this Agreement shall not be deemed a waiver of any prior or subsequent breach of the same term or any other term of this Agreement.
15. Entire Agreement; Modification. This Agreement constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, concerning this Agreement. This Agreement may be modified or amended only by court order or by a writing executed by all the parties hereto under the provisions of this Agreement.
16. Headings. Any headings appearing at the beginning of the several sections contained in this Agreement have been inserted for convenience only and shall not be used in the construction and interpretation of this Agreement.
17. Severability. If any part of this Agreement shall be held invalid, it shall not affect the validity of the remaining parts of this Agreement, provided that such invalidity does not materially prejudice either party under the remaining parts of this Agreement and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby.
18. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

19. Public Data. This Agreement and the information related to it are subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, which presumes that data collected and maintained by the City is public data unless classified otherwise by law.
20. Relationship of Parties. Nothing contained in this Agreement shall be deemed to create a partnership, association or joint venture between the City and the Owner.
21. Compliance with Laws. The Owner agrees to abide by and conform to all laws, rules, and regulations, including future amendments, while performing any obligations under this Agreement.
22. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

IN TESTIMONY WHEREOF, the parties hereto have set their hands as of the day and year first above written.

THE OWNER(S):

By: Theresa A Michels

By: Warren Michels

STATE OF MINNESOTA     )  
                                          ) SS.  
COUNTY OF BLUE EARTH)

The foregoing instrument was acknowledged before me this 24 day of July, 2025, by Theresa + Warren Michels

Meghan A. Houlihan  
Notary Public



CITY OF MANKATO

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MINNESOTA    )  
                                  ) SS.  
COUNTY OF BLUE EARTH)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2025, by \_\_\_\_\_, on behalf of the City.

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

THIS DOCUMENT DRAFTED BY:

Kennedy & Graven, Chartered  
150 South 5<sup>th</sup> Street  
Minneapolis, MN 55402  
(612) 337-9300

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

PIN = R010813331010

Legal = WEST MANKATO E30FT OF 3 & W 3/5 OF 4 168 0

**EXHIBIT B**

**DEPICTION OF THE SIDEWALK**

