

**CONSENT TO OCCUPY
PUBLIC SANITARY SEWER EASEMENT**

RE: Existing 20 foot wide Public Sanitary Sewer Easement granted by Certified Survey Map No. 11912, recorded as Document No. 4235707 on September 18, 2006, in the Office of the Dane County Register of Deeds in the City of Madison, Dane County, Wisconsin.

This Consent to Occupy Public Sanitary Sewer Easement (“Consent”) is entered into on this _____ day of _____, 2020, by the **City of Madison**, a Wisconsin municipal corporation (“City”), to and for the benefit of **Malazi LLC**, a Wisconsin limited liability company (“Owner”).

A. The Owner submitted a Permitted Use Site Plan Review application and site plan to the City, seeking approval for the construction of a multi-tenant commercial building and associated improvements on the property located at 1502 W. Broadway in the City of Madison, Wisconsin (“Owner’s Property”), legally described as follows:

Lot 3, Dane County Certified Survey Map No. 12433, recorded as Document No. 4415873 of Dane County Records in Volume 77 of Certified Survey Maps on Page 248-251, being located in the NW 1/4 of the NW 1/4 of Section 29 and the SW 1/4 of the SW 1/4 of Section 20, all in Township 7 North, Range 10 East, City of Madison, Dane County, Wisconsin.

B. The City is the Grantee of the above-referenced Public Sanitary Sewer Easement that encumbers a portion of the Owner’s Property (“City Easement”).

C. The Owner’s site plan includes the following private improvements that are proposed to encroach upon the City Easement (collectively, the “Permitted Encroachments”) all as depicted and identified on attached Exhibit A:

Permitted Encroachments	
A	24” RCP storm sewer pipe & outfall
B	underdrain cleanout
C	6” PVC underdrain
D	bioretention basin
E	exterior storm sewer catch basin
F	15” RCP storm sewer pipe
G	curb & gutter
H	retaining wall

**TERMS and CONDITIONS
EXHIBIT**

File ID #61879

RETURN TO: City of Madison
Economic Development Division
Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

- D. As a condition of the approval of the Owner's Permitted Use Site Plan Review application, the City's Engineering Division requires this Consent to memorialize the placement of the Permitted Encroachments in, on and across the City Easement, as approved by the City, subject to the terms and conditions specified herein.
- E. This Consent shall be recorded in the public record to memorialize the Owner's use of portions of the City Easement.

NOW, THEREFORE, the City hereby grants to and for the benefit of the Owner this Consent, subject to the following terms and conditions:

1. Grant of Permission. The City does hereby grant the Owner, their successors and assigns, permission to occupy the City Easement for purposes of construction, installation, operation and maintenance of the Permitted Encroachments, all in accordance with the Permitted Use Site Plan Review application LNDSPR-2020-00032, which has been conditionally approved by the City's Engineering Division.
2. Construction and Maintenance. The Owner, at their sole expense, shall maintain the Permitted Encroachments in a good and professional manner, subject to the following conditions:
 - a. Under the terms of City Engineering Contract No. 8927, Project No. 13045, the Owner shall construct replacement sanitary sewer main with casing pipe, sanitary sewer access structures, and sanitary sewer service lateral per plans approved by the City Engineer..
 - b. The Owner shall be responsible for all costs of design, construction/installation and maintenance of the Permitted Encroachments in compliance with all applicable ordinances, codes, statutes, and laws.
 - c. The Owner shall obtain any and all permits required prior to the construction, repair, maintenance or other activity within the City Easement.
 - d. No grade change to the City Easement shall be made by the Owner without the prior written approval of the City.
 - e. With the exception of routine maintenance and repairs and normal use of the Permitted Encroachments, no changes to, additions to or alterations of the Permitted Encroachments shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.
 - f. No additional improvements shall be installed or constructed in the City Easement without the express written consent of the City.
 - g. All areas within the City Easement affected by maintenance and repair work on the Permitted Encroachments will be restored to original grade and vegetation or surface condition, including repair or replacement of pavement and concrete, by and at the

sole expense of the Owner promptly after completion of said work (or as soon thereafter as weather reasonably permits) and in a manner satisfactory to the City.

3. Type of Grant. This Consent does not transfer, release, or convey any of the rights the City may have in said lands by virtue of the City Easement. The granting of this Consent shall be deemed to be permissive and shall preclude the Owner from any claim of adverse possession against the City by virtue of any encroachment on or into the City Easement by virtue of the granting of this Consent.
4. Use of City Easement. The Owner shall use and occupy the City Easement in a manner consistent with the rights herein conveyed, and shall ensure that such use and occupancy shall not interfere with or disturb the City's rights granted by the City Easement.
5. Compensation for Damages. The Owner understands and agrees that the Permitted Encroachments may be removed by the City without replacement or compensation to the Owner, and the Owner shall not hold the City liable for any future expense to move, repair or replace the Permitted Encroachments, if reasonably necessary, for maintenance or replacement of the City's sewer facilities within the City Easement.
6. Indemnification. The Owner shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Owner and/or their agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Consent, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees. This paragraph shall survive termination and assignment or transfer of this Consent.
7. Termination. This Consent shall automatically terminate upon the earliest of the following to occur: (a) the removal or abandonment of the Permitted Encroachments by the Owner, (b) the release of the City Easement by the City; or (b) the agreement to terminate this Consent by the parties hereto, or their successors and assigns. In the event of termination, the Owner shall remove the Permitted Encroachments at the Owner's expense to the extent necessary to permit the City to use the City Easement pursuant to the terms thereof. The City shall execute such document(s) as may be requested by the Owner for the purpose of further evidencing the termination of the rights granted herein.
8. Compliance. The City and the Owner shall comply with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
9. Authorized Agent. The City Engineer or the Engineer's designee is hereby designated as the official representative of the City for the enforcement of all provisions of this Consent, with authority to administer this Consent lawfully on behalf of the City.
10. Severability. If any term or provision of this Consent is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and

provisions of this Consent and the same shall continue to be effective to the fullest extent permitted by law.

11. Binding Effect. This Consent shall be binding upon the City, the Owner, and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned hereby consents to the terms provided in this Consent as of the date first set forth above.

CITY OF MADISON,
a Wisconsin municipal corporation

By: _____
Satya Rhodes-Conway, Mayor

By: _____
Maribeth Witzel-Behl, City Clerk

AUTHENTICATION

The signatures of Satya Rhodes-Conway, Mayor, and Maribeth Witzel-Behl, Clerk, on behalf of the City of Madison, are authenticated on this ____ day of _____, 2020.

Kevin Ramakrishna, Assistant City Attorney
Member of the Wisconsin Bar

MALAZI LLC,
a Wisconsin non-stock corporation

