

# CITY OF BATAVIA

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**DATE:** February 13, 2013  
**TO:** Public Utilities Committee  
**FROM:** Mustafa Kahvedzic, Project Engineer  
**SUBJECT:** Resolution 13-30-R Authorizing Execution of Easement Agreement and Grant of Easement for 125 W. Wilson

**Summary:**

- Attached is Resolution 13-30-R authorizing the Mayor to execute the Easement Agreement Grant of Easement for 125 W. Wilson. This easement area will be utilized for distribution network improvement and enhance electric system reliability for downtown area.

**Staff recommendations:**

- Recommend Public Utilities Committee and City Council approve Resolution 13-30-R, Authorizing Execution of Easement Agreement and Grant of Easement for 125 W. Wilson.

**Attachments:**

1. Resolution 13-30-R
2. Exhibit 1

**CITY OF BATAVIA, ILLINOIS  
RESOLUTION 13-30-R**

**AUTHORIZING EXECUTION OF EASEMENT AGREEMENT AND GRANT OF  
EASEMENT FOR 125 W. WILSON**

**WHEREAS**, the City of Batavia owns and operates an electric utility whereby it purchases wholesale power and resells same to its citizens; and

**WHEREAS**, in connection therewith, it is necessary and appropriate to make improvements to upgrade and to improve the electric system; and

**WHEREAS**, the City of Batavia has negotiated permanent easements from the owner of the property which said project is to be constructed, pursuant to the terms of easement agreements, attached here to as Exhibit 1; and

**WHEREAS**, it is in the best interest of the City to enter into such agreements.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

**SECTION 1:** That the Mayor and City Clerk are hereby authorized to execute the easement agreement for 125 W. Wilson attached hereto as Exhibit 1.

CITY OF BATAVIA, ILLINOIS RESOLUTION 13-30-R

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**PRESENTED** to and **PASSED** by the City Council of the City of Batavia, Illinois, this 1st day of April, 2013.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, this 1st day of April, 2013.

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Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Sparks				
2	Dietz					Wolff				
3	Jungles					Chanzit				
4	Volk					Stark				
5	Frydendall					Thelin Atac				
6	Liva					Clark				
7	Tenuta					Brown				
Mayor Schielke										
<b>VOTE:</b>		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

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Heidi Wetzel, City Clerk

**GRANTOR:**  
**Franchise Realty Investment Trust - IL**

**PROPERTY ADDRESS:**  
**125 W. Wilson Street**  
**Batavia, IL 60510**

**P.I.N. 12-22-252-012**

**Return to:**  
**City Clerk**  
**City of Batavia**  
**100 North Island Avenue**  
**Batavia, Illinois 60510-1930**

**Orig. Esmt. Books**

Above space reserved for the County Recorder

**AGREEMENT FOR A PUBLIC UTILITIES AND DRAINAGE EASEMENT**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between Franchise Realty Investment Trust - IL, a Maryland corporation, located at US Legal Department (12-0325), One McDonalds Plaza, Oak Brook, Illinois, 60523, ("Grantor"), and the City of Batavia, an Illinois Municipal Corporation, and home rule unit of government under the constitution and laws of the State of Illinois with offices at 100 North Island Avenue, Batavia, Illinois, 60510-1930, ("Grantee").

*[ Please leave the above date lines blank. The City Clerk will insert the above date when the City officials sign the Agreement. ]*

**RECITALS**

**WHEREAS**, the Grantor is the owner of the real property identified above and legally described on Exhibit A attached hereto and made part hereof ("Subject Property"), and

**WHEREAS**, the Grantee is responsible for the acquisition, construction, and maintenance of certain public utilities and drainage systems, as well as obtaining easements across private properties for constructing and maintaining such systems; and

**WHEREAS**, the Grantee has determined that it is necessary to acquire easement rights across the Subject Property in order to provide and maintain public utilities and drainage facilities; and

**WHEREAS**, the Grantor has determined to grant to the Grantee a non-exclusive permanent easement on a portion of the Subject Property for the purpose of the installation, maintenance, repair, and replacement of various public utilities, drainage facilities and the distribution of energy, sounds and signals as provided herein.

**NOW, THEREFORE**, in consideration of the covenants and promises set forth herein, the parties agree that:

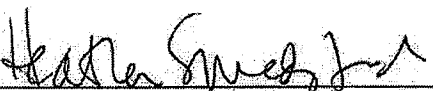
1. The foregoing Recitals are hereby incorporated herein and made part hereof.
2. The Grantor hereby grants to the Grantee a non-exclusive permanent easement on, over under, across and through the property legally described on Exhibit A and depicted on Exhibit B ("Easement Premises") for public utilities purposes.
3. The Grantor further grants to the Grantee, or any of its agents, contractors, employees, and successors the perpetual right, privilege, and authority to enter upon the Easement Premises, with reasonable notice to the Grantor, either by vehicle or on foot to survey, construct, reconstruct, test, repair, inspect, maintain, renew, and operate the various utilities transmission and distribution systems and equipment, including electrical systems, water, sewer, drainage and stormwater systems together with any and all necessary manholes, ductbanks, main valve vaults hydrants, catch basins, connections, appliances, appurtenances, and other structures located on the Easement Premises now or in the future for the purpose of serving the subject property as well as other property, whether or not contiguous thereto, together with the right of access across the Grantor's property for necessary workers and equipment to do any of the required work, collectively ("Grantees Work").
4. This grant of easement shall be subject to the conditions that:
  - a. No permanent structures or buildings shall be constructed or placed by the Grantors on the Easement Premises.
  - b. The Easement Premises may be used for gardens, landscaping, and other purposes that do not then or later conflict with the Grantee's uses or rights.
  - c. The Grantee shall have the right to trim or remove trees, shrubs, or other vegetation on the Easement Premises that interfere with the operation or use of the public utilities.
5. The Grantee or its designees shall, upon completion of any work authorized by this grant of easement, restore the Easement Premises to the same or better surface condition than that existing prior to beginning of the work.
6. The Grantor hereby releases and waives all rights under the Homestead Exemption laws of the State of Illinois as to this grant of easement.
7. Indemnification. Grantee will hold harmless, indemnify and defend Grantor, its lessees, franchisees, licensees, employees, agents, personal representatives, contractors, successors and assigns, against any and all claims, demands, loss, damage, liabilities, costs, expenses and all suits, liens, causes of actions and judgments (including, but not limited to reasonable attorney's fees) arising out of, or in any way related to, or in connection with, or as a result or consequence of Grantee's Work in and/or use of the Easement Premises or Grantee's acts or omissions under this easement agreement, to the extent of Grantee's willful or negligent exercise of rights and privileges granted by this

easement agreement. The Grantee's obligations in this section shall survive any termination or expiration of this easement agreement.

8. Release. Grantee shall enter upon the Easement Premises and conduct Grantee's Work at its sole risk, cost and expense. Grantee hereby waives and relinquishes any and all claims, demands, loss, damage, liabilities, costs, expenses and all suits, liens, causes of actions and judgments related to the subject matter of this easement agreement now or hereafter arising in Grantee or any of its employees', contractors' or agents' favor occasioned by, directly or indirectly, the conditions of the Grantor's Subject Property and the Easement Premises or any improvements thereon or any other facts or occurrences with respect to Grantee's conduct under this easement agreement, other than willful or negligent acts of Grantor. The Grantee's obligations in this section shall survive any termination or expiration of this easement agreement.
- 9 This document contains the entire agreement between the parties relating to the rights granted herein and the obligations herein assumed. Any oral representations or modifications concerning this agreement shall be of no force and effect, and modifications to this agreement shall be in writing and shall be signed by all parties to this agreement.
- 10 This Agreement for a Public Utilities and Drainage Easement shall constitute a covenant running with the land binding upon the Grantors and any of the Grantors' lessees, transferees, successors in interest, heirs, executors, and administrators.
11. The laws of the State of Illinois shall govern the terms of this agreement both as to interpretation and performance and any action brought to enforce the agreement shall be brought in the 16<sup>th</sup> Judicial Circuit Court, Kane County, Illinois.
12. This Agreement shall be recorded by the Grantee with the Kane County Recorder.

IN WITNESS WHEREOF, this Agreement is made and executed as of the date and year first written above.

**GRANTOR: FRANCHISE REALTY INVESTMENT TRUST - IL, a Maryland corporation**

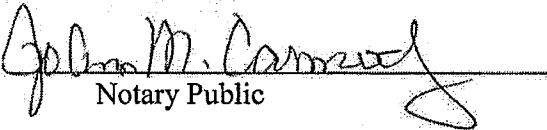
By:   
Heather L. Smedstad, Vice President

Attest:   
Catherine A. Griffin, Assistant Secretary

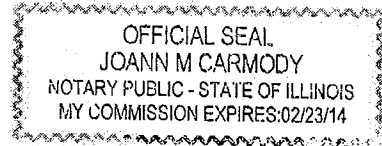
State of Illinois )  
 ) ss  
County of DuPage )

I, JoAnn M. Carmody, a Notary Public in and for the county and state set forth above, CERTIFY that Heather L. Smedstad as Vice President and Catherine A. Griffin as Assistant Secretary of Franchise Realty Investment Trust – IL, a Maryland corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such authorized parties, appeared before me this day in person and acknowledged that they signed, sealed and delivered this instrument as their free and voluntary act as such authorized parties and as the free and voluntary act of the corporation for the uses and purposes described in this instrument.

Given under my hand and notarial seal, this 4th day of February, 2013.

  
Notary Public

My commission expires \_\_\_\_\_.



**GRANTEE: CITY OF BATAVIA**

BY: \_\_\_\_\_  
Jeffrey D. Schielke  
Mayor

ATTEST BY: \_\_\_\_\_  
Heidi L. Wetzel  
City Clerk

State of Illinois )  
 ) ss  
County of Kane )

The foregoing instrument was acknowledged before me by Jeffrey D. Schielke, Mayor, and Heidi L. Wetzel, City Clerk, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
Print Name

**EXHIBIT A**

**Legal description of the Grantors' property:**

That part of the Northeast quarter of Section 22, Township 39 North, Range 8, East of the Third Principal Meridian, described as follows: Commencing at the point of intersection of the Northerly line of Wilson Street with the Westerly line of Island Avenue; thence South 89 Degrees 20 Minutes 00 Seconds West, along the North line of Wilson Street 151.88 feet to an iron pipe and the point of beginning; thence continuing at South 89 Degrees 20 Minutes 00 Seconds West along the North line of Wilson Street, 165.07 feet; thence North 01 Degrees 36 Minutes 00 Seconds West 250.00 feet to an iron pipe; thence continuing at North 01 Degrees 36 Minutes 00 Seconds West 144.62 feet to an iron pipe on the South line of Houston Street; thence North 84 Degrees 19 Minutes 31 Seconds East, along the South line of Houston Street 157.87 feet to an iron pipe; thence South 26 Degrees 32 Minutes 45 Seconds East 32.63 feet to an iron pipe at the Northwest corner of property described in Document Number 1134470 recorded in Book 2508, page 59; thence South 00 Degrees 40 Minutes 00 Seconds East along the West line of said property, 378.99 feet to the point of beginning, in the City of Batavia, Kane County, Illinois.

**Address of the Grantors' property:**

125 W. Wilson Street  
Batavia, IL 60510

**Tax parcel number (PIN) of the Grantors' property:**

12-22-252-012

**Legal description of the Permanent Easement Premises:**

That part of the Northeast Quarter of Section 22, Township 39 North, Range 8, East of the Third Principal Meridian, more particularly described as follows: Commencing at the point of intersection of the Northerly line of Wilson Street with the Westerly line of Island Avenue; thence South 89 Degrees 20 Minutes 00 Seconds West, along the North line of Wilson Street, 316.80 feet to the West line of property as described in Document Number 2011K008424; thence North 01 Degrees 35 Minutes 17 Seconds West, along said West line, 287.35 feet to the Point of Beginning; thence continuing along the last described course, 107.27 feet to the South line of Houston Street; thence North 84 Degrees 22 Minutes 58 Seconds East, along said South line, 10.02 feet; thence South 01 Degrees 35 Minutes 17 Seconds East, 97.93 feet; thence North 87 Degrees 03 Minutes 08 Seconds East, 2.34 feet; thence South 02 Degrees 56 Minutes 52 Seconds East, 2.50 feet; thence North 87 Degrees 03 Minutes 08 Seconds East, 15.22 feet; thence South 19 Degrees 57 Minutes 42 Seconds East, 22.24 feet; thence South 26 Degrees 42 Minutes 32 Seconds East, 24.87 feet; thence South 24 Degrees 11 Minutes 03 Seconds East, 47.36 feet; thence North 89 Degrees 32 Minutes 36 Seconds East, 60.98 feet; thence North 82 Degrees 05 Minutes 36 Seconds East, 39.39 feet; thence North 00 Degrees 39 Minutes 57 Seconds West, 175.08 feet to the Northeast line of property as described in Document Number



Seconds West, 175.08 feet to the Northeast line of property as described in Document Number 2011K008424; thence South 27 Degrees 03 Minutes 59 Seconds East, along said Northeast line, 11.24 feet to the Northwest corner of property as described in Document Number 1134470, said Northwest corner also being on the East line of property as described in Document Number 2011K008424; thence South 00 Degrees 39 Minutes 57 Seconds East, along said east line, 169.41 feet; thence South 82 Degrees 05 Minutes 36 Seconds West, 44.12 feet; thence South 89 Degrees 32 Minutes 36 Seconds East, 59.92 feet; thence South 01 Degrees 07 Minutes 15 Seconds East, 19.19 feet; thence South 88 Degrees 52 Minutes 45 Seconds West, 10.00 feet; thence North 01 Degrees 07 Minutes 15 Seconds West, 31.80 feet; thence North 24 Degrees 11 Minutes 03 Seconds West, 36.86 feet; thence North 26 Degrees 42 Minutes 32 Seconds West, 25.06 feet; thence North 19 Degrees 57 Minutes 42 Seconds West, 18.83 feet; thence South 87 Degrees 03 Minutes 08 Seconds West, 11.52 feet; thence South 02 Degrees 56 Minutes 52 Seconds East, 2.50 feet; thence South 87 Degrees 03 Minutes 08 Seconds West, 12.58 feet to the Point of Beginning, in the City of Batavia, Kane County, Illinois.

