

DRAFTED BY
AND RETURN TO:
Saint Paul Regional Water Services
1900 Rice Street
Saint Paul, Minnesota 55113
Phone: 651-266-6270

(space above this line for Recorder's use only)

PRIVATE WATER MAIN AGREEMENT

THIS AGREEMENT, made this 7th day of June, 2022 by and between MENDOTA MALL ASSOCIATES - WAG, LLC, a Minnesota limited liability company (“Owner 1”), MENDOTA MALL ASSOCIATES, LLC, a Minnesota limited liability company (“Owner 2”), MENDOTA MALL ASSOCIATES - OUTLOTS, LLC, a Minnesota limited liability company (“Owner 3”), MENDOTA PLAZA APARTMENTS, LLC, a Minnesota limited liability company (“Owner 4”), SPAULDING-CASHILL L.L.P., a Minnesota limited liability partnership (“Owner 5”), L&M HOLDINGS, LLC, a Minnesota limited liability company (“Owner 6”) (each, an “Owner” and collectively, “Owners”), and the BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL, a Minnesota municipal corporation (“Board”); and

WITNESSETH:

WHEREAS, the Board during all times herein mentioned did and does manage, control and operate, pursuant to the Home Rule Charter of the City of Saint Paul, its water works and

public water supply system primarily for the purpose of furnishing an adequate supply of water for industrial, commercial and domestic purposes to residents of the City of Saint Paul within its corporate limits, and, by agreement with the City, to residents of the City of Mendota Heights, for the same or similar purposes; and

WHEREAS, Owner 1 owns the following described land, which is situated within the corporate limits of said City of Mendota Heights in the County of Dakota, State of Minnesota, (“Parcel 1”):

Lot 1, Block 1, MENDOTA PLAZA EXPANSION,
according to the recorded plat thereof, Dakota County, Minnesota.

WHEREAS, Owner 2 owns the following described land, which is situated within the corporate limits of said City of Mendota Heights in the County of Dakota, State of Minnesota, (“Parcel 2”):

Lot 2, Block 1, MENDOTA PLAZA EXPANSION,
according to the recorded plat thereof, Dakota County, Minnesota.

WHEREAS, Owner 3 owns the following described land, which is situated within the corporate limits of said City of Mendota Heights in the County of Dakota, State of Minnesota, (“Parcel 3”):

Outlot A, MENDOTA PLAZA EXPANSION SECOND ADDITION, according
to the recorded plat thereof, Dakota County, Minnesota

WHEREAS, Owner 4 owns the following described land, which is situated within the corporate limits of said City of Mendota Heights in the County of Dakota, State of Minnesota, (“Parcel 4”):

Lot 1, Block 2, MENDOTA PLAZA EXPANSION SECOND ADDITION,
according to the recorded plat thereof, Dakota County, Minnesota.

WHEREAS, Owner 5 owns the following described land, which is situated within the

corporate limits of said City of Mendota Heights in the County of Dakota, State of Minnesota,
("Parcel 5"):

Lot 1, Block 1, MENDOTA PLAZA EXPANSION SECOND ADDITION,
according to the recorded plat thereof, Dakota County, Minnesota and Lot 7,
Block 1, MENDOTA PLAZA EXPANSION, according to the recorded plat
thereof, Dakota County, Minnesota.

WHEREAS, Owner 6 owns the following described, land, which is situated within the
corporate limits of said City of Mendota Heights in the County of Dakota, State of Minnesota,
("Parcel 6"):

Lot 8, Block 1, MENDOTA PLAZA EXPANSION, according to the recorded
plat thereof, Dakota County, Minnesota.

WHEREAS, Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 5 and Parcel 6 (each, a "Parcel"
and collectively, "Parcels") are burdened by a Private Water Main Agreement which contained a
perpetual easement, granted to the Board, dated September 8, 2009, recorded as Doc. No. 2731043,
in the files of the County Recorder's office in and for Dakota County, Minnesota ("Original
Agreement"); and

WHEREAS, the Original Agreement was terminated and replaced by a Private Water Main
Agreement dated May 9, 2017, recorded as Doc. No. 3217763, in the files of the County
Recorder's office in and for Dakota County, Minnesota ("May 2017 Agreement") for the purpose
of identifying, granting, and conveying to the Board, a new perpetual water main easement; and

WHEREAS, the Owners and the Board hereby desire to terminate the May 2017
Agreement, and vacate and release said perpetual water main easement, for the purpose of
identifying, granting, and conveying to the Board, a new perpetual water main easement; and

WHEREAS, the Owners have made application to the Board for water supply service to
be afforded from the public water supply system to Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 5
and Parcel 6 according to the rates and charges payable therefore by the Owners, and their
successors or assigns, to the Board as the same may be established from time to time; and

WHEREAS, a private water main has been and will be constructed in accordance with approved plans and specifications on file with the Board, under the supervision and subject to the approval of the Board;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties, for themselves, their successors and assigns, do hereby mutually agree as follows:

1. The Owners and the Board hereby terminate the May 2017 Agreement and vacates and releases the perpetual water main easement granted in the May 2017 Agreement dated May 9, 2017, recorded as Doc. No. 3217763 in the files of the County Recorder's office in and for Dakota County, Minnesota (except to the extent the May 2017 Agreement terminates the Original Agreement, dated September 8, 2009, recorded as Doc. No. 2731043, in the files of the County Recorder's office in and for Dakota County, Minnesota).

2. The Owners do hereby convey and grant to the Board a non-exclusive perpetual water main easement in, under, through, and over and across portions of their respective Parcels, as described and depicted in Exhibit "A", attached hereto and incorporated herein ("Easement Area").

3. The Board does hereby grant permission to the Owners to construct, maintain and repair a private water main necessary for the furnishing of water service to the Parcels subject to the terms and conditions contained herein.

4. All necessary maintenance, repairs, operation and/or replacement of the private water main and service connections shall be borne by the Owners at their sole cost and expense, in strict accordance with plans and specifications approved and on file with the Board under the supervision and approval of the Board. It is expressly understood and agreed that the Owners shall enter into the Water Main Maintenance Agreement as shown in Exhibit "B", of an even date herewith, by which each Owner shall agree to pay all or a proportionate share of the cost of

maintenance and replacement of the private water main and further agree to assume all or a proportionate share of the responsibility and liability arising out of the operation, maintenance, use and repair of the private water main or service pipes; however, the Owners will be jointly and severally liable to the Board with regard to all such costs, expenses and liabilities. The Board shall be provided with two (2) executed copies of the Water Main Maintenance Agreement.

5. The Board, at the request of any Owner(s), or in case of default by any Owner(s), in relation to the construction, reconstruction, maintenance, repair or operation of said private water main, may enter upon Easement Area and construct, reconstruct, maintain, repair or operate said private water main for the aforesaid purposes of the same and all reasonable cost and expense thus incurred by the Board shall be chargeable by the Board to the requesting and/or defaulting Owner(s) and shall become due and payable upon presentation of an invoice therefore; and if such charges are not paid when due, they shall become and constitute a lien upon the Parcel(s) upon which such construction, reconstruction, maintenance, repairs or operations were performed. In the event one Owner(s) pays its share and any of the others does not, said unpaid charges will constitute a lien only upon the Parcel of the Owner(s) which has not paid its share. In the event of nonpayment by an Owner, the Board reserves the right to deny service to any Parcel owned by the non-paying Owner, as the case may be.

6. The Board agrees to supply water service to the Parcels as the same have been or shall be developed for residential and/or commercial purposes, subject to and in accordance with applicable rates or charges, rules and regulations as they are or shall be established from time to time by the Board. It is understood and agreed, however, that the Board undertakes to supply such water supply only in case the pressure in its water mains is sufficient to enable it so to do (provided the Board shall not be permitted to cease such water supply on a permanent basis), and the Board

assumes no responsibility for failure to supply water resulting from acts or conditions beyond its control.

7. It is agreed by and between the parties hereto that this Agreement shall be subject to water service rates, rules and regulations germane to the subject of this Agreement now in force and hereinafter prescribed and promulgated by the Board and further that there shall be and hereby is reserved to the Board the right to change, revise, alter and amend such rates, rules and regulations as their discretion shall direct to that end that such rates, rules and regulations shall be reasonable. Board reserves the right to shut off the water supply for nonpayment of applicable water charges, and it is expressly agreed that such unpaid water charges and costs incurred by the Board pursuant to this Agreement shall be and constitute a lien upon the Parcel incurring such unpaid charges and costs.

8. No extension of the private water main shall be made without the prior written consent of the Board. All necessary service connection taps from the private water main shall be installed by the Board upon due application therefore on a form supplied by the Board and shall be installed by the Board at the cost and expense of the party requesting the same. Official addresses for each service connection shall be obtained by the Owner applying for such service from the City of Mendota Heights and furnished to the Board prior to the installation of service connection taps.

9. The Board reserves the right to shut off the water service when necessary for the extension, replacement, repair or cleaning of the private water main or apparatus appurtenant thereto, and the Board shall not be held liable for any damage occasioned thereby.

10. This Agreement shall be binding upon each Owner, and their respective successors and assigns. The parties intend that their rights and obligations under this Agreement shall run with the land, with respect to each Parcel, and shall be binding on all successors to title thereto. The

Owners shall not otherwise assign their rights and obligations hereunder without first obtaining the written consent of the Board, which consent shall not be unreasonably withheld by the Board.

11. The Owners shall neither construct nor install buildings, structures, trees or any temporary structure, material storage, fixture, or any other objects which may prohibit normal access to water facilities for the above stated purposes within the Easement Area.

12. The Owners shall cause no damage to the approved grade or change in surfacing that would alter the approved depth of cover over the private water main within Easement Area without written permission from the Board.

13. The Owners, and their successors and assigns, shall indemnify, defend and save harmless, the Board, its officers, agents, employees and servants from all suits, actions or claims including any such claims arising between the Owners, which shall arise from any injuries or damage caused by any break or leak in any service pipe, private water main, other main or connection authorized by this Agreement, except those arising from the negligence of the Board that may occur from the furnishing of a supply of water by the Board to the Owners, their tenants, successors and assigns or other persons, firms or corporations served and to be served by this private water main; and further, that the Owners, and their successors and assigns, shall indemnify, defend and save harmless the Board against any claim, action or lawsuit, including any such claims arising between the Owners, brought against the Board, except those arising from the negligence of the Board, in connection with or as a result of the furnishing of such supply of water, by the Board, to the Owners, or other persons, firms or corporations served on the Parcels by such private water main or service connections.

14. Whenever it shall be required or permitted by this Agreement that notice or demand be given or served by any party to or on any other party, such notice or demand shall be delivered

personally or mailed by United States mail to the addresses hereinafter set forth by certified mail. Such notice or demand shall be deemed given when delivered personally or when deposited in the mail in accordance with the above. The addresses of the parties hereto for such mail purposes are as follows, until written notice of change in such address has been given:

- As to the Board: Board of Water Commissioners of the City of Saint Paul
1900 Rice Street
St. Paul, MN 55113
- As to Owner 1: Mendota Mall Associates – WAG, LLC
5320 West 23rd Street, Suite 205
St. Louis Park, MN 55416
- As to Owner 2: Mendota Mall Associates, LLC
5320 West 23rd Street, Suite 205
St. Louis Park, MN 55416
- As to Owner 3: Mendota Mall Associates - Outlots, LLC
5320 West 23rd Street, Suite 205
St. Louis Park, MN 55416
- As to Owner 4: Mendota Plaza Apartments, LLC
1289 Grand Ave
Saint Paul, MN 55105
- As to Owner 5: Spaulding-Cashill, L.L.P.
1289 Grand Ave c/o At Home Apartments, L.L.C.
Saint Paul, MN 55105
- As to Owner 6: L&M Holdings, LLC
105 Hardman Court
Suite 110
South St. Paul, MN 55075

15. The undersigned represent that they have the power and authority to execute this Agreement on behalf of their respective parties.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first shown above.

For Owner 2:

MENDOTA MALL ASSOCIATES, LLC

By: _____

Its: _____

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, on behalf of Mendota Mall Associates, LLC, a Minnesota Limited Liability Company.

Signature of person taking acknowledgment

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first shown above.

For Owner 3:

MENDOTA MALL ASSOCIATES – OUTLOTS, LLC

By: _____

Its: _____

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, on behalf of Mendota Mall Associates - Outlots, LLC, a Minnesota Limited Liability Company.

Signature of person taking acknowledgment

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first shown above.

For Owner 6:

L&M HOLDINGS, LLC

By: _____

Its: _____

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, on behalf of L&M Holdings, a Minnesota Limited Liability Company.

Signature of person taking acknowledgment

For the Board:

**BOARD OF WATER COMMISSIONERS
OF THE CITY OF SAINT PAUL**

Approved:

Patrick Shea, General Manager
Saint Paul Regional Water Services

By: _____
Mara Humphrey, President

Form Approved:

Lisa Veith, Assistant City Attorney
City of Saint Paul

By: _____
Mollie Gagnelius, Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Mara Humphrey, President, Board of Water Commissioners of the City of Saint Paul, a Minnesota municipal corporation, on behalf of the corporation.

Signature of person taking acknowledgment

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Mollie Gagnelius, Secretary, Board of Water Commissioners of the City of Saint Paul, a Minnesota municipal corporation, on behalf of the corporation.

Signature of person taking acknowledgment

John McCarthy, Director
Office of Financial Services

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by John McCarthy, Director, Office of Financial Services, City of Saint Paul, a Minnesota municipal corporation, on behalf of the corporation.

Signature of person taking acknowledgment

GROUND LESSEE'S CONSENT

The undersigned, MENDOTA RESERVE II, LLC, a Minnesota limited liability company (“Ground Lessee”), is the ground lessee under that certain Ground Lease (“Ground Lease”) by and between Ground Lessee, and ground lessee, and Spaulding-Cashill, L.L.P., a Minnesota limited liability partnership (“Ground Lessor”), as Ground Lessor, dated March 23, 2022, evidenced by that certain Memorandum of Lease by and between Ground Lessee and Ground Lessor, dated March 23, 2022, and filed April 6, 2022 in the Office of the County Recorder, Dakota County, Minnesota, as Document No. 3533176.

The Ground Lease constitutes a valid and subsisting ground lease for the property defined as “Parcel 5” in the Private Water Main Agreement (“Agreement”) to which this Consent is attached. Ground Lessee desires to waive any objection it may have to the execution and acknowledgment of the foregoing Agreement, by the parties thereof, and desires further to consent to the recording of the foregoing Agreement in the office of the County Recorder in and for Dakota County, Minnesota.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Ground Lessee, for itself, its successors, and assigns, hereby consents to the foregoing Agreement, and to all the terms, covenants, easements and conditions contained in said Agreement, and consents to the recording of said Agreement in the office of the County Recorder in and for Dakota County, Minnesota. In addition, Ground Lessee, for itself, its successors and assigns, agrees that the Ground Lease shall be, and the same hereby is made, subject to the foregoing Agreement with the same force and effect as though the foregoing Agreement had been executed, delivered and recorded prior to the date of the Ground Lease.

CONSENT TO TERMINATE

The undersigned, City of Mendota Heights, a Minnesota municipal corporation, hereby consents to the termination of the Private Water Main Agreement dated May 9, 2017, recorded as Doc. No. 3217763, in the files of the County Recorder’s office in and for Dakota County, Minnesota (“May 2017 Agreement). Said termination vacates and releases the perpetual water main easement granted in the May 2017 Agreement.

IN WITNESS WHEREOF, this Consent is executed by the undersigned on this ____ day of _____, _____.

CITY OF MENDOTA HEIGHTS

By: _____

Its: Mayor

By: _____

Its: City Administrator

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____ as Mayor and by _____ as City Administrator of the City of Mendota Heights, a Minnesota municipal corporation, on behalf of said corporation.

(Stamp)

Notary Public

LEGAL DESCRIPTION OF EASEMENT

A 30.00 foot wide easement for water main purposes over, under, and across Lots 1, 2, 7, and 8, Block 1, MENDOTA PLAZA EXPANSION and Lot 1, Block 1, and Lot 1, Block 2, and Outlot A, MENDOTA PLAZA EXPANSION SECOND ADDITION, the centerline of said easement is described as follows: COMMENCING at the southeast corner of Lot 7, Block 1, MENDOTA PLAZA EXPANSION; thence on an assumed bearing of South 89 degrees 51 minutes 28 seconds West along the south line of said Lot 7 a distance of 25.58 feet to the POINT OF BEGINNING of centerline to be described; thence North 01 degrees 07 minutes 11 seconds West a distance of 147.33 feet; thence North 37 degrees 27 minutes 38 seconds East a distance of 134.87 feet; thence North 52 degrees 32 minutes 22 seconds West a distance of 20.81 feet; thence South 52 degrees 32 minutes 22 seconds East a distance of 20.81 feet; thence North 37 degrees 27 minutes 38 seconds East a distance of 131.44 feet to Point "A"; thence North 43 degrees 21 minutes 08 seconds East a distance of 151.00 feet; thence North 42 degrees 24 minutes 02 seconds West a distance of 26.02 feet; thence South 42 degrees 24 minutes 02 seconds East a distance of 26.02 feet; thence North 38 degrees 39 minutes 56 seconds East a distance of 59.75 feet; thence North 01 degrees 22 minutes 50 seconds West a distance of 61.10 feet; thence North 54 degrees 05 minutes 11 seconds East a distance of 132.01 feet; thence North 09 degrees 05 minutes 11 seconds East a distance of 6.95 feet to Point "B"; thence continuing North 09 degrees 05 minutes 11 seconds East a distance of 23.76 feet; thence North 35 degrees 54 minutes 49 seconds West a distance of 20.00 feet; thence North 09 degrees 05 minutes 11 seconds East a distance of 11.33 feet; thence North 80 degrees 54 minutes 45 seconds West a distance of 48.04 feet; thence South 80 degrees 54 minutes 45 seconds East a distance of 48.04 feet; thence North 09 degrees 05 minutes 11 seconds East a distance of 17.63 feet; thence North 44 degrees 54 minutes 12 seconds East a distance of 110.17 feet to Point "C"; thence continuing North 44 degrees 54 minutes 12 seconds East a distance of 41.48 feet; thence North 59 degrees 46 minutes 28 seconds East a distance of 12.80 feet; thence South 30 degrees 15 minutes 32 seconds East a distance of 30.42 feet; thence North 30 degrees 15 minutes 32 seconds West a distance of 30.42 feet; thence North 59 degrees 46 minutes 28 seconds East a distance of 17.00 feet and said centerline there terminating.

Together with a 30.00 foot wide easement for water main purposes over, under, and across the first above described property, the centerline of said easement is described as follows: BEGINNING at the hereinbefore described Point "A"; thence North 58 degrees 33 minutes 22 seconds West a distance of 129.45 feet; thence North 27 degrees 50 minutes 26 seconds East a distance of 29.40 feet; thence South 27 degrees 50 minutes 26 seconds West a distance of 29.40 feet; thence North 62 degrees 39 minutes 19 seconds West a distance of 182.44 feet; thence North 57 degrees 56 minutes 47 seconds West a distance of 139.05 feet; thence South 24 degrees 45 minutes 04 seconds West a distance of 4.89 feet to Point "D"; thence North 61 degrees 02 minutes 15 seconds West a distance of 234.84 feet to a northwesterly line of Lot 2, Block 1, MENDOTA PLAZA EXPANSION; thence South 61 degrees 02 minutes 15 seconds East a distance of 234.84 feet to said Point "D"; thence South 24 degrees 45 minutes 04 seconds West a distance of 25.72 feet; thence North 65 degrees 14 minutes 56 seconds West a distance of 27.68 feet; thence South 65 degrees 14 minutes 56 seconds East a distance of 27.68 feet; thence South 24 degrees 45 minutes 04 seconds West a distance of 205.26 feet; thence South 00 degrees 44

EXHIBIT A

minutes 09 seconds East a distance of 370.46 feet to the south line of Lot 8 and said centerline there terminating.

Together with a 30.00 foot wide easement for water main purposes over, under, and across the first above described property, the centerline of said easement is described as follows: BEGINNING at the hereinbefore described Point "B"; thence South 80 degrees 54 minutes 49 seconds East a distance of 3.36 feet; thence South 35 degrees 55 minutes 01 seconds East a distance of 52.30 feet; thence North 54 degrees 05 minutes 11 seconds East a distance of 23.38 feet; thence South 54 degrees 05 minutes 11 seconds West a distance of 23.38 feet; thence South 35 degrees 55 minutes 01 seconds East a distance of 17.01 feet and said centerline there terminating.

Together with a 30.00 foot wide easement for water main purposes over, under, and across the first above described property, the centerline of said easement is described as follows: COMMENCING at the hereinbefore described Point "B"; thence North 09 degrees 05 minutes 11 seconds East a distance of 23.76 feet; thence North 35 degrees 54 minutes 49 seconds West a distance of 20.00 feet; thence North 09 degrees 05 minutes 11 seconds East a distance of 11.33 feet; thence North 80 degrees 54 minutes 45 seconds West a distance of 30.00 feet to the point of BEGINNING of centerline to be described; thence North 09 degrees 05 minutes 11 seconds East a distance of 27.32 feet; thence North 44 degrees 54 minutes 12 seconds East a distance of 15.79 feet and said centerline there terminating.

Together with a 30.00 foot wide easement for water main purposes over, under, and across the first above described property, the centerline of said easement is described as follows: BEGINNING at hereinbefore described "Point C"; thence North 45 degrees 05 minutes 44 seconds West a distance of 29.98 feet; thence North 44 degrees 54 minutes 12 seconds East a distance 17.35 feet; thence North 01 degree 27 minutes 28 seconds East a distance of 8.52 feet; thence South 88 degrees 53 minutes 20 seconds East a distance of 24.40 feet and said centerline there terminating.

EXHIBIT A

EXHIBIT B

WATER MAIN MAINTENANCE AGREEMENT

This Water Main Maintenance Agreement (this “Agreement”) is made effective this ____ day of ____, 2022 (“Effective Date”), by and among **MENDOTA MALL ASSOCIATES - WAG, LLC**, a Minnesota limited liability company (“Owner 1”); **MENDOTA MALL ASSOCIATES, LLC**, a Minnesota limited liability company (“Owner 2”); **MENDOTA MALL ASSOCIATES - OUTLOTS, LLC**, a Minnesota limited liability company (“Owner 3”); **MENDOTA PLAZA APARTMENTS, LLC**, a Minnesota limited liability company (“Owner 4”); **SPAULDING-CASHILL, L.L.P.**, a Minnesota limited liability partnership (“Owner 5”) and **L&M HOLDINGS, LLC**, a Minnesota limited liability company (“Owner 6”). The Owners may be individually referred to herein as a “party” or collectively as the “parties.”

RECITALS

- A. Owner 1 is the fee owner of certain real property located in Mendota Heights, Dakota County, Minnesota, legally described on Exhibit A, attached hereto and incorporated herein (“Parcel 1”).
- B. Owner 2 is the fee owner of certain real property located in Mendota Heights, Dakota County, Minnesota, legally described on Exhibit B, attached hereto and incorporated herein (“Parcel 2”).
- C. Owner 3 is the fee owner of certain real property located in Mendota Heights, Dakota County, Minnesota, legally described on Exhibit C, attached hereto and incorporated herein (“Parcel 3”).
- D. Owner 4 is the fee owner of certain real property located in Mendota Heights, Dakota County, Minnesota, legally described on Exhibit D, attached hereto and incorporated herein (“Parcel 4”).
- E. Owner 5 is the fee owner of certain real property located in Mendota Heights, Dakota County, Minnesota, legally described on Exhibit E, attached hereto and incorporated herein (“Parcel 5”).

EXHIBIT B

- F. Owner 6 is the fee owner of certain real property located in Mendota Heights, Dakota County, Minnesota, legally described on Exhibit F, attached hereto and incorporated herein (“Parcel 6”).
- G. Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 5, and Parcel 6 (each, a “Parcel” and collectively, the “Parcels”) are subject to that certain Private Water Main Agreement, dated May ___, 2022, by and between the Owners and the Board of Water Commissioners of the City of Saint Paul, a Minnesota municipal corporation (the “Board”), filed on _____, 2022, as Doc. No. _____ in the Office of the Dakota County Recorder (the “Private Water Main Agreement”), whereby the Owners granted to the Board a perpetual water main easement over certain real property described and depicted on Exhibit A, therein (the “Water Main Easement Area”).
- H. The Parcels are also subject to that certain Declaration of Easements, Covenants, Conditions and Restrictions, dated December 16, 2009, filed March 22, 2010, as Doc. No. 2720496 in the Office of the Dakota County Recorder, as amended by that certain First Amendment to Declaration of Easements, Covenants, Conditions and Restrictions, dated May 7, 2012, filed May 25, 2012, as Doc. No. 2870428 in the Office of the Dakota County Recorder, as further amended by that certain Second Amendment to Declaration of Easements, Covenants, Conditions and Restrictions, dated November 7, 2016, filed November 17, 2016, as Doc. No. 3161886 in the Office of the Dakota County Recorder and as further amended by that certain Third Amendment to Declaration of Easements, Covenants, Conditions and Restrictions, dated May ___, 2022, filed on _____, 2022, as Doc. No. _____ in the Office of the Dakota County Recorder (collectively, the “Declaration”).
- I. The Owners desire to enter into this Agreement to set forth the terms relating to their respective maintenance and payment obligations for the water main servicing their respective Parcels.

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

AGREEMENT

1. Recitals. The recitals and definitions set forth above are incorporated into this Agreement as part of the terms hereof.
2. Owners. As used herein, the term “Owners” means Owner 1, Owner 2, Owner 3,

EXHIBIT B

Owner 4, Owner 5, Owner 6 and their respective successors and assigns, or any successors or assigns thereof who become owners of any portion of the Parcels, and the term “Owner” means any one of the Owners.

3. Maintenance of Water Main Facilities. The Private Water Main Agreement requires The Owners to perform certain maintenance, repairs and replacements (the “PWMA Obligations”) to the water main and service connections described in the Private Water Main Agreement (the “Water Main Facilities”). Each Owner hereby covenants and agrees, to perform, at its sole cost and expense, all of the PWMA Obligations pertaining to the portion of the Water Main Facilities located upon such Owner’s Parcel and keep such portion of the Water Main Facilities in a good state of repair and safe and working condition in accordance with Section 2.2(D) of the Declaration (collectively, the “Maintenance Obligations”).

4. Self-Help Rights. If any Owner (a “Defaulting Owner”) fails to perform its Maintenance Obligations and such failure is not cured within ten (10) days after delivery of written notice thereof from any other Owner (the “Notifying Owner”), then the Notifying Owner, its agents and contractors shall have the right, but not the obligation, to perform such Maintenance Obligations on behalf of the Defaulting Owner (Self-Help Rights”). Notwithstanding the foregoing, in the event of emergency, including any material interference with the operation of any business located on such other Owner’s Parcel as a result of such failure, only twenty-four (24) hours’ prior written notice shall be required from a Notifying Owner before the Notifying Owner shall have Self-Help Rights. Each Owner hereby grants each other Owner a perpetual non-exclusive appurtenant easement over, under, upon, and across and within the portion of the Water Main Easement Area with its Parcel and such immediately surrounding areas within said Parcel as may be reasonably necessary for another Owner to exercise any Self-Help Rights that may accrue pursuant to this Section 4 (the “Maintenance Easement”).

If a Notifying Owner performs any Maintenance Obligations on behalf of a Defaulting Owner pursuant to the foregoing, then all costs associated with such Maintenance Obligations shall be reimbursed to the Notifying Owner by the Defaulting Owner within fifteen (15) days after the delivery of written notice requesting the same.

5. Lien Rights. Any claim for reimbursement by a Notifying Owner against a Defaulting Owner under Section 4 of this Agreement shall be assessed against the Defaulting Owner, and shall constitute a lien (an “Assessment Lien”) against the Defaulting Owner’s Parcel in relation to which said reimbursement is owed, until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the County Recorder of Dakota County, Minnesota; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges, which by applicable law are expressly made superior, (ii) all liens recorded against the Defaulting Owner’s Parcel in the Office of the County Recorder of Dakota County,

EXHIBIT B

Minnesota, prior to the date of recordation of said notice of lien, and (iii) all leases entered into with unaffiliated third-parties, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded and leases entered into subsequent to the recordation of notice of an Assessment Lien shall be junior and subordinate to such Assessment Lien. Upon payment of the full amount secured by the Assessment Lien, the Owner that recorded the notice of lien shall promptly record an appropriate release of such notice of lien and Assessment Lien.

6. Allocation of Liability; Indemnification. Each Owner agrees to indemnify, defend and hold harmless the other Owners and their respective members, managers, partners, shareholders, directors, officers, advisors and other agents employees and affiliates (collectively, the “Indemnified Parties”) from and against any and all liability, damages, claims, losses, charges, costs and expenses (including, without limitation, attorneys’ fees and court costs) paid or incurred by any of the Indemnified Parties (collectively, “Losses”) arising out of the operation, maintenance, use and repair of the Water Main Facilities, to the extent caused by such Owner’s negligence or willful misconduct.

7. Mutual Waiver of Subrogation. Notwithstanding anything herein to the contrary, each Owner waives all claims for recovery from any other Owner for any loss or damage for which such other Owner would otherwise be liable for hereunder to the extent covered by the insurance each Owner is required to maintain pursuant to Section 8 of the Declaration.

8. Default; Remedies. In the event any violation or threatened violation by an Owner of any of the terms, covenants and conditions in this Agreement, any other Owner, will have, in addition to the right to collect damages and to pursue any other remedy provided herein or available at law or in equity, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

9. No Waiver. Failure of any Owner to insist, in any one or more instances, upon strict performance of any term or condition of this Agreement will not be construed as a waiver or relinquishment of such term or condition in the future.

10. Liability of Owners and Successors. Each Owner is liable for the performance of such obligations with respect to its Parcel(s) accruing during the period of ownership, and said liability will continue until the Parcel is conveyed, at which time the conveying Owner’s personal liability for obligations not accrued shall terminate. Upon any conveyance of a Parcel (or the portion of a Parcel on which the Water Main Facilities are located), the conveying Owner will be released from any further obligation under this Agreement arising thereafter with respect to such Parcel, or portion thereof conveyed. Each Owner agrees to execute and deliver any documents reasonably necessary to evidence such release for the purpose of recording or otherwise, which documents

EXHIBIT B

will be duly executed by the Owner. However, no failure of an Owner to execute or deliver such a document will render a release invalid.

11. Estoppel Certificates. Each Owner, within fifteen (15) days of its receipt of a written request from another Owner, shall from time to time provide the requesting Owner a certificate binding upon such Owner stating (i) to the best of such Owner's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so, identifying such default or violation, and (ii) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

12. Notices. All notices and other communications required or permitted to be given hereunder shall be given in writing and sent by (i) overnight delivery service via Federal Express with proof of deliver, (ii) certified mail, return receipt requested, postage prepaid; (iii) or e-mail transmission, provided the sender's email system confirms receipt, and addressed to the parties at the addresses indicated below (or to any other addresses designated by the parties in writing).

Owner 1: Mendota Mall Associates - WAG, LLC
Attn: Howard Paster
5320 W. 23rd Street, Suite 205
St. Louis Park, MN 55416
Email: hp@pasterprop.com

Owner 2: Mendota Mall Associates, LLC
Attn: Howard Paster
5320 W. 23rd Street, Suite 205
St. Louis Park, MN 55416
Email: hp@pasterprop.com

Owner 3: Mendota Mall Associates - Outlots, LLC
Attn: Howard Paster
5320 W. 23rd Street, Suite 205
St. Louis Park, MN 55416
Email: hp@pasterprop.com

Owner 4: Mendota Plaza Apartments, LLC
Attn: Leanna Stefaniak
1289 Grand Avenue
St. Paul, MN 55105
Email: lstefaniak@aha-mn.com

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Owner 5: Spaulding-Cashill, LLP
Attn: Leanna Stefaniak
1289 Grand Avenue
St. Paul, MN 55105
Email: lstefaniak@aha-mn.com

Owner 6: L&M Holdings, LLC
Attn: _____
105 Hardman Court
Suite 110
South St. Paul, MN 55075
Email: _____

Any notice or communication given in accordance with the foregoing shall be deemed to have been given (i) as of one business day after mailing (if sent by overnight delivery service via Federal Express with proof of delivery); (ii) as of three business days after mailing (if mailed registered or certified, return receipt requested, postage prepaid); or (iii) as of the date of transmission of the email (if sent by email).

13. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Parcels. No easements, except those expressly set forth herein shall be implied by this Agreement.

14. Running of Benefits and Burdens. All provisions of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the Parcels and the Owners, and their respective successors and assigns.

15. Force Majeure. If performance of any act or obligation of any Owner is prevented or delayed by an act of God, war, labor disputes, unavailability of labor or materials or other cause beyond the reasonable control of such Owner, the time for the performance of the act or obligation will be extended for a period that such act or performance is delayed or prevented by any such cause; provided, however, than an Owner's inability to perform its obligations hereunder due to financial incapacity or its own negligence will not constitute unavoidable delay. The delay will be excusable under this Section only if the Owner unable to perform informs the other Owners in writing of the existence and nature of the delay and the time period reasonably necessary to cure the default.

16. Amendments. This Agreement may only be altered or amended by written agreement

EXHIBIT B

signed by all of the then-current Owners of the Parcels. No termination, modification or amendment will be effective until a written instrument has been recorded in the recorder's or registrar's office for Dakota County, Minnesota.

17. Severability. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement.

18. Attorneys' Fees. In the event that any proceeding, suit or action is brought by any Party under this Agreement to enforce any of its terms, it is agreed that the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred.

19. Binding Effect. This Agreement is binding upon and inures to the benefit of each of The parties hereto and their respective successors and assigns.

20. Governing of Law. The interpretation, validity, performance, and enforcement of this Agreement shall be governed by and construed under the laws of the State of Minnesota without regard to conflict of law principles.

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

[Signature Pages Follow]

EXHIBIT B

Signature Page 1 of 6 to Water Main Maintenance Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OWNER 1:

**MENDOTA MALL ASSOCIATES - WAG, LLC, a
Minnesota limited liability company**

By: Howard A. Paster
Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Howard A. Paster, as Chief Manager of Mendota Mall Associates - WAG, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

EXHIBIT B

Signature Page 2 of 6 to Water Main Maintenance Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OWNER 2:

MENDOTA MALL ASSOCIATES, LLC, a
Minnesota limited liability company

By: Howard A. Paster
Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Howard A. Paster, as Chief Manager of Mendota Mall Associates, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

EXHIBIT B

Signature Page 3 of 6 to Water Main Maintenance Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OWNER 3:

**MENDOTA MALL ASSOCIATES - OUTLOTS,
LLC, a Minnesota limited liability company**

By: Howard A. Paster
Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Howard A. Paster, as Chief Manager of Mendota Mall Associates - Outlots, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

EXHIBIT B

Signature Page 4 of 6 to Water Main Maintenance Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OWNER 4:

MENDOTA PLAZA APARTMENTS, LLC, a
Minnesota limited liability company

By: Leanna Stefaniak
Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Leanna Stefaniak, as Chief Manager of Mendota Plaza Apartments, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

EXHIBIT B

Signature Page 5 of 6 to Water Main Maintenance Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OWNER 5:

Spaulding-Cashill, L.L.P., a Minnesota limited liability partnership

By: Michael E. Cashill, as trustee of The Alan J. Spaulding Irrevocable Trust effective September 12, 2019
Its: Partner

By: Alan J Spalding, as trustee of The Michael E. Cashill Irrevocable Trust effective September 12, 2019
Its: Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Michael E. Cashill, as trustee of the Alan J. Spaulding Irrevocable Trust effective September 12, 2019, and by Alan J. Spalding, as trustee of the Michael E. Cashill Irrevocable Trust effective September 12, 2019, as the Partners of Spaulding-Cashill, L.L.P., a Minnesota limited liability partnership, on behalf of said limited liability partnership.

Notary Public

Signature Page 6 of 6 to Water Main Maintenance Agreement

EXHIBIT B

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OWNER 5:

L&M Holdings, LLC., a Minnesota limited liability company

By:
Its:

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, as _____ of L&M Holdings, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

EXHIBIT B

EXHIBIT A

LEGAL DESCRIPTION OF OWNER 1 PROPERTY

“Parcel 1”

Lot 1, Block 1, Mendota Plaza Expansion, Dakota County, Minnesota

EXHIBIT B

EXHIBIT B **LEGAL DESCRIPTION OF OWNER 2 PROPERTY**

“Parcel 2”

Lot 2, Block 1, Mendota Plaza Expansion, Dakota County, Minnesota

EXHIBIT B

EXHIBIT C

LEGAL DESCRIPTION OF OWNER 3 PROPERTY

“Parcel 3”

Lots 7 and 8, Block 1, Mendota Plaza Expansion, Dakota County, Minnesota

Outlot A, Mendota Plaza Expansion Second Addition, Dakota County, Minnesota

EXHIBIT B

EXHIBIT D

LEGAL DESCRIPTION OF OWNER 4 PROPERTY

“Parcel 4”

Lot 1, Block 2, Mendota Plaza Expansion Second Addition, Dakota County, Minnesota

EXHIBIT B

EXHIBIT E **LEGAL DESCRIPTION OF OWNER 5 PROPERTY**

“Parcel 5”

Lot 1, Block 1, Mendota Plaza Expansion Second Addition, Dakota County, Minnesota

Lot 7, Block 1, Mendota Plaza Expansion, Dakota County, Minnesota.

EXHIBIT B

EXHIBIT E

LEGAL DESCRIPTION OF OWNER 5 PROPERTY

“Parcel 6”

Lot 8, Block 1, Mendota Plaza Expansion, Dakota County, Minnesota

EXHIBIT B

MORTGAGEE'S CONSENTS TO WATER MAIN MAINTENANCE AGREEMENT

(Following Pages)

