

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

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

Finance No. \_\_\_\_\_

### **PRIVATE WATER MAIN AGREEMENT**

THIS AGREEMENT, made this 10th day of February, 2015 by and between Sibley Cove, Limited Partnership, a Minnesota limited partnership (“Owner 1”), ECC White Bear Avenue LLC, an Indiana limited liability company (“Owner 2”), Chung Hing Wong and Lan Tu Wong (collectively, “Owner 3”), and the BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL, a Minnesota municipal corporation (“Board”); and

WITNESSETH:

WHEREAS, 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 incidentally to residents of the City of Maplewood, 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 Maplewood in the County of Ramsey, State of Minnesota, (“Lot 1”):

1996 County Road D E; and

WHEREAS, Owner 2 owns the following described land, which is situated within the corporate limits of said City of Maplewood in the County of Ramsey, State of Minnesota, (“Lot 2”):

3094 White Bear Ave; and

WHEREAS, Owner 3 owns the following described land, which is situated within the corporate limits of said City of Maplewood in the County of Ramsey, State of Minnesota, (“Lot 3”):

3070 White Bear Ave; and

WHEREAS, Owner 2 and Owner 3 have made application to the Board for water supply service to be afforded from the public water supply system according to the rates and charges payable therefore by Owner 2, Owner 3, 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 constructed in accordance with approved plans and specifications on file with the Board within the boundaries of Lot 1, which is adjacent to Lot 2 and Lot 3; and

WHEREAS, Owner 2 has paid the Board an administrative fee of \$500.00;

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. Owner 1 does hereby convey and grant to the Board a perpetual water main easement in, under, through, and over and across the portions of Lot 1 described and depicted in Exhibit "A", attached hereto and incorporated herein ("Easement Area"). Said water main easement shall be for the purpose of maintaining, repairing, operating, and replacing the existing subsurface water main located in the Easement Area to provide service to Lot 2 and Lot 3, and shall not be used for any other purpose without the written consent of Owner 1.

2. Board does hereby grant permission to Owner 2, and Owner 3 (each, a "Permitted User" and collectively, "Permitted Users") to maintain and repair the private water main necessary for the furnishing of water service to Lot 2 and Lot 3 subject to the terms and conditions contained herein. For the avoidance of doubt, Owner 1 is not a "Permitted User" for purposes of this Agreement.

3. All necessary maintenance, repairs, operation and/or replacement of the main and service connections shall be borne by the Permitted Users for that portion of the private water main situated in Lot 1 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 Permitted Users shall enter into an agreement by which each Permitted User 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 main or service pipes; however, the Permitted Users will be jointly and severally liable to the Board with regard to all such costs, expenses and liabilities. This agreement shall be in form as to be subject to the approval of the Board, and the Board shall be provided with two (2) executed copies of the agreement.

4. Board, at the request of Owner 1, or in case of default by Owner 2 and/or Owner 3, in relation to the construction, reconstruction, maintenance, repair or operation of said private main, may enter upon Easement Area and construct, reconstruct, maintain, repair or operate said private 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 Permitted Users 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 real property of the Permitted User served. In the event one Permitted User pays its share and any of the others does not, said unpaid charges will constitute a lien only upon the property of the Permitted User which has not paid its share. In the event of nonpayment, Board reserves the right to deny service to Lot 2 or Lot 3, as the case may be.

5. Board agrees to supply water service to Lot 2 and Lot 3 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 mains is sufficient to enable it so to do, and Board assumes no responsibility for failure to supply water resulting from acts or conditions beyond its control.

6. 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.

7. 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 each owner from the City of Maplewood and furnished to the Board prior to the installation of service connection taps.

8. 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 Board shall not be held liable for any damage occasioned thereby.

9. This Agreement shall be binding upon Owner 1, Owner 2, Owner 3, 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 of Lot 1, Lot 2, and Lot 3, and shall be binding on all successors to title thereto. Owner 2 and Owner 3 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.

10. Owner 2, in consideration of its being supplied water by the Board, upon the terms and conditions herein outlined, shall comply strictly with all of the rules and regulations of the Board, and shall pay or cause to be paid unto the Board therefore according to all applicable rates and charges prescribed and promulgated therefore by the Board now in existence or as may be modified or amended. 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 Lot 2.

11. Owner 3, in consideration of its being supplied water by the Board, upon the terms and conditions herein outlined, shall comply strictly with all of the rules and regulations of the Board, and shall pay or cause to be paid unto the Board therefore according to all applicable rates and charges prescribed and promulgated therefore by the Board now in existence or as may be modified or amended. 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 Lot 3.

12. With the exception of any improvements, landscaping, vegetation, or other objects which may exist within the Easement Area as of the date of this Agreement, and replacements thereof, Owner 1 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 Easement Area. Owner 1 shall cause no damage or disturbance to the existing grade within the Easement Area or material change in surfacing within Easement Area without written permission from the Board, which permission shall not be unreasonably withheld.

13. Owner 2, Owner 3, and their respective 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 Owner 1, Owner 2, and/or Owner 3 or any combination thereof, which shall arise from any injuries or damage caused by any break or leak in any service pipe, private 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 Owner 2, Owner 3, their respective tenants, successors and assigns or other persons, firms or corporations served and to be served by this private water

main; and further, that Owner 2 and/or Owner 3, or any combination thereof, and their respective successors and assigns, shall indemnify, defend and save harmless the Board against any claim, action or lawsuit, including any such claims arising between Owner 1, Owner 2, and/or Owner 3, or any combination thereof, 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 Owner 2 or Owner 3, or other persons, firms or corporations served on Lot 1, Lot 2, or Lot 3 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 timely 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:                    Sibley Cove, Limited Partnership  
7645 Lyndale Avenue South, Suite 200  
Minneapolis, MN 55423

With a copy to:

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402  
Attn: Jeff Koerselman

As to Owner 2:                    ECC White Bear Avenue LLC  
725 East 65<sup>th</sup> Street, Suite 300  
Indianapolis, Indiana 46220  
Attn: Thomas English, Manager

As to Owner 3:                    Chung Hing Wong and Lan Tu Wong

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

**Owner 1**

**Sibley Cove, Limited Partnership,**

By: Ariel Group, LLC

Its: General Partner

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

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, on behalf of Ariel Group, LLC, the General Partner of Sibley Cove, Limited Partnership, a Minnesota limited partnership, on behalf of the partnership.

\_\_\_\_\_  
Signature of person taking acknowledgment

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

**Owner 2**

**ECC WHITE BEAR AVENUE LLC**

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

Thomas English, Manager

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Thomas English, the Manager, on behalf of ECC White Bear Avenue LLC.

\_\_\_\_\_  
Signature of person taking acknowledgment



**For the Board:**

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

Approved:

\_\_\_\_\_  
Stephen P. Schneider, General Manager  
Saint Paul Regional Water Services

By: \_\_\_\_\_  
Matt Anfang, 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 \_\_\_\_\_, 2015, by Matt Anfang, 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 \_\_\_\_\_, 2015, 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

\_\_\_\_\_  
Todd Hurley, Director  
Office of Financial Services

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Todd Hurley, Director, Office of Financial Services, City of Saint Paul, a Minnesota municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Signature of person taking acknowledgment

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## Legal Description – Water Main Easement

A 30.00 foot wide easement for utility purposes, over, under and across that part of the Northwest Quarter of Section 2, Township 29, Range 22, Ramsey County, Minnesota. The centerline of said easement is described as follows:

Commencing at the northeast corner of said Northwest Quarter; thence South 89 degrees 47 minutes 13 seconds West, assumed bearing along the north line of said Northwest Quarter, a distance of 200.02 feet to the point of beginning of the centerline to be described; thence South 00 degrees 56 minutes 15 seconds East a distance of 530.77 feet; thence South 89 degrees 43 minutes 07 seconds West a distance of 128.66 feet and there terminating.

Together with a strip of land 2.00 feet in width westerly of and adjoining the above described strip which lies southerly of a line drawn at right angles to the centerline from a point thereon distant 252.81 feet from the point of beginning and northerly of a line drawn at right angles to the centerline from a point thereon distant 340.32 feet from the point of beginning.

And together with a strip of land 20.00 feet in width northerly of and adjoining the above described strip which lies westerly of a line drawn at right angles to the centerline from a point thereon distant 636.88 feet from the point of beginning and easterly of a line drawn at right angles to the centerline from the point of termination.

# Depiction of Water Main Easement

