

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)

Finance No. _____

PRIVATE WATER MAIN AGREEMENT

THIS AGREEMENT, made this 9th day of May, 2017 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") (each, an "Owner" and collectively, "Owners"), the CITY OF MENDOTA HEIGHTS, a Minnesota municipal corporation ("City") 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”):

Lots 7 and 8, Block 1, MENDOTA PLAZA EXPANSION,
according to the recorded plat thereof, Dakota County, Minnesota, together with
Lot 1, Block 1, and 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, Parcel 1, Parcel 2, Parcel 3, and Parcel 4 (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 Owners, the Board and the City hereby desire to terminate the Original 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, and Parcel 4 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 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; and

WHEREAS, Owner 2 has paid the Board inspection costs and 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. The Owners, the Board and the City hereby terminate the Original Agreement (except to the extent the Original Agreement terminates, vacates and releases the perpetual utility easement dated September 21, 1970, recorded as Doc. No. 378820 in the files of Dakota County, Minnesota Registrar of Deeds), and vacates and releases the perpetual water main easement

granted in 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 the City: City of Mendota Heights
Mendota Heights City Administrator
1101 Victoria Curve
Mendota Heights, MN 55118

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
616 Lincoln Ave
Saint Paul, MN 55102

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 1:

MENDOTA MALL ASSOCIATES – WAG, LLC

By: _____

Its: _____

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, on behalf of Mendota Mall Associates - WAG, 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 2:

MENDOTA MALL ASSOCIATES, LLC

By: _____

Its: _____

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
2017, 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 _____, 2017, 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 4:

MENDOTA PLAZA APARTMENTS, LLC

By: _____

Its: _____

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, on behalf of Mendota Plaza Apartments, LLC, a Minnesota Limited Liability Company.

Signature of person taking acknowledgment

For the City:

CITY OF MENDOTA HEIGHTS

By: _____
Its: Mayor

Date: _____

By: _____
Its: City Manager

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____ and _____, Mayor and City Manager, respectively, of the City of Mendota Heights, a Minnesota municipal corporation, on behalf of the corporation.

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 _____,
2017, 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 _____,
2017, 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 _____,
2017, 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

LEGAL DESCRIPTION

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 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: BEGINNING at the hereinbefore described Point "C"; thence North 45 degrees 04 minutes 18 seconds West a distance of 62.89 feet; thence North 00 degrees 04 minutes 47 seconds West a distance of 32.40 feet; thence South 00 degrees 04 minutes 47 seconds East a distance of 32.40 feet; thence South 89 degrees 55 minutes 16 seconds West a distance of 141.79 feet; thence South 44 degrees 55 minutes 13 seconds West a distance of 40.09 feet and said centerline there terminating.