

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. _____

FIRST AMENDMENT TO PRIVATE WATER MAIN AGREEMENT

THIS AMENDMENT, made this 10th day of October, 2017 by and among Sibley Cove, Limited Partnership, a Minnesota limited partnership ("Owner 1"), AEI National Income Property Fund VIII LP, a Minnesota limited partnership ("Owner 2"), Maplewood Partners LLC, a Minnesota limited liability company ("Owner 3"), ECC White Bear Avenue II LLC, an Indiana limited liability company ("Owner 4"), and the BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL, a Minnesota municipal corporation ("Board"); and

WITNESSETH:

WHEREAS, Owner 1; Owner 2, as successor in interest to ECC White Bear Avenue LLC; Owner 3, as successor in interest to Chung Hing Wong and Lan Tu Wong; and the Board have entered into that certain Private Water Main Agreement dated February 10, 2015, and

recorded in the Office of the Recorder of Ramsey County, Minnesota as Document No. A04550472 (the “Agreement”); and

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 4 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 4”):

3088 White Bear Ave; and

WHEREAS, Owner 4 has requested that the parties amend the Agreement to include Owner 4 and Lot 4 as set forth herein; and

WHEREAS, Owner 4 has paid the Board an administrative fee of \$ _____;

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 easement granted by Owner 1 pursuant to paragraph 1 of the Agreement shall be, and hereby is, amended such that the water main easement granted to the Board shall hereafter include Owner 4 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, Lot 3, and Lot 4, and shall not be used for any other purpose without the written consent of Owner 1.

2. The terms "Permitted User" and "Permitted Users" in paragraph 2 of the Agreement and all other references thereto are hereby amended to include Owner 4 to maintain and repair the private water main necessary for the furnishing of water service to Lot 4 subject to the terms and conditions contained in the Agreement (as modified by this Amendment).

3. All necessary maintenance, repairs, operation and/or replacement of the main and service connections shall be borne by the Permitted Users, including Owner 4, 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, including Owner 4, shall enter into an agreement (or amendment to 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; provided that Owner 4's joint and several liability shall commence as of the date hereof. For the avoidance of doubt, Owner 2's and Owner 3's joint and several liabilities under the Agreement prior to the date hereof shall not be affected by this Amendment. This agreement (or amendment to 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, Owner 3, and/or Owner 4, 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, Lot 3, or Lot 4, as the case may be.

5. Board agrees to supply water service to Lot 4 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. This Amendment shall be binding upon Owner 1, Owner 2, Owner 3, Owner 4, and their respective successors and assigns. The parties intend that their rights and obligations under this Amendment shall run with the land, with respect to each of Lot 1, Lot 2, Lot 3, and Lot 4 and shall be binding on all successors to title thereto. Owner 2, Owner 3, and Owner 4 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.

7. Owner 4, 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 4.

8. Owner 2, Owner 3, Owner 4, 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, Owner 3, and/or Owner 4 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 the Agreement (as modified by this Amendment), in each case, first arising on or after the date hereof, 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, Owner 4, 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, Owner 3, and/or Owner 4, 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, Owner 3, and/or Owner 4, or any combination thereof, brought against the Board and first arising on or after the date hereof, 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, Owner 3, or Owner 4, or other persons, firms or corporations served on Lot 1, Lot 2, Lot 3, or Lot 4 by such private water main or service connections. For the avoidance of doubt, Owner 2's and Owner 3's indemnification obligations first arising prior to the date hereof pursuant to paragraph 13 of the Agreement shall not be affected by this Amendment.

9. Whenever it shall be required or permitted by the Agreement (as amended hereby) 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
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As to Owner 1:	Sibley Cove, Limited Partnership 7645 Lyndale Avenue South, Suite 200 Minneapolis, MN 55423
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With a copy to:

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

As to Owner 2: AEI National Income Property Fund VIII LP
1300 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101

As to Owner 3: Maplewood Partners LLC
1900 E. Golf Road, Suite 950
Schaumburg, IL 60173
Attn: Michael J. Peirce

As to Owner 4: ECC White Bear Avenue II LLC
725 East 65th Street, Suite 300
Indianapolis, Indiana 46220
Attn: Thomas English, Manager

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

11. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

12. The sole purpose and intent of this Amendment is to include Owner 4 and Lot 4 in the Agreement as set forth herein. In the event of any conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall control. Except as expressly provided to the contrary in this Amendment to include Owner 4 and Lot 4, all the terms and conditions of the Agreement shall remain in full force and effect. For the avoidance of doubt, any terms, conditions, covenants, agreements or restrictions in the Agreement not expressly amended, modified or terminated by this Amendment shall remain in full force and effect.

[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 _____, 2017, 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

**AEI NATIONAL INCOME PROPERTY FUND
VIII LP**, a Minnesota limited partnership

By: AEI Income Fund Manager, Inc., a Minnesota corporation

Its: Corporate General Partner

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, the _____, on behalf of AEI Income Fund Manager, Inc., the Corporate General Partner of AEI National Income Property Fund VIII LP.

Signature of person taking acknowledgment

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

Owner 3

MAPELWOOD PARTNERS LLC

By: _____

Printed: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
2017, by _____, the _____, on behalf of Maplewood Partners LLC.

Signature of person taking acknowledgment

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

Owner 4

ECC WHITE BEAR AVENUE II LLC

By: _____

Thomas English, Manager

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Thomas English, the Manager, on behalf of ECC White Bear Avenue II LLC.

Signature of person taking acknowledgment

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

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