

**Assignment and Assumption
Of
Private Water Supply System Agreement**

**165-183 N. McKnight Road, Saint Paul, MN
Villages on McKnight**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Assignment**”) is made as of November __, 2018, dated for reference purposes as of November __, 2018 (the “Effective Date”), is entered into by and between McKnight Village Apartments LLP, a Minnesota limited liability partnership, as successor to the original Owners, as hereinafter defined (“**Seller**”), and Bigos-McKnight, LLC, a Minnesota limited liability company (“**Purchaser**”).

WHEREAS, Theodore B. Goldman and Saralee Goldman, his wife, Arnold L. Goldman and Sylvia L. Goldman, his wife, Sheldon A. Vermes and Peggy J. Vermes, his wife, Stuart M. Friedell and Nancy R. Friedell, his wife, Richard F. Sachs and Elaine Lonnie Sachs, his wife, Albert D. Levin and Jeanne L. Levin, his wife, Mitchel I. Kirschbaum and Roberta G. Kirschbaum, his wife (“**Owners**”), the predecessor in interest to Seller, and the Board of Water Commissioners of the City of Saint Paul, a Minnesota municipal corporation (the “**Board**”), Seller entered into that certain Agreement dated July 15, 1968, recorded on July 15, 1968, in the office of the Ramsey County Recorder, in Book 2135, page 332, as Document No. 1728421 (the “**Agreement**”) which Agreement concerns the construction and ongoing maintenance and repair of a private water main on that certain real property located in the City of Saint Paul, Ramsey County, Minnesota and more particularly described on Exhibit A attached hereto and made a part hereof (the “**Property**”).

WHEREAS, Seller is conveying the Property and all improvements thereon to Purchaser pursuant to a Limited Warranty Deed, and in connection therewith, Seller desires to assign to Purchaser all of Seller’s rights, duties and obligations of Seller under the Agreement, and Purchaser desires to assume and perform all of the obligations of Seller under the Agreement, subject to the conditions contained in the Agreement.

NOW, THEREFORE, in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. **Purchase Agreement.** Reference is hereby made to that certain Purchase and Sale Agreement between Seller and Purchaser dated as of September 6, 2018 (the "**Purchase Agreement**") for the Property.

2. **Assignment.** Seller hereby assigns to Purchaser all of Seller's rights, duties, obligations and benefits under the Agreement, and Purchaser hereby assumes such rights, duties, obligations and benefits and agrees to be bound by the terms and conditions of the Agreement as originally binding upon Seller. In furtherance of not in limitation of the foregoing, Purchaser specifically agrees that it shall have an obligation from and after the date hereof to pay the cost of the maintenance and replacement of the private water main which is the subject of the Agreement, and agrees that it shall be responsible and liable for all losses and damages arising out of the operation, maintenance, use and repair of the main or service pipes, all as provided more fully in the Agreement.

3. **Notice of Assignment and Assumption.** Promptly upon the execution of this Assignment, Assignor and Assignee shall cooperate to provide written notice of this Assignment to the Board of Water Commissioners of the City of Saint Paul.

4. **Successors.** The provisions of this Assignment shall be binding upon, and shall inure to the benefit of, the successors and assigns of Seller and Purchaser, respectively. This Assignment shall be governed by and construed in accordance with the laws of the State of Minnesota, without regard to conflicts of law principles.

5. **Amendments.** This Assignment may be amended, modified or supplemented only by written agreement of the parties hereto.

6. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7. **Miscellaneous.** In the event of any litigation between the parties under any of the provisions of this instrument, the non-prevailing party to such litigation agrees to pay to the prevailing party all costs and expenses (including, without limitation, expert fees, costs of investigation, deposition costs, travel costs and reasonable attorney's fees) incurred by the prevailing party in such litigation. The determination of whether a party is a "prevailing party," and the reasonable amount of attorney's fees and other costs recoverable, will all be reserved to and decided by the Judge presiding over such litigation. The parties agree that the amount of attorney's fees and other costs which may be awarded must bear a reasonable relationship to, and must be limited by, the judge to a reasonable amount in view of the amount recovered or the relief obtained by the prevailing party.

[Remainder of this page intentionally left blank. Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Assignment, effective as of the Effective Date.

SELLER:

MCKNIGHT VILLAGE APARTMENTS LLP

By: DEBORAH G. WITTMAN REVOCABLE
TRUST dated August 24, 2007, as amended

Its: Partner

By: _____

Name: Deborah G. Wittman

Its: Trustee

PURCHASER:

BIGOS-McKNIGHT, LLC

By: _____

Name: Theodore J. Bigos

Its: Chief Manager

State of _____, County of _____

This instrument was acknowledged before me on _____, 2018, by Deborah G. Wittman, as Trustee of the Deborah G. Wittman Revocable Trust dated August 24, 2007, as amended, as a Partner of McKnight Village Apartments LLP.

Notary Public

Stamp

State of _____, County of _____

This instrument was acknowledged before me on _____, 2018, by Theodore J. Bigos, as Chief Manager of Bigos-McKnight, LLC.

Notary Public

Stamp

Exhibit A
Legal Description

Lots One (1) through Fourteen (14), inclusive, Block Twenty (20), BATTLE CREEK HEIGHTS PLAT 3, according to the recorded plat thereof, together with that part of vacated Rounds Avenue which accrued to said property by reason of the vacation thereof; and

Block Sixteen (16), BATTLE CREEK HEIGHTS PLAT 2, according to the recorded plat thereof, together with that part of vacated Rounds Avenue which accrued to said property by reason of the vacation thereof;

Excepting therefrom the following described parcel: All that part of Lots Twelve (12) and Thirteen (13), Block Twenty (20) of BATTLE CREEK HEIGHTS PLAT 3, and of vacated Rounds Avenue, and of Block Sixteen (16) BATTLE CREEK HEIGHTS PLAT 2, that is encompassed by the following described line: Beginning at the Southeasterly corner of said Block Sixteen (16), thence due North along the West line of McKnight Road for two hundred eighty (280.00) feet, thence West at right angles for ninety-one and twenty-seven hundredths (91.27) feet, thence Westerly on a curve that has a radius of one hundred eighty (180.00) feet and the radius point for said curve is located one hundred twenty-three and thirty-nine hundredths (123.39) feet North and one hundred eighty (180.00) feet West of the foresaid point of beginning, for an arc distance of one hundred eighty-five and forty-five hundredths (185.45) feet, thence due West along a projection of the foresaid West line for one hundred three and twenty-seven hundredths (103.27) feet to a point that is three hundred seventy-two (372.00) feet West of the West line of McKnight Road, thence South parallel to McKnight Road for three hundred seventy-three and eighty-eight hundredths (373.88) feet to the Northerly line of North Park Drive, thence Easterly along the said Northerly line of North Park Drive for three hundred eighty-five and eighty-five hundredths (385.85) feet to the point of beginning.

(Abstract Property)

Real Property

Address	PID	Water Dept Account No.
165 N. McKnight Rd, Saint Paul, MN 55119	02.28.22.11.0049	0461503
167 N McKnight Rd, Saint Paul, MN 55119		0460747
169 N McKnight Rd, Saint Paul, MN 55119		0462014
171 N McKnight Rd, Saint Paul, MN 55119		0446684
173 N McKnight Rd, Saint Paul, MN 55119	02.28.22.11.0010	0451556
175 N McKnight Rd, Saint Paul, MN 55119		0446691
177 N McKnight Rd, Saint Paul, MN 55119		0446705
179 N McKnight Rd, Saint Paul, MN 55119		0451563
181 N McKnight Rd, Saint Paul, MN 55119		0446719
183 N McKnight Rd, Saint Paul, MN 55119		0451570
Unassigned Burnes Ave	02.28.22.11.0001	
Unassigned Burnes Ave	02.28.22.11.0002	
Unassigned Burnes Ave	02.28.22.11.0003	
Unassigned Burnes Ave	02.28.22.11.0004	
Unassigned Burnes Ave	02.28.22.11.0005	
Unassigned Burnes Ave	02.28.22.11.0006	
Unassigned Burnes Ave	02.28.22.11.0007	
Unassigned Burnes Ave	02.28.22.11.0008	
Unassigned Burnes Ave	02.28.22.11.0009	