

**Assignment and Assumption
Of
Water Main Easement**

**888 Birmingham Street, Saint Paul, MN
Birmingham Townhomes**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Assignment**") is made as of November ____, 2018 (the "Effective Date") and is entered into by and between Birmingham Limited Partnership, a Minnesota limited partnership ("**Seller**"), and 888 Birmingham, LLC, a Minnesota limited liability company ("**Purchaser**").

WHEREAS, Seller and the Board of Water Commissioners of the City of Saint Paul, a Minnesota municipal corporation (the "**Board**") entered into that certain Agreement dated April 22, 1981 and recorded on May 20, 1981 in the office of the Ramsey County Recorder as Document No. 707593 (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 Agreement between Seller and Purchaser, dated as of August 30, 2018, 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, Seller and Purchaser shall cooperate to provide written notice of this Assignment to the Board.

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.

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

SELLER:

BIRMINGHAM LIMITED PARTNERSHIP,
a Minnesota limited partnership

By: FAC Birmingham Holdings, LLC
Its: General Partner

By: _____
Name: Gus A. Chafoulas
Its: Manager

State of _____, County of _____

This instrument was acknowledged before me on _____, 2018, by Gus A. Chafoulas, as manager of FAC Birmingham Holdings, LLC, general partner of Birmingham Limited Partnership, a Minnesota limited partnership, on behalf of the limited partnership.

Stamp

Notary Public

PURCHASER:

888 BIRMINGHAM, LLC

By: _____
Name: Brian Pergament
Its: Manager

State of _____, County of _____

This instrument was acknowledged before me on _____, 2018, by Brian Pergament, as Manager of 888 Birmginham, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Stamp

Notary Public

Exhibit A
Legal Description

PARCEL 1:

All of the South one-half (S. 1/2) of Lot twenty (20) except the East fifty (E. 50) feet of the South one hundred seventy-one (S. 171) feet thereof, and also except the Southerly one hundred eighty (S. 180) feet, except the Easterly fifty (E'ly 50) feet thereof, the South one-half (S. 1/2) of Lot twenty-one (21) except the South one hundred eighty (S. 180) feet thereof, and all that part of the South one-half (S. 1/2) of Lot numbered twenty-two (22) in Block two (2) of Cruickshank's Garden Lots, except the South one hundred eighty-eight (S. 188) feet thereof, and except that part thereof that lies within a strip of land sixty (60) feet in width, the center line of which is described as follows: Beginning at the intersection of Stillwater Avenue and the West line of Schoch's Re-arrangement; thence to a point on the center line of Birmingham Street which is the point of intersection of the center line of Stillwater Avenue as platted in Tracy's Outlots produced and the center line of Birmingham Street, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said County of Ramsey.

PARCEL 2:

Also the North 8 feet of the South 188 feet of Lot 22; The North 90 feet of the South 180 feet of Lot 22, which lies West of the East 64 feet of said lot; The south 90 feet of Lot 22, which lies West of the East 50 feet of said lot; All in Block 2, Cruickshank's Garden Lots.

PARCEL 3:

Also the Westerly 1/2 of the Southerly 1/2 of Lot 19, Block 2, Cruickshank's Garden Lots, except the Easterly 1.34 feet thereof, and also except the Southerly 171 feet thereof and except the portion thereof taken for Stillwater Avenue, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said county.

PARCEL 4:

That part of North one-half (N 1/2) of Lots twenty (20) and twenty-one (21) in Block two (2) of Cruickshank's Garden Lots, that lies within a strip of land sixty (60) feet in width, the center line of which is described as follows: Beginning at the intersection of the center line of Stillwater Avenue and the West line of Schoch's Re-arrangement; thence to a point on the center line of Birmingham Street which is the point of intersection of the center line of Stillwater Avenue as platted in Tracy's Outlots produced and the center line of Birmingham Street, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said County of Ramsey.

Also the South thirty (S 30) feet of the North one-half (N 1/2) of Lot numbered twenty-two (22), Block 2 of Cruickshank's Garden Lots, according to plat thereof on file in the Office of Register of Deeds in and for said County of Ramsey.

Also that part of the South one-half (S 1/2) of the Lot numbered twenty-two (22) in Block two (2) of Cruickshank's Garden Lots, that lies within a strip of land sixty (60) feet in width, the center line of which is described as follows: Beginning at the intersection of Stillwater Avenue and the West line of Schoch's Re-arrangement; thence to a point on the center line of Birmingham Street which is the point of intersection of the center line of Stillwater Avenue as platted in Tracy's Outlots produced and the center line of Birmingham Street, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said County of Ramsey.

Note: Parcel designations are for convenience of reference only and do not constitute an integral part of the legal description.

Real Property

Address	PID	Water Dept. Account No.
888 Birmingham Street St. Paul, Minnesota	27-292-231-0083	