

**RETAINING WALL
EASEMENT AGREEMENT**

Document Number

Document Title

**RETAINING WALL EASEMENT
AGREEMENT**

Recording Area

Name and Return Address

Michael W. Hatch
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202

361-1729-110-8 AND 361-1725-140-8

Parcel Identification Number (PIN)

This document was drafted by Michael W. Hatch of Foley & Lardner LLP.

RETAINING WALL EASEMENT AGREEMENT

This RETAINING WALL EASEMENT AGREEMENT (this “Agreement”) is dated as of the ____ day of _____, 2013, by and between the CITY OF MILWAUKEE, WISCONSIN, a Wisconsin municipal corporation, (“Grantor”) and LIBRARY HILL LLC, a Wisconsin limited liability company, (“Grantee”).

RECITALS:

A. Grantor is the owner of that certain real property in the City of Milwaukee, County of Milwaukee, Wisconsin, and legally described on **Exhibit A** attached hereto and made a part hereof (the “Grantor Parcel”).

B. Grantee is the owner of that certain real property located adjacent to the Grantor Parcel and legally described on **Exhibit B** attached hereto (the “Grantee Parcel”).

C. A prior owner of the Grantee Parcel constructed a retaining wall, certain portions of which encroach onto the Grantor Parcel, which retaining wall is more particularly depicted on **Exhibit C** attached hereto (the “Retaining Wall”).

D. Grantor has agreed to permit the encroachment of the Retaining Wall on the Grantor Parcel, where said Retaining Wall currently encroaches upon the Grantor Parcel, as depicted on **Exhibit C**, and to allow Grantee access over certain areas of the Grantor Parcel (as more specifically described below) for maintenance, repair and replacement of the Retaining Wall.

NOW, THEREFORE, in consideration of the terms and provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, IT IS AGREED:

1. **Grant of Easement.** Grantor hereby grants to Grantee a permanent, perpetual, nonexclusive Easement:

- i. to inspect, maintain, repair, replace, and/or restore the Retaining Wall;
- ii. to use the Retaining Wall for support and related purposes in connection with the development currently located on the Grantee Parcel; and
- iii. for vehicular and pedestrian ingress and egress over the paved areas of the Grantor Parcel from both N. 7th Street (a/k/a James Lovell Street) and W. Wells Street for the purposes of maintaining, repairing, replacing, and/or restoring the Retaining Wall, provided that (except in an emergency) Grantee shall give Grantor at least forty eight (48) hours prior notice of any intended use of such access, and provided, further, that the use of such access shall not unreasonably interfere with the Grantor’s use of the Grantor Parcel. In the event that Grantee’s activities on the Grantor Parcel limit the availability of parking spaces, Grantee will endeavor to provide replacement parking on the Grantee Parcel.

2. Maintenance and Cost Sharing.

(a) Maintenance. Grantee shall be solely responsible for the inspection, maintenance, repair, replacement, and/or restoration of the Retaining Wall. Grantee shall maintain the Retaining Wall in good condition and repair, ordinary wear and tear excepted, and in compliance with all applicable laws. Grantee shall use reasonable efforts so that its performance of the foregoing obligations does not unreasonably interfere with the use by Grantor of the Grantor Parcel.

(b) Replacement. In the event that Grantee replaces all or any substantial portion of the Retaining Wall with a new wall, the new wall shall be constructed solely on the Grantee Parcel so that it no longer encroaches onto the Grantor Parcel. In such event, this Agreement shall continue as an access and maintenance easement.

(c) Costs. The costs of inspection, maintenance, repair, replacement, and/or restoration of the Retaining Wall shall be paid solely by Grantee.

(d) Grantor Maintenance. In the event that maintenance or repair of the Retaining Wall is not undertaken by Grantee, Grantor may, in its sole discretion, enter upon the Grantee Parcel and perform the necessary maintenance or repair work. Except in the case of an emergency, Grantor shall provide Grantee at least ten (10) days prior written notice to cure any default hereunder before performing any such maintenance or repairs. The cost of any maintenance or repairs undertaken by Grantor shall be assessed against Grantee, and such assessments, if any, shall be made in accordance with the provisions of section 66.0627 of the Wisconsin Statutes, as amended from time-to-time. It is expressly acknowledged and agreed that such costs shall be deemed a special charge for current services and may be levied in accordance with the provisions of Wis. Stats. § 66.0627. Any such charge that remains unpaid for more than sixty (60) days after billing shall be deemed delinquent and shall become a lien upon the Grantee Parcel.

3. Insurance. Grantee shall carry at its expense, insurance in the forms and with at least the coverages set forth in the certificate attached as **Exhibit D**. Grantor retains the right, in its sole discretion, to require adjustments to the foregoing coverage limits annually, effective on each January 1 during the term of this Agreement, to such insurance coverages and limits as are customarily provided at that time, by similar enterprises, and are commercially reasonable at that time. Said insurance shall be written by a company licensed in the State of Wisconsin. Grantee shall annually furnish a Certificate of Insurance naming Grantor as additional named insured. Such Certificates shall provide that the insurance company will furnish Grantor with a thirty (30) day written notice of cancellation.

4. Indemnification. Grantee shall be liable to and hereby agrees to indemnify, defend and hold harmless Grantor, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon Grantor, or its officials, officers, agents or employees for damages, under or as a result of this Agreement, because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting

from the acts or omissions of the Grantee and/or its officers, agents, employees, assigns, guests, invitees, or subcontractors.

5. Notices. All notices, demands, certificates, or other communications under this Agreement shall be in writing. They shall be deemed given (a) when hand delivered to the address below; or (b) two business days after being mailed by first-class mail, postage pre-paid, to the address below. Any party may, by written notice to the other parties, designate a change or address for these purposes.

If to Grantor: City of Milwaukee Fire Department
Construction & Maintenance Division
Milwaukee Fire Department Repair Shop
118 West Virginia Street
Milwaukee, WI 53204

If to Grantee: Library Hill LLC
c/o Mandel Group, Inc.
301 East Erie Street
Milwaukee, WI 53202

with a copy to: Library Hill LLC
756 North Milwaukee Street, Suite 400
Milwaukee, WI 53202

6. Taxes. Neither party shall, by reason of this Agreement, be obligated to pay any real estate taxes or special assessments levied against the other party's property.

7. Run with the Land. All of the terms, covenants, and conditions hereof shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns as subsequent owners of the Grantor Parcel and the Grantee Parcel, it being the intent of the parties hereto that all of the covenants hereunder shall be "covenants running with the land" and shall inure to the benefit of and be binding upon the Grantor Parcel and the Grantee Parcel.

8. Enforcement. Either party hereto may enforce this Agreement by appropriate action, and should it prevail in such litigation, that party shall be entitled to recover, as part of its costs, reasonable attorneys' fees.

9. Amendment. This Agreement may not be modified or amended, except by a writing executed and delivered by the party against which enforcement of such modification or amendment is sought.

[Signatures appear on the following pages]

This Agreement is executed and delivered as of the day and year first set forth above.

GRANTEE:

LIBRARY HILL LLC

By: _____

Name: D. Patrick O'Brien

Its: Manager

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

Personally came before me this ____ day of _____, 2013, the above-named D. Patrick O'Brien, personally known to me to be the Manager of Library Hill LLC, who executed the foregoing instrument and acknowledged the same.

Name Printed: _____
Notary Public
State of Wisconsin, County of Milwaukee
My Commission: _____

[Signature Page of Grantee to Retaining Wall Easement Agreement]

EXHIBIT A

Grantor Property

Parcel A

That part of Lots 7 and 8 and part of a vacated alley adjoining Lots 7 and 8 on the North in Block 173 in the Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Northeast corner of Block 173 in said Plat; thence South 00°01'55" West along the West line of James Lovell Street, 157.47 feet to the point of beginning of the land to be described; being the center of vacated alley; thence continuing South 00°01'55" West along said right-of-way line 34.50 feet; thence South 89°56'11" West,

164.27 feet; thence North 00° 01' 55" East, 34.50 feet; thence North 89° 56' 11" East,

164.27 feet to the point of beginning.

AND

Parcel B

Lots 1, 2, 3 and the East 25 feet of Lot 4 and the North 1/2 of the vacated alley adjoining on the South in Block 173 in Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East in the City of Milwaukee, Milwaukee County, Wisconsin, EXCEPTING therefrom that part of Lot 4 and the vacated alley adjoining on the South in Block 173 in Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Northeast corner of said Block 173; thence South 89°54'07" West along the South right-of-way line of West Wells Street, 150.59 feet to the point of beginning of the land to be described, being the Northeast corner of Lot 4; thence South 00°01'55" West, 124.55 feet; thence South 89°56'11" West, 13.58 feet; thence South 00°01'55" West, 32.83 feet; thence South 89°56'11" West, 11.42 feet; thence North 00°01'55" East, 157.38 feet to a point on the South right-of-way line of West Wells Street; thence North 89°54'07" East along said right-of-way line, 25.00 feet to the point of beginning.

Tax Key No. 361-1725-140-8

Address: 711 W. Wells Street

EXHIBIT B

Grantee Property

PARCEL A:

That part of Lot 4 and the vacated alley adjoining on the South in Block 173 in Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Northeast corner of said Block 173; thence South 89° 54' 07" West along the South right-of-way line of West Wells Street, 150.59 feet to the point of beginning of the land to be described, being the Northeast corner of Lot 4 thence South 00° 01' 55" West, 124.55 feet; thence South 89° 56' 11" West, 13.58 feet; thence South 00° 01' 55" West, 32.83 feet; thence South 89° 56' 11" West, 11.42 feet; thence North 00° 01' 55" East, 157.38 feet to a point on the South right-of-way line of West Wells Street; thence North 89° 54' 07" East along said right-of-way line, 25.00 feet to the point of beginning.

PARCEL B:

The West 25 feet of the North 75 feet of Lot 4 and the East 35 feet of the North 50 feet of Lot 5, in Block 173, in Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

PARCEL C:

The West 15 feet of the North 50 feet of Lot 5 and the North 50 feet of Lot 6, in Block 173, in Plat of the East Half of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

PARCEL D:

The South 2/3 of Lots 5 and 6 and the South 1/2 of the West 1/2 of Lot 4 in Block 173, in the Plat of the Town of Milwaukee on the West Side of the River in the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.
TOGETHER with the North 1/2 of the vacated alley abutting on the South.

PARCEL E:

Lots 7, 8 and 9, in Block 173, in Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.
TOGETHER with the South 1/2 of the vacated alley abutting Lots 7 and 8 on the North and TOGETHER with the North 1/2 of the vacated alley abutting Lot 9 on the South.
BUT EXCEPTING therefrom those parts described as follows:
That part of Lots 7 and 8 and part of a vacated alley adjoining Lots 7 and 8 on the North in Block 173 in the Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows:
Commencing at the Northeast corner of Block 173 in said Plat; thence South 00° 01' 55" West along the West line of James Lovell Street, 157.47 feet to the point of beginning of the land to be described; being the center of a vacated alley, thence continuing South 00° 01' 55" West along said right-of-way line 34.50 feet; thence South 89° 56' 11" West, 164.27 feet; thence North 00° 01' 55" East, 34.50 feet; thence North 89° 56' 11" East, 164.27 feet to the point of beginning.

PARCEL F:

Lot 10, Block 173, in Plat of the Partition of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

continued

TOGETHER with the North 1/2 of the vacated alley abutting on the South.

PARCEL G:

All of Lot 11, the West 1/2 of Lot 12, the North 1/3 of the East 1/2 of Lot 12, and the North 1/3 of Lot 13 in Block 173 in Plat of Partition of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

TOGETHER with the South 1/2 of the vacated alley abutting on the North.

PARCEL H:

The East 1/2 of the South 2/3 of Lot 12 and the West 5.00 feet of the South 2/3 of Lot 13 in Block 173 in Plat of the Town of Milwaukee on the West Side of the River, in Partitiion of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

PARCEL I:

The South 2/3 of Lot 13, Block 173, Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, excepting the Westerly 5.00 feet thereof.

PARCEL J:

The West 1/2 of Lot 14, Block 173, Plat of the Town of Milwaukee on the West Side of the River, a part of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

TOGETHER with the South 1/2 of the vacated alley abutting on the North.

PARCEL K:

Parcel 1 of Certified Survey Map No. 3430, recorded on September 19, 1978 on Reel 1146, Images 1527, 1528 and 1529 as Document No. 5252106, of the East 1/2 of Lot 14, all of Lots 15 and 16, Block 173, in Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

TOGETHER with the South 1/2 of the vacated alley abutting on the North.

PARCEL L:

Parcel 2 of Certified Survey Map No. 3430, recorded on September 19, 1978 on Reel 1146, Images 1527, 1528 and 1529 as Document No. 5252106, of the East 1/2 of Lot 14, all of Lots 15 and 16, Block 173, in Plat of the East 1/2 of the Northwest 1/4 of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

TOGETHER with the South 1/2 of the vacated alley abutting on the North.

Tax Key No: 361-1729-110-8

Address: 700-740 W. Wisconsin Avenue

EXHIBIT C

Survey Depicting Retaining Wall

See Attached

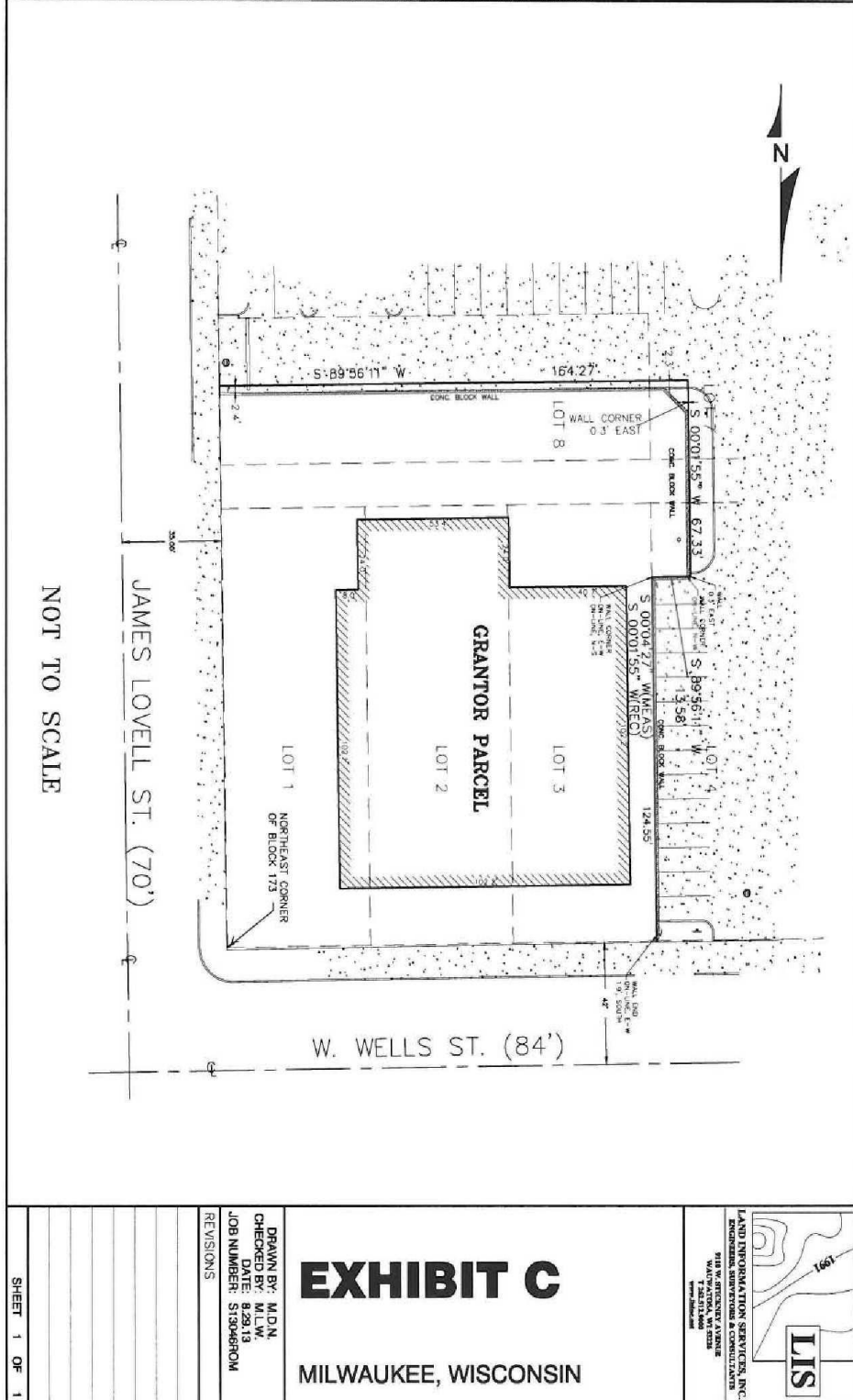


EXHIBIT C

MILWAUKEE, WISCONSIN

LAND INFORMATION SERVICES, INC.
 ENGINEERING, SURVEYING & CONSULTANTS
 518 W. ARDENWAY AVENUE
 WAUKESHA, WI 53186
 PHONE: (262) 533-1111
 FAX: (262) 533-1112

DRAWN BY: M.D.N.
 CHECKED BY: M.L.W.
 DATE: 8/29/13
 JOB NUMBER: S1304970M

REVISIONS

SHEET 1 OF 1

EXHIBIT D

Certificate of Insurance

See Attached



CERTIFICATE OF LIABILITY INSURANCE

LIBRHIL-01 PBRADLEY

DATE (MM/DD/YYYY)
9/11/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

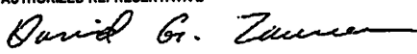
PRODUCER Robertson Ryan - Waukesha 20976 Swenson Drive, Suite 175 Waukesha, WI 53186	CONTACT NAME: PHONE (A/C, No, Ext): (414) 271-3575 FAX (A/C, No): (262) 717-9434 E-MAIL: ADDRESS:
	INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: WEST BEND MUTUAL INSURANCE COMPANY 15350 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Library Hill LLC dba Library Hill Apartments 301 East Erie Street Milwaukee, WI 53202	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> H & NO Auto	X	CPW1400577	12/24/2012	12/24/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 200,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		CUM1400578	12/24/2012	12/24/2013	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						
Y/N N/A DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 RE: Retaining Wall Easement City of Milwaukee Fire Department Construction & Maintenance Division, Milwaukee Fire Department Repair Shop are added as additional insured in respects to General Liability.
 COMPLETE CERTIFICATE HOLDER : City of Milwaukee Fire Department Construction & Maintenance Division, Milwaukee Fire Department Repair Shop
 30 Day Notice of Cancellation

CERTIFICATE HOLDER City of Milwaukee Fire Department 118 West Virginia Street Milwaukee, WI 53204	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2010/05)

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