

SPECIAL PERMISSION AGREEMENT

THIS AGREEMENT, Made by and between the City of Milwaukee, a municipal corporation ("City") and William E. and Patricia R. Herget ("Hergets"), dated as of this ___ day of _____, 2006.

WHEREAS, Hergets own an area of land known as 12345 West Bobolink Avenue (the "Hergets Parcel"), which is south of and adjacent to the unimproved North 124th Street right-of-way ("ROW"), and

WHEREAS, the Hergets Parcel is described as follows:

Parcel 4 of Certified Survey Map No. 2816, as recorded certified survey map in the Southwest ¼ of Section 30, Township 8 north, Range 21 East; and

WHEREAS, the Hergets want access to the Hergets Parcel from the ROW, from West Bobolink Avenue at North 124th Street; and

WHEREAS, the Hergets request that the City grant them special permission to use a portion of the ROW as a private driveway;

NOW, THEREFORE, In consideration of One Dollar (\$1.00) and the mutual covenants and conditions herein described, the parties hereto agree to the following conditions:

1. The Hergets, at no cost to the City, may construct a driveway in and adjacent to the ROW Area described below (the "Row Area"). Said work must be done in accordance with plan and specifications approved by the Commissioner of the City's Department of Public Works (the "Commissioner"), and be graded to conform to the topography of the surrounding area with sufficient surface treatment so that no mud or dust problems are created. The Hergets shall, at their expense, maintain the ROW Area so no condition of mud, dust, or standing water will occur.

The ROW Area is described as follows and is depicted on the map attached hereto as **Exhibit A**:

The easterly half of the 90.0 foot wide public right-of-way of North 124th Street, as platted, lying adjacent to Parcel 4 of the Certified Survey Map No. 2816, a recorded certified survey map in the Southwest ¼ of Section 30, Township 8 North, Range 21 East.

2. The Hergets accept all responsibility to maintain, repair, reconstruct, replace, and remove said driveway at their sole expense.

3. The Hergets shall indemnify and hold the City harmless from and against any and all claims, demands, causes of action, loss, liability, expense, or obligations whatsoever that may or shall arise (directly or indirectly) in connection with the construction, operation, maintenance, existence, or use of the driveway or by any improvements made to the ROW by Hergets.
4. No structures other than surfacing for the driveway or surface drainage facilities and appurtenances thereto will be constructed on the ROW or ROW Area by the Hergets. No installations or improvements by the Hergets (or on their behalf) shall be allowed to cause a condition of standing water on any property at or abutting the ROW.
5. The Hergets agree the ROW and ROW Area will not be used for the parking or storage of vehicles or other property.
6. The City reserves all rights associated with public right of way (including all rights in the ROW and ROW Area) and including the right to enter onto the ROW Area to repair, maintain, construct or reconstruct any City facilities that are or that the City wishes to be in said area.
7. Governmental agencies and entities and utility companies having the right to install and maintain facilities within the ROW and ROW Area shall continue to have and enjoy those rights.
8. The Hergets agree, at their expense, to reconstruct any roadway or appurtenances that they have improved as needed following any repair, maintenance, construction or reconstruction of City facilities and/or others enjoying the rights as indicated in Item 7 above.
9. The Hergets agree to remove without cost to the City all installations constructed as a result of this Agreement whenever the public interest or safety requires, or when so ordered in writing by the Commissioner, or as required by any resolution of the City's Common Council. Said removal of all installations is to be accomplished within 60 days of the issuance of written notice or adoption of Common Council resolution. The Hergets shall not be entitled to any damages or compensation for, or as a result of, such removal.
10. This Agreement does not relieve the Hergets from their responsibilities and obligations to obtain any City permits and/or approvals necessary to construct and use said driveway and adjacent property.
11. The Hergets shall file with the City clerk a certificate of insurance indicating that the Hergets hold a public liability policy in the amount of at least \$25,000 covering bodily injury to any one person, \$50,000 covering bodily injury to more than one person in any one accident, and \$10,000 covering property damage to any one owner on the area covered by this Agreement, and naming the City as an

insured. The insurance policy shall provide for 30 days written notice to the City Clerk prior to cancellation.

- 12. The provisions contained herein shall be binding upon and inure to the benefit of the parties hereto, their personal representative, heirs, successors and assigns. However, the Hergets may not assign or transfer this Agreement on their rights hereunder to anyone without the Commissioner's express, prior written consent, and the Commissioner shall have sole discretion as to whether or not to grant any such consent.
- 13. This Agreement does not create any real property interest in the Hergets in the ROW or ROW Area. The Hergets understand that their interest is a personal license that the City may revoke and/or terminate for any reason, including no reason, at any time by the Commissioner providing written notice of termination to the Hergets sent to them at the following address:

Mr. and Mrs. William E. Herget

Milwaukee, WI 532_____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be entered as of the date first appearing above.

CITY OF MILWAUKEE:

Thomas Barrett, Mayor

Ronald D. Leonhardt, City Clerk

W. Martin Morics, Comptroller

HERGETS:

Patricia R. Herget

William E. Herget

This instrument was drafted by the City of Milwaukee.

Approved as to content this ____ day of _____, 2006.

Jeffrey S. Polenske, P.E., City Engineer

Approved as to form this ____ day of _____, 2006.

City Attorney

Approved as to form this ____ day of _____, 2006.

City Attorney

1029-2006-1188:104506