

Water Easement
W.E. 932D

EASEMENT

Greenfield Highlands
In C.S.M. No. 5410, Parcel 2
S/O West Cold Spring Road
From South 108th Street
To 230 feet W/O South 108th Street

Recording Area

Name and Return Address
Milwaukee Water Works
Water Engineering Section
841 North Broadway, Room 403
Milwaukee, WI 53202

THIS INDENTURE, Made by and between the CITY OF GREENFIELD, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City", and Bouraxis Properties (Budget S108), LLC, a Wisconsin limited liability company, owner, (including heirs, executors, administrators, successors and assigns of above owner(s) as may be or may become applicable), hereinafter called "Grantor," (If more than one grantor is listed above, said language herein referring thereto shall be interpreted in the plural and refer jointly and severally to such grantors).

WITNESSETH

That, WHEREAS, the City desires to acquire a nonexclusive permanent easement with the right of entry in and across the property hereinafter described with the right to build and construct and/or operate, maintain, repair, enlarge, reconstruct, relocate and inspect as may be or may become applicable the following facilities and appurtenances thereto, hereinafter called "Facilities," in said property; namely, an 8" water main as shown on attached plan, file no. WE932.

NOW, THEREFORE, in consideration of the grant of the easement hereinafter described and the payment of One Dollar (\$1.00) and other valuable considerations to the Grantor, receipt whereof is hereby acknowledged, said Grantor, being the owner and person interested in the land hereinafter described does hereby grant unto the City a nonexclusive permanent easement in that part of Parcel 2, of C.S.M. No. 5410, in the Southeast One- Quarter (S.E. ¼) of Section Nineteen (19), Township Six (6) North, Range Twenty-one (21) East, in the City of Greenfield, Milwaukee County, Wisconsin, which is bounded and described as follows:

TO-WIT:

Commencing at the northeast corner of said Southeast One-quarter (S.E. ¼); thence South 88° 35' 24" West, along the north line of said One-quarter (1/4), 60.01 feet to a point, said point being on the west line of South 108th Street extended; thence South 00° 23' 24" East, along said west line, 1379.81 feet to the point of beginning of the easement to be described, said point being on the east line of C.S.M. No. 5410, Parcel 2; thence South 88° 34' 20" West, 230.00 feet to a point, said point being on the west line of C.S.M. No. 5410, Parcel 2; thence North 00° 23' 24" West, along said west line, 28.00 feet to a point; thence North 88° 34' 20" East, 230.00 feet to a point, said point being on the east line of C.S.M. No. 5410, Parcel 2; thence South 00° 23' 24" East, along said east line, 28.00 feet to the point of beginning.

Said easement contains 6,440 square feet of land, more or less.

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UPON CONDITION

1. *That said Facilities shall be maintained and kept in good order and condition by the City.*
2. *That in and during whatever construction, reconstruction, enlargement or repair work is or becomes necessary in constructing and/or maintaining of said Facilities, so much of the surface or subsurface of the property as may be disturbed, will at the expense of the City be replaced in substantially the same condition as it was prior to such disturbance; except that the City will in no case be responsible for replacing or paying for replacing any aesthetic plantings or improvements other than ordinary lawns or standard walks, roadways, driveways and parking lot surfacing which were required to be removed in the course of doing the above work. However, the City shall save harmless the Grantor from any loss, damage, injury or liability resulting from negligence on the part of the City in connection with said work involved in constructing and/or maintaining of said Facilities; provided that if above loss, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses which under law the City is entitled to raise.*
3. *That no structure may be placed within the limits of the easement by the Grantor except that improvements such as walks, pavements for driveways and parking lot surfacing may be constructed thereon.*
4. *That, in connection with the construction after the date hereof by the Grantor of any structure or building abutting said easement defined limits, the Grantor will assume all liability for any damage to the Facilities in the above described property. The Grantor will also save and keep the City harmless from any claims for personal injuries or property damage caused by the negligence of the Grantor (or anyone claiming by, through, or under Grantor, including contractors, subcontractors, agents, and employees), arising out of the construction by the Grantor (or anyone claiming by, through, or under Grantor, including contractors, subcontractors, agents, and employees) of any structure or building abutting the said easement defined limits, and shall reimburse the City for the full amount of such loss or damage.*
5. *That no charges will be made against said lands for the cost of maintenance or operation of said Facilities in the a fore-described property. Whenever the Grantor makes application for a service connection, the regular and customary service connection charge in effect at the time of the application shall be charged and paid.*
6. *All conditions pertaining to the "Maintenance of Water Service Piping" as set forth in Chapter 3.3.0 of the "Rules and Regulations Governing Water Service" dated 1985 and subsequent amendments thereto shall apply to all water services which are within the easement defined limits and also within the limits of any adjoining easements; except that the City of Milwaukee Water Works, a utility owned by the City of Milwaukee shall in no case be responsible for maintaining at its expense any portion of said water services outside of the easement defined limits and outside the limits of any adjoining easements regardless of any statement to the contrary in said "Rules and Regulations Governing Water Service".*
7. *The Facilities shall be accessible for maintenance at all times. The owner shall submit plans for approval to the City for any underground installation within the easement.*
8. *That the Grantor shall submit plans for all surface alterations of plus or minus 1 foot or greater within the limits of said easement. Said alterations shall be made only with the approval of the Commissioner of Public Works of the City of Milwaukee.*
9. *It is understood that in the event the above described Real Estate may become portions of public streets; in which event, in the proceedings for the acquisition of the property needed for such streets by purchase, dedication or by condemnation, said lands shall be considered the same as though this easement had not been executed or any rights granted thereby exercised.*
10. *This EASEMENT AGREEMENT is expressly subject to and conditioned by terms and conditions of a certain WATER AGREEMENT by and between the "CITY OF GREENFIELD" and the CITY OF MILWAUKEE WATER WORKS and executed on the 9th day of August, 1963 (as the same has been or may be updated) said WATER AGREEMENT being incorporated herein by this reference thereto.*
11. *The "Grantor" by execution of this EASEMENT AGREEMENT, hereby consents to the assignment of this easement*

from the "CITY OF GREENFIELD" to the CITY OF MILWAUKEE for the purposes and for the considerations expressed in this document upon the written consent of the officers of the "CITY OF GREENFIELD" and upon a passage of a resolution by the Common Council of the "CITY" granting said assignment to the CITY OF MILWAUKEE.

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IN WITNESS WHEREOF, the Grantor, has hereunto set its hand and seal

ON THIS DATE OF: _____

GRANTOR

BOURAXIS PROPERTIES (BUDGET S108), LLC

By: _____
Paul Bouraxis, its sole member

STATE OF _____)

S.S.

COUNTY OF _____)

Before me personally appeared on this _____ day of _____, A.D. 2007 the above named Paul Bouraxis, to me known to be the person(s) who executed the foregoing EASEMENT on behalf of Bouraxis Properties (Budget S108), LLC and acknowledged the same as the voluntary act and deed of said company.

NOTARY PUBLIC

My commission expires _____

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SUBORDINATION AGREEMENT To Easement W.E. 932D

The: MidAmerica Bank f/k/a St. Francis Bank, hereby agrees and consents to the subordination of that list of certain mortgages

EXECUTED BY BOURAXIS PROPERTIES (BUDGET S108), LLC
MORTGAGOR

ON DATE OF Jan. 30, 2002 Jun. 8, 2006 Jun. 8, 2006 Jul. 12, 2006 Jul. 12, 2006

RECORDED IN Milwaukee County Register of Deeds

AS DOCUMENT NO 8217123 9287951 9287952 9287953 9287954

ON DATE OF Feb. 4, 2002 Aug. 16, 2006 Aug. 16, 2006 Aug. 16, 2006 Aug. 16, 2006

to the above easement executed by above indicated mortgagor to the City of Milwaukee

dated this _____ day of _____ A.D. 20____

IN WITNESS WHEREOF, the said mortgagee, has caused these presents to be signed by Douglas Brown, its authorized vice president.

MidAmerica Bank
f/k/a St. Francis Bank

By: _____
Douglas Brown, Vice President

STATE OF WISCONSIN)

)

COUNTY OF WAUKESHA)

Personally came before me this _____ day of _____, A.D. 2007 the above named Douglas Brown to me known to be a Vice President of MidAmerica Bank f/k/a St. Francis Bank who executed the foregoing SUBORDINATION AGREEMENT and acknowledged the same, and who being by me duly sworn did say that they hold the above office and that they executed the foregoing SUBORDINATION AGREEMENT as such officers as the deed of said corporation by its authority.

Wisconsin

Notary Public, _____ County,

My commission expires _____

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ASSIGNMENT OF EASEMENT W.E. 932D

IN WITNESS WHEREOF, said City of Greenfield, has caused this instrument to be assigned to the City of Milwaukee and these presents signed by Michael J. Neitzke, its Mayor and Jennifer J. Goergen, its City Clerk and its corporate seal hereunto affixed at Greenfield, Wisconsin, this _____ day of _____, A.D. 20____.

City of Greenfield

Michael J. Neitzke Mayor

Jennifer J. Goergen City Clerk

STATE OF WISCONSIN)
S.S.
COUNTY OF MILWAUKEE)

On this _____ day of _____ A.D. 20____,
before me personally appeared Michael J. Neitzke and Jennifer J. Goergen who being by me duly sworn, did say that they are respectively the Mayor and City Clerk of the City of Greenfield, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and acknowledged that they executed the foregoing assignment as such officers as the deed of said municipal corporation by its authority, and pursuant to resolution file No. _____ adopted by its Common Council on _____, 20____.

Notary Public, Milwaukee County, Wisconsin

My commission expires _____

*Water Easement
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This instrument was drafted by the City of Milwaukee.

Approved as to contents

Date:

.....
SUPERINTENDENT OF MILWAUKEE WATER WORKS

Approved as to form and execution

Date:

.....
ASSISTANT CITY ATTORNEY