

**ENCROACHMENT AGREEMENT
1010 DODD ROAD
IN THE CITY OF WEST ST. PAUL,
DAKOTA COUNTY, MINNESOTA**

THIS AGREEMENT (“Agreement”) is made, entered into and effective this ____ day of September, 2020, by and among the West St. Paul Economic Development Authority, a Minnesota public body corporate and politic (“EDA”) and Michael T. Buttgerit and Sarah N. Lewandowski, joint tenants (“Landowner”). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

ARTICLE 1
DEFINITIONS

The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.1 EDA. “EDA” means the West St. Paul Economic Development Authority, a Minnesota public body corporate and politic.

1.2 EDA Property. “EDA Property” means the following real property located in the City of West St. Paul, Dakota County, Minnesota:

Lot 1, Block 2, R.C. Emerson’s Addition to West St. Paul, Dakota County, Minnesota.

1.3 Landowner Property. “Landowner Property” means the following real property located in the City of West St. Paul, Dakota County, Minnesota:

Lot 2, Block 2, R.C. Emerson’s Addition to West St. Paul, Dakota County, Minnesota.

1.4 Landowner. “Landowner” means, individually and collectively, Michael T. Buttgerit and Sarah N. Lewandowski, and their assigns and successors in interest.

1.5 Landowner Encroaching Improvements. “Landowner Encroaching Improvements” means the portions of Landowner’s existing fence, paver patio and retaining wall depicted on Exhibit A, attached hereto and incorporated herein, that are located on EDA Property.

1.6 Maintain. As used in this Agreement with respect to the Landowner Encroaching Improvements, “Maintain” and derivations thereof means to upkeep and repair in accordance with relevant City ordinances and regulations applicable to such structures.

ARTICLE 2 **RECITALS**

Recital No. 1. Landowner owns the Landowner Property.

Recital No. 2. The Landowner Property is improved with Landowner Encroaching Improvements.

Recital No. 3. The EDA Property is North of and abuts the Landowner Property.

Recital No. 4. Landowner Encroaching Improvements are on the EDA Property.

Recital No. 5. The EDA will allow the Landowner Encroaching Improvements to remain on the EDA Property.

ARTICLE 3 **AGREEMENTS**

3.1 Use and Maintenance of Landowner Encroaching Improvements. Under the terms and conditions stated herein, Landowner shall have the right to enjoy the use of the Landowner Encroaching Improvements, including reasonable ingress and egress from the Landowner Encroaching Improvements. Landowner shall, at Landowner’s expense, maintain the Landowner Encroaching Improvements.

3.2 No Additional Structures or Expansion. The Landowner Encroaching Improvements shall not be relocated, moved or expanded such that any further or different encroachment onto the EDA Property occurs. Landowner shall not place any other structures, retaining walls, irrigation systems, buildings, fences, landscaping, trees or shrubs within the footprint of Landowner Encroaching Improvements or elsewhere on EDA Property. If Landowner removes the Landowner Encroaching Improvements that are depicted on Exhibit A and they are not replaced for a period of one year, Landowner shall not thereafter replace the Landowner Encroaching Improvements and this Agreement as it relates to the removed Landowner Encroaching Improvements shall terminate.

3.3 EDA Not Responsible for Landowner Encroaching Improvements. Nothing contained herein shall be deemed an assumption by the EDA of any responsibility for construction, maintenance, replacement or repair of the Landowner Encroaching Improvements.

3.4 Continuing Right to EDA Property. Nothing contained herein shall be deemed a waiver or abandonment or transfer of the right, title and interest that the EDA holds to the EDA Property.

3.5 Subordinate Position Of Landowner Encroaching Improvements. The Landowner Encroaching Improvements are subordinate to the rights of the EDA in the EDA Property.

3.6 Risk of Loss. Landowner understands and agrees that the Landowner Encroaching Improvements on the EDA Property may be damaged by the EDA's use of the EDA Property. The parties agree that the EDA is not responsible for such events and provided the EDA did not act intentionally or recklessly to damage Landowner Encroaching Improvements, the EDA shall have no liability to Landowner for such events. Landowner assumes the risk of installing the Landowner Encroaching Improvements on EDA Property. EDA shall use its best efforts to give notice to Landowner of any potential damage to Landowner Encroaching Improvements prior to EDA's use on EDA Property.

3.7 Emergency. If the EDA determines in its sole discretion that an emergency exists on the EDA Property and Landowner Encroaching Improvements interfere with the EDA's ability to remedy or control such emergency, the EDA, without giving notice to the Landowner may remove all or portions of Landowner Encroaching Improvements in order to address the emergency. EDA shall not be responsible for any loss to Landowner for such actions.

3.8 Remedies. If the Landowner fails to perform its obligations under this Agreement, then the EDA may avail itself of any remedy afforded by law or in equity.

3.9 Indemnification. The Landowner shall indemnify, defend and hold the EDA, its council, agents, consultants, attorneys, employees and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies including interest, penalties and attorneys' fees, that the EDA incurs or suffers, which arise out of failure by the Landowner to observe or perform any covenant, condition, obligation or agreement on his part to be observed or performed under this Agreement.

3.10 Recording. This Agreement shall be recorded with the Dakota County Recorder's Office against both the Landowner Property and the EDA Property.

3.11 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Landowner Property and the EDA Property and shall be binding upon the heirs, successors, administrators and assigns of the parties for so long as the Landowner Encroaching Improvements remain on the EDA Property.

3.12 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another; waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement; waive compliance by another with any of the covenants contained in this Agreement and performance of any obligations by the other; or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

3.13 Governing Law. This Agreement shall be governed by and construed in accord with the laws of the State of Minnesota. Any action shall be venued in Dakota County, Minnesota.

3.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

3.15 Headings. The subject headings of the sections this Agreement are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

3.16 Notice. Notice shall mean notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to EDA:	West St. Paul Economic Development Authority 1616 Humboldt Avenue West St. Paul, MN 55118
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If to Landowner:	Michael T. Buttgerreit Sarah N. Lewandowski 1019 Smith Avenue South West St. Paul, MN 55118
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or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above and not returned undeliverable, provided that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

IN WITNESS WHEREOF, the parties have executed this Agreement the year and day first set forth above.

WEST ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY

David J. Napier, President

James Hartshorn, Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this _____ day of September, 2020 by David J. Napier and James Hartshorn, the President and Executive Director respectively, of the West St. Paul Economic Development Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of the EDA.

Notary Public

LANDOWNER

Michael T. Buttgereit

Sarah N. Lewandowski

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this _____ day of September, 2020, before me a Notary Public within and for said County, personally appeared Michael T. Buttgereit and Sarah N. Lewandowski, as joint tenants, to me personally known.

Notary Public

**This Instrument Was Drafted By
And After Recording Return To:**
Korine L. Land (#262432)
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
DEPICTION OF LANDOWNER ENCROACHING IMPROVEMENTS

