

33.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
R-2009-0093	Resolution	In Committee
	Resolution to approve Amendment of Utility Easement by and between the City of West Allis ("the City"), Sunset Investors WA, LLC ("Sunset") and R&K of Wisconsin, LLC ("R&K").	
	Introduced: 4/7/2009	Controlling Body: Public Works Committee
		Sponsor(s): Public Works Committee

COMMITTEE RECOMMENDATION Adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>4-7-09</u>			Barczak				✓
		✓	Czaplewski	✓			
			Kopplin				
			Lajsic				
			Narlock				
			Reinke				
			Roadt	✓			
	✓		Sengstock	✓			
			Vitale				
			Weigel	✓			
			TOTAL	<u>4</u>	<u>-</u>		<u>1</u>

SIGNATURE OF COMMITTEE MEMBER

[Signature] _____
 Chair Vice-Chair Member

COMMON COUNCIL ACTION **ADOPT**

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>APR 07 2009</u>			Barczak				✓
			Czaplewski	✓			
			Kopplin	✓			
			Lajsic	✓			
		✓	Narlock	✓			
			Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
			Vitale	✓			
	✓		Weigel	✓			
			TOTAL	<u>9</u>	<u>-</u>		<u>1</u>



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2009-0093

Final Action:

APR 07 2009

Sponsor(s): Public Works Committee

Resolution to approve Amendment of Utility Easement by and between the City of West Allis ("the City"), Sunset Investors WA, LLC ("Sunset") and R&K of Wisconsin, LLC ("R&K").

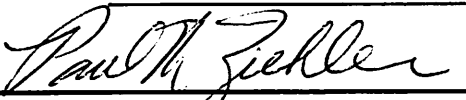
WHEREAS, On or about January 27, 1984, Charles E. Benidt and Glenn H. Benidt, who were then the co-owners of the Storage Property, granted an easement over portions of the Storage Property to maintain, extend, operate, repair and rebuild a sanitary sewer main, storm sewer mains and watermain; which easement was recorded with the Milwaukee County Register of Deeds on February 17, 1984, at Reel 1613, Images 1318-1320, as Document No. 5694118 (the "Utility Easement"),


WHEREAS, Sunset, R&K and the City have agreed to amend the Utility Easement per the attached Amendment of Utility Easement.

NOW, THEREFORE, BE IT RESOLVED By the Common Council of the City of West Allis as follows:

1. That the Amendment of Utility Easement by and between the City, Sunset and R&K, attached hereto and incorporated herein by reference, be and the same is hereby accepted and approved.
2. That the Mayor and the City Administrative Officer, Clerk/Treasurer be and are hereby authorized and directed to execute and deliver the attached Amendment of Utility Easement on behalf of the City.

BE IT FURTHER RESOLVED That the City Attorney is hereby authorized to make such substantive changes to the Amendment of Utility Easement as are needed to protect the City's best interests.

ADOPTED APR 07 2009

 Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED 4/10/09

 Dan Devine, Mayor

AMENDMENT OF UTILITY EASEMENT

Document Number

Document Title

Recording Area

Name and Return Address
David C. Keating
Walsh & Keating, S.C.
1505 Wauwatosa Ave.
Wauwatosa, WI 53213

Parcel Identification Number (PIN)
448-9993-010

SEE ATTACHMENT

This information must be completed by submitter: document title, name and return address, and PIN (if required). Other information such as the granting clauses, legal description, etc. may be placed on this first page of the document or may be placed on additional pages of the document. Note: Use of this cover page adds one page to your document and \$2.00 to the recording fee. Wisconsin Statutes. 59.517. WRDA 2/96

AMENDMENT OF UTILITY
EASEMENT

This Amendment of Utility Easement ("Amendment") is made and entered into on the respective dates set out below by and between the City of West Allis ("the City"), Sunset Investors WA, LLC ("Sunset") and R&K of Wisconsin, LLC ("R&K").

RECITALS

- A. Sunset and R&K are the co-owners of certain real property and improvements located at 11108 W. Lapham Street, West Allis, Wisconsin, as more particularly described in Exhibit A attached hereto (the "Storage Property");
- B. On or about January 27, 1984, Charles E. Benidt and Glenn H. Benidt, who were then the co-owners of the Storage Property, granted an easement over portions of the Storage Property to maintain, extend, operate, repair and rebuild a sanitary sewer main, storm sewer mains and watermain,; which easement was recorded with the Milwaukee County Register of Deeds on February 17, 1984, at Reel 1613, Images 1318-1320, as Document No. 5694118 (the "Utility Easement");
- C. The Utility Easement was shown and confirmed on Certified Survey Map No. 4364, Recorded on August 11, 1983 as Document No. 5642300 and Certified Survey Map No. 5671, Recorded on March 26, 1992, as Document No. 658067;
- D. Sunset, R&K and the City have agreed to amend the Utility Easement as set out herein:

NOW, THEREFORE, in consideration of the above Recitals, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the parties agree as follows:

- 1. Existing Improvements. The parties acknowledge that, notwithstanding the requirements of the Utility Easement, certain improvements have been constructed over the premises described in the Utility Easement without record of any City approval of same. The City retroactively approves the

existing improvements on the Storage Property, to the extent that they encroach on the Utility Easement, and agrees that it will not require the demolition or removal of any improvements currently located over the premises described in the Utility Easement. This does not extend to the erection of any new improvements within the boundaries Of the Utility Easement, which shall not be permitted without prior, written approval from the City of West Allis Fire Department and the West Allis Department of Public Works, which approval may be granted or denied in the sole and absolute discretion of the said Fire Department and Public Works Department and may be subject to such conditions as necessary or advisable to protect the interests of the City.

2. Repairs.

A) In the event that the presence of structures or buildings over the Utility Easement causes damage to the sanitary sewer, storm sewer or water utilities located within the Utility Easement, then Sunset and R&K shall be responsible for the cost of all repairs to such utilities necessitated as a result of such damage. All such repairs shall be under the supervision, management and control of the City, with contractors selected or approved by the City.

B) In the event that, for any reason other than damage caused by the presence of structures or buildings within the Utility Easement, any of the sanitary sewer, storm sewer or water utilities located within the Utility Easement require maintenance or repair (herein known as "routine repair and maintenance") the cost of such routine repair and maintenance shall be borne by the City. Notwithstanding the foregoing, to the extent that the cost of routine repair and maintenance is increased as a result of the presence of structures or buildings in the Utility Easement, Sunset and R&K shall be responsible for all such incremental increases in the cost of such repair or maintenance attributable to the presence of structures or buildings over the Utility Easement. Prior to making any routine repair and maintenance where incremental cost increases will be assessed to Sunset and R&K hereunder, the City shall notify Sunset and R&K, in writing, of the nature and extent of such routine repair and maintenance and shall provide an estimate of the incremental cost to be assessed to Sunset and R&K hereunder at least thirty (30) days prior to the commencement of such work, (the "City Notice") upon receipt of such notice from the City, Sunset and R&K shall have the option to remove the structures and buildings involved in such routine repair and maintenance, which removal shall be accomplished as expeditiously as possible to avoid delays in the performance of the required routine repair and maintenance. Upon timely removal of such infringing structures and buildings, Sunset and R&K shall have no obligation to bear any of the costs associated with such routine repair and maintenance. This option shall be exercised by written notice to the City given no later than ten (10) days after receipt of

the City Notice by Sunset and R&K. In the event that Sunset and R&K do not timely notify the City of their intent to remove the infringing structures and buildings, they shall be deemed to have erected not to do so and shall remain responsible for the incremental costs identified above.

3. Covenants Run with the Land. All easements, restrictions, provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon the parties, their respective heirs, successors (by merger, consolidation or otherwise) and assigns, (including, without limitation, lessees, occupants and all other persons acquiring any interest in any subject properties, or any portion thereof), whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall constitute covenants running with the land pursuant to Wisconsin Law.
4. No Third Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the parties, their heirs, successors and assigns, except as otherwise provided herein, and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied upon any third person, except as otherwise specifically provided herein.
5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin. Any action or proceeding regarding this Amendment or the Utility Easement shall be brought exclusively in the Circuit Court for Milwaukee County, Wisconsin or the United States District for the Eastern District of Wisconsin
6. Notices. All notices to be given pursuant to this Agreement shall be in writing and must be given by personal service, by nationally recognized overnight courier or by United States Certified or Registered Mail, postage prepaid, properly addressed to the following:

If Intended for Sunset and R&K addressed at:
10535 W. College Avenue
Franklin, WI 53122
Attn: Kendall Breunig

If Intended for City, addressed at:
City of West Allis
7525 W. Greenfield Avenue
West Allis, WI 53214

Or to their respective successors at the address hereafter given to the other party by notice which complies with the terms of this Section 6. Such Notices shall be deemed given on the date of personal service, on the day after delivery to the overnight courier or on the day of receipt or refusal of the package by registered or certified mail, as applicable.

7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to the Storage Property does consent and agree and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to those limitations, restrictions, easements, reservations and conditions is contained in the instrument by which such person acquired an interest in such property.
8. Remaining Terms. Except as specifically modified herein, the Utility Easement shall remain in full force and effect and is hereby ratified, confirmed and approved.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

R&K of Wisconsin, LLC

By: _____
Roy N. Cook, Manager

STATE OF WISCONSIN)
)SS.
MILWAUKEE COUNTY)

Personally appeared before me this _____ day of _____, 2009, the above named Roy N. Cook, to me known to be the person who executed the foregoing document, and acknowledged same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[NOTARIAL SEAL]

Notary Public, State of Wisconsin
My commission: _____

1505 Wauwatosa Ave.
Wauwatosa, WI 53213
Phone: (414) 257-9929
Fax: (414) 257-9959

EXHIBIT A

Legal Description

The Storage Property

Lots 2 and 3 of Certified Survey Map No. 5671, recorded on March 26, 1992, Reel 2744, Images 1338 to 1343 inclusive, as Document No. 6588067, part of C.S.M. No. 731, part of Parcels 1 and 2 and all of Parcel 3 of C.S.M. No. 3738, part of Lot 2 and all of Lots 1 and 3 of C.M.S No. 4364, being part of the Northeast $\frac{1}{4}$ and Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 6, Town 6 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin.

Tax Key No: 448-9993-010

Address: 11108 W. LAPHAM STREET

EXHIBIT

SITUATED ON WEST GREENFIELD AVENUE, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN

PART OF LOTS 1 AND 3 OF CERTIFIED SURVEY MAP NO. 5671, RECORDED ON MARCH 26, 1992 ON REEL 2744, IMAGES 1338 TO 1343 INCL., AS DOCUMENT NO. 6588067, BEING PART OF THE NORTHEAST 1/4 AND NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 6, TOWN 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN. BOUNDED AND DESCRIBED AS FOLLOWS:

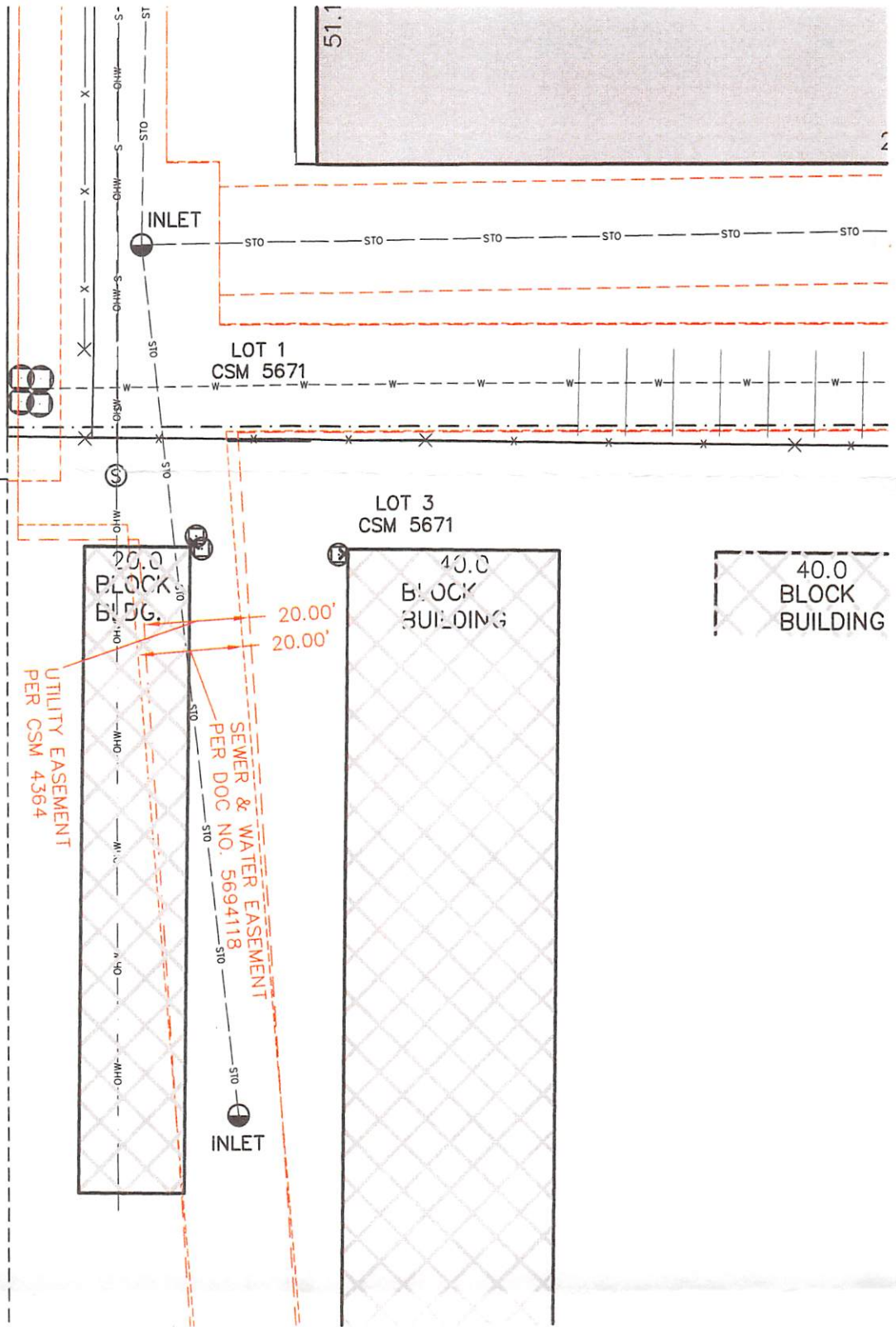
JANUARY 5, 2008

SUNSET INVESTORS

DRAWING NO. 157801-RMK

E
D
C
B
A

R. A. Smith National, Inc.



R.A. Smith National, Inc.

*Beyond Surveying
and Engineering*

16745 W. Bluemound Road, Brookfield WI 53005
262-781-1000 Fax 262-797-7373
www.rasmithnational.com

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SHEET 1 OF 1

