

48.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2009-0175 Resolution Introduced

Resolution Granting an Improvement Easement between the City of West Allis, GK MACS, LLC, and Anderson Management, Inc. to construct an entrance feature for the Towne Centre at the southwest corner of the Burger King Property located at 6746 W. Greenfield Ave. (Tax Key No. 439-0001-010)

Introduced: 8/4/2009

Controlling Body: Safety & Development Committee

Sponsor(s): Safety & Development Committee

COMMITTEE RECOMMENDATION

ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>8/4/09</u>			Barczak				<input checked="" type="checkbox"/>
			Czaplewski				
			Kopplin	<input checked="" type="checkbox"/>			
			Lajsic	<input checked="" type="checkbox"/>			
			Narlock				<input checked="" type="checkbox"/>
		<input checked="" type="checkbox"/>	Reinke	<input checked="" type="checkbox"/>			
			Roadt				
			Sengstock				
	<input checked="" type="checkbox"/>		Vitale	<input checked="" type="checkbox"/>			
			Weigel				
			TOTAL	<u>4</u>	<u>0</u>		<u>1</u>

SIGNATURE OF COMMITTEE MEMBER

Chair

Vice-Chair

Member

COMMON COUNCIL ACTION

ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>AUG 04 2009</u>			Barczak				<input checked="" type="checkbox"/>
			Czaplewski	<input checked="" type="checkbox"/>			
		<input checked="" type="checkbox"/>	Kopplin	<input checked="" type="checkbox"/>			
	<input checked="" type="checkbox"/>		Lajsic	<input checked="" type="checkbox"/>			
			Narlock				<input checked="" type="checkbox"/>
			Reinke	<input checked="" type="checkbox"/>			
			Roadt	<input checked="" type="checkbox"/>			
			Sengstock	<input checked="" type="checkbox"/>			
			Vitale	<input checked="" type="checkbox"/>			
			Weigel	<input checked="" type="checkbox"/>			
			TOTAL	<u>8</u>	<u>-</u>		<u>2</u>

Dev
BINS
Atty

STANDING COMMITTEES OF THE CITY OF WEST ALLIS COMMON COUNCIL

ADMINISTRATION & FINANCE

Chair: Kurt E. Kopplin
Vice-Chair: Vincent Vitale
Thomas G. Lajsic
Richard F. Narlock
Rosalie L. Reinke

PUBLIC WORKS

Chair: Gary T. Barczak
Vice-Chair: Martin J. Weigel
Michael J. Czaplewski
Daniel J. Roadt
James W. Sengstock

SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic
Vice-Chair: Richard F. Narlock
Kurt E. Kopplin
Rosalie L. Reinke
Vincent Vitale

LICENSE & HEALTH

Chair: Michael J. Czaplewski
Vice-Chair: James W. Sengstock
Gary T. Barczak
Daniel J. Roadt
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ADVISORY

Chair: Rosalie L. Reinke
Vice-Chair: Daniel J. Roadt
Kurt E. Kopplin
Richard F. Narlock
Vincent Vitale



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2009-0175

Final Action:

Sponsor(s): Safety & Development Committee

AUG 04 2009

Resolution Granting an Improvement Easement between the City of West Allis, GK MACS, LLC, and Anderson Management, Inc. to construct an entrance feature for the Towne Centre at the southwest corner of the Burger King Property located at 6746 W. Greenfield Ave. (Tax Key No. 439-0001-010)

WHEREAS, Ramco-Gershenson Properties, L.P. ("Ramco"), owner of the West Allis Towne Centre, has agreed with the City of West Allis to construct certain improvements at the entrance to the Shopping Center in connection with a bus stop in front of the Shopping Center, but a portion of such improvements will be located upon a portion of the Burger King Property; and,

WHEREAS, the improvements that are to be located within the Easement Area (the "Improvements"), which include, but are not limited to, certain landscaping features, brick pavers, trash containers, benches, lighting fixtures and a retaining wall, will be constructed in accordance with the final plans approved by the Plan Commission on January 28, 2009; and,

WHEREAS, GK MACS, LLC, owner of the Burger King Property, and Anderson Management, Inc., lessee, have agreed to grant the City of West Allis a permanent, non-exclusive easement over the Property for the purpose of allowing Ramco to install and maintain the Improvements on behalf of the City of West Allis and to allow the public to use the Easement Area; and,

WHEREAS, the City faces potential liability of a lawsuit action by any person for damages, injuries or death arising from the use of the Easement Area, however, Ramco has agreed to reimburse the City up to the maximum amount recoverable by any person, \$50,000, consistent with Wisconsin Statute section 893.80; and,

WHEREAS, the reimbursement agreement between the City and Ramco, along with the low risk of any lawsuit action, justifies the City entering into the Improvement Agreement with GK MACS, LLC and Anderson Management, Inc.

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

1. That the Improvement Easement between the City of West Allis, GK MACS, LLC, and Anderson Management, Inc. to construct an entrance feature for the Towne Centre at the southwest corner of the Burger King property located at 6746 W. Greenfield Ave., in the form attached hereto and incorporated herein by reference, be and the same is hereby approved.

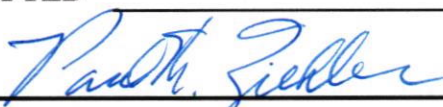
2. That the Mayor and the City Administrative Officer, Clerk/Treasurer be and are hereby authorized and directed to execute and deliver the attached Improvement Easement on behalf of the City of West Allis.

3. That the City Attorney be and is hereby authorized to make such non-substantive changes, modifications, additions and deletions to and from the various provisions of the easement, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

DEV-R-561-8-4-09


Cc: Department of Development

ADOPTED AUG 04 2009



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

APPROVED 8/14/09



Dan Devine, Mayor

IMPROVEMENT EASEMENT AGREEMENT

THIS IMPROVEMENT EASEMENT AGREEMENT ("Agreement") is made this _____ day of _____, 2009, by and between: (i) GK MACS, LLC, whose address is 1278 N. State St. PMB 199, Greenfield, IN 46140 ("Fee Owner") and Anderson Management, Inc., whose address is 9837 North Range Line Road, Mequon, WI 53092 ("Lessee") collectively, Fee Owner and Lessee shall be referred to herein as "Grantor," and CITY OF WEST ALLIS, a municipal corporation whose address is 7525 West Greenfield Avenue, West Allis, WI 53226, as Grantee.

WHEREAS, Fee Owner is the owner of that property described in Exhibit A attached hereto and by reference made a part hereof (the "Property"); and

WHEREAS, Lessee is the lessee of the Property under a long term ground lease between Fee Owner, as lessor, and Lessee, as lessee; and

WHEREAS, Ramco-Gershenson Properties, L.P., a Delaware limited partnership ("Ramco") is the owner of the shopping center ("Shopping Center") adjacent to the Property currently known as "West Allis Towne Centre," as described on Exhibit B, attached hereto and made a part hereof; and

WHEREAS, Ramco has agreed with the City of West Allis to construct certain improvements at the entrance to the Shopping Center in connection with a bus stop in front of the Shopping Center, but a portion of such improvements will be located upon a portion of the Property as described in Exhibit C, attached hereto and made a part hereof (the "Easement Area"); and

WHEREAS, the improvements that are to be located within the Easement Area (the "Improvements"), which include, but are not limited to, certain landscaping features, brick pavers, trash containers, benches, lighting fixtures and a retaining wall, will be constructed in accordance with the final plans identified on Exhibit D, attached hereto and made a part hereof (the "Final Plans"); and

WHEREAS, Grantor has agreed to grant to Grantee a permanent, non-exclusive easement over the Property for the purpose of allowing Ramco to install and maintain the Improvements on behalf of Grantee and to allow the public to use the Easement Area.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto and for the sum of Ten Dollars (\$10), the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Grantor hereby grants to Grantee, and its successors in interests and assigns, an easement on, in, over and across the Easement Area for the purposes of construction, maintenance, repair and replacement of the Improvements. Such easement grant shall include the right of Ramco to enter the Easement Area and the Property for the purposes of constructing, maintaining, repairing and replacing the Improvements within such Easement Area on behalf of the Grantee.

2. Grantee shall cause Ramco to construct the Improvements in accordance with the Final Plans. Grantee may not change or modify the Final Plans without the consent of Grantor.

3. Grantor further grants to Grantee and to all customers, invitees, licensees and permittees of Grantee, as well as the general public, the right to enter the Easement Area in order to use the Improvements for their intended purpose.

4. All work to be performed by Grantee and on behalf of Grantee by Ramco hereunder shall be performed in a good and workmanlike manner and free of construction or mechanic's liens. Grantee shall cause the Improvements to be maintained in a good, useable, clean and attractive condition, in accordance with all laws, regulations, and governmental directives. Grantor shall not interfere with the use of the Improvements by all parties entitled to use the same. No party hereto shall modify or move any of the Improvements once constructed without the consent of the other parties hereto.

5. Subject to the limits on tort claims to third parties set forth in Wisconsin Statute section 893.80 and Ramco's reimbursement obligation set forth below, Grantee shall indemnify, defend, and hold Grantor, Ramco and all members, partners, shareholders, officers, directors, employees, and agents of Grantor and Ramco, harmless from and against any and all loss, cost, liability and/or expense (including reasonable attorneys' fees) incurred by any of them as a result of the installation and maintenance of the Improvements and the use of the Easement Area as contemplated by this Agreement.

By executing this Agreement, Ramco, as current owner of the Shopping Center, hereby agrees on behalf of the owner of the Shopping Center to reimburse Grantee an amount not to exceed \$50,000 recovered, consistent with Wisconsin Statute section 893.80, by any person for damages, injuries or death in any action founded on tort arising from the use of the Easement Area as contemplated by this Agreement. The owner of the Shopping Center shall only have such obligation if: (i) Grantee notifies such owner of any such claim within 30 days after Grantee is notified in writing of the existence of such claim, and (ii) Grantee allows such owner or its insurer to participate in all settlement discussions, approve any proposed settlement, and participate fully in any litigation arising out of such claim. Such reimbursement obligation is a covenant running with the land, binding upon the successors and assigns of Ramco. The reimbursement obligation shall only be the responsibility of the party that owns the Shopping Center at the time that the events giving rise to any claim occur. If more than one party owns the Shopping Center at any time, such obligation shall be the responsibility of the party that owns the largest portion of the Shopping Center at the time that the events giving rise to such claim occur.

6. Fee Owner warrants that, as of the date of this Agreement, it has marketable fee simple title to the Property subject to no encumbrances which will interfere with Grantee's use of the Easement Area. Fee Owner warrants that there is no mortgage or similar monetary lien encumbering the Easement Area. Fee Owner shall defend, indemnify and hold Grantee harmless from and against all claims, losses, liabilities and expenses incurred by Grantee as a result of breach of the foregoing warranty.

7. In the event that Grantee breaches any of its covenants set forth in this Agreement, Grantor shall have the right to notify Grantee of such breach, and if Grantee fails to commence to cure such breach within ten (10) days of the date that such notice is given (or, in the case of an emergency, such shorter period of time as may be reasonable under the circumstances) then Grantor shall have the right to take all steps necessary to cure such breach, including engaging in self help with respect to maintenance and repair. To the extent that Grantor has expended any funds in connection therewith, Grantee shall reimburse Grantor for the full amount therefor within ten (10) days after Grantee receives an invoice therefor from Grantor, which invoice shall contain reasonable backup documentation evidencing the amount of such costs.

8. This Agreement may not be amended except by a writing signed by the parties or their respective successors or assigns.

9. Any notice required or desired to be given under this Agreement shall be in writing and shall be personally delivered or sent by certified or registered mail, postage prepaid, return receipt requested, to the parties at their respective addresses as indicated above, or at such other address as may be designated by a party by notice in writing. Any such notice shall be deemed to have been delivered three (3) days after mailing or when delivered in person or by a nationally recognized overnight courier service.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

11. Miscellaneous.

(a) This Easement may be executed in counterpart originals, each of which, when taken together, shall be deemed one and the same instrument.

(b) All of the covenants, conditions, agreements and restrictions set forth in this Easement are intended to be and shall be construed as covenants running with the land, binding upon, and inuring to the benefit of and enforceable by the parties hereto, their respective successors and assigns, upon the terms, provisions and conditions hereinabove set forth.

(c) This Easement contains the entire agreement between the parties as to the subject matter contained herein and there are no other terms, expressed or implied, except as contained herein.

(d) The rights of the Grantor hereunder may be enforced by either Fee Owner or Lessee.

(e) In the event that any one or more of the provisions contained in this Easement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Easement and this Easement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

[Signatures appear on following page]

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____, the _____, of Anderson Management, Inc., on behalf of the corporation.

_____, Notary Public
_____, Michigan
Acting in _____ County, _____
My commission expires: _____

STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____, the _____, of THE CITY OF WEST ALLIS, a _____.

_____, Notary Public
_____, Wisconsin
Milwaukee County, Wisconsin
My commission expires: _____

EXHIBIT A

Parcel 4 of Certified Survey Map No. 4756, being a Redivision of Lot 1, in Block 1, in Assessor's Plat No. 270, being a Subdivision of a part of the South West 1/4, South East 1/4, and the North East 1/4 of Section 34, and part of the South West 1/4 of Section 35, Township 7 North, Range 21 East, in the City of West Allis, County of Milwaukee and State of Wisconsin, recorded on June 4, 1986 in Reel 1891, Images 1147 to 1151 inclusive, as Document No. 5921484.

EXHIBIT B

Parcels 1, 2 and 3 of Certified Survey Map No. 4756, being a redivision of Lot 1, in Block 1, in Assessor's Plat No. 270, being a subdivision of a part of the SW ¼, SE ¼ and the N/E ¼ of Section 34, and a part of the SW ¼ of Section 35, T 7 N, R 21 E, in the City of West Allis, Milwaukee County, Wisconsin, recorded June 4, 1986 in Reel 1891, Image 1147 as Document No. 5921484.

Together with a non-exclusive right of entry and use for pedestrian and vehicular ingress and egress purposes across that part of Lot 1 in Block 1 in Assessor's Plat No. 270, being a subdivision of a part of the SW ¼, SE ¼ and the NE ¼ of Section 34, and part of the SW ¼ of Section 35, T 7 N, R 21 E, in the City of West Allis, Milwaukee County, Wisconsin, which is bounded and described as follows:

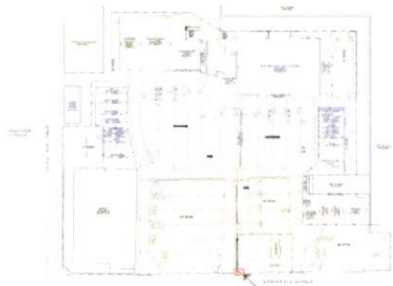
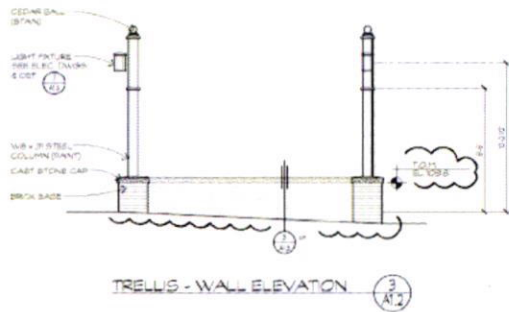
Commencing at the South ¼ corner of Section 34, thence North 00°29'00" East along the North-South ¼ lines of Section 34 aforesaid 33.00 ft. to a point on the North side of West Greenfield Avenue; thence South 89°35'20" West along the North side of West Greenfield Avenue 614.94 ft. to a point; thence North 38°38'40" West 38.77 ft. to a point on the present East line of South 70th Street; thence North 01°36'20" East along the East line of South 70th Street 117.10 ft. to a point, then North 00°26'04" East along the East line of South 70th Street 421.84 ft. to a point; thence South 89°37'30" East 92.35 ft. to the of beginning of said easement; continuing thence South 89°37'30" East 15.00 ft. to a point; thence North 00°28'53" East 172.77 ft. to a point; thence South 89°31'07" East 74.68 to a point; thence North 00°25'26" East 267.00 ft. to a point; thence South 89°34'34" East 295.73 ft. to a point; thence South 60°17'43" East 149.32 ft. to a point; thence South 89°36'27" East 509.61 ft. to a point; thence South 00°25'37" West 554.31 ft. to a point; thence South 89°34'23" East 47.00 ft. to a point; thence North 00°25'37" East 584.34 ft. to a point; thence North 89°36'27" West to a point; thence North 60°17'43" West 6.82 ft to a point; thence North 00°24'12" East 604.03 ft. to a point; thence North 85°51'43" West 354.34 ft. to a point; thence North 86°55'04" West 231.19 ft. to a point on the East line of South 70th Street; thence south 00°26'04" West along the East line of South 70th Street 30.01 ft. to a point; thence South 88°32'00" East 229.74 ft to a point; thence 84°48'31" East 306.57 ft. to a point; thence South 42°36'22" East 29.63 ft. to a point; thence South 00°24'12" West 539.74 ft. to a point; thence North 60°17'43" West 98.21 ft. to a point; thence North 89°34'34" West 302.94 ft. to a point; thence South 00°25'26" West 276.98 ft. to a point; thence North 89°31'07" West 167.17 ft. to a point on the East line of South 70th Street; thence South 00°26'04" west along the East line of South 70th Street 30.00 ft. to a point; thence South 89°31'07" East 92.48 ft. to a point; thence South 00°28'53" West 157.80 ft. to the point of beginning.

Also storm sewer rights as set forth in an instrument dated October 15, 1992 recorded in the Office of the Register of Deeds for Milwaukee County on January 12, 1993 in Reel 2946, Image 878-882, as Document No. 6713871.

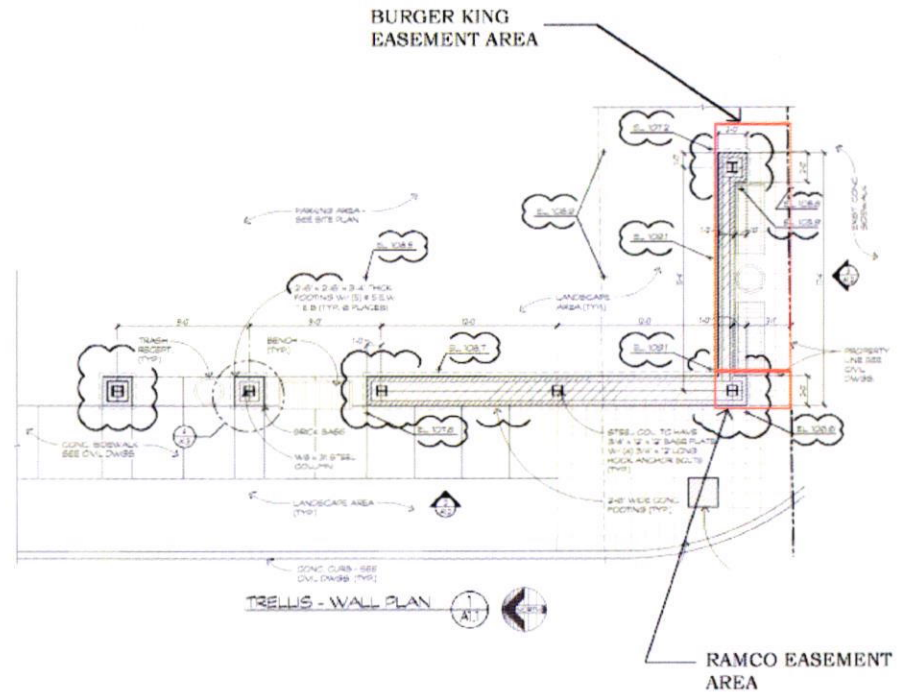
Also, that part of Lot in Block 1 in Assessor's Plat No. 270, being a subdivision of the SW $\frac{1}{4}$, SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of Section 34 and part of the SW $\frac{1}{4}$ of Section 35, T 7 N, R 21 E, in the City of West Allis, Milwaukee County, Wisconsin which is bounded and described as follows:

Commencing at the South $\frac{1}{4}$ corner of said Section 34; thence North $00^{\circ}20'00''$ East along the North/South $\frac{1}{4}$ line of said Section 34 33.00 ft. to a point on the North line of West Greenfield Avenue; thence North $89^{\circ}36'00''$ East along the North line of West Greenfield Avenue 607.98 ft. to the Southeast corner of Parcel 3 of Certified Survey Map No. 4756; thence North $00^{\circ}25'37''$ East 144.45 ft. to the point of beginning of the land to be described; thence South $89^{\circ}36'00''$ West 80.00 ft. to a point; thence North $00^{\circ}25'37''$ East 30.08 ft. to a point; thence South $89^{\circ}37'59''$ East 30.35 ft. to a point; thence South $00^{\circ}22'01''$ West 10.17 ft. to a point; thence South $89^{\circ}37'59''$ East 49.63 ft. to a point; thence South $00^{\circ}25'37''$ West 18.84 ft. to the point of beginning.

EXHIBIT C



EASEMENT AREA



WEST ALLIS TOWNE CENTRE
8-4-09

EXHIBIT D

Improvements to be Constructed on Easement Area

Masonry retaining wall
Stamped concrete sidewalk
2 benches
1 trash receptacle
2 decorative light poles
Landscaping