

SCANNED**PERMIT AGREEMENT**

January 10, 2006

Finance #02- 13943-0

BOARD OF WATER COMMISSIONERS

and

BIX PRODUCE COMPANY, LLC

Granting permission to construct and maintain a parking lot over a portion of said right-of-way adjacent to its property located at 1415 L'Orient Street in Saint Paul, to expand its business.

Section 19

T. 29

R. 22

COUNTY OF RAMSEY

The following documents or copies thereof are filed herein:

| | | | |
|-------------|----------|------|-----------------------------|
| 9-2006-B-01 | 10 Jan | 2006 | Permit Agreement |
| -02 | 10 Jan | 2006 | BWC Resln. #5073 |
| -03 | 01 March | 2006 | City Council Resln. #06-203 |
| -04 | 01 Dec | 2015 | Estoppel Certificate |

RECEIVED BY
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PERMIT AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of January, 2006, by and between the **BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL**, a Minnesota municipal corporation (“Board”), and **BIX PRODUCE COMPANY, LLC**, a Delaware limited liability corporation, whose address is 1415 L’Orient Street, Saint Paul, Minnesota, 55117 (“Permittee”).

WITNESSETH: That the Board, for itself, its successors and assigns, and Permittee, for itself, its successors, heirs and assigns, do hereby agree as follows:

1. Permittee, owner of the property described in Exhibit A, attached hereto and incorporated herein (the “Property”), is hereby permitted to construct and maintain landscaping and hard surface parking lot improvements upon the Board-owned land described in Exhibit A (the “Premises”), in accordance with Pope Associates, Inc.’s plans and specifications on file in the office of the Board and Permittee (“West Addition Plans”), and as shown generally on Exhibit B, attached hereto and incorporated herein, and in respect to the following:

- a. No work shall be performed by Permittee on the Premises until the Board’s Saint Paul Regional Water Services Engineering Division has provided written approval of all West Addition Plans pertaining to work within the Premises.
- b. Permittee shall arrange a pre-construction meeting with the Board’s Vadnais Supervisor (“Board Supervisor”) prior to mobilization of construction work.
- c. Where construction of permitted parking lot requires the removal of more than six (6) inches of cover within ten (10) feet of the Board’s 30-inch public water main (“Water Main”), Permittee shall not proceed with said removal until approved by Board Supervisor. Removal which produces a final cover over the Water Main of less than four (4) feet shall require the construction of a reinforced concrete protective mat, as shown on Exhibit C, attached hereto and incorporated herein.
- d. All work performed within the Premises, including but not limited to, location, materials, equipment and construction practices, shall be subject to approval by Board Supervisor.

2. Permittee shall pay to the Board the sum of \$500 as reimbursement for administrative and inspection costs.

3. Routine operations of the Board shall take precedence over all Permittee activity included in this Agreement.

4. All permitted work, including but not limited to, location, materials and construction practices, shall be subject to approval by Board Supervisor.

5. During the term of this Agreement, Permittee shall maintain the Premises in good condition and keep the same free from litter or other objectionable matter. Permittee shall also provide landscape and turf maintenance of the Premises in respect to the following:

- a. All such maintenance work shall be performed in accordance with Board standards, as determined and approved by Board Supervisor.
- b. In the event such maintenance work is determined to be below Board standards, Board Supervisor shall provide written notice to Permittee of such deficiency and Permittee shall have seven (7) calendar days to remedy said deficiency.
- c. In the event that Permittee does not satisfactorily remedy said deficiency, as determined by Board Supervisor, within seven (7) calendar days, Board Supervisor may direct Board forces to remedy the deficiency and Permittee shall pay the Board all costs incurred to provide said remedy.

6. Permittee shall notify Board Supervisor at least 48 hours in advance of permitted construction activity so that water main locations can be provided and inspection of the construction can be performed on behalf of the Board. Board Supervisor may be reached at 651-766-4150 (office) or 651-775-6188 (cell).

7. The Board shall have the option and authority of assigning its inspector or inspectors to the site at any time or times and for such periods of time as the Board or its Board Supervisor deems necessary or expedient for the safety and protection of employees or works of the Board or of other persons or property whomsoever or whatsoever because of any condition arising out of said proposed construction or from acts or operations of Permittee in the construction operations within said Premises.

8. It is understood and hereby agreed by and between the parties hereto that any plans or data supplied by the Board or its Board Supervisor in respect of but not necessarily limited to works of the Board or of others located within or adjacent to said Premises are approximations only and that the Board explicitly does not guarantee any said plans or data to be either complete or correct.

9. Extreme caution shall be exercised when operating equipment over the Water Main.

10. The use of explosives of any kind or for any purpose whatsoever within and adjacent to the Premises, including ammunition in hand-held impact-driven tools, is expressly prohibited.

11. Permittee shall neither make any excavations nor alter any works or improvements within the Premises nor install any improvements therein other than as expressly provided for in this Agreement, except with and according to the Board's written consent thereto.

12. Permittee shall plant no trees, hedges or large shrubbery within the Premises without prior written approval of Board Supervisor, and the Board reserves the right to remove same if planted without said prior approval.

13. Permittee shall not damage or obstruct or cause any interference or otherwise damage said Premises or any improvement or works of the Board or others located therewithin, thereupon or thereunder and Permittee shall pay for or otherwise make good to the satisfaction of the Board any damage caused to said Premises or to any improvement or works of the Board by Permittee. Any repair or replacement of works of the Board which might be damaged, destroyed or rendered unsuitable to the purpose thereof by any reason arising out of acts of Permittee shall be accomplished by the Board with its own forces or by its contractor, as the Board may elect, and by use of materials furnished by the Board or its contractor as hereinafter provided, all at the cost and expense of Permittee.

14. The Board reserves to itself the right to install additional works within the Premises and to continue maintenance of existing works located therein. Should it be necessary that the Permittee's works or improvements be removed or damaged as a result of the Board's operations, all replacement or modification costs to restore the Permittee's works or improvements shall be borne solely by Permittee.

15. Permittee shall forever indemnify and save harmless, protect and defend the City of Saint Paul and the Board, their employees and agents, from any or all liability, suits or demands, including loss of use, arising out of the construction, maintenance, repair of Permittee's improvements permitted by this Agreement. This provision shall not, however, apply where such bodily injury or property damage is caused by the sole negligence of the City of Saint Paul or the Board, their employees and agents.

16. During permitted activity, Permittee or Permittee's contractor shall take out and maintain comprehensive public liability (including automobile) insurance for and on behalf of Permittee, the City of Saint Paul and the Board of Water Commissioners as *additional insured*, protecting the parties from claims for damages and bodily injuries, including accidental death, as well as from claims for damage to property owned by the Board, which may arise from operations incidental to this Agreement, including coverage for damage to structures of any kind or underground structure of any kind, of whether such operations be by Permittee or by any contractor or subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall also include contractual liability coverage and shall insure the liability assumed by Permittee under the indemnification clause contained in this Agreement. The minimum amount of such liability insurance shall be as follows:

- a) Bodily injury insurance (including death) in an amount not less than \$1,000,000 for all damages arising out of bodily injuries to or death of one person, and subject to the same limit for each person in a total of not less than \$2,000,000 on account of any one occurrence.
- b) Property damage insurance in an amount not less than \$1,000,000 for all damages to or destruction of property in any one occurrence, and subject to that limit per occurrence; further

subject to a total of not less than \$2,000,000 for all damages to or destruction of property during the policy period.

All insurance shall include the provision that it cannot be altered or canceled except upon thirty (30) days written notice to the Board, and such insurance shall meet with approval of the City Attorney of the City of Saint Paul.

Acceptable written proof of insurance shall be delivered to the Board well in advance of the time contemplated for commencing any operation pursuant to this Agreement and no operations shall be commenced, carried on, continued or permitted except after the Board has given Permittee its written approval of said insurance, and said insurance so approved is in force and effect.

17. The obligations of Permittee hereinabove set forth shall not be extinguished or modified in any respect by reason of the fact of any insurance taken out in pursuance of other pertinent provisions of this Agreement.

18. The exercise of privileges granted in this Agreement shall be without cost or expense to the Board and shall be subject to inspection and approval by Board Supervisor. Any such costs or expenses incurred by the Board in excess of the permit fee amount shall be paid by the Permittee.

19. The granting of permissions contained in this Agreement creates in the Permittee no property rights.

20. If Permittee defaults in the performance of any of Permittee's obligations under this Agreement, the Board may, after written notice to the Permittee, suspend performance of its obligations under this Agreement, and the Board may take the following actions:

- a. terminate this Agreement; or
- b. initiate a civil action to compel Permittee's specific performance of Permittee's obligations under this Agreement provided that Board commences such action within six (6) months of the date of Permittee's default. In any such action for specific performance, Board may recover Board's attorneys fees and costs; or
- c. take whatever action at law that may appear necessary or desirable to Board; and seek damages on account of such default together with costs and attorneys fees incurred on account of such default.

21. Permittee agrees to abide by all applicable federal, state and local rules and regulations governing the performance of the activity hereby permitted.

22. This Agreement shall expire on December 31, 2023. However, this Agreement shall automatically renew for one additional twenty-year term, unless Permittee is in default of any of the terms or conditions of

this Agreement, or unless Permittee notifies the Board of its intention not to renew prior to commencement of the renewal term.

23. This Agreement may be terminated by either party upon sixty (60) days written notice to the other party for the following reasons:

- a) By Permittee without cause.
- b) By the Board, in the following situations:
 - 1) Permittee ceases to provide maintenance of the Premises, as described in Section 5 of this Agreement, or
 - 2) Use of the Property or the Premises by the Permittee changes in such a way that the Board, in its sole discretion, determines it is no longer in its best interest to grant the permissions contained in this Agreement.

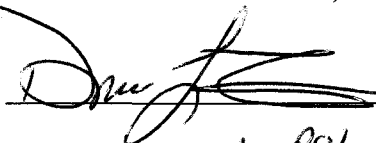
24. Permittee agrees that upon its abandonment of the permitted parking lot by either expiration or termination of this Agreement, Permittee shall leave the Premises in a condition equal to or exceeding that which existed prior to construction of permitted improvements and activities.

25. It is intended that the permission granted herein and the obligations set forth herein shall run with the Premises, and shall be binding upon the Permittee, its heirs, successors or assigns and upon the Board, its successors or assigns.

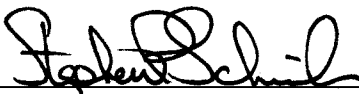
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IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be executed the day and year first written.

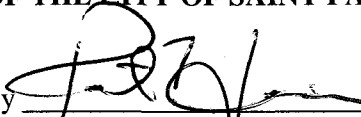
BIX PRODUCE COMPANY, LLC

By 
(Print) Duane L. Pfeiffer
Its C.O.O.

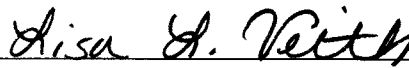
Approved:

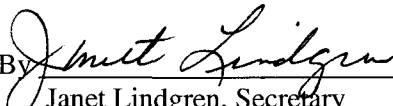

Stephen P. Schneider, General Manager
Saint Paul Regional Water Services

**BOARD OF WATER COMMISSIONERS
OF THE CITY OF SAINT PAUL**

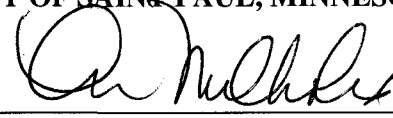
By 
Patrick Harris, President

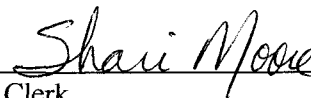
Approved as to form:


Assistant City Attorney
City of Saint Paul

By 
Janet Lindgren, Secretary

CITY OF SAINT PAUL, MINNESOTA

By: 
for Mayor

By: 
City Clerk

By: 
for Matthew G. Smith, Director
Office of Financial Services

Permittee's Property Description

Lot 1, Block 1, ARLINGTON BUSINESS PARK, according to the recorded plat thereof on file at the Register of Deeds, Ramsey County, Minnesota.
(PIN 19.29.22.42.0018)

Board's Premises Description

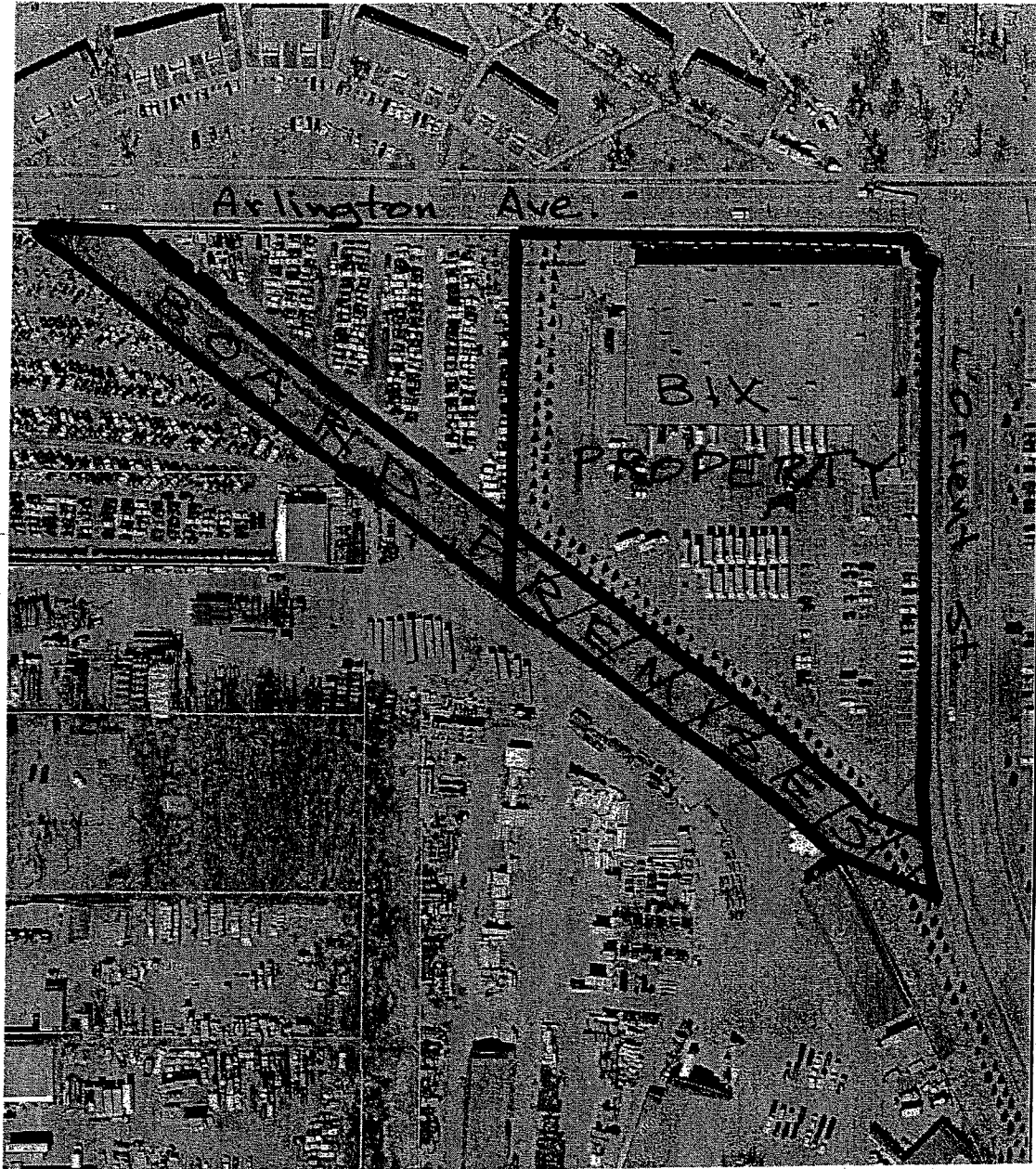
A sixty foot (60-foot) strip of land across Lots 3 through 18 and Lots 23 through 29, J.W. BASS GARDEN LOTS, according to the recorded plat thereof on file at the Register of Deeds, Ramsey County, Minnesota.
(PIN 19.29.22.42.0017)

together with

Outlot A, ARLINGTON BUSINESS PARK, according to the recorded plat thereof on file at the Register of Deeds, Ramsey County, Minnesota.
(PIN 19.29.22.42.0019)

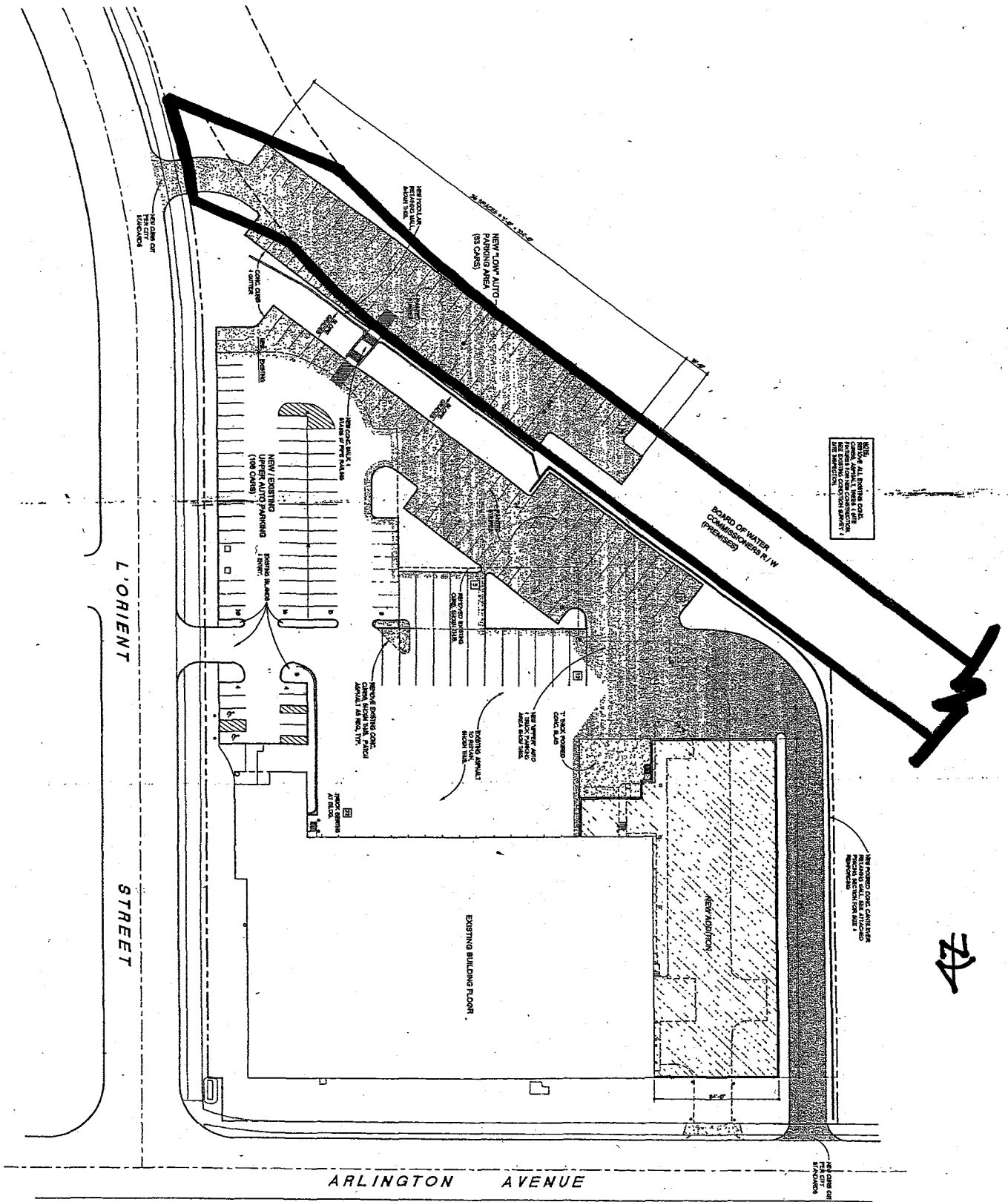
Exhibit A

1 of 2



For Illustrative Purposes

Exhibit A
2 of 2

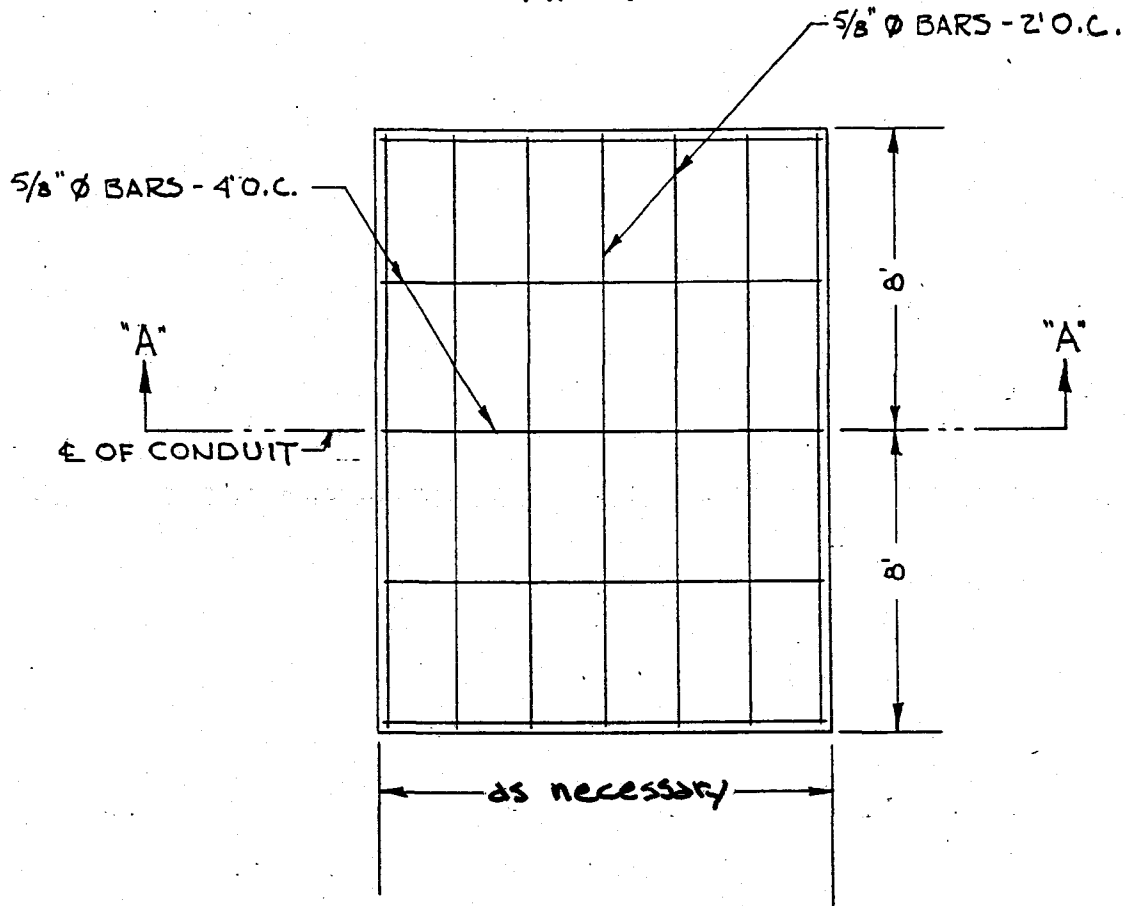


NOTE: ALL BUILDINGS SHOWN ARE APPROXIMATELY LOCATED AND ARE NOT TO SCALE.

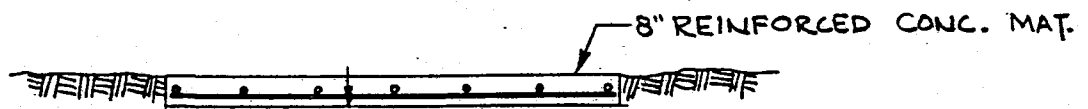
ZB

Exhibit B

PLAN VIEW



SECTION 'A'-'A'



MINIMUM CLEARANCE
BET. TOP OF CONDUIT AND
BOTTOM OF MAT = 1.0'

Exhibit C

DR. TGS TR.
CH.
APPROVED

WATER DEPARTMENT - CITY OF ST. PAUL, MINN.
8" REINFORCED CONCRETE MAT
DRIVEWAY OVER WATER CONDUIT

SCALE NONE
OCT. 20, 1975
REVISIONS

BOARD OF WATER COMMISSIONERS
RESOLUTION — GENERAL FORM

No. 5073

PRESENTED BY
COMMISSIONER Zanmiller

DATE January 10, 2006

WHEREAS, for benefit of the Board of Water Commissioners, the City of Saint Paul does possess title to a 60-foot right-of-way lying in the Southeast One-quarter (1/4) of Section 19, Township 29 North, Range 22 South, in Ramsey County, said right-of-way containing the Board's 30-inch Low Service water main; and

WHEREAS, Bix Produce Company, LLC has requested permission to construct and maintain a parking lot over a portion of said right-of-way adjacent to its property located at 1415 L'Orient Street in Saint Paul, so that it may expand its business at that location; and

WHEREAS, staff has reviewed and approved plans for said proposed construction, and has prepared a Permit Agreement outlining terms and conditions under which the parking lot may be constructed and used, including the provision that Bix Produce Company, LLC shall maintain that portion of said right-of-way situated between Arlington Avenue and L'Orient Street during the term of said Permit Agreement; and

WHEREAS, the assistant city attorney has reviewed and approved said Permit Agreement as to form, and staff does recommend approval of said Permit Agreement; now, therefore, be it

RESOLVED, that the Permit Agreement between the Board of Water Commissioners and Bix Produce Company, LLC allowing the construction of a parking lot on a portion of the Board's Low Service right-of-way adjacent to property owned by Bix Produce Company, LLC is hereby approved, and that the proper officers are hereby authorized to execute said Permit Agreement on behalf of Board; and, be it

FURTHER RESOLVED, that the Honorable Council of the City of Saint Paul is hereby requested to approve said Permit Agreement and to authorize the proper officers of the City of Saint Paul to execute said Permit Agreement on behalf of the City.

Water Commissioners

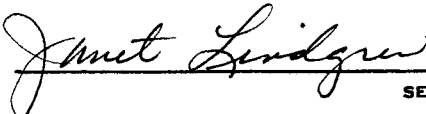
| Yeas | Anfang | Nays |
|----------------|---------------|-------------|
| | Kleindl | |
| | Montgomery | |
| Vice President | Zanmiller | |
| President | Harris | |

Adopted by the Board of Water Commissioners

January 10, 2006

In favor 5

Opposed 0



SECY.

**RESOLUTION
CITY OF SAINT PAUL, MINNESOTA**

16

Presented by _____



1 WHEREAS, the City of Saint Paul does possess fee simple title to a 60-foot wide right-of-
 2 way located south of Arlington Avenue and west of L'Orient Street in Saint Paul (PIN
 3 19.29.22.42.0017 and PIN 19.29.22.42.0019 (the "Property"), such possession of title being
 4 for benefit of the Board of Water Commissioners of the City of Saint Paul (the "Board"); and
 5
 6 WHEREAS, Bix Produce Company, LLC, a firm operating a produce wholesale business
 7 adjacent to the Property at 1415 L'Orient Street ("Bix"), desires to expand its operations at
 8 said location, but by doing so would not have adequate employee parking space; and
 9
 10 WHEREAS, Board staff drafted a Permit Agreement which allows Bix to construct a
 11 parking lot within the Property for such employee parking needs in exchange for Bix
 12 providing all property maintenance required therein, and which provides that all operations
 13 of the Board take precedence over Bix operations; and
 14
 15 WHEREAS, the Board did adopt Board Resolution No. 5073 which approved said Permit
 16 Agreement and requested that the Honorable Council of the City of Saint Paul, as possessors
 17 of title to the Property for benefit of the Board, likewise grant approval; now, therefore, be it
 18
 19 RESOLVED, that the Permit Agreement between the Board of Water Commissioners of the
 20 City of Saint Paul and Bix Produce Company, LLC, allowing the construction of a parking
 21 lot within the Board's Low Service right-of-way south of Arlington Avenue and west of
 22 L'Orient Street in Saint Paul is hereby approved, and that the proper officers are hereby
 23 authorized to execute said Permit Agreement on behalf of the City of Saint Paul.

| | Yeas | Nays | Absent |
|------------|------|------|--------|
| Benanav | ✓ | | |
| Bostrom | | | ✓ |
| Harris | ✓ | | |
| Helgen | ✓ | | |
| Lantry | ✓ | | |
| Montgomery | ✓ | | |
| Thune | ✓ | | |
| | 6 | 0 | 1 |

Requested by Department of:

Saint Paul Regional Water Services

By: _____


General Manager

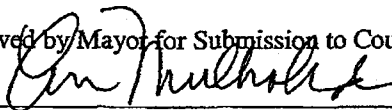
Form Approved by City Attorney

By: _____

Alisa G. Keith

Approved by Mayor for Submission to Council

By: _____



Adopted by Council: Date March 1, 2006

Adoption Certified by Council Secretary

By: Mary Ericsson

Approved by Mayor: Date 3/16/06

By: Don Mulholland

ESTOPPEL CERTIFICATE

December 1, 2015

Bix Produce Company, LLC
a Delaware limited liability company, its successors and assigns (“Owner”)
c/o Norwest Equity Partners,
80 South 8th Street, Suite 3600
Minneapolis MN 55402

BMO Harris Bank N.A.
111 West Monroe Street
Chicago, Illinois 60603, or its designee,
as Administrative Agent on behalf of the
secured creditors from time to time, and their successors
and assigns (“Lender”)

Re: Permit Agreement, dated January 10, 2006 (the “Permit”)

This Estoppel Certificate (the “Certificate”) is for the benefit of Owner and Lender and relates to the property more specifically described in the Permit (the “Permit Area”) located adjacent to the Owner’s property at 1415 L’Orient Street, St. Paul, Minnesota, legally described at Lot 1, Block 1, Arlington Business Park, Ramsey County, Minnesota (the “Property”), and is made as of the date set forth above.

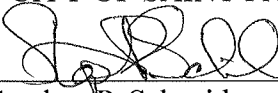
The undersigned, with respect to the Permit, does hereby certify as follows:

1. The Permit is in full force and effect, and no amendments, modifications or supplements to the Permit exist.
2. The undersigned verifies that the improvements located in the Permit Area have been constructed, and are currently being maintained, in compliance with the requirements of the Permit.
3. The undersigned verifies that the owner of the Property is in full compliance with all obligations and is not in default under the Permit.
4. The undersigned verifies that all fees and costs due under the Permit have been paid.
5. The Permit will expire on December 31, 2023, but will automatically renew for an additional twenty year term unless there is a default or notice by Owner to the undersigned that it does not intend to renew the Permit.
6. This Estoppel Certificate shall be binding upon the undersigned and shall inure to the benefit of Owner, Lender and their respective heirs, successors, assigns and related parties.

9-2006-B-04

IN WITNESS WHEREOF, the undersigned has caused this statement to be duly executed as of the date first above written.

BOARD OF WATER COMMISSIONERS OF
THE CITY OF SAINT PAUL

By: 

Stephen P. Schneider
General Manager