



To: MAYOR AND COUNCIL

Agenda Item #: VIII.D.

From: Cary Teague, Community Development Director

Action

Discussion

Information

Date: February 18, 2014

Subject: Final Plat, Development Contract & Preservation Easement – Acres Dubois, Frank Sidell, Property Located Between Little Street And Morningside Road, Resolution No. 2014-20

Action Requested:

Adopt the attached Resolution approving the Final Plat; and approve the Development Contract and Tree and Slope Preservation Easement.

Information / Background:

On April 15, 2013, the City Council approved the Preliminary Plat. The Final Plat is the same as the approved Preliminary Plat. Drainage and utility easements have been expanded to accommodate an updated stormwater management system. The new system will include an underground infiltration system that will be designed to infiltrate all storms up to the 100 year event. It will be located in the area of the new cul-de-sac, upstream of the existing landlocked low area in the northwest area of the site. This new underground infiltration system will better protect the existing low areas and reduce impacts to the adjacent neighbors. This system has been reviewed and approved by the city engineer.

ATTACHMENTS:

- Preliminary & Final Plats
- City Council Minutes April 15, 2013
- Development Contract
- Tree and Slope Preservation Easement
- Resolution 2014-20



**RESOLUTION NO. 2014-20
APPROVING A FINAL PLAT FOR ACRES DUBOIS**

BE IT RESOLVED by the City Council of the City of Edina, Minnesota, as follows:

Section 1. BACKGROUND.

1.01 Mr. Frank Sidell, Sidell is requesting a Final Plat for an eight lot subdivision.

1.02 The owner of the described land desires to subdivide said tract in to the following described new and separate parcels (herein called "parcels") described as follows:

Lots 1-8, Block 1, Acres Dubois Edina, Minnesota

1.03 On April 15, 2013, the City Council approved the Preliminary Plat and the following Variances:

1. Lot depth variances from 161 feet to 130 feet for Lot 4; to 140 feet for Lot 6 and to 135 feet for Lot 7.

Section 2. FINDINGS

2.01 Approval is based on the following findings:

1. The proposed Final Plat is the same as the approved Preliminary Plat, with drainage and utility easements becoming larger in some areas, to accommodate drainage.

Section 3. APPROVAL

NOW THEREFORE, it is hereby resolved by the City Council of the City of Edina, approves the Final Plat for the proposed subdivision, Acres Dubois.

Approval is subject to the following Conditions:

1. Park dedication fee of \$10,000 must be paid prior to release of the final plat.
2. Prior to issuance of building permits, the following items must be submitted:

CITY OF EDINA

- a. Submit evidence of Minnehaha Creek Watershed District approval. The City may require revisions to the preliminary plat to meet the District's requirements.
- b. Individual homes must comply with the overall grading plan for the site. Each individual building permit will be reviewed for compliance with the overall grading plan subject to review and approval of the City Engineer.
- c. A construction management plan will be required for the overall development of the site, and for each individual home construction.
- d. Utility hook-ups are subject to review of the City Engineer.
- e. Outlot A shall be deeded to the adjacent parcel at 4408 Morningside Road.
- f. The applicant must rebuild the driveway at 4408 Morningside Road to access off the new street, and eliminate the curb cut on Morningside Road. The configuration shall be subject to approval of the Director of Engineering.
- g. Use of Lot 7 for the overall grading of the development will require compensation to the City of Edina. A restoration plan shall be submitted by the applicant subject to review and approval by the City Council.

Adopted this 18th day of February, 2014.

ATTEST: _____
Debra A. Mangen, City Clerk

James B. Hovland, Mayor

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)SS
CITY OF EDINA)

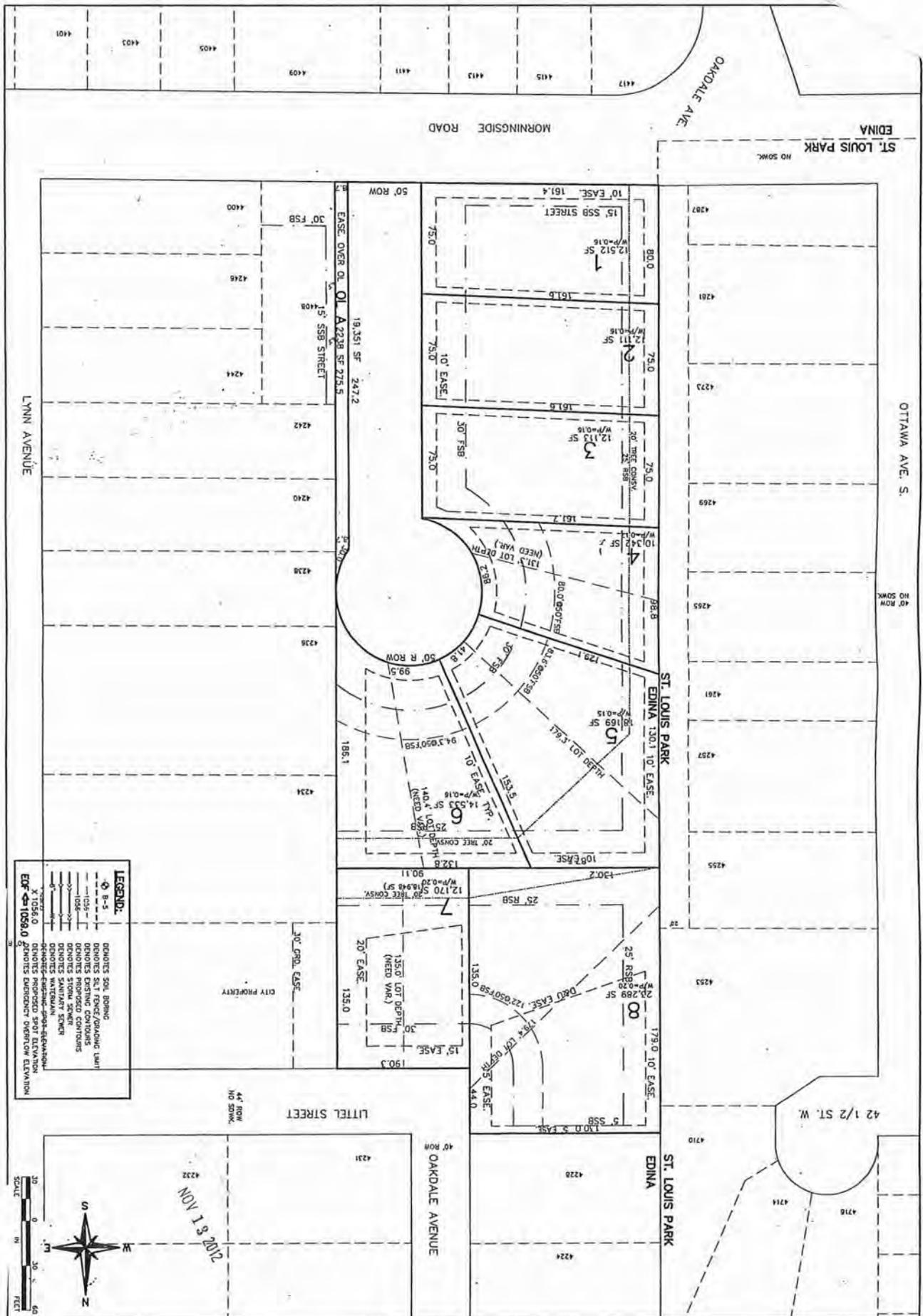
CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of February 18, 2014, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this ____ day of _____, 2014.

City Clerk

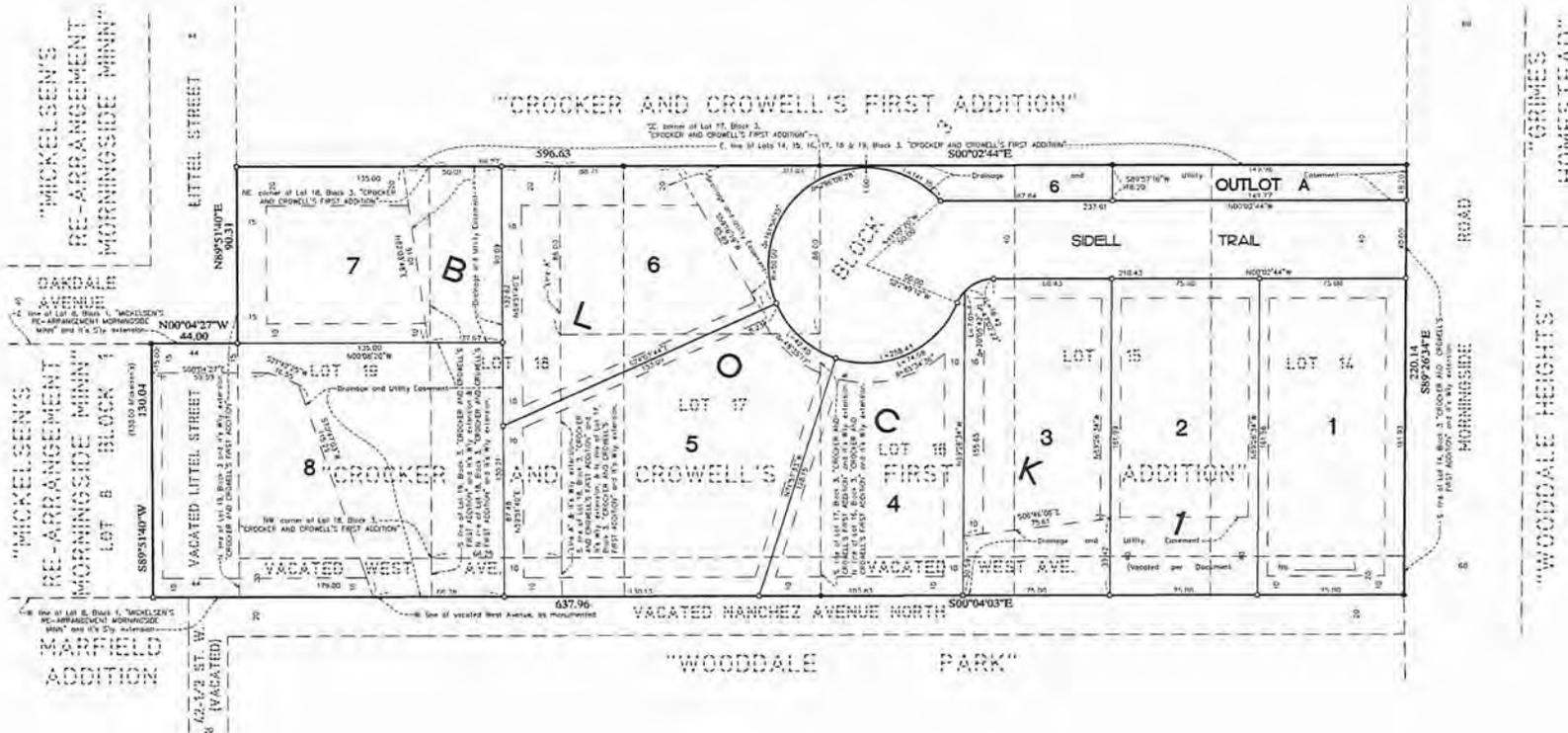
PRELIMINARY PLAT



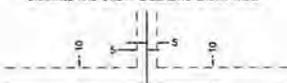
SHEET NO. 7 PROJECT NO. 12-109 DATE 11/5/12	PRELIMINARY PLAT ACRES DUBOIS EDINA, MN	I hereby certify that this plan or report was prepared by me, or under my direct supervision, and that I am a duly Licensed Engineer under the laws of the State of Minnesota. <i>Peter A. Krauth</i> Peter A. Krauth P.E. Date: 11/5/12 Reg. No. 15884	REVISIONS NO. DATE BY	Terra Engineering, Inc. 6001 Glenwood Avenue Minneapolis, Minnesota 55422 763 593 9325 Fax: 763 512 0717
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ACRES DUBOIS

R.T. DOC. NO.
C.R. DOC. NO.

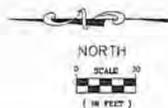


DRAINAGE AND UTILITY EASEMENTS SHOWN THUS:



NO SCALE
BEING 10 FEET IN WIDTH AND ADJOINING RIGHT-OF-WAY LINES AND BEING 5 FEET IN WIDTH AND ADJOINING LOT LINES, UNLESS OTHERWISE SHOWN ON THE PLAT.

- Denotes monument found 1/2 inch iron pipe, unless otherwise shown.
 - Denotes 1/2 inch by 14 inch iron monument set and marked by L.S. No. 44655.
- Dimensions shown (xxxxx Mickelsen's) are per the plat of "MICKELSEN'S RE-ARRANGEMENT MORNINGSIDE MINN."



The south line of Lot 14, Block 3, "CROCKER AND CROWELL'S FIRST ADDITION" is assumed to have a bearing of South 89 degrees 26 minutes 34 seconds East.

ACRE LAND SURVEYING
BLAINE, MN

SHEET 2 OF 2 SHEETS

FINAL PLAT

ACRES DUBOIS

R.T. DOC. NO.

C.R. DOC. NO.

KNOW ALL PERSONS BY THESE PRESENTS: that Carol E. Sidell, a single person, owner of the following described property:

The part of the following described land:

Lot 17,

That part of Lot 18 lying South of a line drawn from a point on the East line of said Lot 18, distant 66.27 feet South from the Northeast corner thereof, to a point on the West line of said Lot 18, distant 66.25 feet South from the Northwest corner thereof; said line being hereinafter referred to as "Line A", all in Block 3, "Crocker & Crowell's First Addition".

All lying West of a line drawn from a point on the South line of said Lot 17, distant 86.0 feet West from the Southeast corner of said Lot 17, to a point on said "Line A", distant 86.0 feet West from the East line of said Lot 18, and

That part of the vacated West Ave., adjoining Block 3, "Crocker & Crowell's First Addition", lying between the extensions across it of the South line of said Lot 17, and the extension Westward of said "Line A".

AND

Lot 17, That part of Lot 18, lying South of a line drawn from a point on the East line of said Lot 18, distant 66.27 feet South from the Northeast corner thereof, to a point on the West line of said Lot 18, distant 66.25 feet South from the Northwest corner thereof; said line being hereinafter referred to as "Line A".

All lying East of a line drawn from a point on the South line of said Lot 17, distant 86.0 feet West from the Southeast corner of said Lot 17, to a point on said "Line A", distant 86.0 feet West from the East line of said Lot 18, All in Block 3, "Crocker & Crowell's First Addition"

AND

Par 1: That part of Little Street (shown on the plat of Weeddole Heights 2nd Add.), vacated, lying between extensions across it of the East and West lines of Lot B, Block 1, "Mickelsen's Re-Arrangement Morningside Minn."

Par 2: That part of lot 1B lying Northerly of a line drawn from a point on the East line of said Lot 18 distant 68.27 feet South from the Northeast corner thereof to a point on the West line of said Lot 18 distant 66.25 feet South from the Northwest corner thereof (said line being hereinafter referred to as Line A);

That part of the adjoining vacated West Ave., lying between the extensions across it of the North line of said Lot 1B and the extension Westward of said Line A;

Lot 19; That part of the adjoining vacated West Avenue lying between the extensions across it of the North and South lines of said Lot 19,

All in Block 3, "Crocker & Crowell's First Addition".

AND That Iris A. Sidell, as Trustee of the Iris A. Sidell Trust U/A dated September 19, 2012, owner of the following described property:

Lot 14, Block 3, "Crocker & Crowell's First Addition", Hennepin County, Minnesota.

AND

Lot 15, Block 3, "Crocker & Crowell's First Addition", Hennepin County, Minnesota.

AND

Lot 16, Block 3, "Crocker & Crowell's First Addition", Hennepin County, Minnesota.

AND

That part of vacated West Avenue lying between the westerly extensions across it of the south line of said Lot 14, Block 3 and the north lines of said Lot 16, Block 3.

Have caused the same to be surveyed and plotted as ACRES DUBOIS and do hereby dedicate to the public for public use forever the public way and drainage and utility easements as shown on this plat.

In witness whereof said Carol E. Sidell, a single person, has hereunto set her hand this _____ day of _____, 20____.

SIGNED:

Carol E. Sidell

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 20____ by Carol E. Sidell, a single person.

Notary Public, _____ County, Minnesota
My Commission expires _____

In witness whereof said Iris A. Sidell, Trustee of the Iris A. Sidell Trust U/A dated September 19, 2012, has hereunto set her hand this _____ day of _____, 20____.

SIGNED:

Iris A. Sidell, Trustee of the Iris A. Sidell Trust U/A
dated September 19, 2012.

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 20____ by Iris A. Sidell, Trustee of the Iris A. Sidell Trust U/A dated September 19, 2012.

Notary Public, _____ County, Minnesota
My Commission expires _____

I, Joshua P. Schneider do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat, and all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 20____.

Joshua P. Schneider, Licensed Land Surveyor
Minnesota License Number 44655

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 20____, by Joshua P. Schneider.

Notary Public, _____ County, Minnesota

My Commission expires _____

CITY COUNCIL, City of Edina, Minnesota

This plat of ACRES DUBOIS was approved and accepted by the City Council of the City of Edina, Minnesota at a regular meeting thereof held this _____ day of _____, 20____ if applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section, 505.03, Subd. 2.

City Council, City of Edina, Minnesota

By _____ Mayor By _____ Manager

TAXPAYER SERVICES DEPARTMENT, Hennepin County, Minnesota

I hereby certify that taxes payable in 20____ and prior years have been paid for the land described on this plat, dated this _____ day of _____, 20____.

Mark V. Chesin, County Auditor By _____ Deputy

SURVEY DIVISION, Hennepin County, Minnesota

Pursuant to MN. STAT. Sec. 3639.565 (1969), this plat has been approved this _____ day of _____, 20____.

William P. Brown, County Surveyor

REGISTRAR OF TITLES, Hennepin County, Minnesota

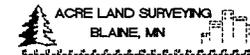
I hereby certify that the within plat of ACRES DUBOIS was filed in this office this _____ day of _____, 20____ at _____ o'clock _____ M.

Martin McCormick, Registrar of Titles By _____ Deputy

COUNTY RECORDER, Hennepin County, Minnesota

I hereby certify that the within plat of ACRES DUBOIS was recorded in this office this _____ day of _____, 20____ at _____ o'clock _____ M.

Martin McCormick, County Recorder By _____ Deputy



VI.B. PRELIMINARY PLAT WITH LOT DEPTH VARIANCES, FRANK SIDELL, PROPERTY LOCATED BETWEEN LITTEL STREET AND MORNINGSIDE ROAD – RESOLUTION 2013-39 ADOPTED

Community Development Director Presentation

Community Development Director Teague presented the request of Frank Sidell for an eight-lot subdivision, lot depth variance from 161 feet to 130 feet for Lot 4, to 140 feet for Lot 6, and to 135 feet for Lot 7 for the Sidell family-owned property located between Littel Street and Morningside Road. It was noted the subdivision reflected the preferred option as supported during sketch plan review and incorporated reduced right-of-way from 50 feet to 40 feet and reduced street widths from 28 feet to 24 feet. In addition, the outlot located east of the cul-de-sac had been widened to provide additional separation from the home at 4408 Morningside Road. This outlot would be landscaped then deeded to the adjacent property owner. The driveway leading to 4408 Morningside Road would then be relocated to the new cul-de-sac. Mr. Teague indicated that while the proponent had considered turning Lots 1 and 2 to face Morningside Road, he preferred to integrate these two lots into the cul-de-sac rather than potentially isolating the lots. He stated the Planning Commission unanimously recommended approval subject to conditions as revised and detailed in the staff report.

The Council asked questions of Mr. Teague and City Attorney Knutson relating to Outlot A, the rain garden, the potential of an additional condition establishing a drainage utility easement, and typical protection strategies included in conservation easements. There was discussion on the potential of revising Condition 2.h to add clarity to the 20-foot buffer requirements, possibly applying a two-tiered conservation easement with a buffer until such time as the neighborhood was fully developed.

Proponent Presentation

Frank Sidell, 4232 Oakdale Avenue, provided a presentation of the preliminary site plan for the property located between Littel Street and Morningside Road. He discussed the intent to maintain the uniqueness of the property and make the best use of the natural topography, and commented on the eclectic neighborhood. Mr. Sidell reviewed the following issues that had been addressed in the preliminary site plan: no lots were less than 75 feet wide; a public sidewalk had been incorporated; a traffic study had been completed confirming the cul-de-sac was in the safest location; a rain garden had been incorporated; and, Outlot A would be deeded. Mr. Sidell indicated the following issues remain open and need to be addressed: 1) The family was not in agreement with the tree conservation requirement with the additional 20-foot buffer. He would like to withdraw this from the plan and proposed that prior to final plat approval, additional discussion occur between his tree expert, the City Arborist, and possibly members of the Council. 2) The family was not in agreement with the fire sprinkler requirement. The City's standard road width was 27 feet, not 30 feet, and houses were currently being built on 24-foot wide streets that were not required to be sprinkled. 3) The family was not in agreement with the requirement to submit a landscaping plan for the right-of-way. They proposed individual builders landscape as they move forward and the lots develop.

The Council discussed the proposed preliminary plat in relation to streetscape and the incorporation of sidewalk. Member Bennett noted that a future sidewalk between Oakdale and Wooddale avenues, the east half of which would be in the City of Edina and the west half of which would be in the City of St. Louis Park, was currently under discussion by Edina and St. Louis Park city staff members. The Council discussed the topography of the land, whether the conservation easement or an alternative tool could be used to accomplish tree and slope preservation goals, which were the basis for the Sidells' requests for lot depth variances and the current code requirements in relation to fire sprinkler installation.

Mayor Hovland opened the public hearing.

Public Testimony

Minutes/Edina City Council/April 16, 2013

Phil Sidell, 4221 Lynn Avenue, addressed the Council.

Member Sprague made a motion, seconded by Member Swenson, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

The Council discussed the fire sprinkler requirement included in Condition 2.m. of the preliminary plat in relation to consistency with requirements of other developments and road width of 24 feet versus 27 feet and 30 feet. City Attorney Knutson and Fire Marshal Siems advised the Council on current code requirements for residential fire sprinkler installation. Mr. Siems stated that while there were currently roads in the City that were 24 feet wide; the fundamental difference in this situation was that the proposed road was a cul-de-sac and not a through street. He stressed the opportunity to avert potential disaster, and that residential fire sprinklers saved lives. Mr. Siems stated that in the event of a residential fire, there was a much higher collapse rate with lighter-weight materials used in new home construction. He stated in accordance with the Minnesota State Fire Code, the City had the authority to request alternative designs, which in this situation would be to supply resident fire sprinklers within this area.

The Council discussed the tree and slope conservation easement included in Condition 2.h. of the preliminary plat in relation to the conservation easement to be drafted in a manner that protected trees while allowing use in the area. Elements to consider in drafting the conservation easement would be to protect trees and other conifer material along the west area behind Lots 1-4, and to protect the steep slope and mature trees off Lots 5 and 6. Mr. Teague stated that the preliminary plat could be approved subject to a conservation easement being approved with the final plat.

Member Swenson introduced and moved adoption of Resolution No. 2013-39, approving a Preliminary Plat with Lot Depth Variances at 4212 Morningside Road 4232 Littel Street, based on the following findings:

1. The applicant has submitted a subdivision of the property that would meet all minimum zoning district requirements with eight lots and new through street that would connect Morningside Road and Littel Street.
2. Rather than develop the site per all minimum Zoning Ordinance requirements, the applicant has submitted a proposed subdivision of the property with a cul-de-sac, which requires lot depth variances for Lots 4, 6, and 7.
3. The proposed subdivision with the three lot depth variances would preserve the steep slopes on the site, and preserves 50 mature trees by placing them in a conservation easement.
4. The proposed subdivision still has eight lots.
5. Except for the variances, the proposal meets the required standards and ordinance for a subdivision.
6. The proposal meets the required standards for a variance, because:
 - a. There is a practical difficulty to the property caused by the existing steep slopes and mature trees on the property.
 - b. The requested variances are reasonable in the context of the immediate neighborhood. The existing lots are larger in size than the median, and there are 26 lots within 500 feet of the property that do not have lot depths greater than 130 feet, which is the shallowest of the three lots that require lot depth variances.
 - c. The variance request is reasonable, as subdivision still contains eight lots, which would be allowed with the Code compliant subdivision; however, it protects steep slopes and 50 mature trees.
 - d. If the variances were denied, the applicant could still subdivide the property into eight lots; however, the steep slopes would be disturbed and an additional 42 mature trees would be removed.

And subject to the following conditions:

1. The City must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.
2. Prior to release of the final plat, the following items must be submitted:
 - a. Submit evidence of Minnehaha Creek Watershed District approval. The City may require revisions to the preliminary plat to meet the District's requirements.
 - b. Enter into a Developers Agreement with the City. The Developers Agreement shall include the requirement for construction of the sidewalk as proposed.
 - c. Pay the park dedication fee of \$10,000.
 - d. Individual homes must comply with the overall grading plan for the site. Each individual building permit will be reviewed for compliance with the overall grading plan subject to review and approval of the City Engineer.
 - e. Compliance with the conditions outlined in the Director of Engineering's memo dated March 22, 2013.
 - f. A construction management plan will be required for the overall development of the site, and for each individual home construction.
 - g. Utility hook-ups are subject to review of the City Engineer.
 - h. Establishment of a tree and slope conservation easement as demonstrated on the grading and tree preservation plan. Approval of a conservation easement with the final plat.
 - i. Outlot A shall be deeded to the adjacent parcel at 4408 Morningside Road.
 - j. The applicant must rebuild the driveway at 4408 Morningside Road to access off the new street, and eliminate the curb cut on Morningside Road. The configuration shall be subject to approval of the Director of Engineering.
 - k. A stop sign is required to be installed on the new street approaching Morningside Road. Clear sight lines shall be maintained from the intersection.
 - l. Use of Lot 7 for the overall grading of the development will require compensation to the City of Edina. A restoration plan shall be submitted by the applicant subject to review and approval by the City Council.
 - m. The new road shall be built to the City standards, including a 27-foot width.
 - n. Signage stating "No Parking Fire Lane" along one side of the roadway the entire length of the road.
 - o. Installation of fire hydrant(s) near end of cul-de-sac, and possibly at intersection of Morningside. Fire hydrant location is subject to review and approval of the Fire Marshal.
 - p. Submittal of a landscape plan showing trees in the right-of-way.

Member Sprague seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VII. COMMUNITY COMMENT

No one appeared to comment.

VIII. REPORTS / RECOMMENDATIONS

VIII.A. COMPREHENSIVE PLAN AMENDMENT, PRELIMINARY REZONING TO PUD, PRELIMINARY DEVELOPMENT PLAN AND PRELIMINARY PLAT, HUNT ASSOCIATES 5109 – 5125 WEST 49TH STREET – RESOLUTION NO. 2013-33 AND RESOLUTION NO. 2013-37 ADOPTED

Community Development Director Presentation

Mr. Teague advised the proponent had submitted revised plans based on the Council's comments at the April 2, 2013, meeting. The revised plans removed one unit, increased the northeast setback from 15 feet to 42 feet, increased the setback on 49th Street to 36 feet, added sidewalk on 49th Street, provided additional greenspace, implemented a one-way drive with additional drive and curb cut (trash truck access) and added three guest parking spaces.

Proponent Presentation

(reserved for recording information)

DEVELOPMENT CONTRACT
ACRES DUBOIS ADDITION

CONTRACT dated _____, 2014, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City"), and **M-K HOLDINGS, LLC**, a Minnesota limited liability company (the "Developer").

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat for the Acres DuBois Addition (referred to in this Contract as the "plat"). The land is situated in the County of Hennepin, State of Minnesota, and is legally described as: _____.

2. CONDITIONS OF PLAT APPROVAL. The City hereby approves the plat on condition that the Developer enter into this Contract, furnish the security required by it at the time of application for the initial grading permit, and record the plat with the County Recorder or Registrar of Titles within one (1) year after the City Council approves the final plat.

3. RIGHT TO PROCEED. Unless separate written approval has been given by the City, as evidenced by grading, utility or building permits or other written authorization to proceed, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings until all the following conditions have been

satisfied: 1) this agreement has been fully executed by both parties and filed with the City Clerk, 2) the necessary security has been received by the City, 3) the plat has been recorded with the Hennepin County Recorder's Office, and 4) the City's Community Development Director has issued a letter that all conditions have been satisfied and that the Developer may proceed.

4. CHANGES IN OFFICIAL CONTROLS. For five (5) years from the date of this Contract, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Contract to the contrary, and not in conflict with any portion of the development already completed or under construction, to the full extent permitted by state law, the City may require compliance with any amendments to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Contract.

5. DEVELOPMENT PLANS. The plat shall be developed in accordance with the following plans. The plans shall not be attached to this Contract. If the plans vary from the written terms of this Contract, the written terms shall control. The plans are:

Plan A – Final Plat

Plan B – Acres DuBois Preliminary Plan Set

Plan C – Final Construction Plans and Specifications

6. IMPROVEMENTS CONSTRUCTED AND PAID FOR BY DEVELOPER. The Developer shall construct and pay 100% of the cost of the following improvements in accordance with the development plans:

- A. Sanitary Sewer System
- B. Water System
- C. Storm Sewer System
- D. Streets

- E. Concrete Curb and Gutter
- F. Landscaping
- G. Street Lights
- H. Underground Utilities
- I. Surveying and Staking
- J. Site Grading, Stormwater Treatment/Infiltration Basins, and Erosion Control
- K. Sidewalks
- L. Setting of Iron Monuments

7. DEVELOPER CONSTRUCTED IMPROVEMENT. Improvements required by this Contract to be constructed by the Developer shall be installed in accordance with plans approved by the City and in accordance with all applicable City ordinances, regulations and policies. The Developer shall submit plans and specifications which have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved City standards as a condition of City acceptance, as stated in Section 9, Engineers Record Drawings. The Developer, its contractors and subcontractors, shall follow all reasonable instructions received from the City's inspectors and engineers. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor. The Developer or his engineer shall schedule pre-construction meetings as necessary to coordinate the work and to allow the City to review the program for the construction work.

All labor and work shall be done and performed in good and workmanlike manner and in strict conformance with the approved plans and specifications. No material deviations from the approved plans and specifications will be permitted unless approved in writing by the City. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance

of the work required by the Contract. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Contract, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the specifications.

In accordance with Minnesota Statutes 505.02, the final placement of iron monuments for all lot corners must be completed before the applicable security is released. The Developer's surveyor shall also submit a written notice to the City certifying that the monuments have been installed following site grading, utility and street construction.

8. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION/ CONSTRUCTION COSTS. The Developer shall pay a fee for in-house engineering administration. City engineering administration will include monitoring of construction observation, consultation with Developer and its engineer on status or problems regarding the project, coordination for final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in security. The Developer shall pay for construction observation performed by the City's in-house engineering staff or consulting engineer. Construction observation shall include part or full time inspection of proposed public utilities and street construction and will be billed on hourly rates. The Developer improvements cost breakdown is:

o Street Construction	\$171,005
o Site Grading	\$162,000
o Storm Sewer	\$125,200
o Sanitary Sewer	\$ 81,225
o Watermain	<u>\$ 42,980</u>
Estimated Construction Cost	<u>\$582,510</u>
Estimated City Engineering Fees (6%)	<u>\$ 34,951</u>
Total Estimated Construction Cost	<u>\$610,461</u>

9. ENGINEERS RECORD DRAWINGS. The Developer's engineer shall prepare a set of reproducible record prints of Drawings and an electronic version that satisfy the City of Edina Record Drawing requirements, attached hereto as Exhibit "A," showing those approved changes made during the construction process, based on the marked up prints, drawings and other data furnished by Contractor(s) to the Developer's Engineer. The Record Drawings shall be submitted prior to the Developer receiving an occupancy permit for any building.

10. CONTRACTORS/SUBCONTRACTORS. City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a twenty-five percent (25%) ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in Paragraph 6 above.

11. PERMITS. The Developer shall obtain or require its contractors and subcontractors to obtain all necessary permits or as needed, including but not limited to:

- A. Minnesota Department of Health for Watermains
- B. MPCA NPDES Permit for Construction Activity
- C. MPCA for Hazardous Material Removal and Disposal
- D. City of Edina for Building Permits
- E. MCES for Sanitary Sewer Connections
- F. Minnehaha Creek for Watershed Permit

The City shall provide cooperative assistance in securing permits from other agencies.

12. TIME OF PERFORMANCE. The Developer shall install all required public improvements and other work required by this Development Contract by October 31, 2016. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

13. LICENSE. The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the plat to perform all work and inspections deemed appropriate by the City in conjunction with plat development.

14. GRADING PLAN. The plat shall be graded in accordance with the approved grading drainage and erosion control plan, Plan B". The plan shall conform to City's Design and Construction Manual. Within thirty (30) days after completion of the grading, the Developer shall provide the City with a "record" grading plan certified by a registered land surveyor or engineer that all ponds, swales, and ditches have been constructed on public easements or land owned by the City. The "record" plan shall contain site grades and field verified elevations of the following: a) cross sections of ponds b) location and elevations along all swales, emergency overflows, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow areas/stockpiles; c) lot corner elevations and house pads; d) top and bottom of retaining walls.

15. EROSION CONTROL. Prior to initiating site grading, the erosion control plan, Plan B, shall be implemented by the Developer and inspected and approved by the City.

16. STREET MAINTENANCE DURING CONSTRUCTION. The Developer shall be responsible for all street maintenance until the public streets are accepted by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event that any building or residential unit is occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage to insure that the streets are passable to traffic and emergency vehicles. The Developer shall be responsible for keeping streets within and without the plat clean of dirt and debris that may spill, track, or wash onto the street from Developer's operation. The Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets prior to final acceptance of said streets. The City shall not be responsible for repairing the streets because of snow plowing operations. Providing snow plowing service does not constitute final acceptance of the streets by the City. The Developer shall

contract for street cleaning within and immediately adjacent to the development. At a minimum, scraping and sweeping shall take place on a weekly basis. A copy of this contract shall be approved by the City before grading is started. The contract shall provide that the City may direct the contractor to clean the streets and bill the Developer.

17. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Contract, the improvements lying within public easements shall become City property.

Prior to acceptance of the improvements by the City, the Developer must furnish the following affidavits:

- Contractor's Certificate
- Engineer's Certificate
- Land Surveyor's Certificate
- Developer's Certificate

certifying that all construction has been completed in accordance with the terms of this Contract. All necessary forms will be furnished by the City. Upon receipt of affidavits and verification by the City Engineer, the City Engineer will accept the completed public improvements. Within thirty (30) days after the acceptance of the improvements, the Developer shall supply the City with a complete set of reproducible "record" plans, an electronic file of the "record" plans in accordance with the City's Design and Construction Manual.

18. PARK DEDICATION. The property within the Plat has already paid park dedication for 6 lots. The Developer shall make cash contribution of \$10,000 to satisfy the City's park dedication requirements, calculated at the rate of \$5,000.00/unit x 2 units. Payment is due at the time prior to City execution of the final plat.

19. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

A. Breach of the terms of this Contract by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, including lots sold to third parties and the halting of all work in the plat.

B. If building permits are issued prior to the acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public improvements and

damage to public improvements caused by the City, Developer, their contractors, subcontractors, material men, employees, agents, or third parties. No sewer and water connection permits may be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.

20. RESPONSIBILITY FOR COSTS.

A. Beginning after final approval has been granted by the City and except as otherwise specified herein, the Developer shall pay all costs incurred by it or the City including but not limited to legal, engineering and inspection expenses in connection with the ongoing development of the plat, the enforcement of this Contract, review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting the development of the plat. The City's costs and expenses must be agreed to in writing by the developer before the City starts any work.

B. The Developer shall hold the City and its officers, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from plat approval and development. The Developer shall indemnify the City and its officers, employees, and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.

C. The Developer shall reimburse the City for costs incurred in the enforcement of this Contract, including reasonable engineering and attorneys' fees.

D. Each party shall pay in full all bills submitted to it by the other for obligations incurred under this Contract within thirty (30) days after receipt. Bills not paid within sixty (60) days shall accrue interest at the rate of eight percent (8%) per year.

E. In addition to the charges referred to herein, other charges and special assessments may be imposed such as but not limited to sewer availability charges ("SAC") charges and building permit fees. REC fees will not be required due to the developer installing the watermain and sanitary sewer system.

21. SPECIAL PROVISIONS. The following special provisions shall apply to plat development:

- A. Implementation of the comments in the March 22, 2013, (Revised 3-27-2013) memorandum from the Director of Engineering to the Community Development Director.
- B. City of Edina Resolution 2013-39
- C. Developer must provide a tree and slope preservation easement to the City to preserve the steep slopes on the site and the 10 mature trees identified in the Preliminary Tree Preservation plan simultaneous with the recording of the final plat.
- D. Approval by the Minnehaha Creek Watershed District and compliance with the District's requirements.
- E. Construction of a 4 foot sidewalk within the right of way on the west side of the public street to be constructed by Developer.
- F. Individual homes must comply with the overall grading plan for the site. Each individual building permit will be reviewed for compliance with the overall grading plan and is subject to review and approval of the City Engineer.
- G. Developer shall provide a construction management plan to the City for the overall development of the site at the time of application for the initial grading permit and for each individual home construction prior to issuance of a building permit.
- H. Utility hook-ups are subject to review and approval by the City Engineer
- I. Outlot A shall be deeded to the adjacent parcel at 4408 Morningside Road simultaneous with the recording of the final plat.
- J. Developer must rebuild the driveway at 4408 Morningside Road to access off the new street within the Plat and eliminate the curb cut on Morningside Road. The configuration is subject to approval of the City engineer. (Letter of Credit)
- K. Developer must install a stop sign on the new street within the Plat approaching Morningside Road at a location approved by the City Engineer. Clear site lines shall be maintained from the intersection.

L. Developer must obtain a license agreement from the City for use of Lot 8, Block 3, Crocker & Crowell's 1st Addition per the approved grading plan, ("City Property") which agreement will include a fee for use of the City Property. A restoration plan is required with the license agreement.

M. The new roadway within the Plat shall be built to City standards, which is 28-ft back of curb to back of curb.

N. Developer must install signage stating "No Parking Fire Lane" along one side of the new road within the Plat the entire length of the road, subject to review and approval of the Fire Marshall.

O. Developer shall install fire hydrant(s) near the end of the cul-de-sac and possibly at the intersection of Morningside, subject to review and approval of the Fire Marshall.

P. Developer must remove the existing home on the south side of the property within the Plat and all accessory buildings located within the Plat.

Q. Developer shall maintain the storm water features located within the Platted area for a period of three years following final acceptance after construction. After the period of three years it will be the responsibility of the City for maintenance.

22. MISCELLANEOUS.

A. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells, assigns, transfers or conveys one or more lots, the entire plat, or any part of it. The Developer shall notify the City when it sells, assigns, conveys or transfers any of its rights, title or interest in the site.

B. In compliance with the Response Action Plan approved by the MPCA for the property, the developer shall remove and properly dispose of any environmental contamination within the plat.

C. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved plans and specifications. All retaining walls identified on the development plans or by special conditions referred to in

this Contract shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

D. Developer shall take out and maintain or cause to be taken out and maintained until six (6) months after the City has accepted the public improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$1,000,000 for one person and \$2,000,000 for each occurrence; limits for property damage shall be not less than \$1,000,000 for each occurrence. The City shall be named as an additional insured on the policy on a primary and noncontributory basis, and the Developer shall file with the City a certificate evidencing coverage at the time of application for the initial grading permit.

E. Third parties shall have no recourse against the City under this Contract.

F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Contract is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Contract.

G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Contract. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Contract shall not be a waiver or release.

H. This Contract shall run with the land and may be recorded against the title to the property. In the event this Contract is recorded, the City covenants to provide a recordable Certificate of Completion promptly upon the completion of the work required herein. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the property being final platted and/or has obtained consents to this Contract, in the form attached hereto, from all parties who have an interest in the property; that there are no unrecorded interests in the property being final platted; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.

I. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

23. DEVELOPER'S DEFAULT. In the event of default by the Developer as to any of the work to be performed by it hereunder, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer, except in an emergency as determined by the City, is first given notice of the work in default, not less than forty-eight (48) hours in advance. This Contract is a license for the City to act, and it shall not be necessary for the City to seek a Court order for permission to enter the land. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part.

24. WARRANTY. The Developer warrants all public improvements required to be constructed by it pursuant to Section 6 of this Contract against poor material and faulty workmanship. The Developer shall submit either a warranty/maintenance bond for 100% of the cost of the improvements, or a letter of credit for twenty-five percent (25%) of the amount of the original cost of these improvements.

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A. The required warranty period for materials and workmanship for the utility contractor installing public sewer and water mains shall be two (2) years from the date of final written City acceptance of the work.

B. The required warranty period for all work relating to street construction, including concrete curb and gutter, sidewalks and trails, retaining walls, materials and equipment shall be subject to one (1) year from the date of final written acceptance, unless the wearing course is placed during the same construction season as the bituminous base course. In those instances, the subdivider shall guarantee all work, including street construction, concrete curb and gutter, sidewalks and trails, material and equipment for a period of two (2) years from the date of final written City acceptance of the work.

C. The required warranty period for sod, trees, and landscaping is two growing seasons following installation.

25. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Contract by the Developer, payment of the costs of all public improvements to be constructed and paid for by Developer, construction of all public improvements to be constructed by the City and reimbursed by the Developer in whole or part, the Developer shall furnish the City with a letter of credit, in the form attached hereto, from a bank, cash escrow or a combination cash escrow and Letter of Credit ("security") for \$ 610,461. The City may draw down the security, without notice, for any violation of the terms of this Contract or if the security is allowed to lapse prior to the end of the required term. If the required public improvements are not completed at least thirty (30) days prior to the expiration of the security, the City may also draw it down. If the security is drawn down, the proceeds shall be used to cure the default. Upon receipt of proof satisfactory to the City Engineer that work has been completed and financial obligations to the City have been satisfied, with City Engineer approval the security may be reduced -from time to time but not more than once every ninety days by ninety percent (90%) of the financial obligations that have been satisfied. Ten percent (10%) of the amounts certified by the Developer's engineer shall be retained as security until: (1) all improvements have been completed, (2) iron monuments for lot corners have been installed, (3) all financial obligations to the City satisfied, (4) the required "record" plans have been received by the City, (5) a warranty security is provided, and (6) the public improvements are accepted by the City.

26. NOTICES. Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: 4232 Oakdale Avenue, Edina, Minnesota 55416. Notices to the City shall be in writing and shall be either hand delivered to the City Manager, or mailed to the City by certified mail in care of the City Manager at the following address: Edina City Hall, 4801 West 50th Street Edina, Minnesota 55424-1330.

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Signature pages follow.]*

CITY OF EDINA

BY: _____
James Hovland, Mayor

(SEAL)

AND _____
Scott Neal, City Manager

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by James Hovland and Scott Neal, respectively the Mayor and City Manager of the City of Edina, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

**DEVELOPER
M-K HOLDINGS, LLC**

By: _____

Its Chief Manager

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ the Chief Manager of M-K Holdings, LLC, a Minnesota limited liability company, on behalf of said company.

NOTARY PUBLIC

DRAFTED BY:
CAMPBELL, KNUTSON
Professional Association
317 Eagandale Office Center
1380 Corporate Center Curve
Eagan, MN 55121
Telephone: 651-452-5000

**FEE OWNER CONSENT
TO
DEVELOPMENT CONTRACT**

FRANKLIN D. SIDELL, II AND CAROL E. SIDELL, husband and wife, fee owners of all or part of the subject property, the development of which is governed by the foregoing Development Contract, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the subject property owned by them.

Dated this _____ day of _____, 2014.

Franklin D. Sidell, II

Carol E. Sidell

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Franklin D. Sidell, II and Carol E. Sidell, husband and wife.

NOTARY PUBLIC

DRAFTED BY:
CAMPBELL KNUTSON
Professional Association
317 Eagandale Office Center
1380 Corporate Center Curve
Eagan, Minnesota 55121
651-452-5000

**FEE OWNER CONSENT
TO
DEVELOPMENT CONTRACT**

IRIS SIDELL TRUST U/A DATED AUGUST 21, 2012 fee owner of all or part of the subject property, the development of which is governed by the foregoing Development Contract, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the subject property owned by her trust.

Dated this ____ day of _____, 2014.

Iris Sidell, Trustee

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Iris Sidell, Trustee

NOTARY PUBLIC

DRAFTED BY:
CAMPBELL KNUTSON
Professional Association
317 Eagandale Office Center
1380 Corporate Center Curve
Eagan, Minnesota 55121
651-452-5000

(All of these properties are free of any encumbrances)

IRREVOCABLE LETTER OF CREDIT

No. _____
Date: _____

TO: City of Edina

Dear Sir or Madam:

We hereby issue, for the account of (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$ _____, available to you by your draft drawn on sight on the undersigned bank.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 2_____, of (Name of Bank) _____";
- b) Be signed by the Mayor or City Manager of the City of Edina.
- c) Be presented for payment at (Address of Bank), on or before 4:00 p.m. on December 31, 2015.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Edina City Manager that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: City Manager, Edina City Hall, 4801 West 50th Street, Edina Minnesota 55424 and is actually received by the City Manager at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: _____

Its _____

TREE AND SLOPE PRESERVATION EASEMENT

THIS INSTRUMENT, is made _____, 2014, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("Grantee") and Carol Sidell and Iris Sidell Trust U/A Dated August 21, 2012("Grantors")

A. Grantors is the owner of certain real property located in the City of Edina, County of Hennepin, State of Minnesota, legally described as Lots 5, 6, 7 and 8, Block 1, Acres DuBois, Hennepin County, Minnesota (the "Property").

B. On _____, Grantee granted Grantor's application for subdivision of the Property.

C. As a condition of approval of the subdivision, Grantee required Grantor to grant a tree and slope preservation easement ("Easement") for the protection of specific trees and slopes over a portion of the Property, legally described as An Easement for Slope and Tree Preservation purposes over, under and across the west 20.00 feet of Lots 1, 2, 3 and 4, Block 1, ACRES DUBOIS, Hennepin County, Minnesota, over, under and across that part of Lot 5, said Block 1, lying northwesterly of a line drawn from a point on the west line of said Lot 5, distant 22.39 feet northerly of the southwest corner thereof, to a point on the northeasterly line of said Lot 5, distant 21.88 feet southeasterly of the most northerly, northwest corner of Lot 6, said Block 1, said last described line to be hereinafter known as Line "A", over, under and across that part of the West 20.00 feet of said Lot 5 lying southerly of said Line "A", over, under and across the North 20.00 feet of said Lot 6, over, under and across the South 20.00 feet of Lot 7, said Block 1 and over, under and across that part of Lot 8, said Block 1, lying southerly of a line drawn from the southwest corner of said Lot 8 to a point on the east line of said Lot 8, distant 20.00 feet northerly of the southeast corner thereof. (the "Easement Property") and depicted on attached Exhibit A.

NOW THEREFORE, in consideration of the City's approval and in satisfaction of the condition imposed, Grantor hereby grants and conveys unto the Grantee a tree and slope preservation easement over, under and across the Property for the protection of specific trees. The terms of this Easement are as follows:

1. Except as permitted by this Agreement, no action of any kind may be undertaken to disturb the slopes within the areas identified in Exhibit A or harm the specific trees listed in Exhibit B as of this date. The following activities are prohibited within the Easement Property identified:

- A. Cutting or removing the trees specified in Exhibit B without a special permit granted by the City of Edina. If one of the specified trees needs to be removed for some reason, new trees having a cumulative total of 15" in diameter or greater must be planted to replace it (species approved by the city).
- B. The deposit of waste, yard waste, or debris.
- C. Outside storage of any kind.
- D. Activity detrimental to the preservation of the slopes or specified trees.

2. Grantor hereby grants to the Grantee the affirmative right, but not the obligation to enter upon the Easement Property for the purposes of inspection and enforcement of this Tree and Slope Preservation Easement and to take whatever actions are necessary to restore the Easement Property to its agreed upon nature. Grantee may assess the reasonable costs of this restoration against the Property, and Grantor waives all rights to contest those costs. Further Grantee may enforce the terms of this Easement by any proceeding in law or in equity to restrain violation, to compel compliance, or to recover damages, including attorneys' fees and costs of the enforcement actions. Grantor is not liable for the actions of any third party, other than its employees, agents or contractors, which may violate the terms of this Easement, unless Grantor, its employees, agents or contractors had actual knowledge of the violation and failed to take reasonable action to stop the violation.

3. Failure to enforce any provision of this Tree and Slope Preservation Easement upon a violation of it cannot be deemed a waiver of the right to do so as to that or any subsequent violation.

4. Invalidation of any of the terms of this Tree and Slope Preservation Easement will in no way affect any of the other terms, which will remain in full force and effect.

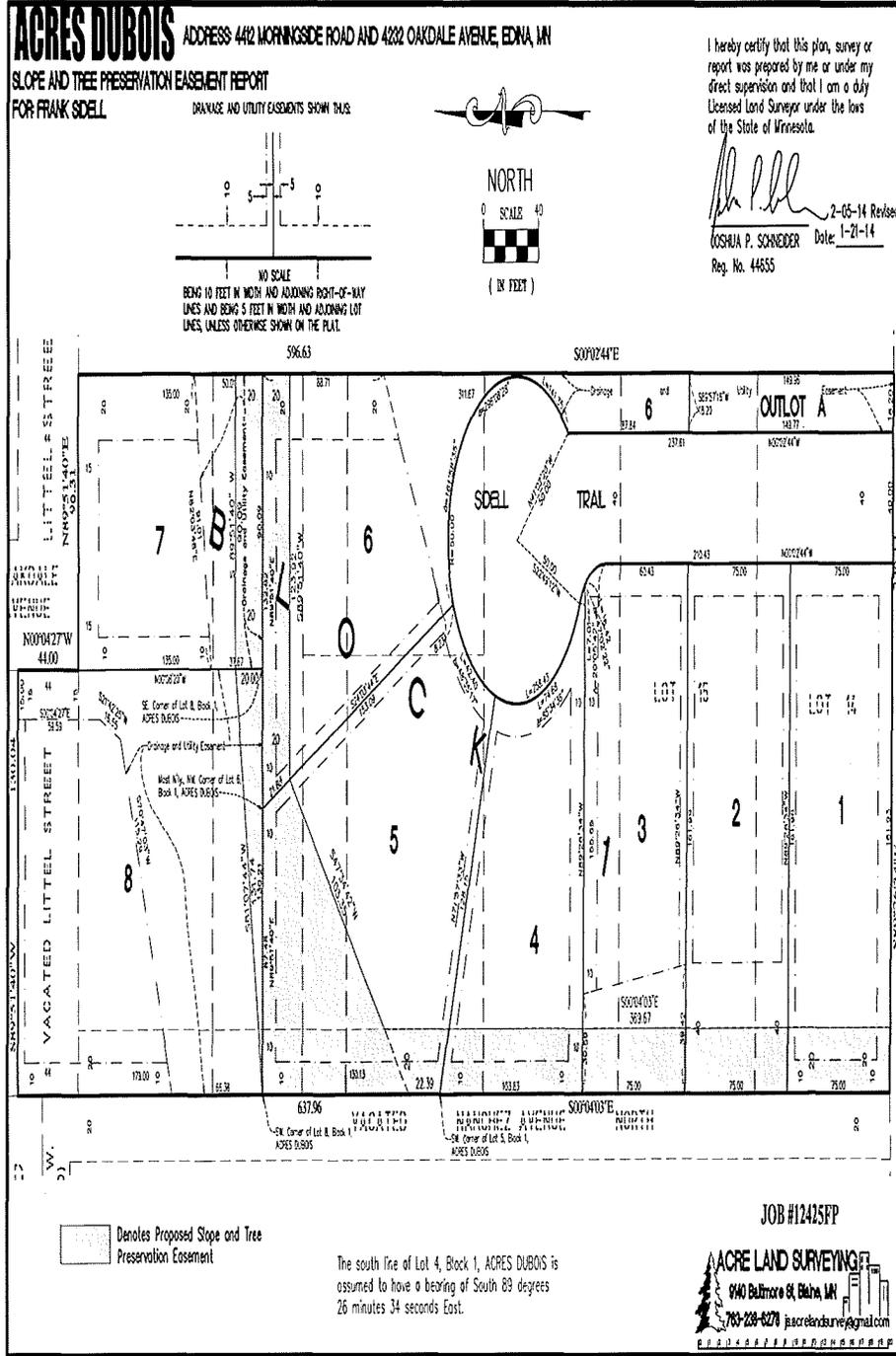
5. This Tree and Slope Preservation Easement does not convey a right to the public to use the Easement Property nor does it convey any right of possession in the Easement Property to the public or the Grantee. Access by the Grantee to the Easement Property is limited to access necessary for purposes of inspection and enforcement as specified in paragraph 2 above. Grantee is not entitled to share in any award or other compensation given in connection with a condemnation or negotiated acquisition of all or any part of the Easement Property by any authority having the power of eminent domain. Grantee hereby waives any right it may have to such an award or compensation.

6. This Tree and Slope Preservation Easement runs with the Easement Property and is binding on the Grantor, its successors and assigns, and inures to the benefit of the Grantee, its successors and assigns.

7. This Tree and Slope Preservation Easement may be amended or released in whole or in part by an instrument signed by the Grantee and Grantor or its respective successors and assigns in interest.

EXHIBIT "A"

Legal Description of Property:



C:\land Projects\2009\Schneider-job\12425FP\fig\12425-Tree Preservation.dwg 7:40:05, 2014 6:45am

SHEET 1 OF 2 SHEETS

ACRES DUBOIS

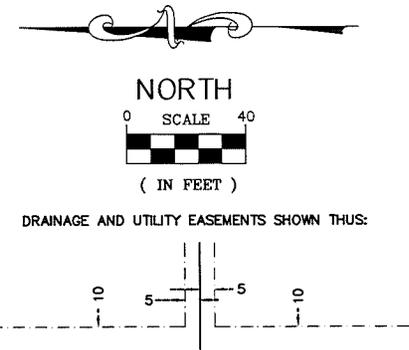
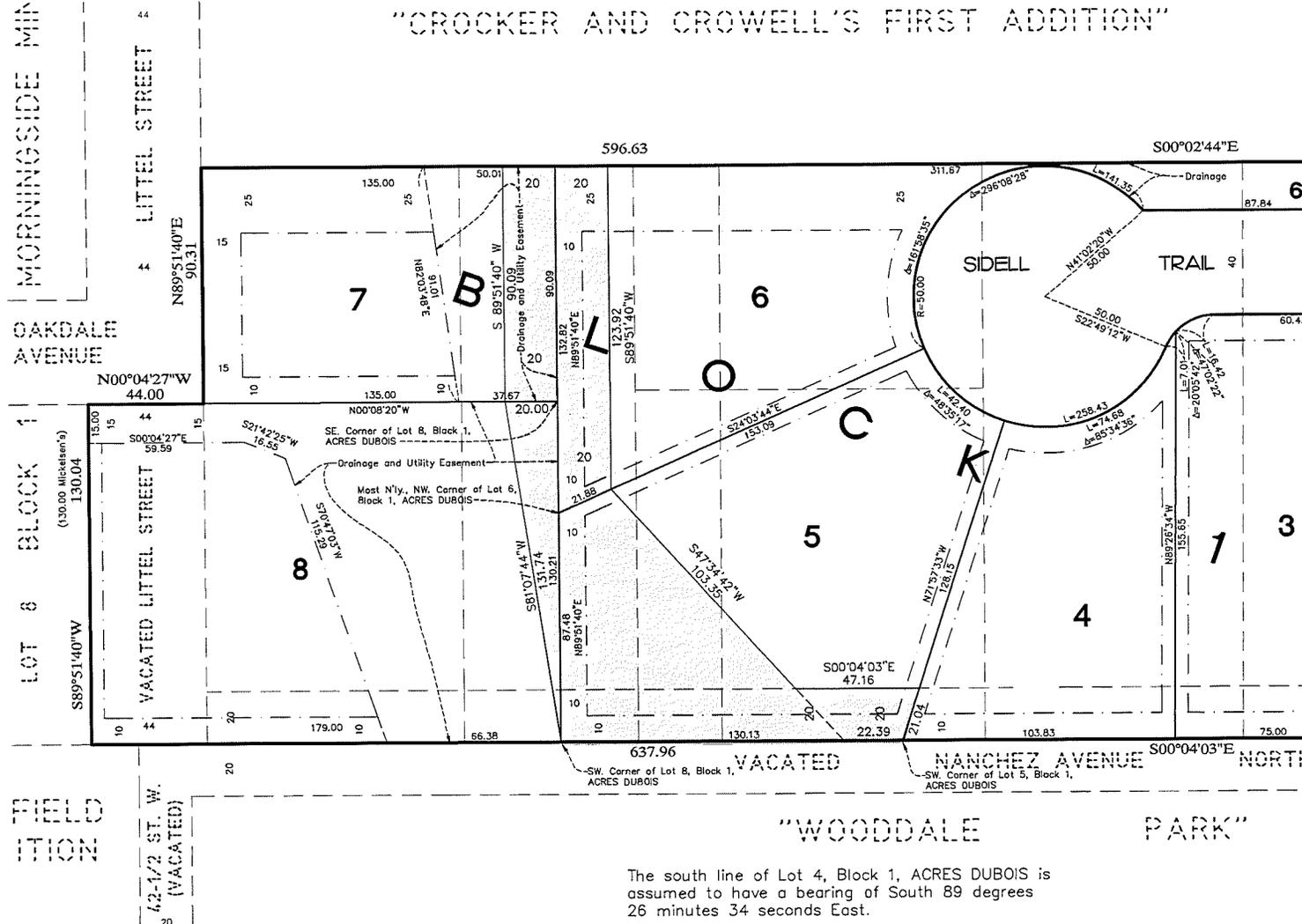
SLOPE AND TREE PRESERVATION EASEMENT REPORT

FOR: FRANK SIDELL

ADDRESS: 4412 MORNINGSIDE ROAD AND 4232 OAKDALE AVENUE, EDINA, MN

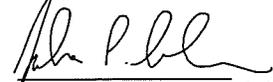
 Denotes Proposed Slope and Tree Preservation Easement

"CROCKER AND CROWELL'S FIRST ADDITION"



NO SCALE
BEING 10 FEET IN WIDTH AND ADJOINING RIGHT-OF-WAY LINES AND BEING 5 FEET IN WIDTH AND ADJOINING LOT LINES, UNLESS OTHERWISE SHOWN ON THE PLAT.

I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.


 JOSHUA P. SCHNEIDER Date: 1-21-14
 Reg. No. 44655

JOB #12425FP

ACRE LAND SURVEYING
 9140 Baltimore St, Blaine, MN
 763-238-6278 js.acrelandsurvey@gmail.com

The south line of Lot 4, Block 1, ACRES DUBOIS is assumed to have a bearing of South 89 degrees 26 minutes 34 seconds East.

EXHIBIT "B"

Drawing Number of the Protected Trees:

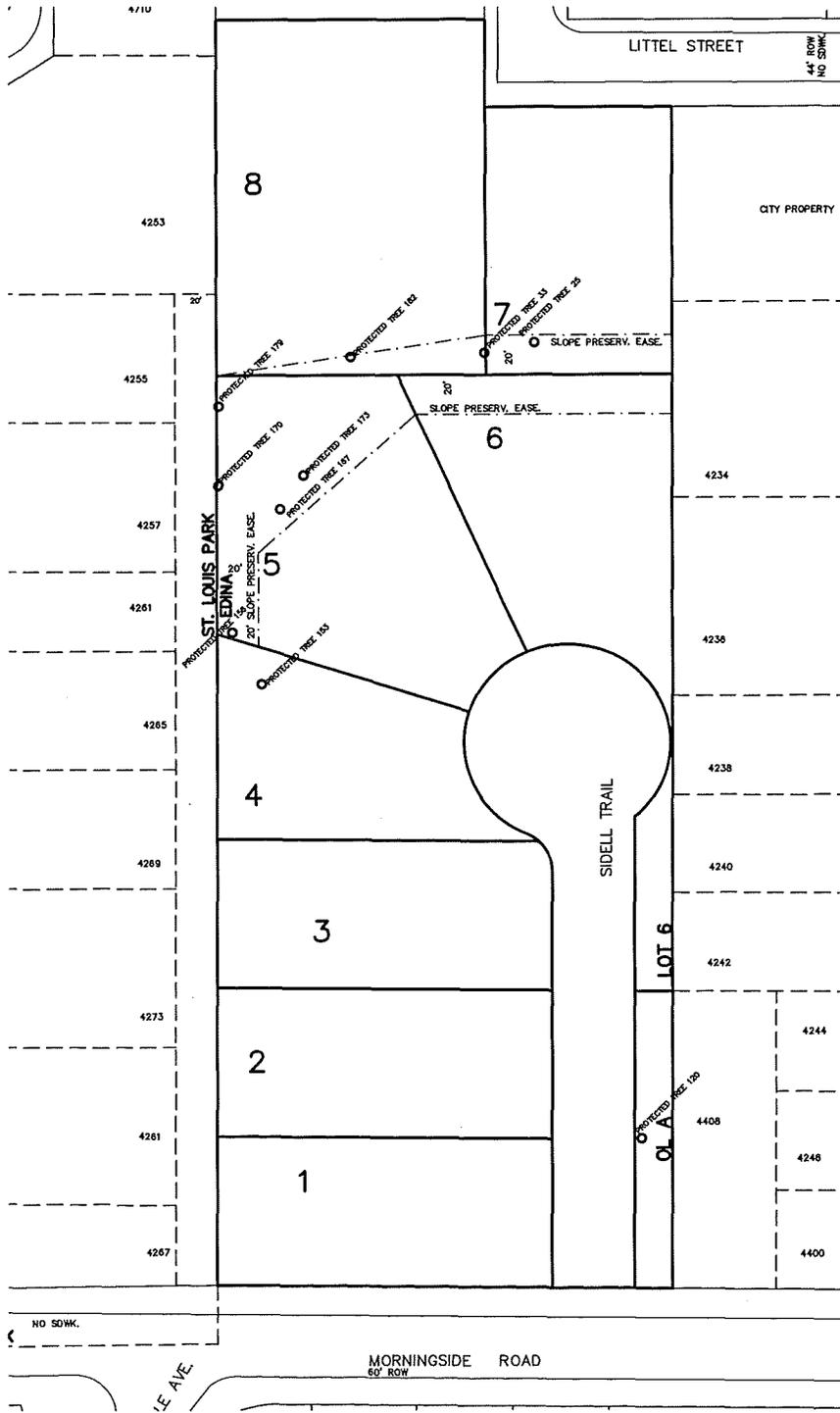
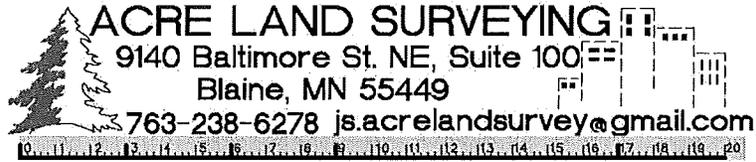


Exhibit C

Description of Trees

Tree #	Species	DBH	Condition	Notes	Lot
25	bur oak	36	fair		7
33	bur oak	26	good		8
120	bur oak	20	good		OLA
153	bur oak	12	fair		4
156	bur oak	16	good		5
167	bur oak	29	excellent		5
170	bur oak	20	good		5
173	American elm	26.5	excellent		5
179	black walnut	24	excellent	On the Property line	5
182	bur oak	29	good	leaner	8

(These properties are free of any encumbrances)



January 21, 2014

ACRES DUBOIS (Unrecorded)

PROPOSED TREE PRESERVATION EASEMENT DESCRIPTION:

An Easement for Slope and Tree Preservation purposes over, under and across that part of Lot 5, Block 1, ACRES DUBOIS, Hennepin County, Minnesota, lying northwesterly of a line drawn from a point on the west line of said Lot 5, distant 22.39 feet northerly of the southwest corner thereof, to a point on the northeasterly line of said Lot 5, distant 21.88 feet southeasterly of the most northerly, northwest corner of Lot 6, said Block 1, said last described line to be hereinafter known as Line "A", over, under and across that part of the West 20.00 feet of said Lot 5 lying southerly of said Line "A", over, under and across the North 20.00 feet of said Lot 6, over, under and across the South 20.00 feet of Lot 7, said Block 1 and over, under and across that part of Lot 8, said Block 1, lying southerly of a line drawn from the southwest corner of said Lot 8 to a point on the east line of said Lot 8, distant 20.00 feet northerly of the southeast corner thereof.