



To: MAYOR AND COUNCIL

Agenda Item #: IV. L.

From: Ross Bintner P.E. - Environmental Engineer

Action

Discussion

Date: April 22, 2014

Information

Subject: Approve Temporary Construction Agreement for 71 France, Building Unit A

Action Requested:

Authorize Mayor and City Manager to sign temporary construction easement

Information / Background:

The 71 France developer has informed the City that their schedule is delayed and is requesting easement over a portion of the Promenade Phase 4 project area. This schedule adjustment means Promenade Phase 4 bid and construction will take place spring 2015.

Staff Recommendation:

Authorize Mayor and City Manager to sign temporary construction easement.

Attachments:

Easement Agreement and Appendices

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT agreement (the "Agreement") is effective as of _____, 2014 (the "Effective Date"), between, the **CITY OF EDINA**, a Minnesota municipal corporation, as Grantor ("Grantor") and IRET-71 France, LLC, a North Dakota limited liability company ("Grantee"), with reference to the following facts:

RECITALS:

1. Grantor is the owner of certain real property located in the City of Edina, Hennepin County, Minnesota, legally described on the attached Exhibit A (the "Grantor Property").
2. Grantee is the owner of certain real property located in the City of Edina, Hennepin County, Minnesota, located adjacent to the Grantor Property and legally described on the attached Exhibit B (the "Grantee Property").
3. Grantee desires to obtain from Grantor and Grantor desires to convey to Grantee (i) a temporary construction easement on that portion of the Grantor Property described on Exhibit C and depicted on Exhibit D attached hereto and made a part hereof (the "Construction Easement Area"), and (ii) a temporary airspace easement above that portion of the Grantor Property depicted on Exhibit D attached hereto and made a part hereof (the "Tower Crane Easement Area"), for the purposes hereinafter set forth, upon and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby acknowledged, Grantor hereby grants to Grantee the easements as hereinafter described and Grantor and Grantee agree as follows:

AGREEMENT

1. Construction Easement Grant. Grantor hereby grants to Grantee a temporary construction easement on, over and across the Construction Easement Area (the "Temporary Construction Easement"), together with the right of ingress and egress, for the purposes of grading, excavating, construction and restoration in conjunction with construction of the following improvements on the Grantee Property: 71 France Building Unit A and related site improvements ("Improvements"). This Temporary Construction Easement includes the right to allow Grantee to remove vegetation, including bushes, shrubs, trees, plants, undergrowth and other obstructions, if any, that interfere

with the temporary use of the Construction Easement Area. This Temporary Construction Easement is also for the benefit of any contractor, agent, employee, or representative of the Grantee in any of said construction and work.

2. Tower Crane Easement. Grantor hereby grants to Grantee a temporary construction easement to enable the boom of any crane that may be located upon the Grantee's Property in connection with the construction of the Improvements to, from to time swing across and remain stationary above the Tower Crane Easement Area (the "Temporary Tower Crane Easement"). The boom of the crane shall be maintained at a sufficient height so that it does not materially interfere with the use of the Grantor Property. This Temporary Tower Crane Easement is also for the benefit of any contractor, agent, employee, or representative of the Grantee in any of said construction work.

3. Term. The Temporary Construction Easement and Temporary Tower Crane Easement (collectively, the "Temporary Easements") shall begin on the Effective Date and expire on April 1, 2015.

4. Restoration. Grantee agrees, at Grantee's expense, to restore the ground surface of the Construction Easement Area to a rough-graded condition consistent with the Promenade Phase IV 60% review plan, dated 2/12/2014 and prepared by URS Inc, and Barr Engineering, including 4' of clean sand fill underlying that portion of "Cell 2" on outlot A, to an elevation of 853 MSL NAVD 29. The work shall be completed as promptly as weather permits, and if Grantee shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Construction Easement Area in the said condition, Grantor shall have, after demand to Grantee to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration at the expense of Grantee. Grantee shall pay to the Grantor the cost of such work done for or performed by the Grantor, including its administrative expense and overhead, plus ten percent (10%) additional as liquidated damages. This remedy shall be in addition to any other remedy available to the Grantor.

5. Permission for Excavation. Grantee shall not open or disturb the surface of the Construction Easement Area for any purpose without first having obtained permission from the Grantor, for which the Grantor may impose a reasonable fee. Permit conditions imposed on Grantee shall not be more burdensome than those imposed on other parties for similar facilities or work. Grantee may, however, open and disturb the Construction Easement Area without permission from the Grantor where an emergency exists requiring the immediate repair of a Grantor utility system. In such event Grantee shall notify the Grantor by telephone to the office designated by the Grantor before opening or disturbing the Construction Easement Area. On the next working day thereafter, Grantee shall obtain any required permits and pay any required fees.

6. Hazardous Materials. Grantee agrees that it will not locate or store on the Construction Easement Area any contaminated soils or hazardous materials, and will remove or cause to be removed all contaminated soils, and solid waste encountered per the Response Action Plan approved the MPCA and dated April 1, 2013.

7. Indemnification. Grantee shall indemnify, keep and hold Grantor, its elected officials, officers, employees, and agents free and harmless from any and all liability on account of injury or

death of persons or damage to or depreciation in value of property which arise out of the act, or failure to act, or negligence of Grantee, its agents, employees or assigns in the exercise of the rights under this Agreement. Grantor shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the Grantor's negligence as to the issuance of permits for, or inspection of, the Grantee's plans or work.

8. Grantee to Defend Claims. In the event a suit is brought against the Grantor under circumstances where this agreement to indemnify applies, Grantee at its sole cost and expense shall defend the Grantor in such suit if written notice thereof is promptly given to Grantee within a period wherein Grantee is not prejudiced by lack of such notice. If Grantee is required to indemnify and defend, it will thereafter have control of such litigation, but Grantee may not settle such litigation without the consent of the Grantor, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Grantor; and Grantee, in defending any action on behalf of the Grantor shall be entitled to assert in any action every defense or immunity that the Grantor could assert in its own behalf.

9. Damage to Property. Grantee agrees to repair or pay Grantor for any damage to the Grantor Property or any equipment or improvements located on the Grantor Property resulting from Grantee's exercise of the rights granted hereunder.

10. Successors and Assigns. The terms, conditions, covenants, agreements and easements contained herein shall run with the Grantor Parcel and Grantee Parcel and shall be binding upon the parties hereto and their respective successors and assigns.

11. Compliance with Laws. Grantee shall, comply with all laws and ordinances and the orders, regulations and requirements of all federal, state and local governmental agencies that may be applicable to the Temporary Easements by reason of Grantee's use thereof.

12. Minnesota law. This Agreement shall be governed, construed and interpreted in accordance with the substantive laws of the State of Minnesota, without regard to its conflict of laws provision.

13. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall be binding upon the parties and shall be enforceable as though said invalid, illegal or unenforceable provisions were not contained herein.

14. Amendment. This Agreement shall not be amended except by written agreement executed by Grantor and Grantee or their successors.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one of the same document.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first above written.

GRANTOR:

CITY OF EDINA

BY: _____
James B. Hovland, Mayor

AND _____
Scott H. Neal, City Manager

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by James B. Hovland and by Scott H. 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

EXHIBIT A

Legal Description of Grantor Property

Outlot A, LB 71 France, Hennepin County, Minnesota and Outlot B, Yorktown, Hennepin County, Minnesota.

EXHIBIT B

Legal Description of Grantee Property

Lot 2, Block 1, LB 71 France, Hennepin County, Minnesota.

EXHIBIT C

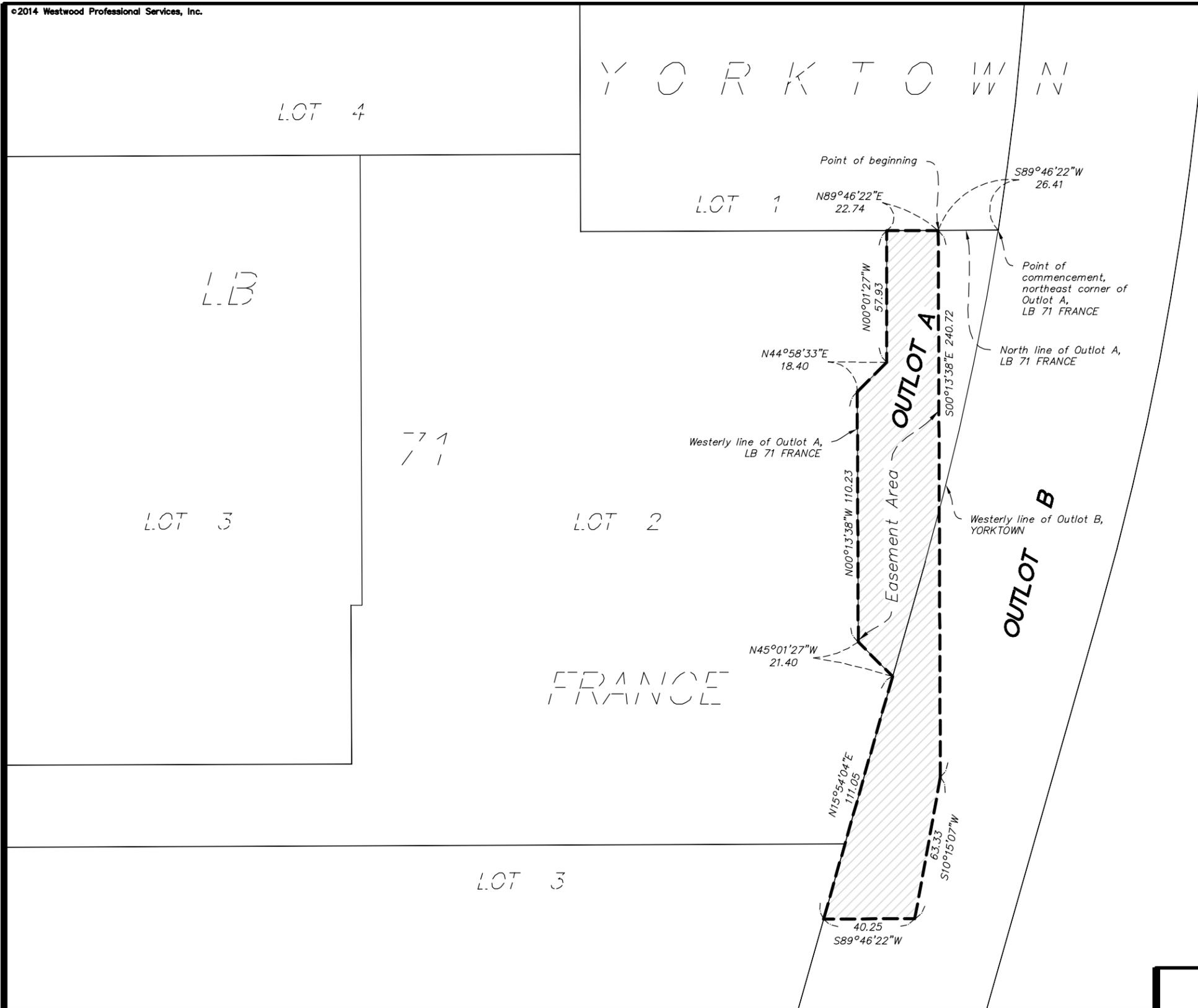
Temporary Construction Easement

A Easement lying over, under and across that part of Outlot A, LB 71 FRANCE, according to the recorded plat thereof and Outlot B, YORKTOWN, according to the recorded plat thereof, all in Hennepin County, Minnesota, described as follows:

Commencing at the northeast corner of said Outlot A; thence South 89 degrees 46 minutes 22 seconds West, assumed bearing along the north line of said Outlot A, a distance of 26.41 feet to the point of beginning of the easement to be described; thence South 00 degrees 13 minutes 38 seconds East, a distance of 240.72 feet; thence South 10 degrees 15 minutes 07 seconds West, a distance of 63.33 feet; thence South 89 degrees 46 minutes 22 seconds West, a distance of 40.25 feet to the westerly line of said Outlot B; thence North 15 degrees 54 minutes 04 seconds East along said westerly line of Outlot B, a distance of 111.05 feet to the westerly line of said Outlot A; thence North 45 degrees 01 minute 27 seconds West along said westerly line of Outlot A, a distance of 21.40 feet; thence North 00 degrees 13 minutes 38 seconds West continuing along said westerly line of Outlot A, a distance of 110.23 feet; thence North 44 degrees 58 minutes 33 seconds East continuing along said westerly line of Outlot A, a distance of 18.40 feet; thence North 00 degrees 01 minute 27 seconds West continuing along said westerly line of Outlot A, a distance of 57.93 feet to said north line of Outlot A; thence North 89 degrees 46 minutes 22 seconds East along said north line of Outlot A, a distance of 22.74 to the point of beginning.

EXHIBIT D

Sketch of Temporary Construction Easement

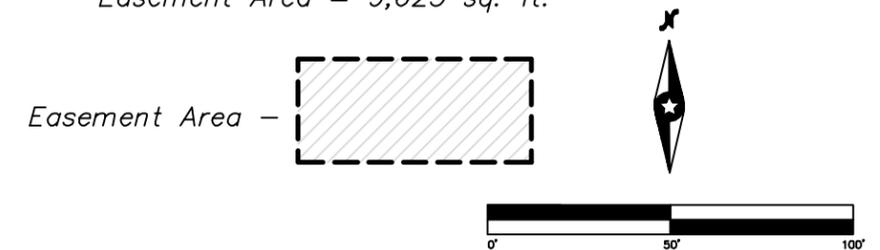


Easement Description

A Easement lying over, under and across that part of Outlot A, LB 71 FRANCE, according to the recorded plat thereof and Outlot B, YORKTOWN, according to the recorded plat thereof, all in Hennepin County, Minnesota, described as follows:

Commencing at the northeast corner of said Outlot A; thence South 89 degrees 46 minutes 22 seconds West, assumed bearing along the north line of said Outlot A, a distance of 26.41 feet to the point of beginning of the easement to be described; thence South 00 degrees 13 minutes 38 seconds East, a distance of 240.72 feet; thence South 10 degrees 15 minutes 07 seconds West, a distance of 63.33 feet; thence South 89 degrees 46 minutes 22 seconds West, a distance of 40.25 feet to the westerly line of said Outlot B; thence North 15 degrees 54 minutes 04 seconds East along said westerly line of Outlot B, a distance of 111.05 feet to the westerly line of said Outlot A; thence North 45 degrees 01 minute 27 seconds West along said westerly line of Outlot A, a distance of 21.40 feet; thence North 00 degrees 13 minutes 38 seconds West continuing along said westerly line of Outlot A, a distance of 110.23 feet; thence North 44 degrees 58 minutes 33 seconds East continuing along said westerly line of Outlot A, a distance of 18.40 feet; thence North 00 degrees 01 minute 27 seconds West continuing along said westerly line of Outlot A, a distance of 57.93 feet to said north line of Outlot A; thence North 89 degrees 46 minutes 22 seconds East along said north line of Outlot A, a distance of 22.74 to the point of beginning.

Easement Area = 9,625 sq. ft.



Date: 04/08/14 Sheet: 1 OF 1

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Westwood Professional Services, Inc.
7699 Anagram Drive
Eden Prairie, MN 55344

PHONE 952-937-5150
FAX 952-937-5822
TOLL FREE 1-888-937-5150

www.westwoodps.com

Designed: _____
Checked: CDH
Drawn: BTW
Record Drawing by/date: _____

Prepared for:

71 France
7171 France Avenue South
Edina, Minnesota

Byerly's

Edina, Minnesota

Easement Sketch

EXHIBIT E

Sketch of Temporary Tower Crane Easement Area

