



**To:** MAYOR AND COUNCIL

**Agenda Item #:** IV. H.

**From:** Chad A. Millner, PE, Director of Engineering

**Action**

**Discussion**

**Date:** May 20, 2014

**Information**

**Subject:** Approve Permanent and Temporary Easement Agreements at 3650 and 3655 Hazelton Road

**Action Requested:**

Authorize Mayor and City Manager to sign attached permanent and temporary easement agreements at 3650 and 3655 Hazelton Road, the Guitar Center and the Think Bank properties.

**Information / Background:**

The Hazelton Road Improvement project was ordered by City Council on June 4, 2013. Stage I of the project is currently under construction. As stated in the feasibility report, "permanent right-of-way and temporary easements will be needed."

The attached agreements will complete the permanent easement for public roadway, sidewalk, drainage and utility purposes and a temporary construction easement with the property owners of 3650 and 3655 Hazelton Road, the Guitar Center and the Think Bank properties.

Staff recommends City Council authorize the Mayor and City Manager to sign attached easement agreements.

**Attachments:**

- Agreement Regarding Grant of Permanent and Temporary Easements with the property owners of 3650 Hazelton Road
- Agreement Regarding Grant of Permanent and Temporary Easements with the property owners of 3655 Hazelton Road

*(Reserved for recording information)*

---

**AGREEMENT REGARDING GRANT OF PERMANENT AND  
TEMPORARY EASEMENTS**

**HAZELTON INVESTMENTS-NFLP, LLC**, a Minnesota limited liability company, owns an undivided 62.6% tenant in common interest in Lot 4, Block 1 Yorktown, Hennepin County, Minnesota (“Property”), and **HAZELTON INVESTMENTS-RG22, LLC**, a Minnesota limited liability company, owns an undivided 37.4% tenant in common interest in the Property.

1. **HAZELTON INVESTMENTS-NFLP, LLC** and **HAZELTON INVESTMENTS-RG22, LLC**, hereinafter collectively referred to as “Grantor”, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant unto the **CITY OF EDINA**, a Minnesota municipal corporation, the Grantee, hereinafter referred to as the “City”, its successors and assigns, the following easements:

A permanent easement for public roadway, sidewalk, drainage and utility purposes over, across, on, under, and through land situated within the County of Hennepin,

State of Minnesota, as legally described on the attached Exhibit "A" and depicted on the attached Exhibit "B" ("Permanent Easement Area"), including the rights of the City, its contractors, agents, and servants to enter upon the permanent easement premises at all reasonable times to construct, reconstruct, inspect, repair, and maintain said public roadway, sidewalk, drainage and utility systems over, across, on, under, and through the permanent easement premises, together with the right to grade, level, fill, drain and excavate the permanent easement premises, and the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said public roadway, sidewalk, drainage and utility easements.

A temporary construction easement over, across, on, under, and through the land situated in the County of Hennepin, State of Minnesota, as legally described on the attached Exhibit "A" and depicted on the attached Exhibit "B" ("Temporary Easement Area"). To have and to hold the same, unto the City, its contractors, agents, and servants, commencing upon execution of this document and expiring October 31, 2015, together with the right of ingress to and egress from the temporary easement premises, for the purpose of constructing, reconstructing, inspecting, repairing, and maintaining the property of the City, at the will of the City, its successors and assigns. Grantor hereby grants the uses herein specified without divesting itself of the right to use and enjoy the above described temporary easement premises, subject only to the right of the City to use the same for the purposes herein expressed. As a condition of this temporary construction

easement grant, the City shall, upon completion of construction and prior to termination, restore the ground surface of the temporary construction easement premises to its original condition so far as is reasonably practicable with the exception of any grade changes, bank sloping, ditching, fills, slope construction, cuts and any removal of earth, other materials, trees and other vegetation.

2. All costs and expenses payable with respect to Grantee's or its agents, contractors, servants or the public's use of the easement areas described herein, and with respect to the installation, construction, maintenance and repair of the roadway, sidewalk, drainage and utility improvements will be paid by the Grantee, its successors or assigns. As consideration for the grant of the easements pursuant to this Agreement, no portion of any such costs or expenses, will ever be levied or assessed against any portion of the Property or the Grantor, its successors or assigns.

3. As further consideration for the grant of the easements pursuant to this Agreement Grantee, its successors or assigns, will indemnify, defend and hold harmless Grantor, and all future owners of the Property, and such fee owner's successors, assigns, mortgagees, tenants, licensees, and their respective successors and assigns, from and against any and all costs, liabilities, damages, expenses (including all attorneys' fees), suffered or incurred by any reason of or relating to the Grantee's use, occupancy, possession, construction, maintenance or repair upon the Permanent Easement Area or Temporary Easement Area or both ("Easement Areas"), including but not limited to any claim for hazardous substances.

4. Nothing in this Easement shall constitute a waiver of the statutory limits on liability set forth in Minnesota Statutes or a waiver of any available immunities or defenses.

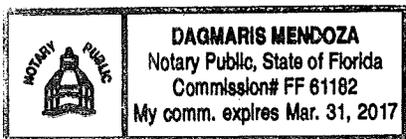


**GRANTOR:  
HAZELTON INVESTMENTS-RG22, LLC**

By: *Herbert R Goldenberg*  
Herbert R Goldenberg  
Its Director  
FL DL 6435336334680

Florida  
STATE OF MINNESOTA )  
COUNTY OF Leq ) ss.

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April, 2014, by Herbert R. Goldenberg the Director of **Hazelton Investments-RG22, LLC**, a Minnesota limited liability company, on behalf of said limited liability company.



*Dagmaris Mendoza*  
Notary Public

**GRANTEE:  
CITY OF EDINA, a Minnesota statutory city**

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA )  
COUNTY OF \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_, 2014, by \_\_\_\_\_, the Mayor and City Manager of the **City of Edina**, a Minnesota statutory city, on behalf of said city.

\_\_\_\_\_  
Notary Public

DRAFTED BY:  
**CAMPBELL KNUTSON**  
*Professional Association*  
317 Eagandale Office Center  
1380 Corporation Center Curve  
Eagan, Minnesota 55121  
Telephone: 651-452-5000  
AMP/jmo

## EXHIBIT "A"

### Parcel 17

A permanent easement for roadway, sidewalk, drainage and utility purposes over, under and across that part of Lot 4, Block 1, Yorktown as is on file and of record in the Office of the County Recorder, Hennepin County Minnesota, which lies southerly and southwesterly of the Line A described as follows:

Line A: Commencing at the northwest corner of said Lot 4; thence South 00 degrees 11 minutes 54 seconds East, assumed bearing along the west line thereof, 249.78 feet to the point of beginning of Line A to be hereinafter described; thence southeasterly 53.15 feet along a non-tangential curve, concave the south, , having a radius of 78.00 feet, central angle of 39 degrees 02 minutes 41 seconds, chord bearing of South 72 degrees 19 minutes 08 seconds East and a chord distance of 52.13 feet; thence continue southeasterly along a reverse curve, tangent to the last described curve, 31.11 feet, having a radius of 87.50 feet, central angle of 20 degrees 22 minutes 07 seconds, chord bearing of South 62 degrees 58 minutes 51 East and a chord distance of 30.94 feet to the south line of said Lot 4 and said Line A there terminating

AND

A temporary construction easement over, under and across that part of said Lot 4, which lies northerly and northeasterly of said Line A and southerly of the following described line: Commencing at the northeast corner of said Lot 4; thence South 00 degrees 11 minutes 54 seconds East, assumed bearing along the east line thereof, 274.26 feet to the point of beginning of the line to be hereinafter described; thence North 90 degrees 00 minutes 00 seconds West, 124.58 feet; thence North 01 degrees 11 minutes 54 seconds West, 38.46 feet; thence South 89 degrees 48 minutes 06 seconds West, 75.42 feet to the west line of said Lot 4 and there terminating.

Said temporary easement shall expire on October 31, 2015

(Torrens Certificate of Title No. 1379088)



---

---

## GRANT OF PERMANENT AND TEMPORARY EASEMENTS

**RWOLFSON HAZELTON ROAD LLC**, a Minnesota limited liability company, **BWOLFSON HAZELTON ROAD LLC**, a Minnesota limited liability company, and **FW PROPERTIES, LLC**, a Florida limited liability company, hereinafter referred to as "Grantors", in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby grant unto the **CITY OF EDINA**, a municipal corporation organized under the laws of the State of Minnesota, the Grantee, hereinafter referred to as the "City", its successors and assigns, the following easements, and upon the following terms and conditions:

1. A permanent non-exclusive easement for public roadway, sidewalk, drainage and utility purposes over, across, on, under, and through land situated within the County of Hennepin, State of Minnesota, as legally described on the attached Exhibit "A" and depicted on the attached Exhibit "B", including the rights of the City, its contractors, agents, and servants to enter upon the permanent non-exclusive easement premises at all reasonable times to construct, reconstruct, inspect, repair, and maintain said public roadway, sidewalk, drainage and utility systems over, across, on, under, and through the permanent non-exclusive easement premises, together with the right to grade, level, fill, drain and excavate the permanent non-exclusive easement premises, and the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location,

construction, and maintenance of said public roadway, sidewalk, drainage and utility easements. Grantor shall not be responsible for, and City agrees to indemnify, defend and hold Grantor harmless from and against, any and all claims, liabilities and/or damages resulting from the City's, the public's and/or any other person or entity's use of the permanent non-exclusive easement premises, except to the extent such claim, liability or damage is the solely caused by Grantor's gross negligence or intentional misconduct as may be determined by a court of competent jurisdiction. The City shall maintain and operate the non-exclusive easement premises in good and safe condition and repair at no cost to Grantor, and Grantor shall have no obligation to maintain or operate said easement premises. As a condition of this permanent non-exclusive easement grant, the City shall, upon completion of any construction and/or repair work on the easement premises, restore the ground surface of any adjacent property of Grantor to its original condition so far as is reasonably practicable with the exception of any grade changes, bank sloping, ditching, fills, slope construction, cuts and any removal of earth, other materials, trees and other vegetation.

2. A temporary non-exclusive construction easement over, across, on, under, and through the land situated in the County of Hennepin, State of Minnesota, as legally described on the attached Exhibit "A" and depicted on the attached Exhibit "B". To have and to hold the same, unto the City, its contractors, agents, and servants, commencing upon execution of this document and automatically expiring October 31, 2015, together with the right of ingress to and egress from the temporary non-exclusive easement premises, for the purpose of constructing, reconstructing, inspecting, repairing, and maintaining the property of the City, at the will of the City, its successors and assigns. Grantors hereby grant the uses herein specified without divesting themselves of the right to use and enjoy the above described temporary non-exclusive easement premises, subject only to the right of the City to use the same for the purposes herein expressed. As a condition of this temporary non-exclusive construction easement grant, the City shall, upon completion of construction and prior to termination, restore the ground surface of the temporary construction non-exclusive easement premises and any adjacent property of Grantor to its original condition so far as is reasonably practicable with the exception of any grade changes, bank sloping, ditching, fills, slope construction, cuts and any removal of earth, other materials, trees and other vegetation.

3. Grantor shall not be responsible for any claims arising from the City's (or any other person's or entity's) use of and entry upon either of the easement areas described herein pursuant to the rights granted herein. City shall not permit any mechanics', materialmen's or other liens to stand against either easement premises or any part thereof for work or materials furnished to City in connection with either of the easements granted herein, and City agrees to indemnify, defend and hold Grantor harmless from and against the same.

4. The above named Grantors, for themselves, their successors and assigns, do covenant with the City, its successors and assigns, that they are well seized in fee title of the above described easement premises.

[Signature pages follow.]

IN TESTIMONY WHEREOF, the Grantors hereto have signed this agreement this 01  
day of MAY, 2014.

GRANTOR:

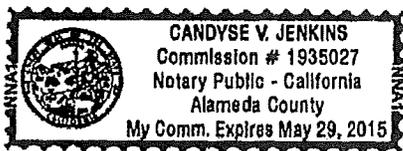
RWOLFSON HAZELTON ROAD LLC

By: [Signature]  
Its: President

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO )<sup>ss.</sup>

The foregoing instrument was acknowledged before me this 01 day of  
MAY, 2014, by ROBBY BERNARD WOLFSON, the  
PRESIDENT of RWolfson Hazelton Road LLC, a Minnesota limited  
liability company, on behalf of said company.

[Signature]  
NOTARY PUBLIC





**GRANTOR:**

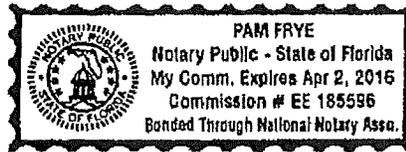
**FW PROPERTIES, LLC**

By: *Kremata Wolfson*  
Its: \_\_\_\_\_

STATE OF Florida )  
COUNTY OF Sarasota ) ss.

The foregoing instrument was acknowledged before me this 1 day of May, 2014, by Kremata Wolfson, the Proprietor of FW Properties, LLC, a Florida limited liability company, on behalf of said company.

*Pam Frye*  
NOTARY PUBLIC



IN TESTIMONY WHEREOF, the City has signed this agreement this \_\_\_ day of \_\_\_\_\_, 2014.

**CITY:**

**City of Edina**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MINNESOTA     )  
  )ss.  
COUNTY OF \_\_\_\_\_  )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, the \_\_\_\_\_, and by \_\_\_\_\_, the \_\_\_\_\_, both of the City of Edina, a municipal corporation organized under the laws of the State of Minnesota, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
CAMPBELL KNUTSON  
*Professional Association*  
317 Eagandale Office Center  
1380 Corporation Center Curve  
Eagan, Minnesota 55121  
Telephone: 651-452-5000  
AMP/cjh

## EXHIBIT "A"

### Parcel 16

A permanent non-exclusive easement for roadway, sidewalk, drainage and utility purposes over, under and across that part of Lot 1, Block 7, Yorktown as is on file and of record in the Office of the County Recorder, Hennepin County Minnesota, which lies northerly and northwesterly of the Line A described as follows:

Line A: Commencing at the northwest corner of said Lot 1; thence South 00 degrees 11 minutes 54 seconds East, assumed bearing along the west line thereof, 43.09 feet to the point of beginning of Line A to be hereinafter described; thence North 88 degrees 46 minutes 15 seconds East, 24.64 feet; thence northeasterly along a non-tangential curve, concave the southeast, 20.94 feet, having a radius of 77.50 feet, central angle of 15 degrees 28 minutes 59 seconds, chord bearing of North 35 degrees 54 minutes 35 seconds East and a chord distance of 20.88 feet; thence continue northeasterly along a compound curve, tangent to the last described, 14.90 feet, having a radius of 49.00 feet, central angle of 17 degrees 25 minutes 25 seconds, chord bearing of North 52 degrees 21 minutes 47 East and a chord distance of 14.84 feet; thence continue northeasterly along a compound curve, tangent to the last described, 50.10 feet, having a radius of 167.50 feet, central angle of 17 degrees 08 minutes 14 seconds, chord bearing of North 69 degrees 38 minutes 36 East and a chord distance of 49.91 feet to the north line of said Lot 1 and said Line A there terminating

AND

A temporary non-exclusive construction easement over, under and across that part of said Lot 1, which lies southerly and southeasterly of said Line A and westerly and northerly of the following described line: Commencing at the southwest corner of said Lot 1; thence North 89 degrees 46 minutes 06 seconds East, assumed bearing along the south line thereof, 17.22 feet to the point of beginning of the line to be hereinafter described; thence North 00 degrees 32 minutes 14 seconds East, 257.89 feet; thence South 89 degrees 27 minutes 46 seconds East, 56.49 feet; thence North 00 degrees 32 minutes 14 seconds East, 48.23 feet to said Line A and there terminating.

Said temporary easement shall automatically expire on October 31, 2015.

(Torrens Certificate of Title No. 1363573)

## JOINT DECLARATION RESOLUTION LETTER

**THIS DECLARATION RESOLUTION** ("Declaration Resolution") is made this 1st day of May, 2014, between Bill Wolfson, ("Property Owner") and Think Mutual Bank ("Leaseholder").

### RECITALS

**WHEREAS**, Property Owner is the owner of real property within the City of Edina, Hennepin County, Minnesota, platted and legally described as:

Lot 1, Block 7, YORKTOWN, Hennepin County, Minnesota

(the "Property") and no one other than Owner, has any right, title or interest in the Property; and

**WHEREAS**, the Property constitutes the entirety of the land to which Nine Mile Creek Watershed District (NMCWD) Permit # 2014-01 applies; and

**WHEREAS**, Owner and Leaseholder desires to subject the Property to certain conditions and restrictions imposed by the NMCWD as a condition to issuance of Permit # 2014-01 for the mutual benefit of the NMCWD and the owners of the Property.

**NOW, THEREFORE**, Owner and Leaseholder makes this Declaration Resolution and hereby declares that this Declaration Resolution shall constitute covenants to run with the Property, and further declares that the Property shall be owned, used, occupied, and conveyed subject to the covenants, restrictions,

easements, charges and liens set forth in this Declaration Resolution, all of which shall be binding on all persons owning or acquiring any right, title or interest in the Property and their heirs, successors, personal representatives and assigns. Leaseholder agrees to be the responsible party that provides the necessary maintenance of the stormwater facilities for the duration of the lease between Leaseholder and Property Owner.

1. **Stormwater Facilities.** The terms of the Stormwater Facility Maintenance Schedule, attached hereto and incorporated herein as Attachment C, will apply to the stormwater management facilities shown in Attachment A, identified as follows:

Underground stormwater retention chambers below parking lot in northwest corner of the site.

2. **Recitals.** The recitals set forth above are expressly incorporated herein.

