



To: MAYOR AND COUNCIL

Agenda Item #: IV. D.

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

Action

Discussion

Date: November 3, 2014

Information

Subject: Approve Permanent Easement Agreement at 7235 France Avenue

Action Requested:

Authorize Mayor and City Manager to sign attached permanent easement agreement at 7235 France Avenue, the Macy's property.

Information / Background:

Please recall at the Aug. 6, 2012, City Council meeting, the City Council adopted Resolution No. 2012-102 approving a trailway cooperative agreement with Three Rivers Park District (TRPD) for the Nine Mile Creek Regional Trail (NMCRT) from Fred Richards Golf Course to Xerxes Avenue in connection with the Gallagher Drive reconstruction project.

The TRPD agreed to fund the installation of the NMCRT along Gallagher Drive in the amount of \$150,000 following the receipt of a trailway easement across the Macy's property. This easement allows the NMCRT to traverse across Macy's property to the Edina Promenade. It will also trigger a payment of \$150,000 from TRPD.

City and TRPD staff continues to draft a license agreement for the portions of the NMCRT within public right-of-ways. It is anticipated that this agreement will be presented to City Council early 2015.

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

Attachment:

- Grant of Permanent Easement agreement with the property owner of 7235 France Avenue

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GRANT OF PERMANENT EASEMENT

MACY'S RETAIL HOLDINGS, INC., a New York corporation, hereinafter 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 municipal corporation organized under the laws of the State of Minnesota, the Grantee, hereinafter referred to as the "City", its successors and assigns, forever, a permanent easement for public walkway purposes over, across, on, under, and through land situated within the County of Hennepin, State of Minnesota, as described on the attached Exhibit "A" and depicted on the attached Exhibit "B".

INCLUDING the rights of the City, its contractors, agents, servants, and assigns, to enter upon the easement premises at all reasonable times to construct, reconstruct, inspect, repair, and maintain said public walkway systems over, across, on, under, and through the easement premises, together with the right to grade, level, fill, drain and excavate the easement premises, and the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said public walkway easement.

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. Grantor specifically reserves the right to allow other utility lines to be installed under, across and within the property subject to these easements, provided such do not interfere with or endanger the installations of the City or the maintenance thereof.

In making use of the easements granted herein, the City shall and shall cause its contractors to: (i) review the work schedule and traffic control with Grantor's local management to limit any impact of the City's activities on Grantor's business and access to Grantor's property, (ii) make commercially reasonable efforts to minimize any adverse impact to the business operations conducted by Grantor on the adjacent property; (iii) replace and restore any areas and improvements disturbed to the condition they were prior to the performance of such work, except for the areas improved by the Grantee in accordance with approved plans and specifications, and raise or lower any and all manholes and/or manhole castings to conform to the elevation of the planters, parking area, driveway and road surfaces in which they are located; (iv) diligently complete all installations and other work once such activities have begun, and (v) thereafter maintain the City's facilities and related equipment in good order and repair.

The City shall not permit any claim, lien or other encumbrance arising from its activities to accrue against or attach to the easement premises or the interest of Grantor in adjacent property.

At all times during construction and other activities, (i) the City will maintain a minimum of one lane vehicular ingress and one lane vehicular egress between France

Avenue and Grantor's adjacent property via the existing access road on the south side of Grantor's property, and (ii) the City will maintain vehicular ingress and egress over at least one of the two curb cut areas between Grantor's property and the adjacent property to the south during all hours of operation of Grantor's business on such property. The construction period of the easement improvements shall not exceed eight (8) weeks without Grantor's written consent.

The easements granted herein are subject to all valid and existing licenses, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations and conditions affecting Grantor's property, including the property subject to these Easements and access thereto.

The above named Grantor, for itself, its successors and assigns, does covenant with the City, its successors and assigns, that it is well seized in fee title of the above described easement premises; that it has the sole right to grant and convey the easement to the City; that there are no unrecorded interests in the easement premises; and that it will indemnify and hold the City harmless for any breach of the foregoing covenants.

The rights herein granted may not be assigned in whole or in parts without Grantor's reasonable consent. Grantor hereby consents to an assignment or license

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agreement for the public walkway easement between the Grantee and Three Rivers Park District.

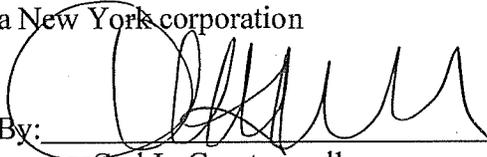
IN TESTIMONY WHEREOF, the Grantor hereto has signed this agreement this

17th day of October, 2014.

GRANTOR:

MACY'S RETAIL HOLDINGS, INC.,
a New York corporation

By: _____



Carl L. Goertemoeller,
Senior Vice President

STATE OF OHIO

COUNTY OF HAMILTON)ss.

The foregoing instrument was acknowledged before me on October 17, 2014, by Carl L. Goertemoeller, Senior Vice President of Macy's Retail Holdings, Inc., a New York corporation, on behalf of said corporation, Grantor.


NOTARY PUBLIC

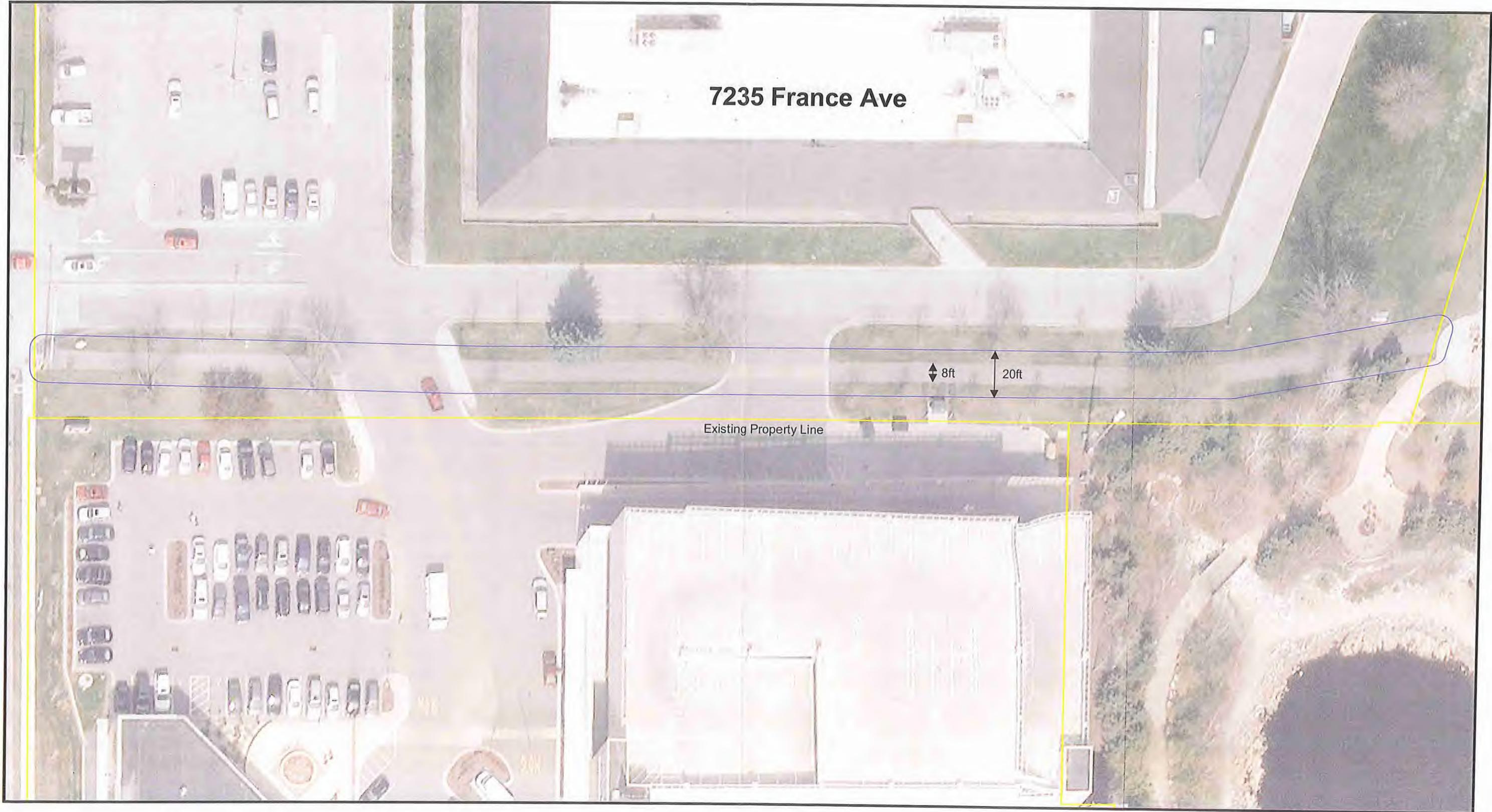


ELIZABETH J. HAASS
Notary Public, State of Ohio
My Commission Expires
March 26, 2017

EXHIBIT "A"
TO
GRANT OF PERMANENT EASEMENT

A 20 foot easement for public walkway purposes over and across that part of Lot 3, Block 7, YORKTOWN according to the recorded plat thereof, Hennepin County, Minnesota.
The centerline of said easement is described as follows:

Commencing at the southwest corner of said Lot 3; thence North 0 degrees 13 minutes 38 seconds West, along the west line of said Lot 3 a distance of 24.00 feet to the beginning of said centerline; thence South 89 degrees 40 minutes 00 seconds East a distance of 525.00 feet; thence North 80 degrees 40 minutes 00 seconds East a distance of 111.05, feet more or less, to the easterly line of said Lot 3, and said centerline there terminating.



7235 France Ave

8ft
20ft

Existing Property Line



0 20 40 Feet

Macy's Furniture Gallery

 Proposed 20ft Public Trailway Easement

Exhibit B



Engineering Dept
January, 2014