



Nine Mile Creek Discovery Point
12800 Gerard Drive

Eden Prairie, MN 55346

(952) 835-2078

www.ninemilecreek.org

MEMO

TO: Nine Mile Creek Watershed District Board of Managers

FROM: Randy Anhorn

DATE: December 7, 2018

RE: City of Minnetonka Request for partial release of a restricted covenant on a city-owned parcel

Background

Similar to a request from the Metropolitan Council on a different parcel in July 2017, the City of Minnetonka and Metropolitan Council are requesting a partial release of a restrictive covenant on a city-owned parcel located at Outlot A, Opus 2 Fourth Addition. The property, which is within the District's 100-year floodplain, is encumbered by a restrictive covenant that was put in place as the result of a condition of District permit condition in 1985. The restriction requires the land to be used only for parkland and open spaces. Because the Met Council's transit use would violate the restriction, Met Council has asked that the restriction be released. Attached is the *Partial Release of Reversionary Interest and of Declaration of Restrictive Covenant*.

As was mentioned at the July 2017 Board meeting, prior to the District adopting rules in 2008, easements were often provided to ensure that further fill would not be allowed in the floodplain of the creek. Since the adoption of the District's rules, which requires no net loss of floodplain storage, proposed projects are reviewed to those standards (including the Southwest Light Rail project), so there really is no reason to have any further easements or restrictions on the property. The floodplain storage will be protected.

According to the District engineer, in this case, the restriction was originally placed on the title because either the allowable encroachment or partial encroachment into the floodplain had been used. With the review of this and other projects in the area, the District's rights would be protected.

Request

Staff recommends authorizing the Chair to executed the *Partial Release of Reversionary Interest and of Declaration of Restrictive Covenant*

PARTIAL RELEASE OF REVERSIONARY INTEREST AND OF
DECLARATION OF RESTRICTIVE COVENANT

THIS PARTIAL RELEASE OF REVERSIONARY INTEREST AND OF DECLARATION OF RESTRICTIVE COVENANT ("Partial Release") is made as of the _____ day of _____, 2018 ("Effective Date") by CITY OF MINNETONKA, a Minnesota municipal corporation ("City") and COLLINS DRIVE CORPORATION, a Minnesota corporation ("Collins").

Recitals

A. By that certain Quit Claim Deed dated September 19, 1977, filed February 15, 1978 as Document No. 4356924 in the Office of the Hennepin County Recorder and filed as Document No. T1260164 in the Office of the Hennepin County Registrar of Titles, Collins (then known as Opus Corporation) conveyed to City fee title to the following described real property in Hennepin County, Minnesota:

Outlot A, OPUS 2 FOURTH ADDITION, according to the recorded plat thereof

("Property").

B. The Property, which lies within the 100-year frequency floodplain of Nine Mile Creek ("Floodplain"), was conveyed upon the express condition that it be used only as "parkland and open space purposes," and with the provision that the Property would revert to Collins if were ever used for any purpose other than parkland or open space.

C. The Nine Mile Creek Watershed District ("NMC Watershed District") imposed a permit requirement in connection with and as a condition to the development of adjacent property ("NMC Condition") that no further development of the Property be permitted which would require fill or encroachment within the Floodplain ("Development Restriction"). The City agreed to the Development Restriction to satisfy the NMC Condition and facilitate the development of adjacent property.

D. In February 1985, City and Collins entered into a Declaration of Restrictive Covenant recorded March 18, 1987 as Document No. 1814167 in the Office of the Hennepin County Registrar of Titles ("Declaration"), which establishes a restriction on the Property to prevent filling or encroachment within the Floodplain.

E. City desires to grant to Metropolitan Council a permanent easement for transit purposes over that portion of the Property identified as the "Released Area" in Section 1 below to facilitate the construction and operation of the Metropolitan Council's Southwest Light Rail Transit project ("Rail Project").

F. To facilitate the construction and operation of the Rail Project, (a) NMC Watershed District has agreed to execute this Partial Release to confirm its agreement to: (i) amend the NMC Condition to remove the Released Area from the Development Restriction; and (ii) permit the construction and operation of the Rail Project within the Released Area. Consequently, the City and Opus desire to amend the Declaration to remove the Released Area from the Development Restriction; and (b) Collins has agreed to release its reversionary interest in the Released Area.

PARTIAL RELEASE

NOW, THEREFORE, in consideration of the foregoing recitals, which are true and correct and incorporated herein by reference and for other adequate consideration, the receipt and sufficiency of which is hereby acknowledged City and Collins agree as follows as of the Effective Date:

1. The "Released Area" is legally described as follows and is depicted in the attached Exhibit A:

That part of Outlot A, OPUS 2 FOURTH ADDITION, according to the recorded plat thereof, Hennepin County Minnesota, lying westerly of the following described Line 2:

LINE 1:

Beginning at the southwest corner of said Outlot A, OPUS 2 FOURTH ADDITION; thence North 01 degrees 05 minutes 50 seconds East, assumed bearing, along the westerly line of said Outlot A, a distance of 108.00 feet; thence continuing on the last described course a distance of 180.28 feet to the intersection with the westerly line of said Outlot A and there terminating.

LINE 2:

Commencing at the southwest corner of said Outlot A, OPUS 2 FOURTH ADDITION; thence South 88 degrees 54 minutes 10 seconds East, assumed bearing, along the south line of said Outlot A a distance of 85.00 feet to the point of beginning of Line 2 to be described; thence northerly, parallel with Line 1 described above, a distance of 91.00 feet; thence easterly, deflecting to the right at right angles a distance of 79.00 feet; thence northerly parallel with said Line 1 a distance of 104.00 feet; thence northwesterly, deflecting to the left 45 degrees 00 minutes 00 seconds to the intersection with a line run parallel with and distant 127.00 feet easterly, as measured perpendicular to, of said Line 1; thence northerly along said parallel line a distance of 162.01 feet to the westerly line of said Outlot A and there terminating.

2. Collins hereby releases its reversionary interest, as created by Document No. A4356924 and T1260164, with respect to the above-described Released Area only.

3. City and Collins agree that the Declaration is hereby amended to remove the Released Area from the Development Restriction.

4. NMC Watershed District joins this Partial Release to evidence its consent and agreement that the NMC Condition is amended to remove the Released Area from the Development Restriction.

[Signature Pages Follow]

Signature Page – Collins

Collins Drive Corporation

By: _____
Its: President

STATE OF MINNESOTA)
)SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on _____, 2018, by _____, the President of Collins Drive Corporation, a Minnesota corporation on behalf of the corporation.

Notary Public

Signature Page – City

City of Minnetonka

By: _____
Brad Wiersum, Mayor

By: _____
Geraldyn Barone, City Manager

STATE OF MINNESOTA)
)SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on _____, 2018, by Brad Wiersum, the mayor of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

STATE OF MINNESOTA)
)SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on _____, 2018, by Geraldyn Barone, the city manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

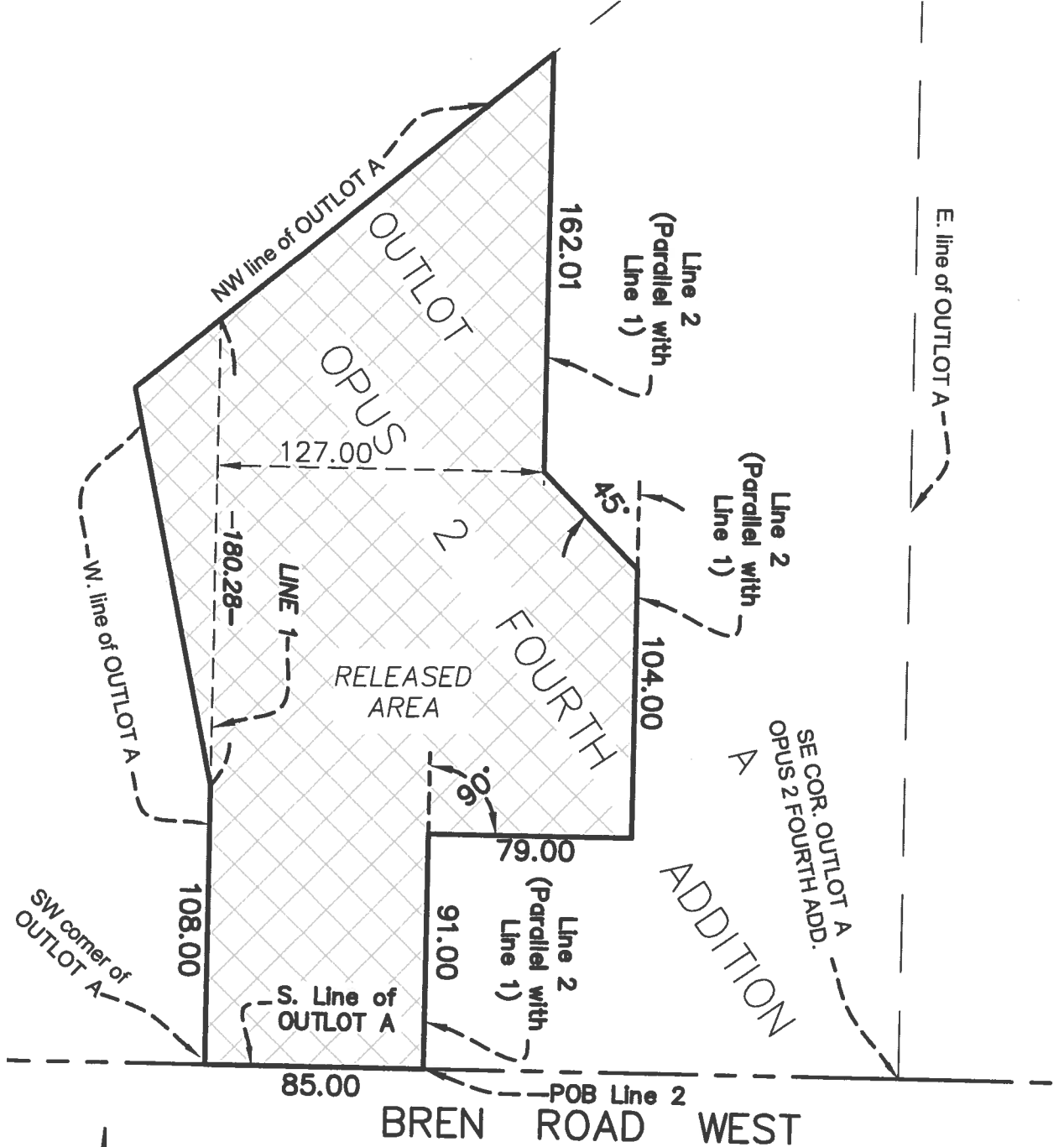
DRAFTED BY:
City of Minnetonka Legal
Department (CAH)
14600 Minnetonka Blvd.
Minnetonka, MN 55345
(952) 939-8200

EXHIBIT A

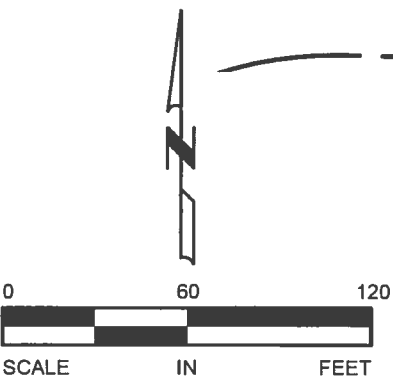
Sketch Depicting Released Area

EXHIBIT A

(SKETCH OF RELEASED AREA)



Oct. 04 2018 03:03 pm v:\3400_ADC\CAD\OVERALL\EXHIBITS\RIGHT-OF-WAY\P-3000--PARTIAL RELEASE EXHIBIT.dwg By: rwinden




 RELEASED AREA

Prepared by:

RANI
 engineering

CONSENT AND JOINDER TO RELEASE OF RESTRICTIVE COVENANT

Nine Mile Creek Watershed District, a political subdivision under the laws of Minnesota ("NMCWD"), and a benefited party under that certain Declaration of Restrictive Covenant recorded as Document No. T1814167 in the Office of the Hennepin County Registrar of Titles, hereby consents to the foregoing instrument, its interests having been secured through the conditional approval of NMCWD permit 2016-88.

NINE MILE CREEK WATERSHED DISTRICT

By Steven Kloiber
Its President

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on _____, 2018, by Steven Kloiber, the president of Nine Mile Creek Watershed District a political subdivision under the laws of Minnesota, on behalf of the political subdivision.

Notary Public