

**RESOLUTION OF THE CITY
COUNCIL OF THE CITY OF
MINNEAPOLIS
Approving Acquisition of Right of
Way and Temporary
Construction Easement and
Agreement For St. Anthony
Parkway Bridge Over BNSF
Northtown Yard – Parcel 7**

WHEREAS, on December 9, 1999, the City Council adopted its Resolution No. 99R-426, “Adoption of 2000-2004 Capital Program and fixing the maximum amounts for 2000 to be expended by the various funds”;

WHEREAS, on December 9, 1999, the City Council adopted its Resolution No. 99R-427, “Request to issue and sell bonds for 2000 Capital Program”;

WHEREAS, on December 13, 2004, the City Council adopted its Resolution No. 2004-580, “Adoption of 2005-2010 Capital Program and fixing the maximum amounts for 2005 to be expended by the various funds”;

WHEREAS, on December 13, 2004, the City Council adopted its Resolution No. 2004R-582 and its Resolution No. 2004R-583, “Request to issue and sell bonds for 2005 Capital Program”;

WHEREAS, on May 5, 2007, the City Council authorized submission of an application for federal funds for the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFE TEA LU) for the St. Anthony Bridge Project with a recommendation to commit City funds should the project be selected per federal requirements;

WHEREAS, on April 24, 2009, the City Council authorized proper City Officers to submit the St. Anthony Bridge Project application for Member-Designated High Priority Project;

WHEREAS, on July 2, 2010, the City Council adopted its Resolution No. 2010R-331, “Authorizing execution of State Grant Agreement No. SG-2009-072 between Minneapolis and the Metropolitan Council”;

WHEREAS, on July 2, 2010, the City Council adopted its Resolution No. 2010R-333 and its Resolution No. 2010R-334, “Amending the 2010 Capital Improvement and PW-Transportation Capital Agency Appropriations by \$600,000 upon execution of State Grant Agreement No. SG-2009-072”;

WHEREAS, on March 7, 2013, the City Council authorized a request for proposal for engineering service;

WHEREAS, on July 19, 2013, the City Council authorized execution of a contract with Short Elliott Hendrickson, Inc. for design services and authorized signing the Memorandum of Agreement under Section 106 of the National Historic Preservation Act;

WHEREAS, on November 12, 2013, the City Council adopted a resolution authorizing acquisition through negotiations or condemnation of temporary construction easements and permanent easements across parcels therein for transportation related purposes;

WHEREAS, on March 7, 2014, the City Council adopted its Resolution No. 2014R-085 Project Designation, Bridge Type and Project Layout Approval, approving the project layout for construction of a new St. Anthony Parkway Bridge over the BNSF Northtown Yard;

WHEREAS, agents on behalf of the City have negotiated a proposed agreement with EllisSPE22329, LLC, fee owner of the real estate at 211 ST. Anthony Parkway, which is described in Exhibit A attached hereto, under which EllisSPE22329, LLC will convey a portion of said real estate containing approximately 27,476 square feet to the City in fee simple for compensation of \$185,500 and will grant the City a temporary easement containing 58,990

square feet for compensation in the amount of \$54,500 for the St. Anthony Parkway Bridge Project for total compensation in the amount of \$240,000.00;

WHEREAS, the proposed settlement amount to be paid to the owner is consistent with the opinion of damages expressed by an independent real estate appraiser retained by the City, whose appraisal report was provided to the owner in the course of negotiations;

WHEREAS, the City Council adopted its Resolution No. 2014R-107 on March 28, 2014, approving said settlement, but desires to adopt this resolution to clarify that the right of way to be purchased by the City as described in said resolution is intended to be purchased in fee simple.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

Upon approval of this proposed agreement and related documents by the City Attorney and outside counsel retained by the City and execution and delivery of the deed and easement on behalf of the EllisSPE22329, LLC, the City Contracting Officer is authorized to execute the easement and agreement on behalf of the City and to pay EllisSPE22329, LLC the amount described in the agreement.

EXHIBIT A

(Top 3 inches reserved for recording data)

WARRANTY DEED

Individual(s) to Business Entity

eCRV number: [_____...]

DEED TAX DUE: \$[_____...]

DATE: February ___, 2014

FOR VALUABLE CONSIDERATION, EllisSPE 22329, LLC, a Minnesota limited liability company ("**Grantor**"), hereby conveys and warrants to City of Minneapolis, a municipal corporation under the laws of Minnesota ("**Grantee**"), real property in Hennepin County, Minnesota, legally described as follows:

All that part of the following described property:

That part of Block "L" bounded and described as follows: Beginning at a point 48 feet East of a point 209 feet North of Southwest corner of Block "L"; thence Southeasterly to a point on South line of Block "L", 405 feet East from Southwest corner of Block "L"; thence East to Southeast corner of said Block; thence North to South line of Minneapolis, St. Paul & Sault St. Marie Railroad Company right of way as created by the Deed recorded in the office of the Register of Deeds of said County in Book 1043 of Deeds on page 189; thence Westerly along said right of way line to West line of said Block; thence South along West line of said Block to a point 269 feet North from Southwest corner thereof; thence Southeasterly to beginning, Columbia Heights Addition to Minneapolis, Hennepin County, Minnesota including that part of the adjoining vacated Westerly Half of 2 ½ Street Northeast lying between the extensions across it of the South line of Minneapolis, St. Paul & Sault Ste. Marie Railroad Company right of way and the South line of said Block "L".

Which lies southwesterly and westerly of the following described line:

Commencing at the southwest corner of the Northwest Quarter of Section 2, Township 29, Range 24, Hennepin County, Minnesota; thence on an assumed bearing of North 89 degrees 53 minutes 47 seconds East along the south line of said Northwest Quarter; a distance of 357.99 feet to the point of beginning of the line to be described; thence North 00 degrees 06 minutes 13 seconds West a distance of 4.71 feet; thence northwesterly a distance of 288.27 feet along a tangential curve, concave to the southwest, having a radius of 290.00 feet and a central angle of 56 degrees 57 minutes 11 seconds; thence North 57 degrees 03 minutes 24 seconds West, tangent to said curve, a distance of 80.83 feet; thence northwesterly a distance of 259.55 feet along a tangential curve, concave to the northeast, having a radius of 260.00 feet and a central angle of 57 degrees 11 minutes 45 seconds; thence North 00 degrees 08 minutes 21 seconds East a distance of 100.00 feet and there terminating.

Check here if all or part of the described real property is Registered (Torrens) (as is evidenced by Certificate of Title No. 1123111)

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:
[...]

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

EllisSPE 22329, LLC, a Minnesota limited liability company,

By:
Its Chief Manager

State of Minnesota, County of Hennepin

This instrument was acknowledged before me on February ____, 2014, by _____, the Chief Manager of EllisSPE 22329, LLC, a Minnesota limited liability company, on behalf of the company.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____

(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
Kennedy & Graven, Chartered (RJL)

**470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
612-337-9300**

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO:
**City of Minneapolis Public Works Department
Real Estate Section
350 South Fifth Street, #203
Minneapolis, MN 55415**

**TEMPORARY CONSTRUCTION
EASEMENT AND AGREEMENT**

THIS INDENTURE, made this ____ day of _____, 2014, by and between EllisSPE22329, LLC, a Minnesota limited liability company, Grantor, and the City of Minneapolis, a Minnesota municipal corporation, Grantee.

Recitals

1. **Legal Description of Property.** Grantor is the owner in fee simple of the real estate hereinafter described (“Property”):

All that part of the following described property:

That part of Block “L” bounded and described as follows: Beginning at a point 48 feet East of a point 209 feet North of Southwest corner of Block “L”; thence Southeasterly to a point on South line of Block “L”, 405 feet East from Southwest corner of Block “L”; thence East to Southeast corner of said Block; thence North to South line of Minneapolis, St. Paul & Sault Ste. Marie Railroad Company right of way as created by the Deed recorded in the office of the Register of Deeds of said County in Book 1043 of Deeds on page 189; thence Westerly along said right of way line to West line of said Block; thence South along West line of said Block to a point 269 feet North from Southwest corner thereof; thence Southeasterly to beginning, Columbia Heights Addition to Minneapolis, Hennepin County, Minnesota including that part of the adjoining vacated Westerly Half of 2 ½ Street Northeast lying between the extensions across it of the South line of Minneapolis, St. Paul & Sault Ste. Marie Railroad Company right of way and the South line of said Block “L”.

Which lies southwesterly and westerly of the following described line:

Commencing at the southwest corner of the Northwest Quarter of Section 2, Township 29, Range 24, Hennepin County, Minnesota; thence on an assumed bearing of North 89 degrees 53 minutes 47 seconds East along the south line of

said Northwest Quarter; a distance of 357.99 feet to the point of beginning of the line to be described; thence North 00 degrees 06 minutes 13 seconds West a distance of 4.71 feet; thence northwesterly a distance of 288.27 feet along a tangential curve, concave to the southwest, having a radius of 290.00 feet and a central angle of 56 degrees 57 minutes 11 seconds; thence North 57 degrees 03 minutes 24 seconds West, tangent to said curve, a distance of 80.83 feet; thence northwesterly a distance of 259.55 feet along a tangential curve, concave to the northeast, having a radius of 260.00 feet and a central angle of 57 degrees 11 minutes 45 seconds; thence North 00 degrees 08 minutes 21 seconds East a distance of 100.00 feet and there terminating.

Containing 277,913 square feet (Approximately 6.38 Acres)

Certificate of Title No. 1123111.

P.I.D. No. 02-029-24-23-0034

Property Address: 211 St. Anthony Parkway, Minneapolis, MN

2. Grant of Temporary Easement. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor hereby bargains, sells and transfers unto Grantee, its successors and assigns, a temporary easement for construction purposes over, under, across and upon that part of the Property which is legally described as follows:

Commencing at the northeast corner of said Lot 1; thence on an assumed bearing of South 89 degrees 43 minutes 13 seconds West along the most northerly line of said Lot 1, a distance of 110.00 feet to the point of beginning of the easement to be described; thence South 00 degrees 16 minutes 47 seconds East a distance of 111.20 feet; thence South 25 degrees 57 minutes 35 seconds East to the east line of said Lot 1; thence southerly along said east line, a distance of 86.55 feet; thence North 89 degrees 30 minutes 44 seconds West a distance of 79.57 feet; thence North 38 degrees 56 minutes 22 seconds West a distance of 20.00 feet; thence North 00 degrees 16 minutes 47 seconds West a distance of 246.76 feet; thence South 89 degrees 43 minutes 13 seconds West a distance of 15.00 feet; thence North 00 degrees 16 minutes 47 seconds West a distance of 105.00 feet; thence South 89 degrees 43 minutes 13 seconds West a distance of 33.00 feet; thence North 00 degrees 16 minutes 47 seconds West to said most northerly line of Lot 1; thence easterly along said most northerly line to the point of beginning.

Containing 19,537 square feet (0.45 acres)

3. **Rights Within Temporary Easement.** Said temporary easement shall include, but not be limited to, the right of the Grantee, its contractors, employees, agents and invitees to enter upon said easement tract, for the purpose of constructing roadway, utility and drainage improvements, and all purposes in furtherance thereof, or related thereto, including grading, sloping, excavating, restoring, depositing earthen materials, moving and storing equipment, supplies, and materials, and removing pavement, sidewalks, bushes, trees, undergrowth and other buildings, improvements and obstructions as, in the judgment of Grantee, may interfere with Grantee's construction of such roadway, utility and drainage improvements.

4. **Terms of Temporary Easements.** The term of the temporary easement granted herein shall commence on the effective date stated in a written notice from Grantee which is given at least 30 days prior to such effective date stated in said notice, and shall terminate on the date which is four months after the effective date state in the written notice.

5. **Title.** Grantor covenants with Grantee that it is the owner of the Property in fee simple, subject to mortgages of record, that it has the sole right to grant said easement, and that any judgments or liens against parties with the same or similar names as Grantor are not against Grantor.

6. **Environmental Matters.** The Grantee shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and attorneys' fees, costs, disbursements, or losses resulting from any claims, actions, suits or proceedings relating to a release or threat of release of any hazardous substances, pollutants, or contaminants that may have existed on, or relate to the easement tract or the Property prior to the date of this instrument.

7. **Restoration of Property.** Prior to the expiration of the temporary easement term, Grantee shall restore the surface of the temporary easement tract in accordance with Grantee's restoration plan.

8. **Binding Effect.** The terms and conditions of this instrument shall run with the land and be binding on the Grantor and the personal representatives, heirs, devisees, successors and assigns of Grantor.

IN WITNESS WHEREOF, said Grantor has caused this instrument to be executed the day and year first above written.

GRANTOR:

ELLISPE22329, LLC

By: _____
Its Chief Manager

STATE OF MINNESOTA }
 } ss.
COUNTY OF

This instrument was acknowledged before me on _____, 2014, by _____ the chief manager of EllisSPE22329, LLC and that he signed his name on behalf of the company.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Kennedy & Graven, Chartered (RJL)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
612-337-9300