

**LAND USE APPLICATION SUMMARY**

*Property Location:* 121-123 9<sup>th</sup> Avenue Northeast  
*Project Name:* Party-wall split  
*Prepared By:* Lisa Steiner, Senior City Planner, (612) 673-3950  
*Applicant:* Julia Anastas & Orest Kramarczuk  
*Project Contact:* Joe Nuñez & Bob Houle  
*Request:* To allow for a minor subdivision party-wall split.  
*Required Applications:*

<b>Minor Subdivision</b>	To allow for a party-wall split of an existing duplex. The purpose of this subdivision is to allow separate ownership of both sides of the duplex.
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**SITE DATA**

<b>Existing Zoning</b>	R5 Multiple-family District
<b>Lot Area</b>	10,434 square feet
<b>Ward</b>	3
<b>Neighborhood</b>	St. Anthony West
<b>Designated Future Land Use</b>	Urban Neighborhood
<b>Land Use Features</b>	One block from Community Corridor (Marshall Street NE)
<b>Small Area Plan</b>	None

<b>Date Application Deemed Complete</b>	October 21, 2016	<b>Date Extension Letter Sent</b>	Not applicable
<b>End of 60-Day Decision Period</b>	December 20, 2016	<b>End of 120-Day Decision Period</b>	Not applicable

## BACKGROUND

**SITE DESCRIPTION AND PRESENT USE.** The existing structure is a two-story side-by-side duplex that was constructed in 1971. Each unit has an attached garage accessed from 9<sup>th</sup> Avenue NE. The 123 9<sup>th</sup> Ave NE unit has a two-car garage and the 121 9<sup>th</sup> Ave NE unit has a one-car attached garage.

**SURROUNDING PROPERTIES AND NEIGHBORHOOD.** The property is located in the St. Anthony West neighborhood. There is a range of residential densities in the surrounding area. A large assisted living/nursing home facility is located across Main Street from the subject property.

**PROJECT DESCRIPTION.** The proposed minor subdivision is to allow separate ownership of both sides of an existing duplex constructed in 1971. The subdivision ordinance allows a split on lots with an existing side-by-side two-family dwelling, along the party wall, to allow separate ownership of each side of the building, provided that covenants are recorded that state that the parcels may be used separately as long as the existing building is continued. If the building is destroyed, then the parcels shall be combined to make a single parcel that conforms to the requirements of the subdivision regulations. This prevents the creation of substandard lots.

**PUBLIC COMMENTS.** No comments had been received as of the writing of this report. Any correspondence received prior to the public meeting will be forwarded on to the Planning Commission for consideration.

## ANALYSIS

### MINOR SUBDIVISION

The Department of Community Planning and Economic Development has analyzed the application for a minor subdivision based on the following findings:

1. *The subdivision is in conformance with these land subdivision regulations, the applicable regulations of the zoning ordinance and policies of the comprehensive plan.*

The subdivision is in conformance with the design requirements of the zoning code and the land subdivision regulations. The *Minneapolis Plan for Sustainable Growth* designates this property as urban neighborhood on the future land use plan. This designation indicates that the area is appropriate for residential development.

2. *The subdivision will not be injurious to the use and enjoyment of other property in the immediate vicinity, nor be detrimental to present and potential surrounding land uses, nor add substantially to congestion in the public streets.*

The site contains a side-by-side duplex each with their own attached garages. No new units will be added as part of this application. The minor subdivision would not be injurious to the use and enjoyment of other property in the vicinity, would not be detrimental to surrounding uses, and would not contribute to congestion in the public streets.

3. *All land intended for building sites can be used safely without endangering the residents or users of the subdivision or the surrounding area because of flooding, erosion, high water table, soil conditions, improper drainage, steep slopes, rock formations, utility easements or other hazard.*

The site does not present any of the above hazards. No building sites are being created. The duplex is existing and has been located on the site since 1971.

4. *The lot arrangement is such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits and in providing driveway access to buildings on such lots from an approved street. Each lot created through subdivision is suitable in its natural state for the proposed use with minimal alteration.*

No change to existing access or grading is proposed. Both units have attached garages accessed from 9<sup>th</sup> Avenue NE. The property is relatively flat.

5. *The subdivision makes adequate provision for stormwater runoff, and temporary and permanent erosion control in accordance with the rules, regulations and standards of the city engineer and the requirements of these land subdivision regulations. To the extent practicable, the amount of stormwater runoff from the site after development will not exceed the amount occurring prior to development.*

Existing utility and drainage provisions are adequate for the structure.

## RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the City Planning Commission adopt staff findings for the application by Joe Nuñez & Bob Houle for the property located at 121-123 9<sup>th</sup> Avenue Northeast:

### **A. Minor subdivision.**

Recommended motion: **Approve** the application for a minor subdivision for a party-wall split of an existing duplex.

## ATTACHMENTS

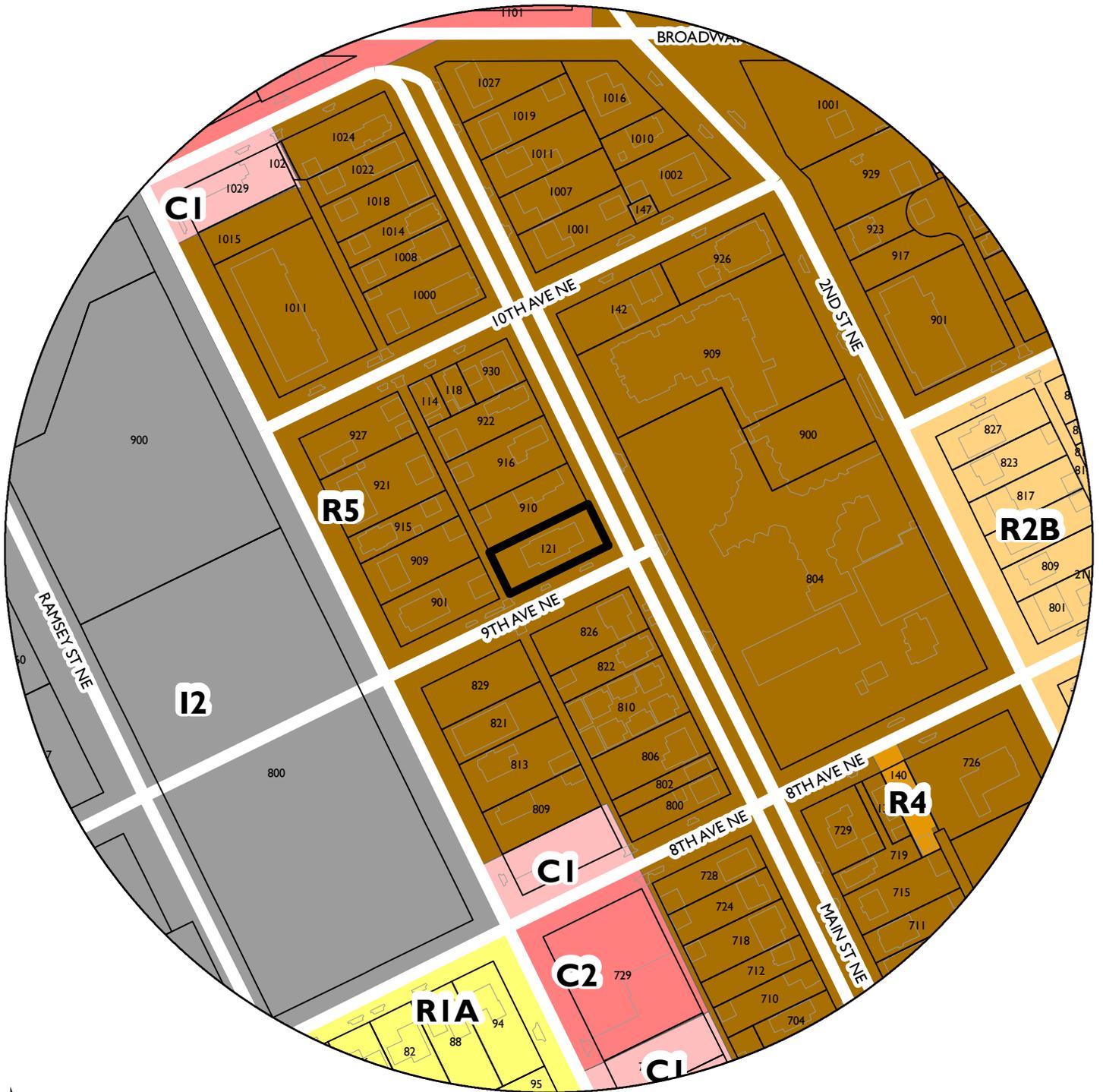
1. Zoning map
2. Oblique aerial photo
3. Photo
4. Survey
5. Written description and findings submitted by applicant
6. Draft covenant

Joe Nuñez & Robert Houle

3rd

NAME OF APPLICANT

WARD



PROPERTY ADDRESS  
**121-123 9th Ave NE**

FILE NUMBER  
**MS-251**



04/01/2015

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**Proposed Parcel A Description**

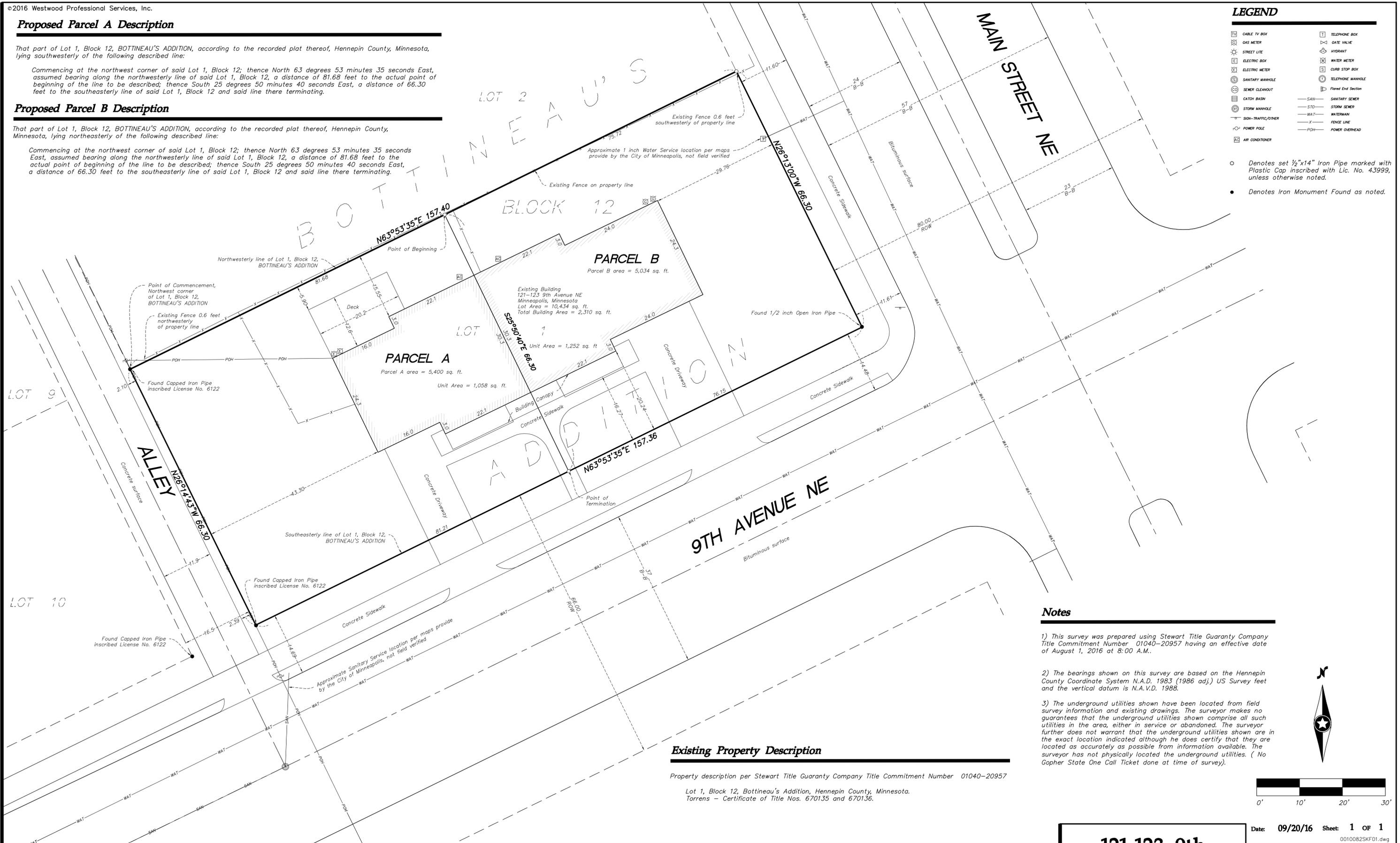
That part of Lot 1, Block 12, BOTTINEAU'S ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, lying southwesterly of the following described line:

Commencing at the northwest corner of said Lot 1, Block 12; thence North 63 degrees 53 minutes 35 seconds East, assumed bearing along the northwesterly line of said Lot 1, Block 12, a distance of 81.68 feet to the actual point of beginning of the line to be described; thence South 25 degrees 50 minutes 40 seconds East, a distance of 66.30 feet to the southeasterly line of said Lot 1, Block 12 and said line there terminating.

**Proposed Parcel B Description**

That part of Lot 1, Block 12, BOTTINEAU'S ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, lying northeasterly of the following described line:

Commencing at the northwest corner of said Lot 1, Block 12; thence North 63 degrees 53 minutes 35 seconds East, assumed bearing along the northwesterly line of said Lot 1, Block 12, a distance of 81.68 feet to the actual point of beginning of the line to be described; thence South 25 degrees 50 minutes 40 seconds East, a distance of 66.30 feet to the southeasterly line of said Lot 1, Block 12 and said line there terminating.



**LEGEND**

- CABLE TV BOX
- GAS METER
- STREET LITE
- ELECTRIC BOX
- ELECTRIC METER
- SANITARY MANHOLE
- SEWER CLEANOUT
- CATCH BASIN
- STORM MANHOLE
- SIGN-TRAFFIC/OTHER
- POWER POLE
- AIR CONDITIONER
- TELEPHONE BOX
- GATE VALVE
- HYDRANT
- WATER METER
- CURB STOP BOX
- TELEPHONE MANHOLE
- Flared End Section
- SAN- SANITARY SEWER
- STD- STORM SEWER
- WAT- WATERMAIN
- X- FENCE LINE
- POH- POWER OVERHEAD

- Denotes set 1/2"x14" Iron Pipe marked with Plastic Cap inscribed with Lic. No. 43999, unless otherwise noted.
- Denotes Iron Monument Found as noted.

**Notes**

- 1) This survey was prepared using Stewart Title Guaranty Company Title Commitment Number 01040-20957 having an effective date of August 1, 2016 at 8:00 A.M..
- 2) The bearings shown on this survey are based on the Hennepin County Coordinate System N.A.D. 1983 (1986 adj.) US Survey feet and the vertical datum is N.A.V.D. 1988.
- 3) The underground utilities shown have been located from field survey information and existing drawings. The surveyor makes no guarantees that the underground utilities shown comprise all such utilities in the area, either in service or abandoned. The surveyor further does not warrant that the underground utilities shown are in the exact location indicated although he does certify that they are located as accurately as possible from information available. The surveyor has not physically located the underground utilities. (No Gopher State One Call Ticket done at time of survey).

**Existing Property Description**

Property description per Stewart Title Guaranty Company Title Commitment Number 01040-20957  
 Lot 1, Block 12, Bottineau's Addition, Hennepin County, Minnesota.  
 Torrens - Certificate of Title Nos. 670135 and 670136.

**Westwood**

Phone (952) 937-5150 7699 Anagram Drive  
 Fax (952) 937-5822 Eden Prairie, MN 55344  
 Toll Free (888) 937-5150 westwoodps.com  
 Westwood Professional Services, Inc.

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly licensed LAND SURVEYOR under the laws of the State of Minnesota.  
  
 Robert L. Houle  
 Date: 9/27/2016 License No. 43999

Revisions:	Crew:	TAV
	Checked:	RLH
	Drawn:	BTW
	Record Drawing by/date:	

Prepared for:  
**Julia Anastas and Orest Kramarczuk**  
 121 9th Avenue NE  
 Minneapolis, Minnesota

**121-123 9th Ave NE**  
 Minneapolis, Minnesota

October 21, 2016

City of Minneapolis  
Community Planning and Economic Development  
Development Services Division  
250 South 4<sup>th</sup> Street, Room 300  
Minneapolis, Minnesota 55415-1216

**Re: Statement addressing the required findings for a subdivision.  
Minor Subdivision for 121 & 123 9<sup>th</sup> Avenue NE Minneapolis, Minnesota  
Current Legal Description: Lot 1, Block 12, Bottineau's Addition,  
Hennepin County, Minnesota**

To Whom it may concern:

(1) The subdivision is in conformance with these land subdivision regulations, the applicable regulations of the zoning ordinance and policies of the comprehensive plan.

**The proposed Lot Split conforms with the comprehensive plan and complies with the zoning regulations.**

(2) The subdivision will not be injurious to the use and enjoyment of other property in the immediate vicinity, nor be detrimental to present and potential surrounding land uses, nor add substantially to congestion in the public streets.

**There presently are no plans to change the exiting conditions of the Twin Home that now exists on the Property. Each of the 2 units has it's own garage and separate street access.**

(3) All land intended for building sites can be used safely without endangering the residents or users of the subdivision or the surrounding area because of flooding, erosion, high water table, soil conditions, improper drainage, steep slopes, rock formations, utility easements or other hazard.

**There presently are no plans to change the exiting conditions of the Twin Home or grading that now exists on the Property. There are no steep slopes and the drainage is good around both units of the twin home.**

(4) The lot arrangement is such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits and in providing driveway access to buildings on such lots from an approved street. Each lot created through subdivision is suitable in its natural state for the proposed use with minimal alteration.

**There presently are no plans to change the exiting conditions of the Twin Home that now exists on the Property. Each of the 2 units has it's own garage and separate street access. No alterations are need to accommodate the Lot Split.**

(5) The subdivision makes adequate provision for stormwater runoff, and temporary and permanent erosion control in accordance with the rules, regulations and standards of the city engineer and the requirements of these land subdivision regulations. To the extent practicable, the amount of stormwater runoff from the site after development will not exceed the amount occurring prior to development.

There presently are no plans to change the exiting conditions of the Twin Home or grading that now exists on the Property. There are no steep slopes and the drainage is good around both units of the twin home.

Sincerely,  
WESTWOOD PROFESSIONAL SERVICES, INC.

A handwritten signature in black ink, appearing to read "Robert L. Houle". The signature is written in a cursive style with a horizontal line underneath it.

Robert L. Houle, Professional Land Surveyor  
MN. License 43999

Cc. Joseph Nunez, Esq. Vantage Law Group, PLLC

**Recorded at the Request of:**

Joseph L. Nuñez, Esq.  
Vantage Law Group PLLC  
125 SE Main Street, Ste. 250  
Minneapolis, MN 55414

**When Recorded, mail to:**

Joseph L. Nuñez, Esq.  
Vantage Law Group PLLC  
125 SE Main Street, Ste. 250  
Minneapolis, MN 55414

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DECLARATION OF EASEMENTS AND COVENANTS**

This Declaration is made this \_\_\_\_ day of \_\_\_\_\_, 2007, by JULIA ANASTAS and OREST KRAMARCZUK (jointly, "**Declarants**").

**Recitals**

A. Declarant Orest Kramarczuk owns Parcel A of the "**Property**" as described in Exhibit A attached hereto. Declarant Julia Anastas owns Parcel B of the Property. As used hereunder, the term "**Party**" includes Declarants for so long as they own their Parcel, and include any future owner of a Parcel.

B. The Property consists of two separate residential parcels and is currently improved with a physically integrated, two-level residential duplex building (the "**Building**") at the northwest corner of the block bounded by 9th Street NE and NE Main Street, in Minneapolis, Minnesota.

C. Declarants desire to create and impose certain easements and covenants on the Property which will benefit and burden its two constituent Parcels.

Accordingly, Declarants declare as follows:

1 **Easements.**

1.1 **Support.** Declarants hereby each declares for the benefit of the other Party and its Parcel, as an appurtenance to their respective Parcels, perpetual and exclusive easements to maintain the roof and supporting structure of the Building for each other Party's improvements on underlying portions of the granting Party's Parcel and to use such roof and supporting structural components for support of such other Party's building improvements. No Party shall without the consent of the other Party alter an improvement within the Building on its Parcel or impose weight or pressure on its Parcel that would require modifying or strengthening the structure of the Building or modifying the structure of any improvement on the other Parcel. In the event any portion of the roof or other structure of the Building is damaged or destroyed, Declarants agree that such damage or destruction must be repaired and the Building improvements so affected must be reconstructed so as to provide the structural support required hereunder.

1.2 Encroachments and Abatements. Declarants each hereby declares for the benefit of the other Party and its Parcel, as an appurtenance to their respective Parcels, perpetual and exclusive easements (a) for such inadvertent, minor encroachments as may occur upon an adjoining Parcel by reason of construction or alteration of any improvements, or by reason of addition to any such improvements, or from settlement, sag or variance occurring after any such construction or reconstruction, and (b) to have improvements on any boundary common to both Parcels abut and connect to the improvements on the grantor's Parcel. The grant of said easements shall not excuse any Party from exercising diligence to construct or alter its improvements on and within its Parcel.

1.3 Utilities. Declarants each hereby declares for the benefit of the other Party as an appurtenance to their respective Parcels, perpetual and non-exclusive easements for the extension and use of utility lines located on the adjoining Parcel or otherwise within the Building improvements of the other Party's portion of the Building, together with reasonable access therefore, including, without limitation, access for emergency or unexpected maintenance and repair to forestall or correct inadequate delivery of services. A Party may hereafter from time to time at its expense install, move or replace any utility conduits, devices or other apparatus typical of residential utility applications and services. If a party discontinues use of a utility line then upon reasonable request of the granting Party, the Party that has discontinued such use shall remove by appropriate procedures the wires, conduit and other apparatus that are no longer used. The easements granted in this Section shall not be fixed as to location, but shall be located or relocated by the grantor, but only in such manner as will not disturb or interfere with the grantee's use or enjoyment of the grantee's Parcel any more than is reasonable necessary in the circumstances. In the event of such a change, alteration or relocation the grantor will repair any damage to the grantee's improvements caused thereby, including without limitation the utility facilities affected. As used herein, the term "utility" includes services and facilities for natural gas, water, electric, cable television, satellite television and data.

2. Restrictions and Covenants.

2.1 Residential Use. The Property may be used only for residential purposes (which may include home studios and offices as permitted by applicable ordinance and law) and for no other use or purpose whatsoever without the consent of the other party in her/his/its absolute discretion.

2.2 Separate Use of Parcels/Re-Combining Parcels. The two Parcels that make up the Property may be used and owned separately only as long as the existing Building continues to be an integrated structure. In the event the existing Building is destroyed or otherwise removed and not rebuilt as an integrated residential building, Declarants agree that the two Parcels either (i) shall be combined to make a single parcel or (ii) additional adjoining land must be purchased so that both Parcels conform to the requirements of all applicable City of Minneapolis subdivision and building regulations and requirements.

3 Maintenance and Repair.

3.1 Maintenance of Improvements. Each Party shall, at its sole cost, take good care of the improvements on its Parcel and at all times keep the same in good order and condition, ordinary wear and tear excepted, make all necessary repairs thereto, interior and exterior, structural or non-structural, and keep the same in compliance with all typical insurance requirements and all applicable legal requirements.

3.2 Maintenance of and Repairs to Roof, Exterior and Structure of Building. Each Party must cooperate with the other Party in connection with any routine maintenance and repairs necessary to the roof and the exterior of the Building, and with respect to any structural portion of the Building. In the event a Party believes that such a repair is necessary, such Party will notify the other and the two Party's will act in good faith to obtain bids from qualified professional contractors for the repairs. No matter what portion of the roof, exterior or structure is damaged, the Parties will share equally in the cost of the repair, unless (a) the act or negligence of one Party directly caused such damage, in which event the Party directly causing the damage shall pay for the cost of the repair or (b) the repair is to only a portion of the exterior of the Building not near or affecting the portion of the Building on the other Parcel, in which event the Party owning such exterior portion shall pay for the cost of the maintenance or repair. All roof and exterior maintenance and repairs will be conducted so as to provide a good quality aesthetic appearance of the Building as one unified Building, which may mean that a repair of one portion of the Building may also need to be performed on another portion of the Building in order to maintain such aesthetic. To the extent available, insurance claims and resulting proceeds will be used to defray the cost of any repairs. All repairs shall be (i) equal in quality and class to the original work, (ii) effected with all due diligence and in a workmanlike manner, and (iv) promptly and fully paid for as provided herein. If a Party disapproves of the proposed budget or need for a repair, it shall notify the other Party stating the specific items, amounts or basis for disapproval. If the Parties cannot quickly reach agreement, either Party may submit the matter to binding arbitration or to a qualified professional mediator to resolve the disagreement. A Party may immediately undertake any repairs that are necessary in an emergency to preserve the roof or structure of the Building or to avoid injury to persons or personal property.

4. Taxes and Assessments. Each Party shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Parcel.

5. Insurance. The Parties agree to continuously maintain property insurance with "all-risk" coverage for the full replacement cost of the Building, as well as casualty insurance for their respective personal property. If necessary, the Parties will purchased one or more insurance policies for the entire Building and share equally in the cost of such policy. The proceeds of any insurance carried pursuant will first be applied to repair and reconstruction. Each Party hereby releases each other from any liability for any loss or damage to all property of such releasing Party within the Property, which loss or damage is of the type covered by the insurance required to be maintained hereunder, regardless either of any

negligence on the part of the released Party that may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible.

6 Miscellaneous.

6.3 Relationship of Parties. No provision of this Declaration and no action taken pursuant hereto shall create any relationship between the Parties other than as specifically set forth herein.

6.4 Headings; Interpretation. The language in this Declaration shall be construed simply according to its generally understood meaning, and not strictly for or against any Party. The headings to the Sections of this Declaration are incorporated for convenience only and shall have no effect upon the construction or interpretation of this Declaration.

6.5 Amendment or Modification. This Declaration and any of the rights, licenses and easements created hereby may be terminated or amended by an instrument duly executed the Party for each Parcel and the holder of any mortgage on the fee title of each, and all such parties shall be bound by any amendment duly adopted hereunder provided that said amendment is duly recorded with the Hennepin County real estate records.

6.4 Law Applicable. This Declaration shall be governed by and construed under the laws of Minnesota.

6.5 Merger Not Intended. Common ownership of the Parcels shall not cause this Declaration to be extinguished by operation of merger in whole or in part unless and until the two Parcels are combined to make a single parcel.

6.6 Run With the Land Declarants do hereby declare that both of the Parcels are, and shall be, held, transferred, sold, conveyed and occupied subject to the restrictions and covenants of this Declaration, which restrictions and covenants (a) are for the purpose of protecting the value, desirability and amenities of the Property; and (b) shall operate as equitable covenants, restrictions and reservations, that shall run with each Parcel and be binding on all parties having any right, title or interest in the same, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each of such other parties' heirs, personal representatives, successors and assigns; and (c) are imposed upon each Parcel, respectively, as a servitude in favor of the other Parcels.

6.7 Severability. If any term of this Declaration or any application thereof shall be invalid or unenforceable, then the remainder of this Declaration and any other application of such term shall not be affected thereby.

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## EXHIBIT A

### Legal Description of the Property

#### **Parcel A Description**

That part of Lot 1, Block 12, BOTTINEAU'S ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, lying southwesterly of the following described line:

Commencing at the northwest corner of said Lot 1, Block 12; thence North 63 degrees 53 minutes 35 seconds East, assumed bearing along the northwesterly line of said Lot 1, Block 12, a distance of 81.68 feet to the actual point of beginning of the line to be described; thence South 25 degrees 50 minutes 40 seconds East, a distance of 66.30 feet to the southeasterly line of said Lot 1, Block 12 and said line there terminating.

#### **Parcel B Description**

That part of Lot 1, Block 12, BOTTINEAU'S ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, lying northeasterly of the following described line:

Commencing at the northwest corner of said Lot 1, Block 12; thence North 63 degrees 53 minutes 35 seconds East, assumed bearing along the northwesterly line of said Lot 1, Block 12, a distance of 81.68 feet to the actual point of beginning of the line to be described; thence South 25 degrees 50 minutes 40 seconds East, a distance of 66.30 feet to the southeasterly line of said Lot 1, Block 12 and said line there terminating.