

**AGREEMENT ESTABLISHING ENCROACHMENT EASEMENT, MUTUAL
CONSTRUCTION AND MAINTENANCE AGREEMENTS AND COST SHARING
RELATED TO THE WALNUT STREET STAIRWAY**

THIS AGREEMENT is made this _____ day of _____, 2013, by and between the City of Saint Paul, a municipal corporation under the laws of the State of Minnesota (“City”) and Richard H. Nicholson and Nancy Nicholson (“Nicholson”), owners of property located at 260 Summit Avenue, Saint Paul, Minnesota.

PRELIMINARY STATEMENT OF FACTS

- 1) Richard and Nancy Nicholson are owners of real property located in the City of Saint Paul, Ramsey County and legally described as follows (the “Nicholson Parcel”):

Lots 1 and 30, Block 69, Dayton and Irvine’s Addition to the City of St. Paul, also a triangular piece of land described as follows: Beginning at the point of intersection of the Southerly line of Walnut Street with the Easterly line of Summit Avenue as indicated upon the said plat of Dayton and Irvine’s Addition to the City of St. Paul thence extending Eastwardly on said Southerly line of Walnut Street as indicated on said plat 100 feet; thence in a straight line Northwesterly to the said line of Summit Avenue produced to a point 20 feet Northerly from the point of beginning thence Southerly on said produced line of Summit Avenue to the point of beginning, said triangular tract being that portion of Walnut Street as platted, vacated by decree of the District Court of Ramsey County, Minnesota, dated August 24, 1881 recorded in “103” Deeds 125 (which decree was entered nunc pro tunc and filed December 5, 1871); Also that portion of said Walnut Street in said City as platted and as added to by the deed hereinafter mentioned, lying between the Southeasterly line of Summit Avenue and the Northwesterly line of Irvine Avenue if extended across Walnut Street, including that portion of Lot 8, Block 70 in Dayton and Irvine’s Addition to St. Paul conveyed to the City of St. Paul as and for a public highway by deed dated October 23, 1871 recorded in “52” Deeds 282; together with that part of vacated Walnut Street extending from the Southeasterly line of Summit Avenue to the Northwesterly line of Irvine Avenue subject

to an easement reserved by the City of Saint Paul ten (10) feet in width extending along the Northeasterly line of vacated Walnut Street extending from the Northwesterly line of Irvine Avenue to the Southeasterly line of Summit Avenue as set forth in that certain Resolution adopted on August 15, 1901, and recorded on September 23, 1901, in Book 45 of Miscellaneous Records, Page 352.

- 2) In a Resolution adopted by the Common Council of the City on August 15, 1901 (“Vacation Resolution”), and recorded on September 23, 1901, in Book 45 of Miscellaneous Records, Page 352, the City agreed to vacate all that part of Walnut Street in the City of Saint Paul subject, however, to an easement to the public, for all time, the right to travel on foot, upon and over that portion of Walnut Street, ten (10) feet in width, extending along the Northeasterly line of vacated Walnut Street from the Northwesterly line of Irvine Avenue to the Southeasterly line of Summit Avenue (the easement reserved to the City is hereinafter referred to as the “City Easement”), and further subject to Mary T. Hill and James J. Hill, predecessors in title to Nicholson, at their own cost and without any expense to the City building a suitable stairway ten (10) feet in width to be used for the accommodation of foot passengers within the City Easement.
- 3) Thereafter in an Agreement dated August 23, 1901, and recorded on September 23, 1901, in Book 45 of Miscellaneous Records, Page 358, James J. Hill and Mary T. Hill (“Hill”) entered into an agreement in conformance with the Vacation Resolution in which Hill agreed to abide by all of the conditions and requirements contained in the Vacation Resolution and also agreed to grant to the City of Saint Paul the right to maintain said stairs within the City Easement for the use of the public, for foot travel thereon, and to keep open and reserve unto the public for all time the right to travel on foot upon and over the City Easement.
- 4) Thereafter, Hill completed construction of what has become known as the Walnut Street Stairway (the “City Improvements”) within the City Easement which City Improvements provide the public with a means of access from Summit Avenue to Irvine Avenue and are comprised of stone steps (the “Step Portion”) bearing on an appurtenant masonry brick wall (the “Wall Portion”) composed of three wythes of brick with a clay tile cap.
- 5) The parties agree that a section of the Wall Portion of the City Improvements is in need of immediate repair. City, as holder of the dominant estate in the City Easement, and Nicholson as owner of the Nicholson Parcel and owner of the servient estate in the City Easement, desire to clarify responsibility for the current repairs which are necessary and for future repairs, maintenance, rebuilding, and cost sharing related to the City Improvements.
- 6) The parties agree that the Nicholson garage has a common wall with the Wall Portion of City Improvements that is contiguous with and abuts the Northeasterly wall of the garage and extends above the elevation of the Step Portion of the City Improvements (the “Common Wall”); and further agree that a portion of said garage and the Nicholson driveway (hereinafter the “Nicholson Improvements”) are located on and encroach within the City Easement and depend on the City Improvements for lateral support. The parties also desire to reach an agreement which will allow Nicholson to continue occupancy, possession, and use of the encroaching Nicholson Improvements located on the City Easement.

- 7) Nicholson and the City further desire to provide such easements for ingress, egress and construction as may be necessary for the future maintenance of the City Improvements by the City and for future maintenance by Nicholson of the Nicholson Improvements as described hereunder.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual covenants of the parties set forth herein, the parties hereby agree as follows:

- 8) Nicholson to Provide Conveyance.

Contemporaneous with the execution of this Agreement, Nicholson shall provide City with a quit claim deed, as shown on **Exhibit A**, by which Nicholson conveys all rights, including the servient estate, Nicholson, or his successors have in the City Easement and the City Improvements located thereon, subject only to the rights and obligations of Nicholson and his successors as set forth in this Agreement.

- 9) Nicholson Contribution to Current Repair of City Improvements. Responsibility of Nicholson and City for Future Repairs and Costs Related to Nicholson Improvements and City Improvements.

Contemporaneous with the execution of this Agreement Nicholson shall contribute the sum of \$82,418.25 to the City in full discharge of any obligation that Nicholson or his successors shall have to maintain, repair, or rebuild the current deficiencies in the Wall Portion of the City Improvements. All costs and expenses in connection with the maintenance, repair, construction, or rebuilding of the Nicholson Improvements, including the Common Wall, shall be the sole responsibility of Nicholson. The maintenance of the foundation of the Common Wall which serves as a bearing wall for the Step Portion of the City Improvements located at or below the elevation of the Common Wall (the "Foundation Improvements") shall be shared equally by the owners of the Nicholson Parcel and the City. Except for the obligation of Nicholson to maintain the Nicholson Improvements and the Common Wall and the shared costs of Foundation Improvements as set forth above, all costs and expenses incurred in connection with the repair, maintenance, construction, or rebuilding of the City Improvements from and after the date of this Agreement shall be the sole responsibility of the City.

- 10) City Right to Remove City Improvements Subject to Nicholson Improvements.

The parties agree that City, as owner of the City Easement, shall have the absolute discretion at any time in the future to remove the City Improvements located thereon subject only to the right of Nicholson to maintain the encroaching Nicholson Improvements as set forth in Section 11 of this Agreement.

- 11) City Grant of Encroachment Easement to Nicholson.

GRANT AND PURPOSE OF ENCROACHMENT EASEMENT. The City shall grant to Nicholson, his heirs, successors and assigns, a permanent encroachment easement ("Encroachment Easement") over the City Easement for the Nicholson Improvements. This easement shall allow Nicholson, his invitees, heirs, successors, and assigns the exclusive right of occupancy, possession, and use of the Nicholson Improvements located thereon together with the right of ingress, and egress to the encroaching Nicholson Improvements and the right to maintain,

repair, construct, and rebuild the Nicholson Improvements. The Encroachment Easement is illustrated and legally described in the Easement Agreement attached hereto as **Exhibit B**.

12) Nicholson Grant of Ingress, Egress, and Construction Easement to City to Maintain City Improvements and Foundation Improvements.

GRANT AND PURPOSE OF INGRESS, EGRESS, AND CONSTRUCTION EASEMENT. Nicholson shall grant to City a non-exclusive easement for ingress, egress, maintenance, repair, construction, and rebuilding of the City Improvements ("City Construction Easement") over the Nicholson Parcel. The City Construction Easement is illustrated and legally described on the Easement Agreement attached hereto as **Exhibit B**.

13) City Grant of Ingress, Egress and Maintenance Easement to Nicholson to Maintain Common Wall.

GRANT AND PURPOSE OF MAINTENANCE EASEMENT. City shall grant to Nicholson, a non-exclusive easement over the City Easement for ingress, egress, maintenance, repair, construction, and rebuilding of the Common Wall and any necessary Foundation Improvements to be maintained by Nicholson ("Nicholson Maintenance Easement") The Nicholson Maintenance Easement is illustrated and legally described on the Easement Agreement attached hereto as **Exhibit B**.

14) Successors and Assigns. This Agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

15) Easement Agreement. Attached hereto as **Exhibit B** is a true and correct copy of the Easement Agreement which Nicholson and the City will execute simultaneously with the execution of this Agreement for the purpose of formalizing the easement rights and obligations as set forth in Paragraphs 11, 12, and 13 of this Agreement. The terms and conditions set forth in this Easement Agreement represent the final understanding between Nicholson and the City regarding their respective easement rights.

IN WITNESS WHEREOF, City and Nicholson have caused this Agreement to be executed as of the date first written above.

RICHARD H. NICHOLSON

Richard H. Nicholson

CITY OF ST. PAUL

By: _____
Its: Mayor or Deputy Mayor

NANCY NICHOLSON

Nancy Nicholson

By: _____
Its: Director of Financial Services

By: _____
Its: City Clerk

Approved as to form:

Assistant City Attorney

ACKNOWLEDGMENT

STATE OF MINNESOTA)

COUNTY OF _____)

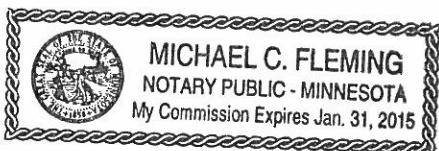
The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____, Mayor or Deputy Mayor, _____, Director, Office of Financial Services, and _____, City Clerk of the City of St. Paul, a municipal corporation under the laws of the State of Minnesota.

Notary Public

STATE OF MINNESOTA)

COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this 15th day of May, 2013 by Richard H. Nicholson and Nancy Nicholson, husband and wife.



Michael C. Fleming
Notary Public

EXHIBIT A
Nicholson Quit Claim Deed

(Top 3 inches reserved for recording data)

QUIT CLAIM DEED

Individual(s) to Business Entity

DEED TAX DUE: \$ _____

DATE: _____, _____

FOR VALUABLE CONSIDERATION, **Richard H. Nicholson** and **Nancy Nicholson**, husband and wife ("**Grantor**"), hereby convey and quitclaim to the **City of St. Paul**, a municipal corporation under the laws of Minnesota ("**Grantee**"), real property in Ramsey County, Minnesota, as legally described on the attached **Exhibit A**.

*****Consideration for this conveyance is less than \$500.00*****

Check here if all or part of the described real property is Registered (Torrens)

together with all hereditaments and appurtenances belonging thereto.

Grantor

Richard H. Nicholson

Nancy Nicholson

State of Minnesota, County of Ramsey

This instrument was acknowledged before me on _____, _____, by **Richard H. Nicholson and Nancy Nicholson**, husband and wife.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN
THIS INSTRUMENT SHOULD BE SENT TO:

City of St. Paul

EXHIBIT A
Legal Description

The northeasterly ten (10) feet of the following described parcel:

Lots 1 and 30, Block 69, Dayton and Irvine's Addition to the City of St. Paul, also a triangular piece of land described as follows: Beginning at the point of intersection of the Southerly line of Walnut Street with the Easterly line of Summit Avenue as indicated upon the said plat of Dayton and Irvine's Addition to the City of St. Paul thence extending Eastwardly on said Southerly line of Walnut Street as indicated on said plat 100 feet; thence in a straight line Northwesterly to the said line of Summit Avenue produced to a point 20 feet Northerly from the point of beginning thence Southerly on said produced line of Summit Avenue to the point of beginning, said triangular tract being that portion of Walnut Street as platted, vacated by decree of the District Court of Ramsey County, Minnesota, dated August 24, 1881 recorded in "103" Deeds 125 (which decree was entered nunc pro tunc and filed December 5, 1871); Also that portion of said Walnut Street in said City as platted and as added to by the deed hereinafter mentioned, lying between the Southeasterly line of Summit Avenue and the Northwesterly line of Irvine Avenue if extended across Walnut Street, including that portion of Lot 8, Block 70 in Dayton and Irvine's Addition to St. Paul conveyed to the City of St. Paul as and for a public highway by deed dated October 23, 1871 recorded in "52" Deeds 282. Ramsey County, Minnesota.

This conveyance is given for the purpose of conveying any and all rights which Grantors have in the above-described parcel as a result of a vacation resolution adopted by the City of St. Paul on August 15, 1901, and recorded on September 23, 1901, in Book 45 of Miscellaneous Records, Page 352; subject, however, to the terms and conditions of an agreement for encroachment easement, mutual construction and maintenance agreements, and cost sharing dated _____, _____, and recorded on _____, _____, as Document No. _____.

EXHIBIT B
Easement Agreement

EASEMENT AGREEMENT

This Agreement is made effective this ____ day of _____, 2013 by and between Richard H. Nicholson and Nancy Nicholson, husband and wife ("Nicholson") and City of St. Paul, a municipal corporation under the laws of the State of Minnesota ("City").

WHEREAS, Nicholson is the owner of real property situated in the County of Ramsey, State of Minnesota (hereinafter referred to as "Parcel A"), as illustrated on the attached **Exhibit 1**, and legally described as follows, to wit:

The following described parcel, excepting the northeasterly ten (10) feet thereof:

Lots 1 and 30, Block 69, Dayton and Irvine's Addition to the City of St. Paul, also a triangular piece of land described as follows: Beginning at the point of intersection of the Southerly line of Walnut Street with the Easterly line of Summit Avenue as indicated upon the said plat of Dayton and Irvine's Addition to the City of St. Paul thence extending Eastwardly on said Southerly line of Walnut Street as indicated on said plat 100 feet; thence in a straight line Northwesterly to the said line of Summit Avenue produced to a point 20 feet Northerly from the point of beginning thence Southerly on said produced line of Summit Avenue to the point of beginning, said triangular tract being that portion of Walnut Street as platted, vacated by decree of the District Court of Ramsey County, Minnesota, dated August 24, 1881 recorded in "103" Deeds 125 (which decree was entered nunc pro tunc and filed December 5, 1871); Also that portion of said Walnut Street in said City as platted and as added to by the deed hereinafter mentioned, lying between the Southeasterly line of Summit Avenue and the Northwesterly line of Irvine Avenue if extended across Walnut Street, including that portion of Lot 8, Block 70 in Dayton and Irvine's Addition to St. Paul conveyed to the City of St. Paul as and for a public highway by deed dated October 23, 1871 recorded in "52" Deeds 282. Ramsey County, Minnesota; and

WHEREAS, City is the fee owner of real property situated in the County of Ramsey, State of Minnesota (hereinafter referred to as "Parcel B"), as illustrated on the attached **Exhibit 1**, and legally described as follows to-wit:

The northeasterly ten (10) feet of the following described parcel:

Lots 1 and 30, Block 69, Dayton and Irvine's Addition to the City of St. Paul, also a triangular piece of land described as follows: Beginning at the point of intersection of the Southerly line of Walnut Street with the Easterly line of Summit Avenue as indicated upon the said plat of Dayton and Irvine's Addition to the City of St. Paul thence extending Eastwardly on said Southerly line of Walnut Street as indicated on said plat 100 feet; thence in a straight line Northwesterly to the said line of Summit Avenue produced to a point 20 feet Northerly from the point of beginning thence Southerly on said produced line of Summit Avenue to the point of beginning, said triangular tract being that portion of Walnut Street as platted, vacated by decree of the District Court of Ramsey County, Minnesota, dated August 24, 1881 recorded in "103" Deeds 125 (which decree was entered nunc pro tunc and filed December 5, 1871); Also that portion of said Walnut Street in said City as platted and as added to by the deed hereinafter mentioned, lying between the Southeasterly line of Summit Avenue and the Northwesterly line of Irvine Avenue if extended across Walnut Street, including that portion of Lot 8, Block 70 in Dayton and Irvine's Addition to St. Paul conveyed to the City of St. Paul as and for a public highway by deed dated October 23, 1871 recorded in "52" Deeds 282. Ramsey County, Minnesota; and

WHEREAS, located on Parcel B is the Walnut Street Stairway (the "City Improvements") which City Improvements are comprised of stone steps (the "Step Portion") bearing on an appurtenant masonry brick wall (the "Wall Portion"). The City Improvements provide the public with a means of access from Summit Avenue to Irvine Avenue; and

WHEREAS, located on Parcel A is a garage and driveway ("Nicholson Improvements") which depend on the City Improvements to provide lateral support for the Nicholson Improvements.

WHEREAS, a portion of the Nicholson Improvements are located on and encroach within Parcel B.

WHEREAS, the Nicholson garage shares a common wall with the Wall Portion of the City Improvements that is contiguous with and abuts the Northeasterly wall of the Nicholson garage and extends above the Step Portion of the City Improvements (the "Common Wall").

WHEREAS, there have been questions regarding the responsibility of the City and Nicholson to maintain the Wall Portion of the City Improvements; and

WHEREAS, Nicholson and the City wish to resolve all questions regarding repair and maintenance of the Wall Portion of the City Improvements; and, furthermore, to reach an agreement which will allow Nicholson to continue occupancy, possession, and use of the encroaching Nicholson Improvements located on Parcel B.

WHEREAS, to resolve these questions, Nicholson and the City have entered into an Agreement dated _____, _____ which resolves all outstanding questions, including the agreement of City and Nicholson to establish easements for ingress, egress, and construction as may be necessary for future maintenance, repair, construction, and rebuilding of the City Improvements and the Nicholson Improvements.

NOW, THEREFORE, in consideration of the mutual benefits derived herefrom, Nicholson hereby conveys to the City and the City hereby conveys to Nicholson, the following easements:

1. NICHOLSON ENCROACHMENT EASEMENT

The City grants to Nicholson, their heirs, successors and assigns, a permanent encroachment easement (“Encroachment Easement”) over Parcel B for the encroaching Nicholson Improvements. This easement shall allow Nicholson, their invitees, heirs, successors, and assigns the exclusive right of occupancy, possession, and use of the Nicholson Improvements located thereon, together with the right of ingress and egress to the encroaching Nicholson Improvements and the right to maintain, repair, construct, and rebuild the Nicholson Improvements. The Encroachment Easement is illustrated on **Exhibit 2** attached hereto and legally described as follows to-wit:

An easement for garage and driveway purposes across the following described parcel:

The northeasterly ten (10) feet of the following described parcel:

Lots 1 and 30, Block 69, Dayton and Irvine's Addition to the City of St. Paul, also a triangular piece of land described as follows: Beginning at the point of intersection of the Southerly line of Walnut Street with the Easterly line of Summit Avenue as indicated upon the said plat of Dayton and Irvine's Addition to the City of St. Paul thence extending Eastwardly on said Southerly line of Walnut Street as indicated on said plat 100 feet; thence in a straight line Northwesterly to the said line of Summit Avenue produced to a point 20 feet Northerly from the point of beginning thence Southerly on said produced line of Summit Avenue to the point of beginning, said triangular tract being that portion of Walnut Street as platted, vacated by decree of the District Court of Ramsey County, Minnesota, dated August 24, 1881 recorded in "103" Deeds 125 (which decree was entered nunc pro tunc and filed December 5, 1871); Also that portion of said Walnut Street in said City as platted and as added to by the deed hereinafter mentioned, lying between the Southeasterly line of Summit Avenue and the Northwesterly line of Irvine Avenue if extended across Walnut Street, including that portion of Lot 8, Block 70 in Dayton and Irvine's Addition to St. Paul conveyed to the City of St. Paul as and for a public highway by deed dated October 23, 1871 recorded in "52" Deeds 282. Ramsey County, Minnesota.

Said garage and driveway easement is described as follows:

Commencing at the most northerly corner of the above described parcel; thence South 54 degrees 56 minutes 16 seconds West assumed bearing along the southeasterly line of Summit Avenue 10.71 feet to the southwesterly corner of the above described parcel; thence South 56 degrees 01 minutes 19 seconds East along the southwesterly line of the above described parcel 89.23 feet to the point of beginning of the easement to be described; thence South 56 degrees 01 minutes 19 seconds East continuing along said southwesterly line of said parcel 6.64 feet to an angle point in the southwesterly line of said parcel; thence South 66 degrees 47 minutes 10 seconds East along said southwesterly line of said parcel 67.37 feet; thence North 67 degrees 36 minutes 07 seconds East 4.40 feet; thence North 21 degrees 47 minutes 46 seconds East 1.00 feet; thence North 68 degrees 12 minutes 14 seconds West 40.45 feet; thence South 21 degrees 21 minutes 14 seconds West 1.00 feet thence North 68 degrees 12 minutes 14 seconds West 36.55 feet to the point of beginning and said easement there ending.

2. CITY MAINTENANCE EASEMENT

Nicholson on behalf of themselves, their heirs, successors and assigns hereby grant the City a non-exclusive easement over Parcel A for ingress, egress, maintenance, repair, construction, and rebuilding of the City Improvements located on Parcel B (the "City Maintenance Easement"). The City Maintenance Easement is illustrated on **Exhibit 3** attached hereto and legally described as follows to-wit:

An easement for maintenance purposes across the following described parcel:

The following described parcel, excepting the northeasterly ten (10) feet thereof:

Lots 1 and 30, Block 69, Dayton and Irvine's Addition to the City of St. Paul, also a triangular piece of land described as follows: Beginning at the point of intersection of the Southerly line of Walnut Street with the Easterly line of Summit Avenue as indicated upon the said plat of Dayton and Irvine's Addition to the City of St. Paul thence extending Eastwardly on said Southerly line of Walnut Street as indicated on said plat 100 feet; thence in a straight line Northwesterly to the said line of Summit Avenue produced to a point 20 feet Northerly from the point of beginning thence Southerly on said produced line of Summit Avenue to the point of beginning, said triangular tract being that portion of Walnut Street as platted, vacated by decree of the District Court of Ramsey County, Minnesota, dated August 24, 1881 recorded in "103" Deeds 125 (which decree was entered nunc pro tunc and filed December 5, 1871); Also that portion of said Walnut Street in said City as platted and as added to by the deed hereinafter mentioned, lying between the Southeasterly line of Summit Avenue and the Northwesterly line of Irvine Avenue if extended across Walnut Street, including that portion of Lot 8, Block 70 in Dayton and Irvine's Addition to St. Paul conveyed to the City of St. Paul as and for a public highway by deed dated October 23, 1871 recorded in "52" Deeds 282. Ramsey County, Minnesota.

Said easement is described as follows:

Beginning at the most easterly corner of the above described parcel; thence South 58 degrees 34 minutes 57 seconds West along the southeasterly line of said parcel 5.84 feet; thence North 67 degrees 28 minutes 39 seconds West 183.71 feet; thence North 67 degrees 36 minutes 07 seconds East 9.76 feet; thence South 66 degrees 47 minutes 10 seconds East along the northeasterly line of said parcel 180.25 feet to the point of beginning.

Also:

Beginning at the most northerly corner of the above described parcel; thence South 54 degrees 56 minutes 16 seconds West assumed bearing along the southeasterly line of Summit Avenue 11.55 feet; thence South 57 degrees 12 minutes 03 seconds East 100.45 feet; thence South 68 degrees 13 minutes 42 seconds East 31.56 feet; thence North 21 degrees 21 minutes 14 seconds East 7.85 feet to the northeasterly line of said parcel; thence North 66 degrees 47 minutes 10 seconds West along said northeasterly line 30.09 feet to an angle point in said northeasterly line; thence North 56 degrees 01 minutes 19 seconds West along said northeasterly line 95.87 feet to the point of beginning.

3. NICHOLSON MAINTENANCE EASEMENT

The City hereby grants Nicholson, their heirs, successors and assigns, a non-exclusive easement over Parcel B for ingress, egress, maintenance, repair, construction, and rebuilding of the Common Wall and any necessary Foundation Improvements to be maintained by Nicholson as set forth in Paragraph 4(D) hereunder (the "Nicholson Maintenance Easement"). The Nicholson Maintenance Easement is illustrated on **Exhibit 4** attached hereto and legally described as follows to-wit:

A construction easement for ingress, egress, maintenance, repair, construction and rebuilding of the common wall and foundation improvements across the northeasterly ten (10) feet of the following described parcel:

Lots 1 and 30, Block 69, Dayton and Irvine's Addition to the City of St. Paul, also a triangular piece of land described as follows: Beginning at the point of intersection of the Southerly line of Walnut Street with the Easterly line of Summit Avenue as indicated upon the said plat of Dayton and Irvine's Addition to the City of St. Paul thence extending Eastwardly on said Southerly line of Walnut Street as indicated on said plat 100 feet; thence in a straight line Northwesterly to the said line of Summit Avenue produced to a point 20 feet Northerly from the point of beginning thence Southerly on said produced line of Summit Avenue to the point of beginning, said triangular tract being that portion of Walnut Street as platted, vacated by decree of the District Court of Ramsey County, Minnesota, dated August 24, 1881 recorded in "103" Deeds 125 (which decree was entered nunc pro tunc and filed December 5, 1871); Also that portion of said Walnut Street in said City as platted and as added to by the deed hereinafter mentioned, lying between the Southeasterly line of Summit Avenue and the Northwesterly line of Irvine Avenue if extended across Walnut Street, including that portion of Lot 8, Block 70 in Dayton and Irvine's Addition to St. Paul conveyed to the City of St. Paul as and for a public highway by deed dated October 23, 1871 recorded in "52" Deeds 282. Ramsey County, Minnesota.

4. TERMS GOVERNING ALL EASEMENTS

A. In granting all of the easements set forth in this agreement, the parties hereto retain the right to use the easement areas in any manner which is consistent with and does not interfere with the rights of the other party. In the event that one party finds it necessary to disturb the easement areas for purposes of repair and maintenance of their respective parcel, such repair or maintenance shall be undertaken so as to cause, to the extent reasonably practical, minimum interference with the use of the easement by the other party and any and all disturbance shall be restored to a condition substantially the same as existed prior to the disturbance.

B. No fence, obstruction or other barrier which would prevent or obstruct the passage of pedestrian or vehicular traffic for purposes herein committed shall be erected or permitted within or across the Easement Area except on a temporary basis during construction, repairs, reconstruction or maintenance of such areas. In the event temporary obstructions are necessary, they shall be placed so as to provide as minimum disruption as commercially reasonable. In the event either party, in exercising the rights granted hereunder disturbs or otherwise damages any portion of the parcel owned by the other party the party causing the damage or disturbance shall expeditiously prosecute the completion of said repair, construction, reconstruction or maintenance work, and at its sole expense, and shall immediately restore and repair the disturbed area to the same condition that existed prior to the commencement of said repairs, construction, reconstruction or maintenance.

Said easement rights shall include the right to place any equipment or materials within the easement area reasonably necessary to carry out the repair and maintenance set forth herein. No materials or equipment shall remain within the easement area any longer than is necessary to carry out the repair and maintenance activities. Once the repair and maintenance activities have been completed, the party exercising the rights granted herein shall remove all equipment and material, and shall return the easement area to the same condition as it found it prior to commencing said repair or maintenance activity. The right to use the easement areas granted herein shall belong not only to the party granted such easement rights but also their agents, servants, contractors, or employees.

C. Nicholson and City hereby agree to defend and indemnify each other against any loss either party may incur, including reasonable attorney's fees, resulting from any property damage or personal injury relating to the use of the easement areas by the Nicholson or City, their tenants, contractors, employees, servants or agents. This indemnification does not apply to any damage or injury resulting from the physical condition of the easement area, unless the physical condition is the result of the

actions of Nicholson or City. In this event, the party who is responsible for the change of the physical condition, which causes the injury or damage, shall indemnify the other party and restore the area to the condition it was in prior to the damage.

D. All costs and expenses in connection with maintenance, repair, construction, or rebuilding of the Nicholson Improvements, including the Common Wall, shall be the sole responsibility of the owners of Parcel A. All costs and expenses in connection with the maintenance of the foundation of the Common Wall which serves as a bearing wall for the Step Portion of the City Improvements located at or below the elevation of the Common Wall (the "Foundation Improvements") shall be shared equally by Nicholson, as owners of Parcel A and the City, as owner of Parcel B. Except for the obligation of Nicholson to maintain the Nicholson Improvements and the Common Wall and the shared costs of Foundation Improvements as set forth above, all costs and expenses incurred in connection with the repair, maintenance, construction, and rebuilding of the City Improvements from and after the date of this Agreement shall be the sole responsibility of the City, as owners of Parcel B.

Regarding the Nicholson Improvements, the owners of Parcel A shall have the sole right and authority to enter into any contract which said owner deems necessary to maintain the Nicholson Improvements. The City shall have the sole authority and responsibility to enter into contracts for the repair and maintenance of the City Improvements.

As to the Foundation Improvements, all contracts for maintenance, repair or replacement of the Foundation Improvements shall be subject to the terms set forth in this Paragraph. Either the owners of Parcel A or the City may contract for repairs or maintenance of the Foundation Improvements. All contracts for repair or maintenance shall be in writing. Upon receipt of a written contract, the receiving party shall mail a copy of said written contract to the other party. The other party shall then have twenty-one (21) days from the date the contract is deposited in the United States Mail, first class

postage prepaid, to accept or reject the terms of the contract. If rejected, said rejection shall be in writing and shall be effective upon deposit in the United States Mail, first class postage prepaid. If said contract is rejected, said rejection shall be considered a dispute and that dispute shall be governed by the terms of Paragraph E set forth in this section.

In the event either party contracts for labor or materials to be performed upon the Foundation Improvements without first satisfying the provisions set forth above, the noncomplying party shall indemnify and hold harmless the party from all claims, actions, proceedings and costs incurred (including reasonable attorney's fees and cost of suit) which result from said construction activity. Any damage occurring to any portion of the Foundation Improvements as a result of said construction work shall be the responsibility of the noncomplying party and shall be promptly repaired by such noncomplying party, at such noncomplying parties sole cost and expense, to substantially the same condition as existed immediately prior to such work.

E. If any dispute arises between the parties regarding the terms and conditions of this Agreement and the parties are unable to resolve the dispute among themselves, then in that event the said dispute shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association. If the parties cannot agree as to the arbitrator, then each party shall appoint their own arbitrator and those two arbitrators shall appoint a third arbitrator. Any arbitration hearing shall occur within 60 days of the date that notice is sent by a party to exercise the rights of arbitration. If arbitration does occur, each party shall be responsible for their own attorney's fees and costs but shall share equally all fees charged by the arbitrators.

F. In the event either party contracts for labor and material to be performed upon the easement areas, the contracting party shall indemnify and hold harmless the other party from all claims, actions and proceedings and costs incurred (including reasonable attorney's fees and costs of suit) which result

from said construction activity. Any damages occurring to any portion of the easement areas as a result of such construction work shall be the responsibility of the contracting party and shall be promptly repaired by such contracting party, at such contracting party's sole cost and expense, to substantially the same condition as existed immediately prior to such work.

G. If any Owner of a parcel governed by this agreement shall default with respect to any of its obligations set forth herein (including maintenance obligations) and shall fail within thirty days after receipt of written notice from the other party to cure such default, then the non-defaulting party shall have the right, at its election, but not the obligation, and in addition to such other rights and remedies as may be available at law or in equity, to cure such default for the account of the defaulting party, and shall be reimbursed by the defaulting party for the reasonable cost and expenses so incurred (including reasonable attorney's fees) within ten days of receipt of written demand for payment, together with reasonable documentation substantiating said costs and expenses. Any sums not reimbursed within the ten day period shall bear interest thereon at the rate of eight percent per annum, or the highest lawful rate, whichever is lower. The thirty day cure period can be extended in cases where the default cannot be cured within thirty days as long as the defaulting party is diligently pursuing such cure. In the event of an emergency, no prior notice shall be required to be given so long as notice is provided as soon as practicable.

H. The owners of Parcel A shall add the City as an additional named insured to any general public liability insurance policies maintained by the owners of Parcel A. Such insurance shall be written with an insurer licensed to do business in the State of Minnesota. The limits of liability of all insurance obtained by the owners of Parcel A shall not be less than One Million Dollars for total claims for any one occurrence and Five Hundred Thousand Dollars with respect to damage to property; or in lieu of such

coverage, a combined single limit (including bodily injury and property damage liability) with a limit of not less than Three Million Dollars. .

I. The easements and other terms of this Agreement shall be considered covenants running with the land and appurtenant to parcels A and B and shall be binding upon and inure to the benefit of the owners of such parcels and their respective successors, heirs, personal representatives and assigns who become the owners of either parcel A or B or portions thereof. Each party, now or hereafter, owning any portion of parcels A or B shall be liable for the performance of all covenants, obligations and undertakings set forth herein with respect to such portion of the parcel owned, during the period of its ownership, but it is expressly understood and agreed that such liability shall terminate upon termination of ownership except for any liability which accrues prior to the time of termination. But such party shall remain liable for any costs incurred while such party was bound by the terms of this Agreement. For matters accruing after such termination, any liability arising hereunder prior to such party ceasing to be the owner shall not be terminated but shall continue after the party ceases to be an owner until such liability is satisfied. The covenants and agreements herein contained are enforceable by any party against any other party whose property is burdened by the terms hereof.

J. If any provision of this Agreement is held invalid; the validity of the remainder of the Agreement shall not be affected thereby.

K. No provision contained in this Agreement shall be deemed to have been abrogated or waived by reason of any failure to enforce the same.

L. This Agreement is entered into in the State of Minnesota and shall be governed by and construed into the laws of the State of Minnesota.

M. Any action to enforce the terms of this Agreement shall be commenced in District Court located in the County of Ramsey, State of Minnesota.

N. This agreement represents the entire understanding between the parties hereto. Except for the Agreement dated _____, any prior understandings, either oral or written, are hereby declared null and void. No amendment to this Agreement shall be effective unless said amendment is reduced to writing and said writing is signed by the owners of Parcels A and B set forth herein.

WHEREFORE, Nicholson and the City have caused this document to be executed in their respective names on the day and year first written above.

RICHARD H. NICHOLSON

NANCY NICHOLSON

CITY OF ST. PAUL

By: _____
Its: Mayor or Deputy Mayor

By: _____
Its: Director of Financial Services

By: _____
Its: City Clerk

Approved as to form:

Assistant City Attorney

ACKNOWLEDGMENT

STATE OF MINNESOTA)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____, Mayor or Deputy Mayor, _____, Director, Office of Financial Services, and _____, City Clerk of the City of St. Paul, a municipal corporation under the laws of the State of Minnesota.

Notary Public

STATE OF MINNESOTA)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2013 by Richard H. Nicholson and Nancy Nicholson, husband and wife.

Notary Public

This instrument was drafted by:

KELLY & LEMMONS, P. A.

Chad D. Lemmons (#125039)

7300 Hudson Boulevard, Suite 200

Oakdale, MN 55128

(651) 224-3781

EXHIBIT 1

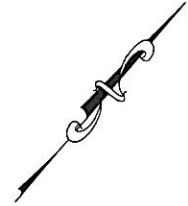
PARCELS A AND B

SUMMIT AVENUE

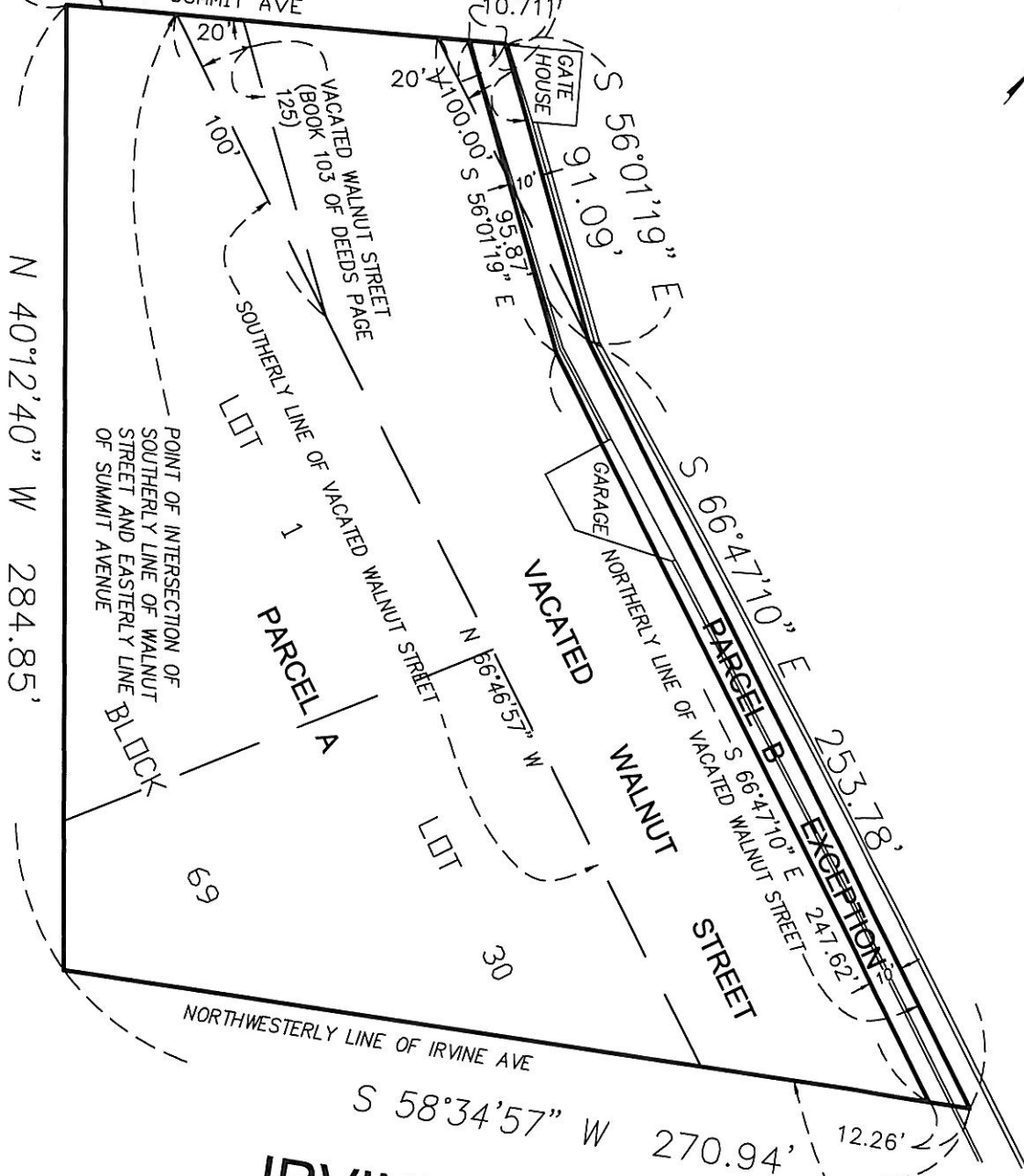
N 54°56'16" E 129.93'

SOUTHEASTERLY LINE OF SUMMIT AVE

PORTION OF LOT 8, BLOCK 70 (BOOK 52 OF DEEDS PAGE 282)



1" = 50'



N 40°12'40" W 284.85'

POINT OF INTERSECTION OF SOUTHERLY LINE OF WALNUT STREET AND EASTERLY LINE OF SUMMIT AVENUE

PARCEL A

VACATED WALNUT STREET

PARCEL B

WALNUT STREET

NORTHWESTERLY LINE OF IRVINE AVE

S 58°34'57" W 270.94'

IRVINE AVENUE

AVENUE

NORTHWESTERLY LINE OF IRVINE AVE EXTENDED ACROSS WALNUT STREET

EXHIBIT 2

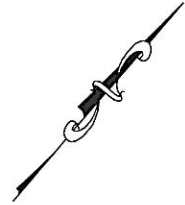
EASEMENT FOR GARAGE & DRIVEWAY

SUMMIT AVENUE

N 54°56'16" E 129.93'

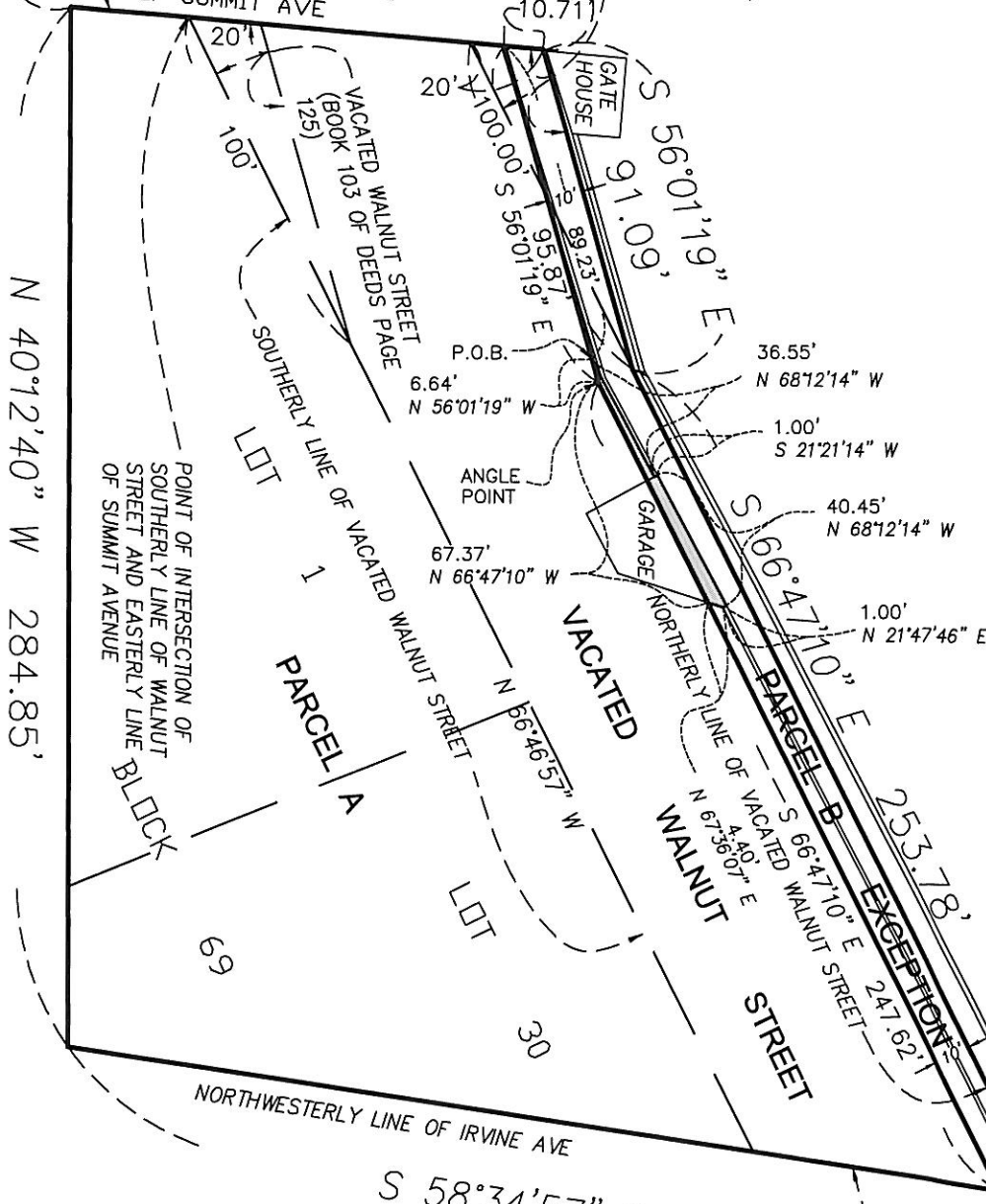
SOUTHEASTERLY LINE OF SUMMIT AVE

PORTION OF LOT 8, BLOCK 70 (BOOK 52 OF DEEDS PAGE 282)



1" = 50'

DENOTES EASEMENT AREA



N 40°12'40" W 284.85'

POINT OF INTERSECTION OF SOUTHERLY LINE OF WALNUT STREET AND EASTERLY LINE OF SUMMIT AVENUE

LOT 1

PARCEL A

9

30

WALNUT STREET

STREET

PARCEL B

EXCEPTION

NORTHWESTERLY LINE OF IRVINE AVE

S 58°34'57" W 270.94'

IRVINE AVENUE

AVENUE

NORTHWESTERLY LINE OF IRVINE AVE EXTENDED ACROSS WALNUT STREET

EXHIBIT 3

CITY MAINTENANCE EASEMENT

SUMMIT AVENUE

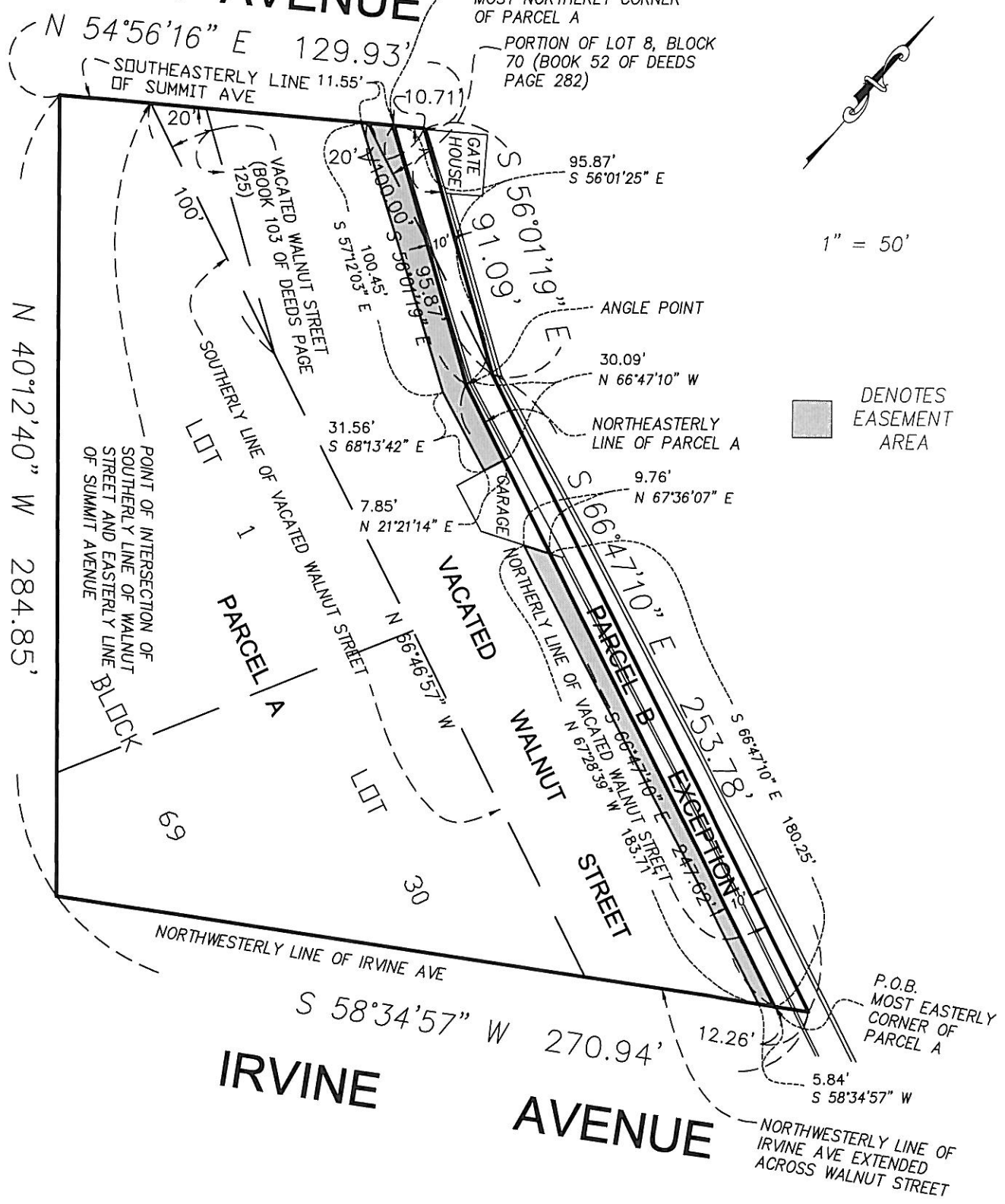


EXHIBIT 4

NICHOLSON MAINTENANCE EASEMENT

SUMMIT AVENUE

