

ATTACHMENT B – PART 1

PERPETUAL DRAINAGE AND STORMWATER EASEMENT

THIS PERPETUAL DRAINAGE AND STORMWATER EASEMENT (this “Agreement”) is made this ____ of _____, 2021 (the “Effective Date”), by and between the **CITY OF SAINT PAUL, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “City”) and **PROJECT PAUL, LLC**, a Delaware limited liability company (“Grantee”, and, collectively with their respective successors and assigns the “Parties”).

RECITALS

WHEREAS, the City is the owner of that certain real property described in Exhibit A attached hereto and incorporated herein by reference (“City Property”); and

WHEREAS, Grantee is the owner of certain real property adjoining the City Property and legally described on Exhibit B attached hereto (“Grantee Property”); and

WHEREAS, the Grantee Property is being developed as a medical office building, and in conjunction with such development project, Grantee desires to utilize and construct a private, below ground stormwater system to include storm sewer piping and structures (the “Stormwater Improvements”) upon portions of the City Property as legally described and depicted on Exhibit C attached hereto and made a part hereof (the “Stormwater Easement Area”), which Stormwater Improvements shall benefit the Grantee Property in perpetuity; and

WHEREAS, Grantee further desires to utilize overland flow routes over that portion of the City’s Property as legally described and depicted on Exhibit D attached hereto and made a part hereof (“the Drainage Easement Area”), pursuant to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Grantee hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement as substantive provisions hereof.

2. Grant of Stormwater Easement. Subject to the terms and conditions of this Agreement, the City hereby grants and conveys to Grantee a perpetual, non-exclusive easement over, across, under and through the Stormwater Easement Area, for the use, operation, maintenance, repair, and replacement of the Stormwater Improvements (the “Stormwater Easement”). Grantee will be solely responsible for its own expenses for operations, maintenance, repair, and replacement and related activity associated with the Stormwater Improvements (collectively, “O&M Expenses”). If during the course of normal events, the Stormwater Improvements located on the Stormwater Easement Area are found to have caused damage, backups or other maintenance problems identified by City, Grantee shall undertake repairs as soon as is reasonably practical, subject to prior review and approval by City, which approval shall not be unreasonably withheld, conditioned or delayed. If Grantee fails to undertake and complete the necessary restoration or repairs within thirty (30) days after notice and demand from City, City may complete the restoration or repairs, in the manner of and in all respects in its sole discretion, and charge Grantee for City’s costs and collect said costs, plus a 10% service fee, and, if necessary, impose an assessment against Grantee. The Stormwater Easement runs with the land and benefits the Grantee Property and burdens the City Property.

3. Construction of Stormwater Improvements. Grantee shall secure all necessary permits and governmental approvals necessary to construct the Stormwater Improvements and shall perform its work in compliance with all applicable federal, state, and local requirements. In the event Grantee constructs the Stormwater Improvements, Grantee hereby agrees to repair damage to the City Property caused by Grantee to its previous condition, and to the satisfaction of City. In addition to Grantee’s obligations to avoid damaging or overburdening the Stormwater Improvements, including its obligation to maintain soil erosion control, Grantee shall not deposit construction debris into infrastructure located on the Grantee Property that may be swept or washed into the Stormwater Improvements or the sanitary system, it being acknowledged and agreed that neither the Stormwater Improvements or sanitary system were designed to handle construction debris and damage to the same may result if Grantee is in breach of this paragraph. If Grantee fails to meet its obligations or violate the foregoing prohibition, Grantee shall promptly notify City of the incident and resulting damage to the Stormwater Improvements. Grantee shall correct any continuing condition and repair any damage to the Stormwater Improvements as soon as is reasonably practical and at its sole cost and expense, subject to prior review and approval by City, which approval shall not be unreasonably withheld, conditioned or delayed. If Grantee fails undertake and complete the necessary correction or repairs, City may complete the correction or repairs in the manner of and in all respects in its sole discretion, and charge Grantee for City’s costs and collect said costs, plus a 10% service fee, and, if necessary, impose an assessment against Grantee.

4. Grant of Overland Perpetual Drainage Easement. In addition to the rights granted above, the City does hereby grant and convey to Grantee a non-exclusive perpetual easement as may be necessary to facilitate stormwater drainage, in, across, along, over, under, and upon the Drainage Easement Area, for drainage purposes, together with the right to enter upon the Drainage Easement Area with such personnel and equipment as may be necessary to inspect, repair,

maintain, and replace all drainage facilities serving the Grantee Property (the “Drainage Easement”). The Drainage Easement runs with the land and benefits the Grantee Property and burdens the City Property.

5. Change of Grade Prohibited. The City and its grantees, assigns, and transferees shall not change the grade, elevation or contour of any part of the Drainage Easement Area without obtaining the prior written consent of Grantee, which consent shall not be unreasonably withheld. Likewise, Grantee shall not change the grade, elevation or contour of any part of the Grantee Property in such a manner as would materially increase the overland flow into the Drainage Easement.

6. Entry onto City Property. In addition to any permitting or other notification requirements, at least five (5) business days in advance, prior exercising any of its rights under this Agreement to access City Property, Grantee shall notify the City in writing of its intent to access City Property, describe the operations and maintenance activities to be undertaken, and the expected duration of such activities. In the event of an emergency, Grantee shall provide immediate notice of entry and describe the emergency conditions and its intended response and activities.

7. Insurance Grantee shall, at its sole cost and expense, obtain and continuously maintain the minimum insurance coverage set forth below with respect to its operations and completed operations and/or the respective portion of the City Property for so long as (i) Grantee or its successor or assigns has a possessory or use interest in any portion of City Property (including, without limitation, the Stormwater Easement or the Drainage Easement) or, (ii) any portion of the City Property is within the control of Grantee.

(a) Insurance Policies and Coverages. From time to time, at the reasonable request of the City, Grantee shall furnish proof to the City that such insurance is in effect.

(1) Comprehensive General Liability. Comprehensive general liability insurance with limits against bodily injury (including death) and property damage of not less than \$5,000,000 per occurrence, which coverage requirement may be satisfied by an umbrella policy. The following provisions shall apply to the general liability policy, as well as any umbrella policy maintained by Grantee to comply with the insurance requirements of this Article:

(i) the coverage must include Commercial Form; Premises/Operations; Contingent Liability; Underground, Explosions, and Collapse Hazard (if excavation, blasting, tunneling, demolition or rebuilding of any structural support of a building is involved or explosion hazard exists); Products/Completed Operations; Contractual Liability Insurance; Operations of Subcontractors/Independent Contractors (if any part of the work is to be subcontracted); Broad Form City Property Damage; Personal Injury; and Cross-Liability Coverage .

(ii) defense costs shall be payable in addition to policy limits;

(iii) there shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another; and

(iv) coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

(b) Professional Liability. For and during any design and construction of the Stormwater Improvements, professional liability insurance, including acts, errors and omissions arising out of the rendering of, or failure to render, professional services related to the Stormwater Easement with coverage limits of not less than \$3,000,000 per occurrence.

(g) All insurance policies required to be procured and maintained under this Article shall be written on an occurrence basis unless otherwise approved in writing by the City.

(h) In lieu of separate policies, Grantee may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required by this Article, in which event Grantee will deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force. Any excess or umbrella policies used to meet the minimum limits required under this Article shall be at least as broad as the underlying coverage and shall otherwise follow form.

(i) All insurance required in this Article shall be obtained and continuously maintained during the periods of time required in this Article in responsible insurance companies selected by Grantee which are authorized under the laws of the State to assume the risks covered by such policies, provided, however, that such insurers shall have a minimum A.M. Best rating of "A-" or better and a financial size category of not less than "X".

(j) Grantee shall, or shall cause, each insurer to agree to give Grantee and City 30 days' prior written notice of cancellation or expiration of coverage of any policy of insurance issued by such insurer. Not less than 5 business days prior to the cancellation or expiration of any policy of insurance, Grantee must provide the City evidence satisfactory that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, or that there is no longer a requirement for such policy under the terms of this Agreement.

(k) With the exception of worker's compensation/employer's liability and professional liability insurance, all insurance policies required under this Article (including coverage for both ongoing and completed operations) shall name the City as an additional insured.

(l) All insurance policies required to be procured and maintained by Grantee under this Article shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the City or the City Indemnified Parties (as defined below) may maintain, including

any self-insurance or self-insured retention they may have. Any other insurance the City or the City Indemnified Parties may maintain shall be considered excess insurance only and shall not be called upon to contribute with Grantee's insurance.

(m) Grantee hereby waives all rights of subrogation against the City and the City Indemnified Parties. Each policy of insurance required of Grantee herein shall include a written waiver of subrogation in favor of the City and the City Indemnified Parties.

(n) Notwithstanding anything herein to the contrary, Grantee's failure to secure the insurance coverage set forth in this Article, failure to comply with the insurance provisions of this Article, or failure to secure such endorsements on the policies as may be necessary to carry out the terms and provisions of this Agreement, shall in no way relieve Grantee from the obligations of this Agreement, and shall constitute a Default.

(o) The minimum insurance requirements of this Article, or any subsequent approval of Grantee's insurance by the City shall not relieve or decrease the liability of Grantee under this Agreement, including the defense and indemnification obligations of Grantee set forth in this Agreement.

8. Release and Indemnification Covenants by Grantee. Grantee hereby releases the City and their respective body members, officials, officers, servants and employees, agents, contractors, consultants, and legal counsel (collectively, the "City Indemnified Parties") from, and covenants and agrees that the City and Indemnified Parties shall not be liable for, and agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless the City and the City Indemnified Parties from and against, any and all damage to property or injury to or death of any person, loss, cost, fines, charges, damage and expenses, including reasonable attorney's fees, due to claims or demands of any kind whatsoever occurring at, about or in connection with any portion of the City Property or any improvements constructed thereon by Grantee or any acts or omissions of Grantee (including its contractors, subcontractors of any tier, and any party for which the foregoing are responsible) in connection with this Easement; except to the extent such loss or damage is caused by the willful misrepresentation, gross negligence, or intentional misconduct of the City or another City Indemnified Party.

9. No Waiver and No Waiver of Governmental Immunity and Limitations on Liability. The failure of Grantee or the City to enforce any of the terms or conditions in this Easement shall not be deemed a waiver of any rights or remedies which Grantee or the City may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms or conditions. Nothing in this Agreement shall in any way affect or impair the City's immunity or the immunity of the City's employees, consultants and contractors whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity or otherwise. Nothing in this Agreement shall in any way affect or impair the limitations on the City's liability or the liability of the City's employees, consultants and independent contractors. By entering into this Agreement, the City does not waive any rights, protections, or limitations as provide under law and equity for the City, or their respective employees, consultants and contractors.

10. Modification. This Agreement constitutes the entire agreement between the Parties

regarding the Drainage Easement granted herein and may not be changed without the prior written consent of Grantee and the City, or the then-current owners of the City Property and the Grantee Property, as the case may be.

11. Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

12. Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person and receipted for on a business day at the address set forth below; (2) on the third business day after being deposited in the U.S. mail, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address listed below; (3) when delivered to the address listed below by any courier service; or (4) on the date of deposit if deposited in the U.S. mail on the same day for delivery to the address listed below:

To City:

All Notifications:

City of Saint Paul (Parks & Recreation Department)
City Hall Annex, Suite 400
25 West Fourth Street
Saint Paul, MN 55012
Attn: Director

City of Saint Paul (Public Works Department)
City Hall Annex, Suite 1500
25 West Fourth Street
Saint Paul, MN 55012
Attn: Director

With a Copy to, except for communication/notifications due to and limited to entry onto Property per section 7 above for operation, restoration and repair purposes only:

City of Saint Paul (OFS, Real Estate Section)
City Hall Annex, Suite 1000
25 West Fourth Street
Saint Paul, MN 55012

City of Saint Paul (Safety and Inspections)
Suite 220
375 Jackson Street
Saint Paul, MN 55012
Attn: Director

Office of the City Attorney
400 City Hall, Civil Division
15 W. Kellogg Blvd.

Saint Paul, MN 55102
Attn: Deputy City Attorney

To Grantee: Project Paul, LLC
c/o Ryan Companies US, Inc.
533 S 3rd Street, Suite 100
Minneapolis, MN 55415
Attn: Maureen Michalski

With a copy to: Ryan Companies US, Inc.
533 S 3rd Street, Suite 100
Minneapolis, MN 55415
Attn: Audra Williams

13. Estoppel. Within thirty (30) days after request therefor from either party, each party hereto shall deliver an estoppel certificate confirming that this Agreement is in full force and effect, stating whether or not there are, to the best of their knowledge, any existing, uncured defaults by either party hereto and such other information as is reasonably requested by a party.

14. Attorneys' Fees. If any party brings an action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and court costs, in addition to any other relief granted.

15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A facsimile copy or an electronic PDF of a signature shall be as binding as an original signature.

16. Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of the Agreement.

17. Governing Law; Jurisdiction, and Venue. All matters relating to this Agreement shall be controlled by, interpreted and determined in accordance with the laws of the state of Minnesota. Any litigation arising out of this Agreement shall be venued in Ramsey County District Court, Second Judicial District, state of Minnesota, and shall not be removed therefrom to any other federal or state court. All parties to this agreement and their respective successors-in-interest hereby consent to personal jurisdiction and venue in the foregoing court.

18. Severability. If any provision of this Agreement or any application thereof is held invalid, illegal, or unenforceable, the remaining provisions of this Agreement and any other application of such provision shall remain unimpaired and shall continue in full force and effect.

19. City Regulatory Authority. Nothing in this Agreement shall be construed to limit or modify the City's regulatory authority.

(Signature Pages Follow)
(Consents of Mortgagees Follow Signature Pages)

PROJECT PAUL, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

This instrument was executed before me this ____ day of _____, 2021, by
_____, the Manager of Project Paul, LLC, a Delaware limited liability
company, on behalf of the company.

Notary Public

This instrument was drafted by,
And upon recording shall be returned to:
Ryan Companies US, Inc. (AEW)
533 South Third Street, Suite 100
Minneapolis, MN 55415

EXHIBIT A

LEGAL DESCRIPTION OF THE CITY'S PROPERTY

Park A, FORD, according to the recorded plat thereof, Ramsey County, Minnesota.

EXHIBIT B

LEGAL DESCRIPTION OF GRANTEE'S PROPERTY

Lot 1, Block 1, FORD, according to the recorded plat thereof, Ramsey County, Minnesota

EXCEPT That part of Lot 1, Block 1, FORD, according to the recorded plat thereof, Ramsey County, Minnesota, lying southerly and easterly of the following described line:

Commencing at the northeast corner of said Lot 1; thence South 00 degrees 04 minutes 33 seconds East, along the east line of said Lot 1, a distance of 138.18 feet to the point of beginning of the line to be described; thence South 89 degrees 55 minutes 26 seconds West, a distance of 76.00 feet; thence South 00 degrees 04 minutes 34 seconds East, a distance of 57.00 feet; thence South 89 degrees 55 minutes 26 seconds West, a distance of 301.87 feet to the west line of said Lot 1 and said line there terminating.

(Part of Certificate of Title No. 632290)

EXHIBIT C

STORMWATER EASEMENT AREA

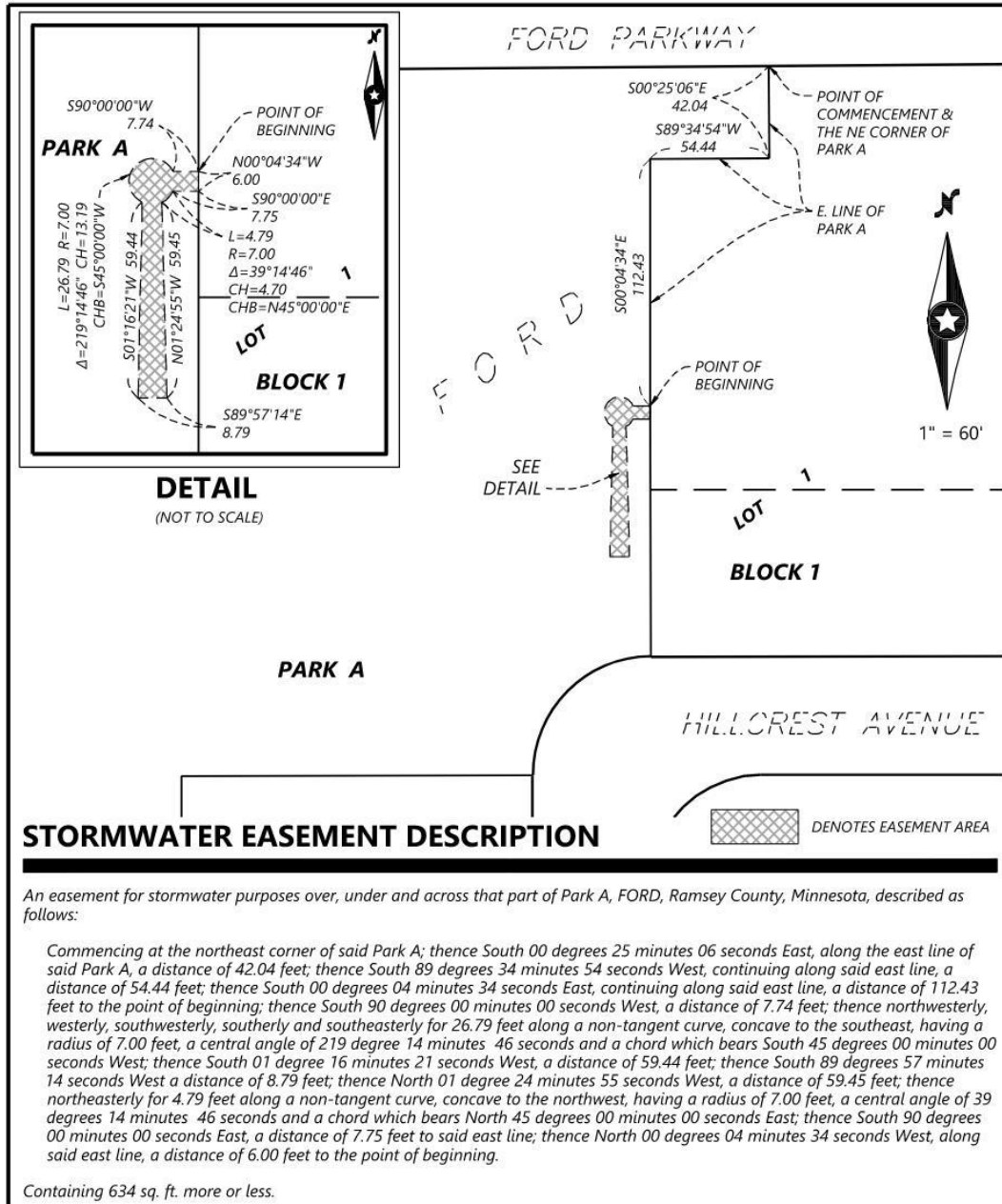
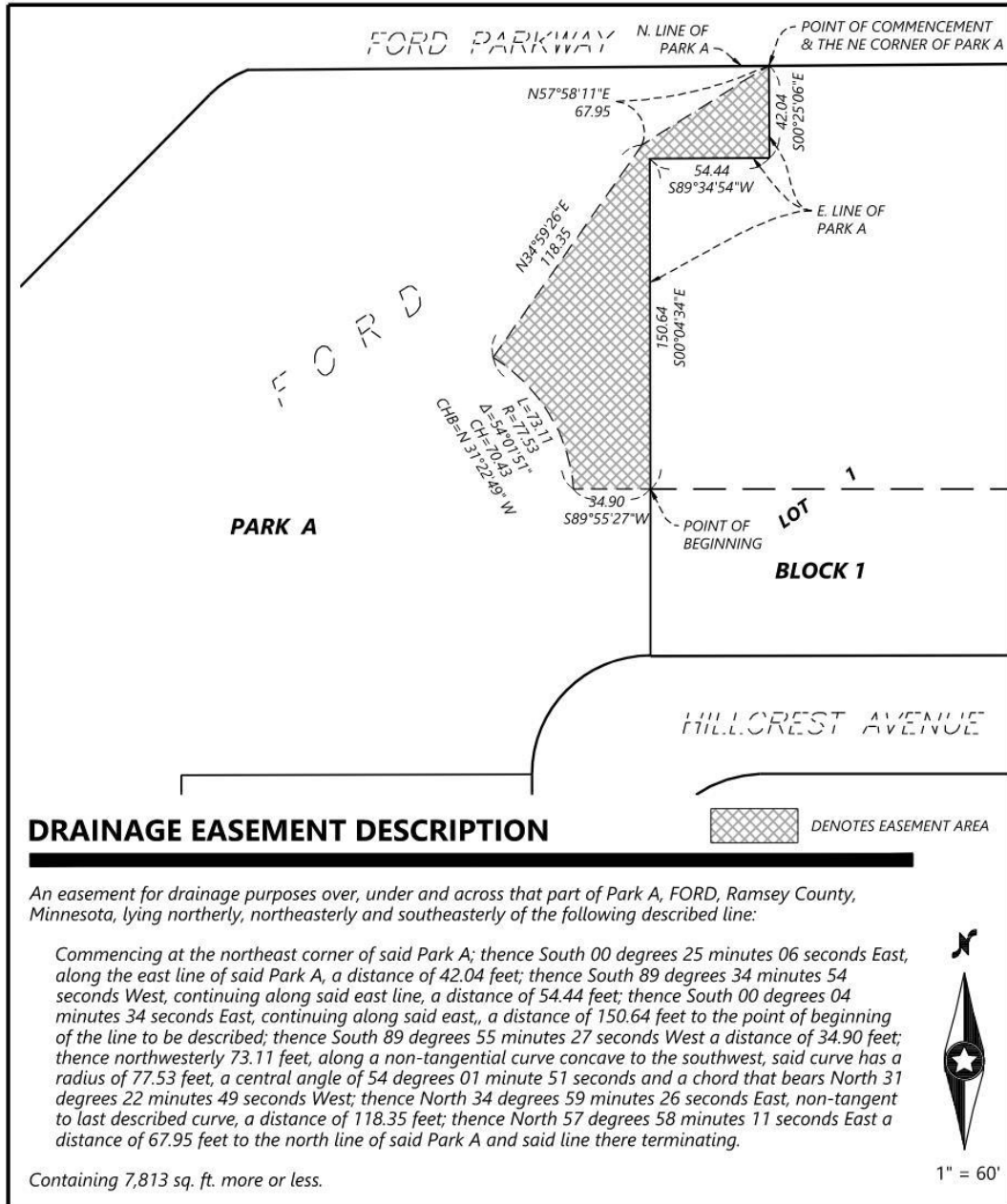


EXHIBIT D

DRAINAGE EASEMENT AREA



CONSENT OF MORTGAGEE

Wells Fargo Bank, National Association, a national banking association, (“**Mortgagee**”), is the holder of a mortgage granted by Project Paul, LLC, a Delaware limited liability company (“**Mortgagor**”) against the Grantee Property, as legally described on Exhibit B. Mortgagee hereby consents to and subjects its interest in said Grantee Property to the foregoing Perpetual Drainage Easement dated _____, 2021.

WELLS FARGO BANK NATIONAL
ASSOCIATION,
a national banking association

By: _____
Name: John Rent
Its: Director

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by John Rent, the Director of Wells Fargo Bank National Association, a national banking association, on behalf of the association.

Notary Public