



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: IK

Title:

Motion to approve a Resolution Authorizing the Execution of A Release of Reserved Easements and Right to Re-Acquire (North Fourth Avenue - Delnor PUD)

Presenter:

Rita Tungare

Meeting: City Council -New Business Date: December 5, 2016

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

In 2001, the City vacated a portion of North Fourth Avenue right-of-way for the purpose of including this property within the Delnor Glen townhome development. In 2002, when the City approved a PUD for the project, plans showed buildings to be developed within the vacated Fourth Avenue right-of-way.

Northwestern Medicine, the current owners of Delnor Glen, recently discovered that the City's 2001 right-of-way vacation ordinance (Ord. #2001-M-71) reserved rights for the City to maintain a utility easement over the vacated right-of-way and to re-acquire the property for \$10.

Staff believes the City's intent in approving the PUD was to allow for development of the vacated right-of-way, and the easement reservation and right to re-acquire should have been released at the time the PUD was approved.

Northwestern Medicine has asked the City to approve the attached release. Staff and the City Attorney have reviewed the document and have no concerns. A blanket utility easement exists over the entire development site, other than the building footprints.

Attachments *(please list):*

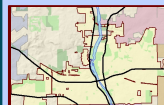
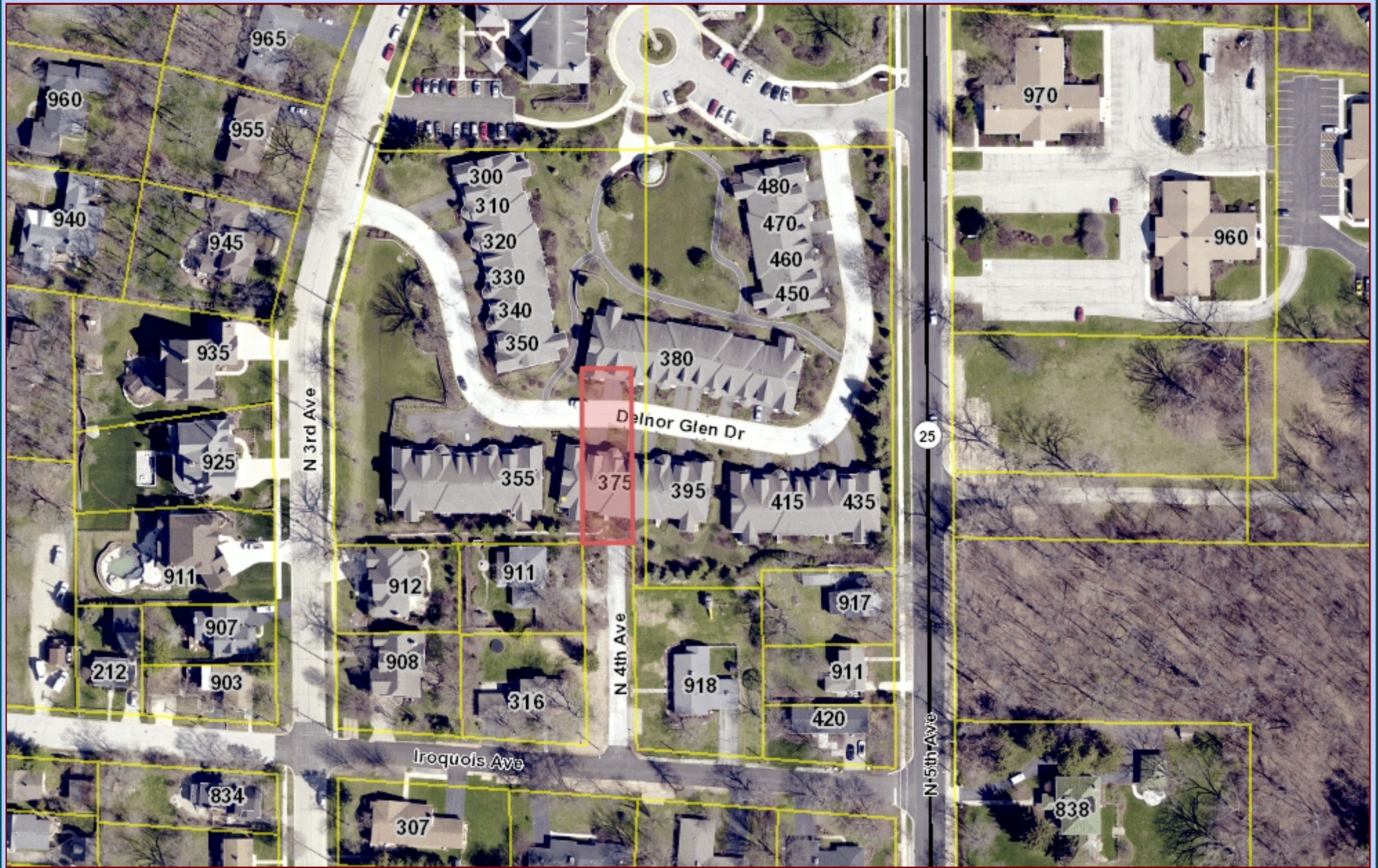
Location Map, 2001 Right-of-way vacation ordinance, 2002 subdivision plat, Resolution

Recommendation/Suggested Action *(briefly explain):*

Motion to approve a Resolution Authorizing the Execution of A Release of Reserved Easements and Right to Re-Acquire (North Fourth Avenue - Delnor PUD)



4th Ave. Vacated in 2001



Data Source:
City of St. Charles, Illinois
Kane County, Illinois
DuPage County, Illinois
Projection: Transverse Mercator
Coordinate System: Illinois State Plane East
North American Datum 1983
Printed on: November 29, 2016 01:56 PM



0 66 133 Feet

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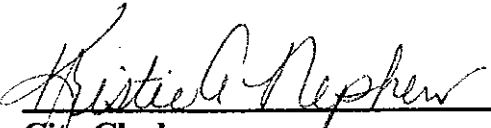
City of St. Charles, Illinois

Ordinance No. 2001-M-71

**An Ordinance Vacating Certain Street Right-of-Way
(North Fourth Avenue)**

**Adopted by the
City Council
of the
City of St. Charles
November 19, 2001**

**Published in pamphlet form by
authority of the City Council
of the City of St. Charles,
Kane and Du Page Counties,
Illinois, November 23, 2001**



City Clerk

(SEAL)

2

2001K123409

DATE OF PUBLICATION 11/23/01
NEWSPAPER Pamphlet Form

REFER TO:
MINUTES 11/19/01
PAGE _____

ORDINANCE NO. 2001- M - 71

**AN ORDINANCE VACATING CERTAIN STREET RIGHT-OF-WAY
(North Fourth Avenue)**

WHEREAS, the Corporate Authorities of the City of St. Charles have determined that the public interest will be subserved by vacating a certain portion of North Fourth Avenue in the City of St. Charles, Kane County, Illinois.

WHEREAS, pursuant to the Municipal Code 65 ILCS 5/11-91-1, the corporate authorities have found, by at least a three-fourths affirmative vote of the aldermen then holding office, that Delnor Community Health Systems, being the record owner of the property abutting and surrounding the vacated portion of North Fourth Avenue have requested the vacation of said parcel; and

WHEREAS, the corporate authorities find that the relief to the public from the further burden and responsibility of maintaining that portion of North Fourth Avenue constitutes a public interest authorizing the vacation;

WHEREAS, the City shall retain such easements as, in the judgment of the corporate authorities, are necessary or desirable for continuing public services.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:

1. That pursuant to the Municipal Code, the following portion of North Fourth Avenue is hereby vacated to Delnor Community Health Systems: See attached Exhibit 1, containing the legal description of the area to be vacated.
2. That the City of St. Charles reserves within the above described parcel being vacated an easement over, under, upon and across the area vacated for access for installation, maintenance,

repair, replacement, and customary servicing of all sanitary sewer lines and structures, storm water collection lines, structures and drainage courses, water supply systems, electrical lines, telephone lines, natural gas supply systems, central antennae television, communication systems and other public utility facilities or systems servicing the surrounding area for and to the City of St. Charles, Illinois and all other public and private utility company now holding or in the future receiving a franchise from the City of St. Charles, together with their respective successors and assigns as grantees. Delnor Community Health Systems acquiring interest in the land vacated platted hereby by virtue of the vacation of the street affected and subsequent instruments thus is subject to the easements granted hereby. Said right of access is granted to the officers, employees, servants and agents of the above named entities to enter upon said land in person together with their related service and emergency equipment for all such purposes stated herein. This easement also grants to the above named entities the right to cut, trim or remove trees, bushes or fences as may reasonably be required incidental to the rights granted herein. No permanent building shall be placed upon said easement area; however the same may be used for such purposes that do not now or in the future interfere with the rights and uses granted herein. The grantee shall replace and restore any surfaces disturbed by the exercise of any right herein granted. Further, the City of St. Charles, hereby reserves the right to re-acquire fee title to the area vacated hereby through condemnation thereof with compensation to be fixed now and in the future in the amount of Ten and 00/100ths (\$10.00) U.S. Dollars.

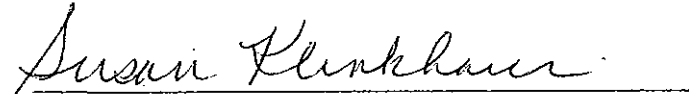
3. The corporate authorities have determined by an affirmative vote of at least three-fourths (3/4ths) of the aldermen that the nature and extent of the public use or public interest to be subserved warrants vacation of the above mentioned street.

4. That this Ordinance shall become effective one (1) day after the recording of the final plat pursuant to the special use as a planned unit development granted by Ordinance No. 2001-Z-38 (Delnor PUD).


PRESENTED to the City Council of the City of St. Charles, Illinois, this 19th day of November, 2001.

PASSED by the City Council of the City of St. Charles, Illinois, this 19th day of November, 2001.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 19th day of November, 2001.


Susan L. Klinkhamer, Mayor

ATTEST:


Kristie Nephew, City Clerk

COUNCIL VOTE:

Ayes : 9
Nays : 0
Absent: 1

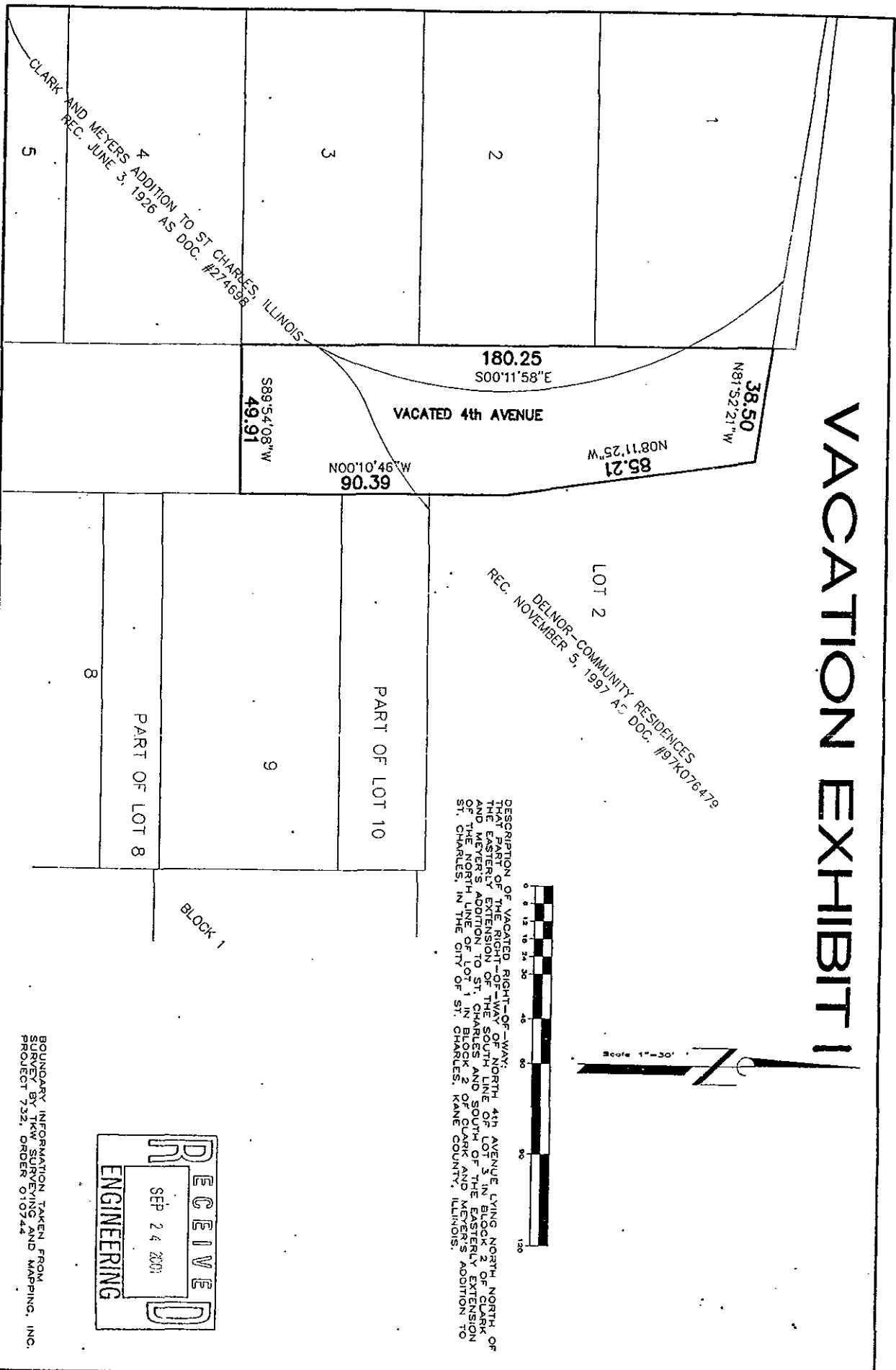
APPROVED AS TO FORM:


City Attorney

DATE: 11/19/01

Prepared by:
Rita Tungare
City of St. Charles
2 E. Main St.
St. Charles, IL
60174

VACATION EXHIBIT I



BOUNDARY INFORMATION TAKEN FROM
PLAN BY SURVEYING AND MAPPING, INC.
PROJECT 732, ORDER 010744

RECEIVED
SEP 24 2001
ENGINEERING

EXHIBIT I

PREPARED FOR:
BLAIR WINTON & ASSOCIATES, INC.

CRA Craig R. Knoche & Associates
Civil Engineers, P.C.
1181 Commerce Drive Geneva, Illinois 60134 phone (630) 845-1208 (630) 845-1275

DATE: 6-22-01
FILE: 1-025VAC
JOB NO: 1-025

SHEET NO.
1
OF
1

2001K123409

State of Illinois)
)
) ss.
)
Counties of Kane and DuPage)

Certificate

I, KRISTIE A. NEPHEW, certify that I am the duly elected and acting municipal clerk of the City of St. Charles, Kane and DuPage Counties, Illinois.

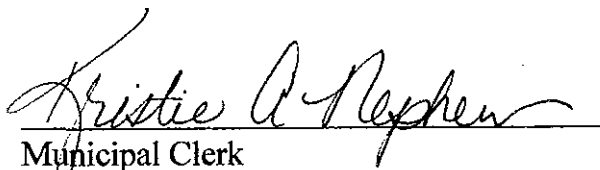
I further certify that on November 19, 2001, the Corporate Authorities of such municipality passed and approved Ordinance No. 2001-M-71, entitled

"An Ordinance Vacating Certain Street Right-of-Way (North Fourth Avenue)",

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2001-M-71, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on November 23, 2001, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 19th day of November 2001.


Municipal Clerk

(SEAL)

City of St. Charles, Illinois
Resolution No. 2016-_____

**A Resolution Authorizing the Execution of A Release of Reserved
Easements and Right to Re-Acquire
(North Fourth Avenue - Delnor PUD)**

**Presented & Passed by the
City Council on _____**

NOW THEREFORE, be it resolved by the authorities of the City of St. Charles that the Mayor and City Clerk are hereby authorized to execute A Release of Reserved Easements and Right to Re-Acquire, attached hereto as Exhibit "A".

PRESENTED to the City Council of the City of St. Charles, Illinois this 5th day of December 2016.

PASSED by the City Council of the City of St. Charles, Illinois, this 5th day of December 2016.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 5th day of December 2016.

Raymond P. Rogina, Mayor

ATEST:

Nancy Garrison, City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

EXHIBIT "A"

A Release of Reserved Easements and Right to Re-Acquire

**RELEASE OF RESERVED
EASEMENTS AND RIGHT TO
RE-ACQUIRE**

Prepared by and after recording return to:

Thomas L. Hefty
Office of General Counsel
Northwestern Memorial HealthCare
211 East Ontario Street
Suite 1800
Chicago, Illinois 60611
Thomas.Hefty@nm.org

Space above reserved for Recorder

WHEREAS, the City of St. Charles, Illinois (the “**City**”) vacated a portion of North Fourth Avenue (the “**Vacation Property**”) in Ordinance No. 2001-M-71 recorded as Document 2001K123409 (the “**Vacation Ordinance**”) while reserving (a) easements for utilities and imposing restrictions as is further described therein (the “**Easement**”) and (b) the right to re-acquire the vacated portion of North Fourth Avenue for nominal consideration (\$10.00)(the “**Right to Re-Acquire**”); and

WHEREAS, concurrently with the Vacation Ordinance, the City enacted Ordinance No. 2001-Z-38 (the “**Zoning Ordinance**”) which amended the Planned Unit Development Special Use previously enacted to permit additional development of the Vacation Property and the surrounding land (referred to in the Zoning Ordinance as the “**Subject Realty**”);

WHEREAS, the Zoning Ordinance included preliminary plan approval for substantial improvements (the “**New Development**”) to and upon the Subject Realty, including the Vacation Property;

WHEREAS, the City later issued final plan approval and building permits for the New Development, and the owner of the Subject Realty, Delnor Community Residential Living, Inc. (“**Delnor**”), constructed the New Development as approved and permitted by the City, and in conjunction therewith, all existing public utilities which were previously located in the Vacation Property (if any) were relocated or removed so as to not interfere with the New Development; and

WHEREAS, by following the Zoning Ordinance in constructing the New Development, Delnor has encroached upon the Easement, even though (a) there are no utility services in the Vacation Property and (b) pursuant to Section G. of the Zoning Ordinance Delnor agreed to grant to the City such necessary easements upon the Subject Realty as determined by the City;

WHEREAS, the Easement encroachment and the Right to Re-Acquire are adversely affecting the property value of the New Development and Delnor has requested that the City release the Easement and Right to Re-acquire.

NOW, THEREFORE, THE CITY OF ST. CHARLES, ILLINOIS, HEREBY AGREES AS FOLLOWS:

1. That the Easement reserved in the Ordinance, including any restrictions related thereto, is hereby released. The release of the Easement shall not affect any other easements granted by Delnor or reserved by the City pursuant to the Zoning Ordinance, which other easements and reservations are hereby affirmed.
2. That the Right to Re-acquire is hereby released; provided, however, that the City reserves all right, power and authority to condemn the Vacated Property and any improvements thereon for a public purpose and fair and just compensation.

This Release of Easement and Right to Re-acquire has by approved by the City this _____ day of November 2016.

ATTEST
City Clerk

MAYOR

Approved as to form:

CITY ATTORNEY