

To: **Mayor and City Council**  
 Through: **Ryan Schroeder, City Manager**  
 From: **Kori Land, City Attorney**  
 Date: **October 23, 2019**

**Approval of Settlement with Ottawa Investment Company (Parcel 11) for the Marie and Oakdale Trail Project 18-4**

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**BACKGROUND INFORMATION:**

Parcel 11 in the Marie Trail Project is the Ottawa Investment Company apartment building sites at 1910-1940 Oakdale Avenue.

The City has negotiated a settlement agreement with Parcel 11 in the condemnation action in the amount of \$110,000. The City previously deposited \$61,500 with the Court for the quick-take deposit. The lender for the property has signed off on the settlement so there is no need to include a commissioners’ hearing to approve the settlement.

**FISCAL IMPACT:**

		<b>Amount</b>
<b>Fund:</b>		
<b>Department:</b>		
<b>Account:</b>		

**STAFF RECOMMENDATION:**

Approve attached Stipulation of Settlement (Parcel 11).

STATE OF MINNESOTA  
COUNTY OF DAKOTA

DISTRICT COURT  
FIRST JUDICIAL DISTRICT

COURT FILE No. 19HA-CV-18-4611  
Case Type: Condemnation

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City of West St. Paul,  
a Minnesota municipal corporation,

Petitioner,

**STIPULATION OF SETTLEMENT  
Parcel 11**

v.

Covington Court Apartments, LP; et al.,

Respondents.

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THIS STIPULATION is made by and between Petitioner City of West St. Paul (“City”) and Respondent Ottawa Investment Company, Limited Partnership, a Minnesota limited partnership (“Owner”) and Respondent Fannie Mae, a corporation organized and existing under the laws of the United States (“Lender”), by and through their respective attorneys in this matter.

RECITALS

The following recitals are a part of the parties’ stipulation.

1. The Owner is the fee owner of the real property identified as Parcel 11 on **Exhibit A** to the Court’s Findings of Fact, Conclusions of Law, and Order Granting Petition, Authorizing Payment or Deposit, and Awarding Title and Right of Possession, and Order Appointing Commissioners filed February 7, 2019. An excerpt from **Exhibit A** pertaining to Parcel 11 is attached.
2. **Exhibit A** identifies Lender as having a mortgage interest in Parcel 11.

3. **Exhibit A** identifies Respondent State of Minnesota as having an easement interest. The Parcel 11 easements the City has condemned in this action are subordinate and taken subject to the State's superior easement interest.

4. **Exhibit A** identifies Respondent Dakota County as having a possible interest in Parcel 11 for payment of property taxes. This action does not include any fee taking from Parcel 11. The property tax payments are current.

5. The City commenced this condemnation action to acquire easements over portions of Parcel 11 for the purposes of constructing, operating and maintaining a multi-use trail along Marie Avenue ("Project").

6. The City has deposited the sum of \$61,500.00 with the Dakota County District Court, in payment of its approved appraisal of value for the taking and damages to Parcel 11 (the "Deposit").

7. The City and Owner have reached a full and final settlement and compromise of the matters in dispute.

### **AGREEMENT**

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, it is hereby stipulated and agreed between the parties as follows:

1. **Settlement Amount.** The City, Owner and Lender agree to a full and final settlement of all claims of Owner and Lender, with respect to the City's acquisition of the easements over portions of Parcel 11, for the total amount of \$110,000.00 ("Settlement Amount").

2. **Payment of Settlement Amount.** Within 10 business days after the date that the last party signs this agreement, the City shall pay the Settlement Amount. The City shall issue a check in the Settlement Amount made payable to the Kluger, Kaplan, Silverman, Katzen & Levine, P.L. Trust

Account and sent to Daniel N. Rosen, Kluger, Kaplan, Silverman, Katzen & Levine, P.L., 60 South 6th Street, Suite 3615, Minneapolis, MN 55402.

3. Deposit. Owner and Lender assign to the City all their right, title and interest in the Deposit. The City may apply to the Court at any time for disbursement to City of the Deposit, together with any interest that has accrued thereon, without further notice to Owner or Lender. The City, Owner and Lender agree to the entry of a Court order directing disbursement to the City alone of the \$61,500.00 Deposit, together with any interest that has accrued thereon.

4. Other Considerations. The parties agree to the following additional terms:

- a. The Owner acknowledges that the Owner will not have to, and does not intend to, relocate as a result of the Project.
- b. The Owner and Lender acknowledge that they did not obtain an appraisal and will not seek reimbursement for an appraisal.

5. Full and Final Compromise. The Owner, Lender and City acknowledge that the terms and conditions of this Stipulation of Settlement constitute a full and final compromise of all matters in dispute with respect to Parcel 11. In consideration of the Settlement Amount and other terms and conditions of this Stipulation of Settlement, the Owner and Lender waive any and all claims they may have against the City in connection with this condemnation action, including without limitation, just compensation, statutory remedies, any other damages, interest, relocation benefits, appraisal fees, attorney fees, and costs and disbursements to which the Owner or Lender may otherwise be entitled. The Owner and Lender waive any and all rights to further notices, viewings, or hearings regarding this action.

6. Condemnation Action. The City shall file this Stipulation of Settlement with the district court. After payment of the Settlement Amount, the City will file a Final Certificate in this

action with respect to Parcel 11 and record a Discharge of Notice of Lis Pendens in the Office of the Dakota County Recorder. Each of the parties will bear its own costs in connection with this action. The district court shall retain jurisdiction to enforce the terms of this Stipulation of Settlement.

7. Entire Agreement. The undersigned confirm that each has read this Stipulation of Settlement, and that each knows and understands its consequences and legal effect. This Stipulation of Settlement contains the entire agreement of the parties in the above-referenced action.

8. Execution. The parties agree that this Stipulation of Settlement may be executed in separate counterparts which, taken together, shall be and comprise one agreement.

9. Authority. Any person signing this Stipulation of Settlement in a representative capacity represents and warrants by signing this Agreement that it is the signer's intent to bind the principal being represented to the terms and conditions of this Agreement, that the signer has been authorized to bind the principal to the terms and conditions, and that it is the intent of the principal to be so bound.

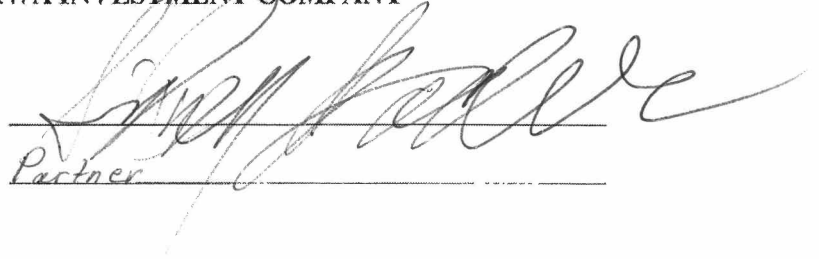
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Dated: October 21, 2019

**OTTAWA INVESTMENT COMPANY**

By: \_\_\_\_\_

Its: \_\_\_\_\_



**KLUGER, KAPLAN, SILVERMAN, KATZEN  
LEVINE, P.L.**

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Daniel N. Rosen (#250909)  
60 South 6th Street, Suite 3615  
Minneapolis, MN 55402  
612-767-3000  
drosen@klugerkaplan.com

*Attorney for Respondent Ottawa Investment  
Company*

Dated: \_\_\_\_\_, 2019

**OTTAWA INVESTMENT COMPANY**

By: \_\_\_\_\_

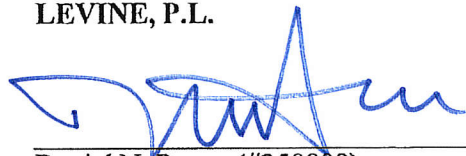
Its: \_\_\_\_\_

&

**KLUGER, KAPLAN, SILVERMAN, KATZEN**

**LEVINE, P.L.**

Dated: 10-23-19, 2019



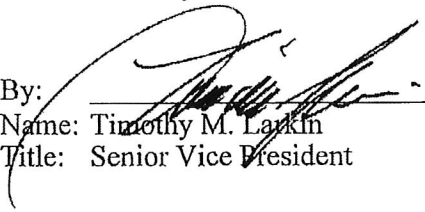
\_\_\_\_\_  
Daniel N. Rosen (#250909)  
60 South 6th Street, Suite 3615  
Minneapolis, MN 55402  
612-767-3000  
drosen@klugerkaplan.com

*Attorney for Respondent Ottawa Investment Company*

Dated: \_\_\_\_\_, 2019

**FANNIE MAE**

By: DOUGHERTY MORTGAGE LLC,  
a Delaware limited liability company  
Its: Attorney-in-Fact

By:  (SEAL)  
Name: Timothy M. Larkin  
Title: Senior Vice President

**WINTHROP & WEINSTINE, P.A.**

Dated: \_\_\_\_\_, 2019

  
Heidi J. Nau (#0340844)  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402  
612-604-6548  
hnau@winthrop.com

*Attorneys for Respondent Fannie Mae by and  
through its Attorney-in-Fact Dougherty Mortgage  
LLC*

**CITY OF WEST ST. PAUL**

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
David J. Napier, Mayor

\_\_\_\_\_  
Ryan Schroeder, City Manager

**LEVANDER, GILLEN & MILLER, P.A.**

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Peter G. Mikhail (# 249907)  
Korine L. Land (#262432)  
633 South Concord Street, Suite 400  
South St. Paul, MN 55075  
651-451-1831  
pmikhail@levander.com  
kland@levander.com

*Attorneys for City of West St. Paul*

**EXHIBIT A**

**Parcel 11 (“Ottawa Investment Company, Limited Partnership”)**

<u>Interest</u>	<u>Name</u>	<u>Address and Telephone Number</u>
Fee Owner	Ottawa Investment Company, Limited Partnership, a Minnesota limited partnership	Ottawa Investment Company c/o Sidney Bader, Registered Agent 3020 France Avenue South St Louis Park, MN 55416
Mortgagee	Fannie Mae, a corporation organized and existing under the laws of the United States	Fannie Mae 3900 Wisconsin Avenue NW Washington, DC 20016
Easement Interest	State of Minnesota	State of Minnesota Minnesota Attorney General 445 Minnesota Street, Suite 1400 St. Paul, MN 55101
Property Taxes	County of Dakota	County of Dakota c/o Joel T. Beckman Dakota County Treasurer/Auditor 1590 Highway 55 Hastings, MN 55033
Possible Unknown Real Property Interest Owners	All other parties unknown having any right, title or interest in the real property described below, together with the unknown heirs or devisees, if any, of the parties that may be deceased and including unknown spouses, if any, and all others claiming any interest in the property described below.	

**Parcel 11 (“Ottawa Investment Company, Limited Partnership”) – PID: 42-02900-04-010**

**LEGAL DESCRIPTION OF LANDOWNER’S PROPERTY**

The Southwest Quarter of the Northeast Quarter of the Northeast Quarter of Section 29, Township 28, Range 22, EXCEPTING therefrom the North 30 feet, according to the United States Government Survey thereof and situate in Dakota County, Minnesota.

*Abstract Property*

**Parcel 11 (“Ottawa Investment Company, Limited Partnership”)**

**LEGAL DESCRIPTION OF EASEMENT AREAS**

Parcel 11 as shown on DAKOTA COUNTY RIGHT OF WAY MAP NO. 480, according to the recorded map thereof, Dakota County, Minnesota.

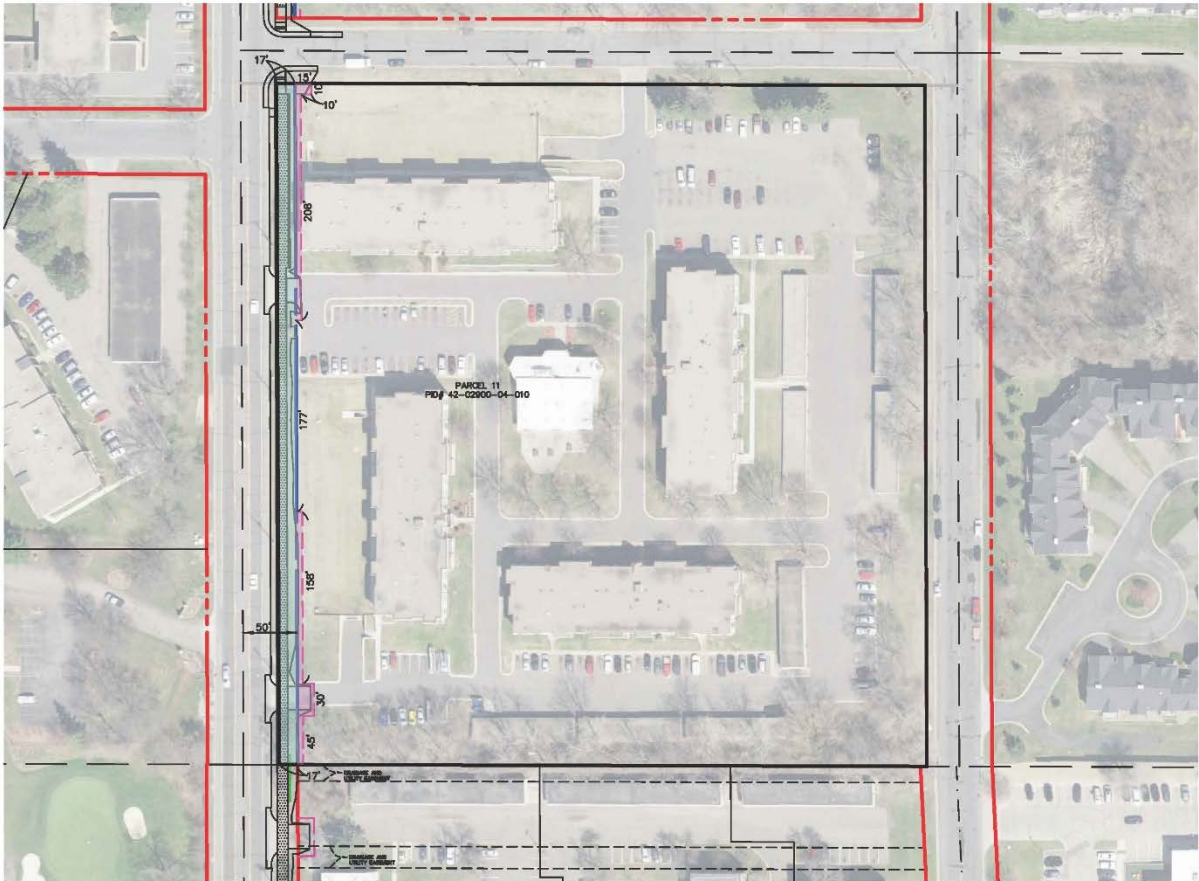
AND

TE 11 as shown on DAKOTA COUNTY RIGHT OF WAY MAP NO. 480, according to the recorded map thereof, Dakota County, Minnesota.

**Parcel 11 (“Ottawa Investment Company, Limited Partnership”)**

**DEPICTION OF EASEMENT AREAS**




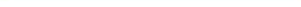

**C.S.A.H. 73 (OAKDALE AVE.) PARCEL EXHIBIT  
WEST ST. PAUL**



Prepared by Dakota County Transportation Department. 4/17/2018

\* DIMENSIONS OF EASEMENT AREAS ARE ROUNDED TO THE NEAREST FOOT SO MAY NOT MATCH SQUARE FOOTAGE LISTED BELOW

**LEGEND**

-  DENOTES PARCEL LINE
-  DENOTES EXISTING R/W LINE
-  DENOTES PROPOSED R/W LINE
-  DENOTES TEMPORARY EASEMENT LINE
-  PROPERTY CORNER FOUND

**PRELIMINARY**

**DAKOTA COUNTY ROAD RIGHT OF WAY MAP NO. 480**

OWNER OTTAWA INVESTMENT COMPANY, LP

PARCEL 11  
PROJECT NO. 73-30  
PID 42-02900-04-010

NEW TRAIL EASEMENT (SQ. FT.)		10,666
TEMPORARY EASEMENT (SQ. FT.)		2,654

