



Office of the City Clerk

City Hall
121 N. LaSalle St.
Room 107
Chicago, IL 60602
www.chicityclerk.com

Legislation Text

File #: SO2011-1436, Version: 1

SUBSTITUTE ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, by ordinance adopted by the City Council of the City of Chicago (the "City Council") on February 9, 2011 and published in the Journal of Proceedings of the City Council (the "Journal") for such date at pages 112439 - 112442 (the "Subdivision Ordinance"), the City Council approved North Pullman 111th, Inc.'s, an Illinois for profit corporation ("Developer"), Plat of Subdivision, as shown on the Plat of Subdivision, Pullman Park Phase I ("Subdivision") attached hereto as Exhibit A, for approximately 56 acres of land generally located at the northwest corner of East 111th Street and South Doty Avenue/Bishop Ford Freeway all falling within Planned Development No. 1167; and

WHEREAS, as part of the redevelopment of the Subdivision, as approved by the Subdivision Ordinance, Developer shall dedicate, and the City shall accept, a new Doty Avenue ("New Doty Avenue") in a different location which such dedicated area is shown on Exhibit A; and

WHEREAS, on both sides of the New Doty Avenue various storm detention ponds will be installed by the Developer for an integrated stormwater management system as shown on the Right to Use plat attached hereto as Exhibit B; and

WHEREAS, Developer, as owner of the new storm sewers, is requesting, and the City has agreed to enter into an easement agreement, on substantially the same terms and conditions set forth in the Grant of Easement Agreement (the "Easement Agreement") attached hereto and incorporated herein as Exhibit C, to allow for the placement of the storm sewers under the New Doty Avenue,

Now, Therefore, Be It Ordained by the City Council of the City of Chicago:

SECTION 1. The foregoing recitals are hereby incorporated herein and adopted as the findings of the City Council.

SECTION 2. The Commissioner (the "Commissioner") of the Department of Water Management or a designee of the Commissioner is each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver an Easement Agreement, substantially in the form attached hereto as Exhibit C and made a part hereof, between the Developer and the City, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Easement Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Easement Agreement.

SECTION 3. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 4. This ordinance shall take effect upon its passage and approval.

Honorable Anthony Beale Alderman, 9th Ward

EXHIBIT A

PLAT OF SUBDIVISION PULLMAN PARK-PHASE I

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EXHIBIT B RIGHT TO USE

EASEMENT EXHIBIT

103RD ST

L=282.74' R=180.00' N43«36'34"E CH=254.56'

POINT OF COMMENCEMENT-

SCALE: 1"

/

, L=17.87'

S88°36'34"W 20.00' / R=267.00'

EXISTING BANK / S88°30'03"W y CH=17.96'

EASEMENT AREA

DATE: 02/14/2011

JOB NO: 5484

FILENAME: 5484EXB-07

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PAGE 1 OF 1

EXHIBIT C

EASEMENT AGREEMENT

GRANT OF EASEMENT AGREEMENT

This Grant of Easement Agreement (this "Agreement") is made and entered into as of this _ day of _, 2011 by and between the CITY OF CHICAGO, an Illinois municipal corporation, by and through its Department of Water Management ("Grantor"), and the NORTH PULLMAN 111™, INC., an Illinois for profit corporation ("Grantee"). Grantor and Grantee are collectively referred to herein as the "Parties."

WHEREAS, Grantee is the owner of approximately 56 acres of land generally located at the northwest corner of East 111th Street and South Doty Avenue/Bishop Ford Freeway, all falling within Planned Development No. 1167, located in Chicago, Illinois (the "Property"); and

WHEREAS, by ordinance adopted by the City Council of the City of Chicago (the "City Council") on February 9, 2011 and published in the Journal of Proceedings of the City Council (the "Journal") for such date at pages 112439 - 112442 (the "Subdivision Ordinance"), the City Council approved Grantee's Plat of Subdivision, as shown on the Plat of Subdivision, Pullman Park Phase I ("Subdivision") attached hereto as Exhibit A. for the Property; and

WHEREAS, as part of the redevelopment of the Subdivision, as approved by the Subdivision Ordinance, Grantee shall dedicate, and the City shall accept, a new Doty Avenue ("New Doty Avenue") in a different location which such dedicated area is also shown on Exhibit A; and

WHEREAS, Grantee has requested a permanent easement for two (2) 48-inch (48") reinforced concrete pipes and one (1) twelve-inch (12") ductile iron sewer pipe (the "Easement") for the purpose of installing several stormwater detention ponds that will serve the Property and other property as an interconnected stormwater management system located on both sides of, and cross under the New Doty Avenue (the "Facilities"). The Easement shall run to the benefit of, and be appurtenant to, the Property and other property containing and served by such interconnected stormwater management system. The Easement shall allow for the Grantee's installation, maintenance, operation, repair, renewal, and replacement of said Facilities with all necessary attachments and appurtenances under the New Doty Avenue at Grantee's sole costs and expense. The location of the Easement is depicted on Exhibit B and is legally described on Exhibit C, each attached hereto and made a part hereof ("Easement Area"); and

WHEREAS, by ordinance adopted by the City Council of the City of Chicago (the "City Council") on _, 2011 and published in the Journal of Proceedings of the City Council (the "Journal") for such date at pages _ - _ (the "Easement Ordinance"), the City Council approved a grant of easement agreement, namely this Agreement, to allow for the placement of the Facilities in the Easement Area; and

WHEREAS, Grantor is willing to grant to Grantee such Easement on the terms and conditions set forth in this Agreement and Grantee is willing to accept such Easement.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual agreements contained herein and other good and valuable consideration,,the receipt and sufficiency of which are hereby

acknowledged, Grantor and Grantee agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by this reference and shall be deemed terms and provisions hereof, the same as if fully set forth in this Section 1.

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2. Easement Grant. Grantor hereby grants to Grantee the permanent Easement for the purpose of installing, maintaining, operating, repairing, renewing and replacing the Facilities within the Easement Area. Grantee hereby accepts such grant of the Easement from Grantor subject to the terms herein.

3. Cost Obligations. Grantee shall be solely responsible for the cost and expense of installing, maintaining, operating, repairing, renewing and/or replacing the Facilities.

4. Right of Access. In furtherance of this Agreement, Grantor grants to Grantee, its agents, employees, contractors, subcontractors, licensees and invitees (collectively the "Grantee Parties") the right, permission and authority to enter from time to time upon such portions of the New Doty Avenue as may be reasonably necessary for the purpose of installing, maintaining, repairing, replacing and operating the Facilities and exercising the rights and performing the obligations of Grantee in accordance with the terms of this Agreement and in compliance with all applicable laws; provided, however, except for emergencies involving threats to public health, safety or welfare, Grantee shall notify Grantor in writing at least three (3) business days prior to such entry of such entry and of the length of necessary entry upon the New Doty Avenue and Easement Area. Grantor also grants to the Grantee Parties the right, permission and authority to enter in a reasonable manner upon such portions of the New Doty Avenue approved by the Grantor, which approval shall not be unreasonably withheld, as shall be reasonable and necessary for the purpose of access to the Easement Area to exercise the rights and perform the obligations of this Agreement.

5. Grantee's Obligations.

a. The Grantee, at its own cost and expense, shall design, construct and diligently pursue completion of the Facilities substantially in accordance with plans approved by Grantor in accordance with subsection "b" below. The Grantee expressly warrants that the Facilities shall be designed and constructed in compliance with all federal, state and local laws and regulations.

b. The Grantee shall be responsible for obtaining approvals of and paying for any and all removals, relocations, alterations, additional maintenance and restorations of or to any utility or public service structures or facilities, or any structures or facilities located in or adjacent to the Easement Area which are owned by the Grantor, including pavements, bridges, poles and other facilities and utilities, which are or may be necessary or appropriate to facilitate construction of or work related to the Facilities. The Grantee shall be responsible for obtaining the consent of and making suitable arrangements with all entities owning and having an interest in such structures and facilities, including any department of the Grantor.

c. The Grantee shall secure all necessary building and other permits.

d. Prior to commencement of the construction of the Facilities, Grantee shall prepare and deliver to the Commissioner of the Department of Transportation for his review and approval proposed plans and specifications of the Facilities which shall be in compliance with this Agreement.

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6. Uses Within the Easement Areas. Grantee may from time to time install, maintain, operate, repair, renew, and replace all or any portion of the Facilities provided, however, that the work does not affect any portion of the public right-of-way other than the Easement Areas.

7. Indemnity. Except with respect to the wrongful intentional acts of Grantor (to the extent the same are the cause of an injury or loss to a third person), Grantee hereby indemnifies and agrees to hold harmless and defend Grantor from and against any and all claims, demands, damages, lawsuits, legal proceedings, losses, liens, liabilities, judgments, orders or decrees, and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, court costs, and other reasonable expenses related to litigation), arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to any natural person, or the property of any person, arising out of, or occurring in any manner relating to the use of the Easement Area and Facilities by Grantee and/or any Grantee Parties. In the event any legal action is taken against Grantor or its agents relating to the Easement or any claim is made relating to the use of the Easement Area and/or Facilities by Grantee and/or any Grantee Parties, the Grantor may elect to tender said defense to Grantee which shall and must defend such action or claim at Grantee's own expense and Grantor

shall cooperate with Grantee in the defense thereof. Grantor shall have the right to join Grantee as a party defendant in any such legal action. This indemnity shall not be the exclusive remedy of the Grantor, and Grantor shall maintain whatever other right of indemnity it may have under common law, by statute, or by ordinance.

8. Maintenance.

a) The Grantee shall maintain the Easement and Facilities at its expense.

b. Grantee shall maintain the Easement and Facilities so that the Easement and Facilities do not unduly interfere with any use of the public way by the Grantor, the public, or any person or entity authorized to use or occupy the public way.

c. Grantee shall cooperate with the Grantor concerning the coordination of uses of the New Doty Avenue public way, including reasonable responses to inquiries and attending meetings and site visits necessary to ensure the use of the Easement Area by Grantee does not interfere with the use of the public way.

d. The Grantee shall pay for all utility expenses incurred with respect to the operation of the Easement and Facilities within the Easement Area.

e. Grantor Has No Operational Duties. The Grantee acknowledges that Grantor is not responsible for the operation, maintenance, repair or security in the Easement and Facilities, and Grantor has no obligations with respect thereto (other than the provision of Grantor services available to all similarly situated improvements).

9. Insurance.

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a. The Grantee shall procure and maintain, at all times, including but not limited to, prior to commencement of construction of the Easement and Facilities, all of the types and coverages of insurance specified below, with insurance companies authorized to do business in the State of Illinois, covering all operations of this Agreement, whether performed by the Grantee or its contractor or subcontractors ("Contractor"). Grantee shall procure and maintain, or shall cause any/all Contractors to procure and maintain, all of the types and coverages of insurance specified below, with insurance companies authorized to do business in the State of Illinois, covering all operations under this Agreement, whether performed by the Grantee or its Contractor.

b. The kinds and amounts of insurance required are as follows:

i. Workers' Compensation and Employers Liability. Workers' Compensation Insurance, as prescribed by applicable law, covering all employees who are to provide work under this Agreement and Employers' liability coverage with limits of not less than One Million Dollars (\$1,000,000) each accident, illness or disease.

ii. Commercial General Liability (Primary and Umbrella).

Commercial General Liability Insurance, or equivalent, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury, and property damage liability. All premises and operations, products/completed operations, independent contractors, explosion, collapse, underground, separation of insureds, defense and contractual liability coverages are to be included. The Grantor is to be named as an additional insured on a primary non-contributory basis for any liability related directly or indirectly to this Agreement.

Contractors performing work for Grantee must maintain limits of not less than \$2,000,000 with the same terms herein.

iii. Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with Work to be performed, the Grantee must provide or cause to be provided, Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage. The Grantor is to be named as an additional insured on a primary, non-contributory basis.

Contractor performing work for Grantee must maintain limits of not less than \$1,000,000 with the same terms herein.

c. Additional Requirements

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At least thirty (30) days prior to the commencement of any construction in or use of the Easement Area, the Grantee must provide and cause its contractor to provide the Grantor at Department of Transportation, 30

North LaSalle Street, Room 600, Chicago, Illinois 60602-2570, original Certificates of Insurance, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The receipt of any certificate does not constitute agreement by the Grantor that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Grantor to obtain certificates or other insurance evidence from Grantee and Contractor is not a waiver by the Grantor of any requirements for the Grantee to obtain and maintain the specified coverages. The Grantee and Contractor must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Grantee and Contractor of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and the Grantor retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance must provide for 30 days prior written notice to be given to the Grantor in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Grantee and Contractor.

The Grantee hereby waives and agrees to require their insurers to waive and will cause its Contractor to agree that insurers waive their rights of subrogation against the Grantor (City of Chicago), its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Grantee and Contractor in no way limit the Grantee's and Contractor's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Grantee and Contractor under the Agreement,

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Grantee or Contractor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Grantee must require the Contractor to provide the insurance required herein. All Contractors are subject to the same insurance requirements of Grantee unless otherwise specified in this Agreement.

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Notwithstanding any provisions in the Agreement to the contrary, the City of Chicago, Risk Management Department maintains the right to reasonably modify, delete, alter or change these requirements.

10. Default. Either party to this Agreement may, upon breach of any of the terms and provisions of this Agreement by the other party, send such other party written notice of such breach. In the event any breach is not cured within sixty (60) days after receipt of such notice of breach, then the party causing such breach shall be deemed in default in its obligations under this Agreement, and the non-defaulting party shall have such rights and remedies as shall be available to it at law or in equity; provided that in the event a default cannot reasonably be cured within sixty (60) days after written notice and the defaulting party is proceeding diligently to cure the default, the defaulting party shall have such additional time as may be reasonably necessary to cure said default.

11. Damage to the Easement Area or Grantor's New Doty Avenue. Grantee shall be responsible, at its sole cost, for any damage to the Easement Area, Grantor's New Doty Avenue, or any improvements thereon caused by the entry onto or use of the Easement Area or the New Doty Avenue by the Grantee Parties or the exercise of any of Grantee's rights hereunder. In the event of any such damage Grantee shall immediately notify Grantor thereof, and thereafter Grantee shall file a claim for reimbursement under its insurance policies required under the insurance provisions set forth herein. Grantee shall use due care in exercising its rights under the Agreement.

12. Covenants Run with Land. All provisions of this Agreement, including the benefits and burdens, shall run with the land and are binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, the Easement Area, and/or the New Doty Avenue.

13. No Lien. Grantee shall not permit any lien to stand against the Easement Area, the New Doty Avenue or

any improvements thereon for any labor or material in connection with work of any character performed on the Easement Area or the New Doty Avenue at the discretion or sufferance of Grantee.

14. Notices All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered on the first day following delivery to an overnight courier service or on the third day after deposit in the U.S. mail as registered or certified mail, return receipt requested, postage prepaid, as follows:

If to Grantor: City of Chicago

Department of Transportation 30 North LaSalle Street, Suite 400 Chicago, Illinois, 60602 Attn: Commissioner

With a copy to: City of Chicago,

Department of Law

Real Estate and Land Use Division

121 N. LaSalle, Room 600

Chicago, IL 60602

Attn: Karen Bielarz,

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Senior Counsel

If to Grantee: North Pullman 111th, Inc.

1000 East 111th Street 10th Floor

Chicago, Illinois 60628 Attn: David Doig

With a copy to: DLA Piper US LLP

203 N. LaSalle Street Suite 1900

Chicago, Illinois 60601 Attn: David Reifman

Addressees may be changed by the parties by notice given in accordance with the provisions hereof.

15. Transfer by Grantor or Grantee. Upon any transfer or conveyance of the Easement Area by Grantor or the Property by Grantee, the transferor shall be released from any liability under this Agreement relative to the real estate so transferred or conveyed, and the transferee shall be bound by and deemed to have assumed the rights and obligations of the transferor arising after the date of such transfer of conveyance.

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IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed and delivered as of the day and year first above written.

GRANTOR

CITY OF CHICAGO, an Illinois municipal corporation

By:

Name: Title:

GRANTEE

NORTH PULLMAN 111TH, INC., an Illinois for profit corporation

By:

Name: Title:

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STATE OF MICHIGAN)

) SS

COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County and State aforesaid, do

hereby certify that __, in his/her position as

__ of North Pullman 111th, Inc., an Illinois for profit corporation,

personally known to me to be the same person whose name is subscribed to the foregoing instrument,

appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as

his/her own free and voluntary act and as the free and voluntary

act of said corporation, as of said __, for the uses and purposes therein set

forth.

GIVEN under my hand and notarial seal this __ day of __, 2011.

Notary Public
STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, __, a Notary Public, in and for said County, in the
State aforesaid, do hereby certify that __ the
__ of the City of Chicago, Department of Transportation personally known
to me to be the same person whose name is subscribed to the foregoing instrument as such
__, respectively, appeared before me this day • in person, and
acknowledged that he/she signed and delivered the said instrument as his/her own free and
voluntary act and as the free and voluntary act of said __, for the uses and purposes
therein set forth.

GIVEN under my hand and notarial seal this __ day of __, 2011.

Notary Public

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EXHIBIT A
PLAT OF SUBDIVISION, PULLMAN PARK PHASE I
ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, North Pullman 111th, Inc., an Illinois for profit corporation ("Developer ") owns land and intends to create a subdivision in the vicinity of 111th Street and the Bishop Ford Freeway, Chicago, Illinois, as shown on the Plat of Subdivision, Pullman Park Phase I ("Subdivision") attached hereto as Exhibit A; and

WHEREAS, As part of the Subdivision Developer proposes to vacate a portion of Doty Avenue and dedicate a new Doty Avenue in a different location which location is shown on Exhibit A; and

WHEREAS, City is willing to vacate the portion of Doty Avenue and accept the dedication of Doty Avenue in the location proposed by Developer; and

WHEREAS, As part of the redevelopment of the Subdivision it is anticipated that a storm sewer will be located under newly dedicated Doty Avenue as shown on the Right to Use plat attached hereto as Exhibit B; and

WHEREAS, The Developer is requesting and the City has agreed to enter into an easement agreement to allow for the placement of the storm sewer under to be dedicated Doty Avenue,

Now, Therefore, Be It Ordained by the City Council of the City of Chicago:

SECTION 1. The forgoing recitals are hereby incorporated herein and adopted as the findings of the City Council.

SECTION 2. The Commissioner of the Department of Water Management (the "Commissioner") or a designee of the Commissioner is each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver an easement agreement between the Developer and the City, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the easement agreement.

SECTION 3. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 4. This ordinance shall take effect upon its passage and approval.

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Exhibit "A" Plat of Subdivision Pullman Park-Phase I

CHGO2\40184428.2

Exhibit "B" Right to Use

CHGO2\40184428.2

FINAL PLAT OF

PULLMAN PARK SUBDIVISION - PHASE 1

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CHICAGO tDCHBOnOOO tHTUTIVES

Boo c uTh street. Chicago, n. tout

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BMTEKQ IT PSS FJLU* MM

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AMUOKI, dUHOH.

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