



## **CITY COUNCIL WORK SESSION AGENDA**

**AFTON CITY COUNCIL CHAMBERS  
3033 St. Croix Trail South  
Wednesday, November 14, 2018  
At 5:15 p.m.**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF AGENDA – November 14, 2018 City Council Work Session**
- 4. CITY COUNCIL BUSINESS**
  - A. Review of the Development Agreement and the Conservation Easement for the Afton Creek Preserve PLCD Subdivision
  - B. Downtown Project Update
  - C. Process for the Review and Clarification of the Preservation and Land Conservation Development (PLCD) Ordinance Language
  - D. Update and Options Regarding the House on the Wastewater Treatment System Property
  - E. 3M Settlement Update
- 5. ADJOURN**

**A quorum of the City Council or Other Commissions may be present to receive information at, but not limited to, any of the following meetings: Planning Commission; the Public Works Committee; Parks Committee; Design Review and Heritage Preservation Commission; Lower St. Croix Cable Commission; LSCWMO; MSCWMO; I-94 Corridor Coalition and the 5-City Mayor's Alliance.**

City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

## Meeting Date Nov. 14, 2018

### Council Memo

To: Mayor Bend and Members of the City Council  
From: Ron Moorse, City Administrator  
Date: November 7, 2018  
Re: Review of the Afton Creek Preserve Conservation Easement and Development Agreement

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The approval of the Preliminary Plat for the Afton Creek Preserve Subdivision included a condition that a conservation easement be placed on the two open space outlots to protect and preserve the outlots as open space in perpetuity. The approval also included a condition that the developer enter into a development agreement outlining the responsibilities of the developer in relation to the development and requiring financial security to ensure the construction of the improvements necessary for the development are satisfactorily completed.

#### Conservation Easement

The Minnesota Land Trust (MLT) has prepared the attached conservation easement. The conservation easement is a perpetual easement that protects and preserves the two open space outlots and the conservation values that are identified in the easement. While the condition of approval referenced a tri-party conservation easement agreement (the MLT, the developer and the City) the MLT has prepared a two-party conservation easement (the MLT and the developer). When staff questioned the two party agreement vs. a three-party agreement, the MLT explained that the MLT will be enforcing the conservation easement in perpetuity, and has funding and staffing to do that. If the City wants to have an active role in enforcing the agreement, the City could be added as a party to the agreement. Wayne Ostlie, of the MLT, along with the MLT's conservation easement attorney, will attend the work session to address any Council questions.

#### Development Agreement

The City Attorney prepared a draft development agreement, and staff has worked with the City Attorney to make revisions to reflect the conditions of approval of the Preliminary Plat. The development agreement is attached for the Council's review. The City Attorney will attend the work session to address questions from the Council.

Draft 4  
October 26, 2018

## CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by Albert W. Carlson, as trustee of the Trust Agreement of Albert W. Carlson U/T/D February 17, 2010, (the "Owner") to the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the "Land Trust").

### BACKGROUND

- A. OWNER. The Owner is the current owner of approximately 218 acres of real property located in Washington County, Minnesota, platted as *Afton Creek Preserve* (hereinafter referred to as "*Afton Creek Preserve*", a Preservation and Land Conservation Development (PLCD) with 18 single family homes to be developed by the Owner. Approximately 109 acres of open space, consisting of 2 noncontiguous outlots in *Afton Creek Reserve*, are more fully described below as the "Protected Property." The remaining portions of that real property are intended to be developed for residential use.
- B. MINNESOTA LAND TRUST. The Minnesota Land Trust is a non-profit corporation organized and operated exclusively for charitable and educational purposes including the preservation and protection of land in its natural, scenic or other open space condition. The Land Trust is a public charity as defined in Sections 501(c)(3) and 509(a) of the Internal Revenue Code and an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations, possessing the commitment to protect the conservation purpose of this conservation easement (the "Conservation Purpose") and the resources to enforce the restrictions.
- C. PROTECTED PROPERTY. The Protected Property is that real property legally described in Exhibit A and generally depicted on the "Property Map" in Exhibit B. Both exhibits are attached to this conservation easement (the "Easement") and incorporated by this reference.

The Protected Property lies within the city limits of Afton, Minnesota, in Washington County. It is located within the St. Paul-Baldwin Plains and Moraines subsection, which is part of the Eastern Broadleaf Forest Province of Minnesota's Ecological Classification System. The subsection is dominated by glacial end moraine complex with rolling to hummocky terrain on the moraine (steep, short complex slopes) and level to rolling on the outwash plains. A mosaic of vegetation occurred in the subsection historically, ranging from oak and aspen savanna to tallgrass prairie and maple-basswood forest.

The Protected Property lies within the Land Trust's *Twin Cities Metro* and *Rum and St. Croix Rivers* Priority Conservation Program Areas. The Minnesota Land Trust's *Twin Cities Metro Priority Conservation Program Area* encompasses the rapidly growing Greater Minneapolis-St. Paul Metropolitan area that contains a majority of Minnesota's increasingly diversifying population. This program area grades from densely populated and heavily developed at its core to predominantly agricultural at its perimeter. The Minnesota and St. Croix rivers merge with the Mississippi here, providing important wildlife corridors for wildlife and migratory birds. The program area is notable for its varied habitats, including oak savannas, Big Woods forests, prairies and wetlands, that support one of the highest concentrations of Species in Greatest Conservation Need in the state.

The Minnesota Land Trust's *Rum River and St. Croix River Priority Conservation Program Area* encompasses the watersheds of the Rum and St. Croix rivers in east-central Minnesota. The area is rich in water features, including four important Minnesota rivers and Lake Mille Lacs, one of the state's largest lakes. The St. Croix River is a designated National Scenic Riverway, one of the original eight American rivers to be designated through this prestigious program, and an important recreational asset in close proximity to the Twin Cities Metropolitan Area. The Rum and Kettle rivers are designated as Minnesota Wild and Scenic Rivers. All three, along with the Snake River, are designated state water trails.

The Protected Property currently consists of approximately 75 acres of grasslands, 14 acres of woodlands, 8 acres of forest, 11 acres of wetlands, and 1 acre of open water. The Protected Property has approximately 5,939 feet of shoreline along Trout Brook. The Protected Property consists of rolling topography with elevations decreasing from high points on the north and south perimeters of the Protected Property to Trout Brook, which flows west to east through both Outlot A and Outlot B of the Protected Property.

There are currently no improvements on the Protected Property other than fencing and an overhead electrical line located on Outlot A. These improvements are more specifically described in the baseline documentation report referred to in section 6 of this Easement (the "Baseline Documentation Report").

The natural attributes of the Protected Property provide habitat for fish, wildlife and plants and include grassland, woodlands, wetlands, open ponds, and Trout Brook, a state-designated trout stream. Approximately 57 acres of Outlot B will be restored to prairie beginning some time in 2019.

The northwestern corner of the Protected Property is part of a site (Afton 32) of moderate biodiversity significance, as identified by the Minnesota Biological Survey (MBS). Moderate biodiversity sites typically contain occurrences of rare species, support native plant communities with modest environmental disturbance, and have strong potential for recovery of characteristic ecological functioning. An area of Dry Bedrock Bluff Prairie (Southern) was identified within this area on the Protected Property by MBS. This native plant community is increasingly rare within the state and has been assigned a conservation status rank of S3 in Minnesota, meaning that it is vulnerable to extirpation. The area containing this community is also part of a corridor the Minnesota DNR identified as a Regionally Significant Ecological Area. While the Dry Bedrock Bluff Prairie (Southern) community on the Protected Property is transitioning into a woodland due to long periods of fire suppression, it provides excellent potential for restoration activities.

The Protected Property is located within the St. Croix River Watershed Conservation Focus Area, as identified in the Minnesota Wildlife Action Plan 2015-2025. Dry Bedrock Bluff Prairie (Southern) is a target habitat and brook trout is a target species within the conservation focus area. The plan identifies buffering riparian habitat with native vegetation as an important strategy to restore degraded water quality and altered hydrology in the focus area.

The Protected Property is located within the Lower St. Croix River major watershed, which covers 585,735 acres in ten counties in northwest Wisconsin and east-central Minnesota. Portions of the watershed located near the Twin Cities Metropolitan Area and the Protected Property are heavily developed for residential and commercial use. Despite these pressures, the Lower St. Croix River is well known for its outstanding scenic beauty and recreational opportunities. The Lower St. Croix River was designated as a National Wild and Scenic River on June 17, 1976, administered by the states of Minnesota and Wisconsin. The Riverway protects one of the most diverse natural mussel populations in the National Park system, with around 40 species. The Riverway is located approximately two miles to the east of the Protected Property.

The Protected Property is located less than a half mile to the west of the St. Croix Lake Important Bird Area (IBA). The widening of the St. Croix River within the IBA is a unique feature that separates this area ecologically from other IBAs to the north and south. The IBA is an important migratory route, wintering area, and breeding area for a wide variety of birds, including migratory raptors and waterbirds. Its location and variety of habitats results in a large avian species diversity, with 268 bird species documented within the IBA boundaries. Development is a major threat to the quality bird habitat found in the IBA. The Protected Property contains excellent habitat along the western edge of the IBA, including an undeveloped riparian corridor. This habitat buffers the IBA and provides additional benefits for the birds that use the IBA.

Within five miles of the Protected Property there are eleven properties permanently protected with Land Trust conservation easements totaling approximately 841 acres, as well as the approximately 1,620 acre Afton State Park managed by the Minnesota Department of Natural Resources (Minnesota DNR). Additional conservation lands within five miles of the

Protected Property include four Conservation Reserve Program (CRP) easements, two Washington County regional parks, two Minnesota DNR Division of Trails and Waterways parcels, and one Minnesota DNR Scientific & Natural Area. As part of this protected matrix of lands, the Protected Property contributes to the preservation of natural areas for habitat, prevents detrimental land use conversion, and protects groundwater and surface water sources.

The scenic attributes of the Protected Property include its rural, open and wooded character, which are visible to the general public from 60<sup>th</sup> Street South.

It is anticipated that the public will have access to a network of walking trails located on Outlot B of the Protected Property through public access easements granted by the Owner and running from Prairie Wind Court, a platted public road in *Afton Creek Preserve*.

The Protected Property is located in an area of the Twin Cities Metropolitan Region experiencing increased housing development and fragmentation of natural lands. According to the 2015 System Statement for City of Afton by the Metropolitan Council, the population of the City is projected to grow by 8.1% by year 2040, with a household increase of 17% during the same time period.

Preservation of the Protected Property provides a unique opportunity to protect the watershed of Trout Brook, one of the few natural trout streams in the Twin Cities Metropolitan area.

D. CONSERVATION VALUES. Collectively and individually, the following natural, scenic and open space qualities of the Protected Property that are outlined above comprise its "Conservation Values:"

- The undeveloped and relatively natural character of the Protected Property provides significant habitat for a variety of fish, wildlife and plants.
- The undeveloped shoreline along Trout Brook helps maintain the water quality of the brook and provides near-shore habitat for a variety of aquatic plants, animals and natural communities.
- The open and natural character of the Protected Property provides scenic views enjoyed by the general public from 60<sup>th</sup> Street.

These Conservation Values have not been and are not likely to be significantly impaired by the continued use of the Protected Property as described above or as authorized in this Easement or by the use, maintenance, or construction of any structures and improvements that presently exist on the Protected Property or that are authorized below.

The preservation and protection of these Conservation Values will provide significant benefit to the public.

E. CONSERVATION POLICY. Protection of the Conservation Values of the Protected Property is consistent with, and will further, delineated governmental policies including those established by the following:

- Minnesota Statutes Chapter 103A, which promotes protection of Minnesota's waters and their adjacent lands, and Minnesota Statutes Section 103A.206 in particular, which recognizes the economic and environmental importance of maintaining and enhancing the soil and water resources of this state and the role of private lands in these conservation efforts to, among other things, preserve natural resources, protect water quality, preserve wildlife, and protect public lands and waters.
- Minnesota Statutes Section 103A.201, which specifically promotes the protection of wetlands, and Minnesota Statutes Section 103A.202, which specifically declares that it is in the public interest to preserve the wetlands of this state to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, and enhance the natural beauty of the landscape.
- City of Afton Comprehensive Plan (2008), which establishes goals to maintain and enhance fish and wildlife habitats, preserve existing forests, woodlands and prairies; protect and preserve steep slopes; protect and preserve natural features unique to the City of Afton, and policies to preserve open spaces and natural resources for passive use and create non-motorized trails through direct purchase, subdivision, scenic and/or conservation easements and other means, and to protect steep slopes, tree cover, wetlands and other fragile lands through conservation easements, scenic easements and other available means.
- National Park Service, through its Cooperative Management Plan: Lower St. Croix National Scenic Riverway (2002), which identifies water quality and quantity as a priority natural resource concern for the riverway inclusive of the Trout Brook watershed. The plan discusses the need for a whole basin strategy for the St. Croix River, inclusive of specific goals, projects and mitigating measures, with the Minnesota Pollution Control Agency the primary State of Minnesota partner.
- Minnesota Pollution Control Agency, through its 2013 revised Lake St. Croix Total Maximum Daily Load (TMDL) Implementation Plan, which identifies Trout Brook as a high source of phosphorus to the St. Croix River. Trout Brook currently has the third highest load per unit area of all St. Croix River tributaries. The TMDL Implementation Plan lists retirement of cropland in high phosphorous contributing areas, wetland restoration, and installation of shoreline buffers as priority opportunities to reduce phosphorous inputs.
- South Washington Watershed District Watershed Management Plan (2016), which sets a goal for a 35% reduction in total phosphorous for Trout Brook as specified in the Lake St. Croix TMDL and a no net loss for wetland acreage or function.

- Washington County Acquisition of Development Rights Ordinance 175, which establishes a program for the preservation of open space, parks and public water, commonly referred to as the Land and Water Legacy Program. Primary objectives of the program include improving water quality of rivers, lakes and streams; protecting drinking water sources; purchasing parkland; preserving wetlands and woodlands; and protecting land along water bodies from development. The program identifies Trout Brook as priority for conservation action.
- Minnesota Statewide Conservation and Preservation Plan, 2008, which promotes the protection of priority land habitats, critical shorelands and private shorelands via economic incentives and other tools, including conservation easements.
- Minnesota Statutes Chapter 84C, which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality.

F. **CONSERVATION INTENT.** The Owner and the Land Trust are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current Owner and all future owners of the Protected Property and that conveys to the Land Trust the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

### **CONVEYANCE OF CONSERVATION EASEMENT**

Pursuant to the laws of the State of Minnesota, and in particular Minnesota Statutes Chapter 84C, and in consideration of the facts recited above and the mutual covenants contained herein, the Owner hereby conveys and warrants to the Land Trust and its successors and assigns a perpetual conservation easement over the Protected Property. This Easement creates a property right immediately vested in the Land Trust and consists of the rights, terms, and restrictions set out below.

The Owner also conveys and warrants to the Land Trust a perpetual easement for access to the Protected Property. The terms of this access easement are described in more detail in section 4 of this Easement.

1. **CONSERVATION PURPOSE.** The Conservation Purpose of this Easement is to provide significant public benefit by preserving and protecting in perpetuity the Conservation Values of the Protected Property identified above as those values exist at the time of this conveyance and as they may evolve in the future.

This Conservation Purpose is accomplished by confining the development, management and use of the Protected Property to activities and improvements that are consistent with the preservation of these Conservation Values, by prohibiting activities and improvements that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

2. RESTRICTIONS. Any activity or improvement on or use of the Protected Property in a manner that may significantly impair or interfere with a Conservation Value of the Protected Property or that is inconsistent with the terms or the Conservation Purpose of this Easement is prohibited.

This specifically prohibits any future development that would interfere with or intrude upon the essential scenic quality of the Protected Property or the visual enjoyment of the open and natural character of the Protected Property by the general public.

Except as specifically permitted in section 3 of this Easement and without limiting the general prohibition above, restrictions imposed upon the Protected Property expressly include the following:

- 2.1. Industrial and Commercial Activity. No industrial or commercial use of the Protected Property is allowed.
- 2.2. Agricultural Use. Except as specifically provided in this section, no agricultural use of the Protected Property is allowed. This includes and prohibits tilling, plowing, commercially cultivating row crops, keeping or grazing livestock, haying, feedlots, tree farms, orchards or nurseries. This does not include or prohibit vegetation management activities allowed in section 2.13 of this Easement or vegetation management activities allowed in accordance with an approved habitat management plan as provided in section 3.2 of this Easement.
- 2.3. Residential Use and Development. No residential use or development of the Protected Property is allowed.
- 2.4. Division of the Protected Property. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel under single ownership (joint or undivided) regardless of whether it now consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes.

The general prohibition set out above does not prohibit the following:

- a. The division of the Protected Property when a portion of the Protected Property is being conveyed to a conservation entity defined in section 7.1 of this Easement.
- b. The correction or adjustment of boundary lines to resolve a bona fide ownership dispute.

- 2.5. Density. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations, or ordinances controlling land use other than the plat of *Afton Creek Preserve*, recorded prior to this Easement. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property.
- 2.6. Rights of Way. No right of way shall be granted across the Protected Property by the Owner in conjunction with any industrial, commercial, or residential use or development of other land not protected by this Easement without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement.
- 2.7. Structures and Improvements. No temporary or permanent buildings, structures, utilities, roads or other improvements of any kind may be placed or constructed on the Protected Property except as specifically permitted in section 3 of this Easement or as set forth below:

- a. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced to serve only uses and activities specifically permitted by this Easement or to serve the overall residential development of *Afton Creek Preserve*. This includes, without limitation, any systems and facilities necessary to provide and maintain on-site power, fuel, water, storm water drainage, waste disposal, and communication, but does not permit communication towers, wind turbines, or similar structures without the prior approval of the Land Trust as provided in section 7.6 of this Easement.
- b. Signs. No billboards or other signs may be placed or erected on the Protected Property except for small, unlighted signs for informational or interpretive purposes, and those signs required or authorized under this section. The Owner agrees to place and maintain appropriate signs along the boundaries of the Protected Property as designated by the Land Trust and as provided in section 2.7.e below. Additionally, the Owner agrees that the Land Trust may place signs on the Protected Property identifying the land as protected.

The Owner may, during the construction and development of *Afton Creek Preserve*, erect and maintain necessary promotional signs advertising lots and homes for sale within *Afton Creek Preserve*. Such signs shall be removed by the Owner from the Protected Property upon completion of the initial build-out of *Afton Creek Preserve*.

- c. Roads. Currently, no roads or other rights of way exist on the Protected Property. No new roads, driveways or parking areas may be established or constructed on the Protected Property without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement.

- d. Trails. Currently, no trails exist on the Protected Property. A generally circular, mowed hiking trail may be established and maintained on Outlot B of the Protected Property and may be used by pedestrians, but not bicycles or motorized vehicles. Any additional trails on the Protected Property will be subject to the approval of the Land Trust under the provisions of section 7.6 of this Easement. Permitted trails may be established, maintained and used only in a manner that does not result in significant erosion and that does not impair or interfere with the natural habitat, water quality or scenic quality of the Protected Property.
- e. Fences. Prior to beginning construction on the first residential lot in *Afton Creek Preserve*, the Owner shall permanently stake all the boundaries of the Protected Property and install temporary boundary fences along those boundaries shared with a residential lot. Also at that time, the Owner shall post small permanent signs along the temporary fences bordering residential lots stating the land is permanently protected with a conservation easement in favor of the Land Trust. As soon as possible after the closing on the purchase of each residential lot, the Owner shall replace the temporary boundary fence located on that lot with permanent fencing consistent with the design of the entire residential development.

The Owner may install permanent boundary fences instead of the required temporary boundary fences along boundaries of the Protected Property that are shared with a residential lot, prior to beginning construction on the first residential lot.

- 2.8. Dumping. No trash, non-compostable garbage, debris, unserviceable vehicles or equipment, junk, other unsightly material or hazardous or toxic substances may be dumped or accumulated on the Protected Property.
- 2.9. Mining and Extraction. No mining, drilling, exploring for, or removing any minerals, sand, gravel, rock, or fossil fuels from the Protected Property is allowed.
- 2.10. Topography and Surface Alteration. After the grading of *Afton Creek Preserve* is completed, no alteration or change in the topography or the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil or other material, except as incidental to the development of *Afton Creek Preserve* or activities or uses specifically permitted by this Easement.

This provision does not include or prohibit creation, maintenance, restoration or enhancement of wildlife habitat or native biological communities otherwise permitted under section 3 of this Easement.

- 2.11. Water. With the exception of drainage easements reserved on the plat of *Afton Creek Preserve* and other drainage systems put in place on the residential Lots 1, 2, 4, 5, 6, 7 and 8 of Block 2, *Afton Creek Preserve*, no alteration, manipulation or diversion of

natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water or creation of new wetlands or water bodies is allowed except to restore or enhance wildlife habitat or native biological communities, to improve or enhance the function and quality of existing wetlands or water bodies or as specifically permitted in section 3 of this Easement.

Any alteration or creation of wetlands, watercourses or water bodies must be undertaken in accordance with a habitat management plan and detailed action plan approved by the Land Trust under section 3 of this Easement.

No activities on or uses of the Protected Property that cause significant erosion or that significantly impair water quality or quantity are allowed.

- 2.12. Vegetation Management. No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:
- a. In conjunction with the habitat management as specifically required in section 3.2 of this Easement.
  - b. As reasonably required to construct and maintain structures, trails and other improvements specifically permitted under this Easement and provided that following any construction disturbed vegetation shall be restored in a timely manner to a condition consistent with the Conservation Purpose of this Easement.
  - c. As minimally required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage.
  - d. Harvesting naturally occurring plant products (i.e. mushrooms, berries, nuts, herbs, prairie seed, etc.) in a manner that maintains a sustainable growth and reproduction cycle for the harvested plant populations and the surrounding vegetation.

Nothing in this section allows the intentional introduction of recognized invasive vegetation on the Protected Property. Section 2.12.c is intended to permit only limited, small scale activities. Any larger scale activities on the Protected Property require an approved habitat management plan and an approved detailed action plan in accordance with section 3.2 of this Easement.

- 2.13. Vehicles. After the grading of *Afton Creek Preserve* is completed, no use of motorized vehicles on the Protected Property is allowed except in conjunction with habitat management or restoration or enhancement, or in conjunction with the creation or maintenance of permitted trails or structures, or the maintenance of utility and drainage systems on the Protected Property, provided that any resulting erosion or soil compaction is repaired and replanted after such vehicle use. This provision is not intended to prohibit the use of any emergency vehicle on the Protected Property.

3. **RESERVED RIGHTS.** The Owner retains all rights associated with ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. The Owner may not, however, exercise these rights in a manner that impairs or interferes with the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Land Trust before exercising any reserved right that might impair or interfere with a Conservation Value of the Protected Property.

Without limiting the generality of the above, the following rights are expressly reserved and the Owner may use and allow others to use the Protected Property as follows:

- 3.1. **Right to Convey.** The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property. This right to convey the Protected Property is subject to the following provisions.
- a. **Covered Transactions.** Any lease, deed or other conveyance or any encumbrance of the Protected Property is subject to this Easement.
  - b. **Notice to New Owner.** The Owner will reference this Easement in any deed or other document by which the Owner conveys title to or any interest in the Protected Property.
  - c. **Notice to Land Trust.** The Owner will notify the Land Trust of any proposed conveyance of title to the Protected Property at least fifteen (15) days before closing. The Owner will also provide the Land Trust with the name and address and telephone number of the new owner of the Protected Property and a copy of the deed transferring title within fifteen (15) days after closing. Notice and documents shall be sent to the Land Trust in accordance with section 7.6 of this Easement.
  - d. **Designated Representative.** If the Protected Property is owned by an association of homeowners, the Owner shall provide the Land Trust with the name and address of the contact person for the association. Additionally, the Owner shall provide the Land Trust, on an annual basis, with a list of the current homeowners in *Afton Creek Preserve* with their mailing addresses.
  - e. **Notice of Action Affecting Easement.** The Owner will also notify the Land Trust of any proposed condemnation or any claim, legal proceeding, foreclosure or other legal action that might affect title to the Protected Property or the validity or enforceability of this Easement.

The enforceability or validity of this Easement will not be impaired or limited by any failure of the Owner to comply with this section 3.1.

- 3.2. **Habitat Management.** The Protected Property shall be used to create, maintain, restore, or enhance habitat for wildlife and native biological communities in

accordance with a habitat management plan approved by the Land Trust under the provisions of section 7.6 of this Easement. Specific habitat management, restoration or enhancement activities are permitted in accordance with an additional detailed action plan approved by the Land Trust under the provisions of section 7.6 of this Easement that is consistent with the approved habitat management plan. The detailed action may permit, in appropriate quantities and locations, the introduction of honey producing bees and the installation and maintenance of bee structures for the primary purpose of enhancing pollination of the restored prairie and other natural habitat, and for the secondary purpose of the production of honey. The Owner may actively manage, enhance or restore the vegetation on the Protected Property only in accordance with this approved detailed action plan, or as otherwise permitted under section 2.12 of this Easement.

- 3.3. Recreational and Educational Uses. The Protected Property may be used for hiking, nature observation or study, and other non-intensive recreational and educational programs or activities that have no more than minimal impact on the Conservation Values of the Protected Property.

Minor rustic structures such as trail barriers, benches, picnic tables and informational kiosks that do not impair or interfere with the natural habitat or scenic qualities of the Protected Property may be placed on the Protected Property in conjunction with these activities.

4. LAND TRUST'S RIGHTS AND REMEDIES. In order to accomplish the Conservation Purpose of this Easement to preserve and protect the Conservation Values of the Protected Property, the Land Trust has the following rights and remedies:

- 4.1. Right to Enter. The Land Trust has the right to enter the Protected Property at reasonable times and in a reasonable manner for the following purposes:
- a. To inspect the Protected Property and to monitor compliance with the terms of this Easement.
  - b. To obtain evidence for use in seeking judicial or other enforcement of this Easement.
  - c. To survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Easement.
  - d. To otherwise exercise its rights under this Easement.
- 4.2. Access. In order to enter the Protected Property, the Land Trust has a non-exclusive, perpetual right of access that benefits the Protected Property, over that other property

currently owned by the Owner and legally described in Exhibit C attached to this Easement and incorporated by this reference and as identified on the Property Map.

4.3. Right of Enforcement. The Land Trust has the right to prevent or remedy violations of this Easement, including prohibiting the construction of buildings or improvements on the Protected Property, through appropriate judicial action brought in any court of competent jurisdiction, or through other methods of dispute resolution, against the Owner or other responsible party.

a. Notice. The Land Trust may not initiate judicial action until the Owner has been given notice of the violation, or threatened violation, of this Easement and a reasonable opportunity to correct the situation. This provision shall not apply if in the Land Trust's sole discretion and exclusive judgment immediate judicial action is necessary to prevent or mitigate significant impairment to or interference with the Conservation Values of the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.

b. Remedies. In enforcing this Easement, the Land Trust has the right to:

- Temporary or permanent injunctive relief for any violation or threatened violation of this Easement.
- Require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement.
- Specific performance or declaratory relief.
- Recover damages resulting from a violation of this Easement or injury to any Conservation Values associated with the Protected Property.

These remedies are cumulative and are available without requiring the Land Trust to prove actual damage to the Conservation Values of the Protected Property.

The Land Trust and the Owner agree that the damages created by a violation of this Easement may be determined by calculating the cost of acquiring a conservation easement over similar property. The Land Trust and the Owner also recognize that restoration may be the only adequate remedy for certain violations of this Easement.

The Land Trust is entitled to seek expedited relief, ex parte if necessary, and shall not be required to post any bond applicable to a petition for such relief.

c. Costs of Enforcement. The Owner shall be responsible for all reasonable costs incurred by the Land Trust in enforcing this Easement, including without limitation costs of suit, attorneys' fees, and expenses related to restoration of the Protected Property. If, however, the Owner ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs and attorneys' fees.

- d. Enforcement Decisions. The Land Trust does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the Land Trust in discovering a violation or initiating enforcement proceedings. The Land Trust shall not be barred by any applicable statute of limitations in bringing any action to enforce the terms of this Easement.
- e. Acts Beyond Owner's Control. The Land Trust may not bring an action against the Owner for any change to the Protected Property resulting from any of the following:

- Causes beyond the Owner's control such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of third parties.
- Reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

Actions by the Owner's lessees, agents, employees or contractors, as well as actions by parties entitled to use the Protected Property, are not considered unauthorized acts of third parties.

In the event the Owner fails to enforce required third party compliance with the Easement restrictions in a reasonable manner, and to restore the Protected Property to its condition before the violation occurred, the Land Trust may bring an appropriate judicial action against the Owner for a violation of this Easement or injury to any Conservation Value associated with the Protected Property resulting from causes created by such third parties.

This section does not preclude the Owner or the Land Trust from recovering damages or bringing an action against any third party for trespass or other violation of their respective rights in this Easement or in the Protected Property.

- f. Right to Report. In addition to other remedies, the Land Trust has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.
- g. Enforcement Rights of Others. Nothing in this Easement is intended to create any right to enforce this Easement in any third party where no such right otherwise exists under this Easement or under law.
- 4.4. Limitation on Rights. Nothing in this Easement gives the Land Trust the right or responsibility to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, the Minnesota Environmental Response and

Liability Act, or other similar successor federal, state or local statutes or laws regarding responsibility for environmental conditions associated with contamination.

5. PUBLIC ACCESS. Although the public benefits from this Easement through the preservation and protection of the Conservation Values of the Protected Property, nothing in this Easement gives the public a right to enter upon or use the Protected Property where no such right exists otherwise. However, the public has a right to use any public trails established on the Protected Property.
6. DOCUMENTATION. The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement are more fully described in the Baseline Documentation Report on file at the office of the Land Trust. The Owner and the Land Trust acknowledge that the Baseline Documentation Report accurately represents the condition of the Protected Property at the time of this conveyance and may be used by the Land Trust in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This Baseline Documentation Report, however, is not intended to preclude the use of other information and evidence to document the present condition of the Protected Property in the event of a future controversy.

## 7. GENERAL PROVISIONS.

- 7.1. Assignment. This Easement may be assigned or transferred by the Land Trust only to a conservation entity defined as a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and as an authorized conservation easement holder under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the Land Trust by this Easement.

As a condition of any assignment or transfer, the Land Trust will require any future holder of this Easement to continue to carry out the Conservation Purpose of this Easement in perpetuity.

The Land Trust will notify the Owner of any assignment within thirty (30) days after the assignment and will provide the Owner with the name and address of the new holder.

- 7.2. Amendment. Under appropriate circumstances, this Easement may be modified or amended. However, the Land Trust may in its sole discretion and exclusive judgment refuse to agree to any amendment or modification of this Easement, including any amendment in which the following apply:

- The amendment is inconsistent with the Conservation Purpose of this Easement.
- The amendment will impair or interfere with the Conservation Values of the Protected Property.
- The amendment affects the perpetual duration of this Easement.

- The amendment affects the validity of this Easement under Minnesota law or the status of the Land Trust under Sections 501(c)(3) and 170(h) of the Internal Revenue Code or successor or related law.
- The amendment creates or results in impermissible private benefit or private inurement as prohibited by 501(c)(3) of the Internal Revenue Code.
- Lienholders of existing liens and mortgages will not agree to subordinate their interests to the amended Easement.

Any amendment or modification must be in writing and recorded in the same manner as this Easement.

7.3. Termination. This Easement may be terminated or extinguished in whole or in part only as set out in this section.

- a. Change of Circumstances. This Easement may be terminated or extinguished if circumstances arise that make continued use of the Protected Property in a manner consistent with the Conservation Purpose of this Easement impossible or impractical. In this event, this Easement may be extinguished only through judicial proceedings.
- b. Condemnation. This Easement may be terminated or extinguished pursuant to the proper exercise of the power of eminent domain.
- c. Proceeds upon Termination. Following any termination or extinguishment of this Easement in whole or in part, the Land Trust shall be entitled to a portion of the proceeds from any sale, exchange or involuntary conversion of the Protected Property.

The Land Trust's share of the proceeds shall be an amount equal to the fair market value of this Easement at the time of the extinguishment but not less than an amount equal to the proportionate value that this Easement bears to the value of the Protected Property as a whole at the time of this conveyance.

The value of this Easement at the time of extinguishment or termination shall be calculated by the method required by the Internal Revenue Service for calculating an income tax deduction for a charitable donation of a conservation easement.

The Land Trust will use the resulting share of its proceeds in a manner consistent with the Conservation Purpose of this Easement.

7.4. Warranties. The current Owner represents and warrants as follows:

- a. The current Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Easement to the Land Trust.

- b. The Protected Property is free and clear of all rights, restrictions and encumbrances other than those subordinated to this Easement or otherwise specifically agreed to by the Land Trust.
- c. The Protected Property is not subject to any pending claim, legal proceeding, foreclosure or other legal action affecting title to the Protected Property or the validity or enforceability of this Easement.
- d. The current Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Protected Property that is in violation of a federal, state, or local environmental law and will defend, indemnify and hold the Land Trust harmless against any claims of contamination from such substances.

7.5. Ownership Responsibilities, Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities related to the use, ownership, and maintenance of the Protected Property.

- a. Taxes. The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Land Trust created by this Easement. The Land Trust may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to immediate reimbursement from the Owner.
- b. Regulatory Compliance. All activities or construction permitted by this Easement shall be undertaken in accordance with applicable federal, state and local laws, regulations and ordinances and nothing in this Easement shall be construed to exempt the Protected Property or the Owner from otherwise applicable laws or regulations.

The Owner is solely responsible for obtaining any required governmental permits.

- c. Indemnity. The Owner shall defend, indemnify, and hold the Land Trust harmless from any and all costs or liability, including but not limited to, reasonable attorney fees and court costs, for any loss, damage, or personal injury occurring on or related to the Protected Property or the existence of this Easement, except to the extent attributable to the negligence of the Land Trust.
- d. Insurance. The Owner will name the Land Trust as an additional insured on any general liability insurance policy carried by the Owner with respect to the Protected Property.
- e. Future Environmental Condition. The Owner is solely responsible for Owner's use or release on the Protected Property of any hazardous or toxic substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, the Minnesota Environmental Response and Liability Act, or other similar successor federal, state or local law or regulation regarding responsibility

for environmental conditions associated with contamination. The Owner shall take all steps necessary to assure any needed containment or remediation resulting from any release of such substance.

7.6. Notice and Approval. Any notice or request for approval required by this Easement must be in writing and is subject to the following.

- a. Approval Requirements. No activity requiring the prior approval of the Land Trust may proceed without the Land Trust's written approval as set out in this section. Approval of the Land Trust must be in writing to be effective. Failure of the Owner to receive approval from the Land Trust constitutes denial of the request.
- b. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

To the Owner:  
Albert W. Carlson, Trustee  
2534 Stagecoach Trail South  
Afton, MN 55001

And to:  
Joe Bush  
XXXXXX  
XXXXXX

To the Land Trust:  
Minnesota Land Trust  
2356 University Avenue West  
Suite 240  
St. Paul, MN 55114

- c. Timing. Unless otherwise specified in this Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.
- d. Content. The notice or request for approval must include sufficient information to allow the Land Trust to make an informed decision on whether any proposed activity is consistent with the terms and Conservation Purpose of this Easement. At a minimum, this should include:
  - The location, nature, and scope of the proposed activity.
  - The proposed use, design, and location of any structure or improvement.

- The plan for any needed restoration of the Protected Property following construction.
  - Any potential impact on the Conservation Values of the Protected Property.
- e. Approval Decisions. The Land Trust may withhold its approval if it determines in its sole discretion that the proposal may impair or interfere with the Conservation Values of the Protected Property or is inconsistent with the terms or Conservation Purpose of this Easement or lacks sufficient information to allow the Land Trust to reach an informed decision. The Land Trust may condition its approval on the Owner's acceptance of modifications, which would, in the Land Trust's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.

7.7. Binding Effect. This Easement creates a property right immediately vested in the Land Trust and its successors and assigns that cannot be terminated or extinguished except as set out herein.

This Easement shall run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the current Owner of the Protected Property, all successors in title to the Protected Property and all other parties entitled to possess or use the Protected Property.

If at any time the Land Trust or other holder of this Easement becomes the owner of all or a portion of the fee interest in the Protected Property, this Easement shall not be deemed to merge with the underlying fee interest but shall remain in force and effect unless otherwise terminated or extinguished as set out herein.

7.8. Definitions. Unless the context requires otherwise, the following terms are defined as follows:

- a. "Owner" includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property.
- b. "Land Trust" includes the Minnesota Land Trust and its successors or assigns to its interest in this Easement.
- c. "Easement" includes both this instrument of conveyance and the property interest conveyed from the Owner to the Land Trust.

Other terms may be defined throughout this Easement.

7.9. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for acts or

omissions occurring prior to the transfer or termination will survive that transfer or termination.

- 7.10. Recording. The Land Trust will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The Land Trust may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement.
- 7.11. Interpretation. This Easement shall be interpreted as follows:
- a. Controlling Law and Construction. This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its Conservation Purpose and to the policies and purposes of Minnesota Statutes Chapter 84C.
  - b. Severability. A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.
  - c. Captions. Captions have been inserted in this document solely for convenience of reference and shall have no effect upon interpretation or construction.
  - d. Future Economic Condition. A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible or impractical for continued use of the Protected Property for the Conservation Purpose and shall not constitute grounds for terminating the Easement.
- 7.12. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably needed by the Land Trust to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any error or mutual mistake, legal description or title matter or to comply with any federal, state, or local law, rule or regulation.
- 7.13. Entire Agreement. This document sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions or understandings.
- 7.14. Signatures. This Easement may be completed with the signatures of the parties to this Easement executed and notarized on separate pages which when attached to this document shall constitute one complete document.

*The remainder of this page has been intentionally left blank.*

IN WITNESS WHEREOF, the Owner has voluntarily executed this Easement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OWNER:

\_\_\_\_\_  
Albert W. Carlson, as trustee of the Trust Agreement of Albert W. Carlson U/T/D February 17, 2010

State of MINNESOTA    )  
  ) ss  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Albert W. Carlson, as trustee of the Trust Agreement of Albert W. Carlson U/T/D February 17, 2010.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ACCEPTANCE**

The MINNESOTA LAND TRUST hereby accepts the foregoing Easement effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MINNESOTA LAND TRUST

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

Title: \_\_\_\_\_

State of MINNESOTA    )  
  ) ss  
County of RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the Minnesota Land Trust, a non-profit corporation under the laws of the State of Minnesota, on behalf of said corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

This document drafted by:

Minnesota Land Trust  
2356 University Avenue West  
Suite 240  
St. Paul, MN 55114

Exhibit A

Legal Description of Protected Property

Outlots A and B, Afton Creek Preserve, Washington County, Minnesota.

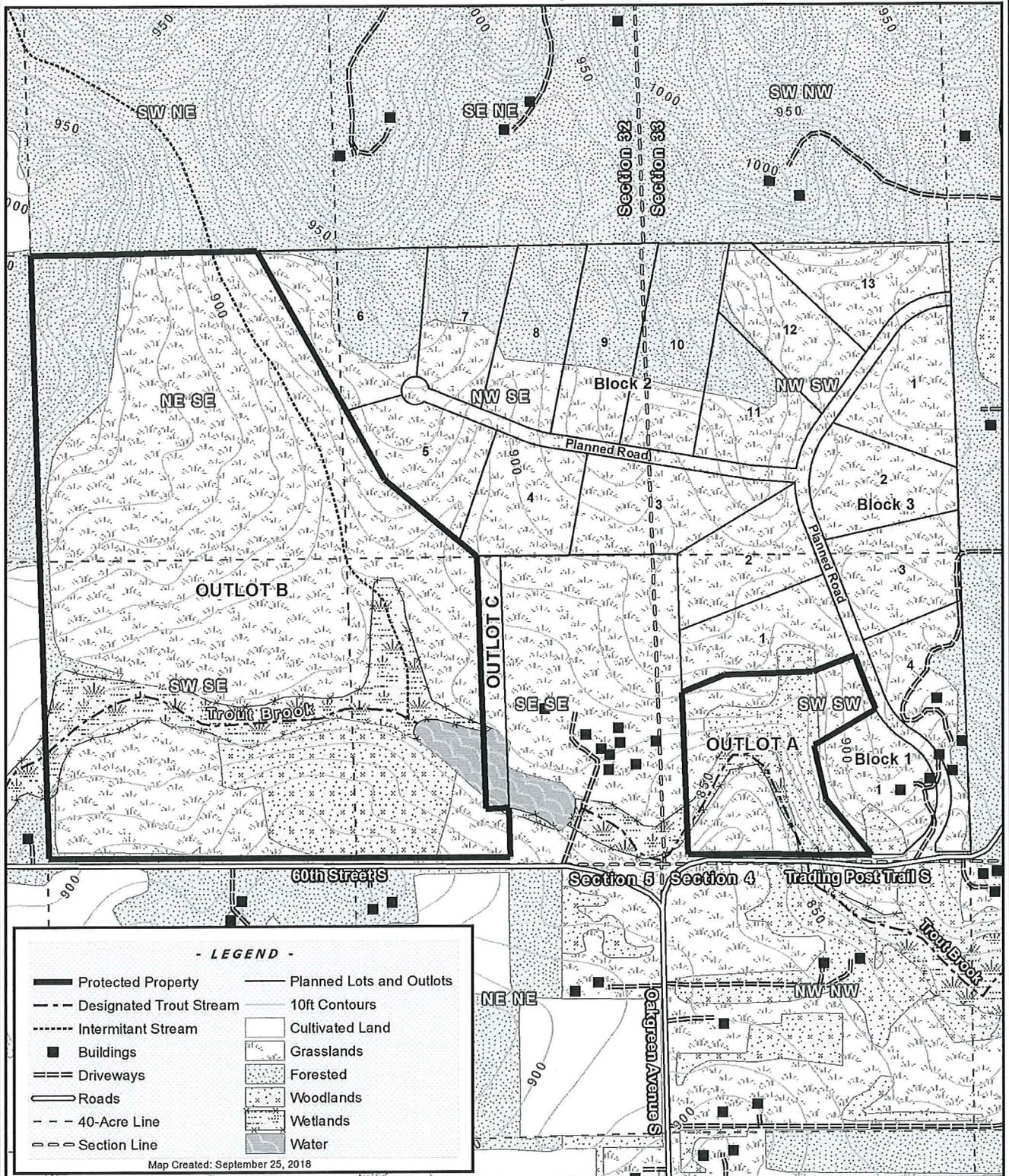
draft

Exhibit B

Property Map

*draft*

# Exhibit B: Property Map



**- LEGEND -**

Protected Property	Planned Lots and Outlots
Designated Trout Stream	10ft Contours
Intermittent Stream	Cultivated Land
Buildings	Grasslands
Driveways	Forested
Roads	Woodlands
40-Acre Line	Wetlands
Section Line	Water

Map Created: September 25, 2018

**Map Resource Information**

Protected Property, Section Lines, Buildings, Roads, Driveways & Minor Roads, Contours, Cultivated Land, Forested, Grasslands, Woodlands, Wetlands & Water created by Community GIS Services Inc.

Users of map agree and acknowledge that Community GIS Services Inc. and the Minnesota Land Trust cannot be held liable for accuracy of GIS material provided. GIS materials should not be relied upon to establish legal title, boundary lines, or locations of improvements.

**Site: Afton Creek Preserve - Tract: Carlson**

Washington County - Twp. 28 N Rng. 20 W Sec. 32



Scale: 1" = 600'

Exhibit C

Legal Description of Access Easement

TOGETHER WITH a 20.00 foot wide easement for ingress and egress purposes over, under and across all that part of Lot 5, Block 2 and all that part of Lot 6, Block 2, Afton Creek Preserve, on file and of record in the Office of the County Recorder, Washington County, Minnesota lying 10.00 feet on either side of the following described center line:

Beginning at the westerly most corner of said Lot 5; thence North 74 degrees 35 minutes 56 seconds East, bearings are based on said plat of Afton Creek Preserve, along a northerly line of said Lot 5, a distance of 248.27 feet, more or less, to its intersection with the public way dedicated as Prairie Wind Court and said center line there terminating.

The sidelines of said easement are to be prolonged or shortened to terminate on said public way and are to be prolonged or shortened to terminate on an easterly line of OUTLOT B.

CITY OF AFTON  
WASHINGTON COUNTY, MINNESOTA

PRIVATE IMPROVEMENT  
DEVELOPER'S AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of July, 2018, by and between the

CITY OF AFTON  
3033 Saint Croix Trail  
PO Box 219  
Afton, MN 55001

A Minnesota Statutory City organized under the laws of the State of Minnesota, (the "City"), and

J.P. BUSH HOMES, INC.  
1980 Quasar Avenue  
Lakeland, MN 55043-5504

A Minnesota Corporation, organized under the laws of the State of Minnesota (the "Developer"), and

Albert W. Carlson  
as Trustee of the Trust Agreement of Albert W. Carlson U/T/D February 17, 2010  
a Trust organized under the laws of the State of Minnesota, (the "Guarantor")

**WITNESSETH**, That:

**WHEREAS**, the Developer has made, by its representative, Joseph P. Bush, an application to the City Council, for approval of a Planned Unit Development, as allowed under the City's zoning code and within the corporate limits of the City, on land totaling approximately 218.6 acres owned by William Carlson and JP Bush homes, and legally described in the official records of Washington County, Minnesota, as follows:

---

LEGAL DESCRIPTION:

PID #30.028.XXXX  
PID #30.028.21.XXXX  
PID # 30.028.21.XXXX

(and located at the address of 14220 60<sup>th</sup> Street S., Afton, MN 55001)

---

**WHEREAS**, the City Council granted all necessary preliminary and final approvals to the Planned Unit Development proposal, on \_\_\_\_\_, 2018, upon the condition

that certain changes be made to the proposal in accordance with the recommendations of the City's staff prior to Final Plat approval and on the condition that the Developer enter into this agreement stipulating the conditions for land acquisition, the provision for site access to adjacent, existing roadways, the installation of stormwater treatment, roads, paths and other public improvements within and adjacent to the proposed plat, as well as the development of on-site improvements, including landscaping and environment mitigation, hereinafter described, all in accordance with the terms and conditions hereinafter set forth.

### Definitions

Completion of the Development: A point in time when a Certificate of Occupancy has been issued and the driveway installed for all buildable lots within the development, and all open area within or disturbed as part of the development is vegetated as provided in the plans provided by Developer and approved by the City.

Improvements: Shall include all Grading, Landscaping, Septic System site preparation, Storm Sewers and Appurtenances, Trails, Public Access and Street and Roadway improvements as shown by the Plans and Specifications prepared by \_\_\_\_\_ entitled "Afton Creek Preserve PLCD" dated \_\_\_\_\_, 2018 and revised thru \_\_\_\_\_, 2018 as approved by the City of Afton and its Engineer.

**NOW, THEREFORE**, in consideration of the premises and of the mutual promises and conditions hereinafter contained, it is hereby agreed as follows:

### Land Acquisition

This development is predicated upon the purchase in fee by the Developer of all of the above-described parcels

The Developer shall furnish the City with evidence of fee ownership of the property being platted by way of an attorney's title opinion or title insurance commitment dated not earlier than 30 days prior to the execution of the Plat.

The Developer shall, prior to the acceptance of the Final Plat, show ownership of the parcel located at 5550 Odell Avenue and provide a perpetual easement over that parcel that will access the Plat with an acceptable roadway built to urban standards and designs and approved by the Afton City Engineer. The developer will provide an acceptable method to assure the long term use of that easement including maintenance thereof, for a period of not less than 40 years.

### Designation of Improvements

The City agrees that prior to construction of any improvements, it will undertake, with Developer's cooperation as necessary, a determination as to whether Developer has sufficient means to construct the minimum improvements noted below.

Improvements to be installed at Developer's expense by the Developer include (but should not be considered to be limited to): Grading, Landscaping, Storm Sewers and Appurtenances, including Holding Ponds, and Street and Roadway Improvements hereinafter noted and attached hereto.

1. **Developer Improvements.** The Developer shall secure a contractor to install these improvements, hereinafter referred to as the "Developer Improvements," which contractor shall be approved by the City in its absolute discretion. The cost of Developer Improvements is as shown on Exhibit C attached hereto. All Developer Improvements shall require City inspection and approval and, where appropriate, the approval of any other governmental agency having jurisdiction. The Developer shall construct and install at the Developer's expense the following improvements according to the following terms and conditions:
  - a. Site Grading
    - i. No grading shall commence until all requirements of the South Washington Watershed District (SWCWD) have been satisfied.
    - ii. All site grading shall be conducted in accordance with the grading plan as approved by the City and in accordance with NPDES and SWWD requirements. The Developer shall perform the work in accordance with a Storm Water Pollution Prevention Plan (SWPPP) pursuant to Minnesota Pollution Control Agency (MPCA) requirements.
  - b. Grading and Erosion Control
    - i. The Developer shall grade the site to within 0.2 foot of the grades shown on the approved grading plan. No deviations will be allowed unless a revised plan is submitted and approved by the City and all other regulatory agencies.
    - ii. The street right-of-way, storm water storage ponds, and surface water drainage ways shall be graded prior to commencement of utility construction.
    - iii. The Developer shall be responsible for ascertaining that site geotechnical and groundwater conditions are adequate and conforming with the grading and site improvement as proposed.
    - iv. The Developer's engineer shall certify in writing, with an as-built survey, that all grading complies with the approved grading plan prior to issuance of any building permits.
    - v. The Developer shall promptly clear dirt and debris within public rights-of-way and drainage and utility easements resulting from construction by the Developer, its purchasers, builders and contractors within five (5) days after notification by the City. The

Developer shall be responsible for all necessary street and storm sewer maintenance, including street sweeping, until all home construction is completed, unless otherwise released by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on them, including detour signs if necessary. If and when the streets become impassable, such streets shall be barricaded and closed. The Developer shall maintain a smooth, hard driving surface and adequate drainage on all temporary streets.

- c. Final street grading, subbase, gravel base, concrete curb and gutter, and bituminous base course and wear course shall be furnished and installed.
- d. Sidewalks, paths and street lighting as required by the City.
- e. Storm sewers, when determined to be necessary by the City Engineer, including all necessary laterals, catch basins, inlets and other appurtenances, shall be furnished and installed.
- f. The Developer shall place iron monuments at all lot and block corners and at all other angle points on boundary lines. Iron monuments shall be placed after all street and lawn grading has been completed in order to preserve the lot markers for future property owners. Lot corner irons on the back-property line shall be installed so that the top of the iron corresponds to the finished ground elevation in accordance with the approved grading plan. Guard stakes shall be appropriately installed to mark these irons.
- g. Landscaping shall be furnished and installed in accordance with the approved plans.
- h. Land shall be developed in increments of workable size such that adequate erosion and siltation controls can be provided as construction progresses. The smallest practical area of land shall be exposed at any one period of time. Such exposed areas shall be identified on the approved grading plan. All utilities must be installed underground.
- i. As part of the mass grading of the site, topsoil shall be removed and set aside for respreading over the developed area. Topsoil shall be of a quality at least equal to the soil quality prior to development. Topsoil shall not be removed from the site unless authorized by the City
- j. Failed erosion control structures or apparent need for additional erosion control measures will be addressed within twenty-four (24) hours notification by the City. If the Developer fails to perform the requested corrections in the time frame given, the Developer hereby grants the City consent to enter onto the property to perform the corrective work. The Developer will reimburse the City for all erosion control work performed on their behalf.

- k. The drainage and utility easement within Lot 4, Block 3 shall not be constructed or deemed approved for construction without a separate review and approval by the City Engineer. In addition, such approval will not be deemed to have occurred until the City, by its Attorney, agrees to the means by which the maintenance responsibilities will occur, including any necessary subsequent assessments for repair.
- l. The Developer shall provide a twenty-foot-wide access easement to the City between Lots 5 and 6, Block 2, for fire and emergency access in a configuration approved by the City Engineer.
- m. The Developer expressly recognizes that this subdivision is located on land of exceptional environment sensitivity, particularly with respect to the existence on this site of a natural trout stream. All technically feasible and necessary precautions will be taken during construction on this site to assure that no pollution or other damage to this resource will occur as the result of the construction process.
- n. The Developer shall be responsible for constructing any Roadway, Retaining Ponds, Trails and Signages as described on the Afton Creek Preserve plans and specifications as approved by the City Engineer. Said facilities shall include the roadway base, curb and gutter, if any, signage, parking stalls, if any, and sidewalks, if any, associated with said improvements. Said facilities, which after construction and review and inspection and recommendation of acceptance by the City Engineer shall become the property of the City. The City may assess subsequent property owners in the Development for subsequent repair or maintenance of any improvements, including any water retention system in the Development.

## **2. Record Drawings.**

- a. Upon project completion, Developer shall submit record drawings, in electronic and written format, of all public and private infrastructure improvements, including grading, storm sewer and water retention and drainage facilities, and roads and trails, constructed by Developer. The files shall be drawn in Washington County NAD 83 Coordinate system and provided in both AutoCAD .dwg and Adobe .pdf file formats. The plans shall include accurate locations, dimensions, elevations, grades, slopes and all other pertinent information concerning the complete work.
- b. The Developer shall submit certified compaction testing results for the site grading operations.
- c. A summary of the record plan attribute data for the storm sewer, watermain, and sanitary sewer structures and pipes shall be submitted in the form of an Excel Spreadsheet as provided by the City Engineer.

- d. No securities will be fully released until all record drawings have been submitted and accepted by the City Engineer.

### 3. **Iron Monuments and Markers**

As per Minnesota State Statute 505.03 the Developer shall place iron monuments at all lot and block corners and at all other angle points on boundary lines. Where lot lines are platted in wetland areas, the Developer shall place approved wetland boundary markers on the designated wetland edge. Markers shall be placed on every other lot line where the wetland boundary intersects with the lot line. Markers shall be placed before grading activities begin and shall remain undisturbed while grading activities continue. All lot lines, including those of the proposed Lot 2, Block 3, shall be drawn substantially at right angles to straight street lines and radial to curved street lines.

The developer shall install signage along the boundaries of the dedicated Conservation Areas in the plat. Signs shall be installed at least every one hundred fifty feet (150') along the Conservation Area boundaries, with at least one sign on each private lot. The signs shall identify the area as a public conservation area where no vegetative cutting, construction, disturbance, or other encroachment is permitted.

The conservation areas shall be designated as two Outlots on the Plat. Their ownership and a management plan must be approved by the City after review and recommendation by the City Attorney as a condition of any final Plat Approval. This will specifically include provision for the participation of the Minnesota Land Trust in the ongoing maintenance and utilization of the conservation areas. Failure to receive any such approval shall void this agreement.

### 4. **Lot Trees/Sodding and Landscaping**

The Developer shall complete all vegetative plantings as described by the approved Landscape Plan. The Developer shall maintain the vegetative plantings installed as described by the Engineering Plans for a period of twelve months following the completion and final acceptance by the City of the development. Any plant stock, which dies or fails to flourish during the twelve-month period shall be replaced by the Developer and maintained through a further twelve-month period. The Developer shall place trees in the front yard of Lot 8, Block 2 unless express approval is given by the City not to include those plantings. The Developer will be responsible for sodding all interior and right-of-way areas that are not paved and all disturbed areas. The Developer will also be responsible for sodding, rip rap-ing, or similar erosion control, drainage swales and emergency overflow swales as directed by the City. The responsibility for sodding boulevards may be transferred to a building permit applicant when proper security is provided to the City. The sodding limits must extend to the back curb or to the shoulders of all adjacent roadways.

A final detailed landscape plan shall be submitted to and approved by the City before building permits will be issued or by a time as authorized by the City in

writing. No less than 60% of each residential lot shall be planted in natural prairie grasses, flowers and other plants, including existing trees.

The Developer shall provide a financial guarantee for all improvements, as described herein and shall include the estimated cost of the Landscape Plan improvements and sodding described by said plans

5. **Signage**

The Developer shall be financially responsible for all Public traffic signs and provide other traffic control signs determined to be necessary by the City.

All signs advertising the PLCD and general sales of lots or residences within the development (including lighting of such signs) must comply with the City's sign ordinance and policies and be approved by the City in advance of installation.

6. Tree Protection and Removal

The Developer shall protect existing trees and remove trees as per the approved final grading plan before building permits will be issued or by a time as authorized by the City in writing.

7. Street Maintenance

The Developer shall be responsible for street maintenance, including curbs, sodding of right-of-way areas, and street sweeping until the project is complete. All streets shall be maintained free of debris and soil until the development is completed. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and directing attention to detours. If and when the street becomes impassible, such streets shall be barricaded and closed. In the event residences are occupied or actively under construction prior to completing streets, the Developer shall maintain a smooth driving surface, adequate drainage, and provide snow and ice control on all incomplete streets.

It is understood that the City will perform snow plowing and any other normal City street maintenance after completion of construction and during the Warranty Period. If the Developer requests and the City agrees to provide any snowplowing or other maintenance prior to completion of construction, such plowing and maintenance shall be at the expense and risk of the Developer. The City shall not be responsible for any damage to any improvements prior to completion of construction.

8. Damage Responsibilities

The Developer shall be financially responsible for the repair of any damage done to the streets and public utilities from the time of installation until the development is fully completed and approved by the City.

## 9. Street Lights

If the City approves street lights, the Developer shall furnish streetlights in accordance with the approved plans. The streetlights shall conform to City Code in all respects.

### General Requirements:

- a. Street lighting systems located on City property shall be owned, installed, operated and maintained by the electric utility company. The City and the electric utility company shall enter into a contractual agreement to the rate and maintenance of the street lighting system.
- b. It shall be the responsibility of the Developer to:
  - 1) Pay the electric utility company for the purchase of all components of the street lighting system.
  - 2) Pay the electric utility company any cost incurred in the installation of the street lighting units not covered in the electric utility company rate for this service.
  - 3) Pay the on-going operational costs for the street lights, including electricity and maintenance costs.
  - 4) The style of the lighting system along with the purchase and installation costs will be established by the City Council. An alternate lighting system style will require City approval. The Developer shall pay any additional costs.
  - 5) All of the street lighting costs shall be guaranteed by part of the Developer's security as outlined in this Agreement.

## 10. Park Dedication and Improvements

The developer shall provide a cash park dedication fee to meet park dedication requirements, to be calculated as required by City Code. Based on the park dedication fee calculation, the park fee due to the City is \$180,000. This amount shall be due and payable upon approval of the Final Plat, and prior to recording of the Final Plat.

## 11. Storm Water Holding Ponds/Groundwater and Wetland Issues

The Developer shall maintain ownership of all storm water holding facilities as located of said property, as required by the City. The Developer shall be responsible for storm sewer cleaning and holding pond dredging, as required, by the City prior to completion of the development. Upon completion of the development, the Developer shall submit to the City a certified as built grading plan showing that the facilities meet all design contours as set by the City. To the extent any further maintenance of the facilities were to be required of the City in the future,

Developer shall agree for the City to assess those costs to the Developer or to any future property owner in the Development in a manner proportionate to the overall percentage of the property in the development owned by that individual owner.

The Developer shall be financially responsible for any corrective action deemed necessary by the City because of groundwater encountered during, or because of, the building phase of development.

All wetland and drainage areas within public drainage easements shall not be filled, altered or disturbed without the prior written consent of the City. In the event that any drainage areas on a lot have been filled, altered, or disturbed without the prior written consent of the City and the same is not corrected within thirty (30) days after notice thereof by the City to the owner(s) of such lot, the City, and its agents and contractors, shall have the right to enter upon such lot for the purpose of performing work necessary to correct the disturbance and repairing any damage caused by the disturbance, and assess the costs thereof against the lot, provided, however, that in the event of an emergency, the City shall not be required to provide notice and an opportunity to the lot owner(s) to perform such necessary work, but may nonetheless assess the cost thereof to the lot.

## 12. Grading and Surfacing of Roadways

Streets shall be graded to the full width of the right-of-way in accordance with street grades submitted to and approved by the City Engineer. All street grading and gravel base construction will be in accordance with specifications on file in the City and with the review and approval of the City Engineer. Grading must be completed prior to the issuance of any building permits.

Following City Engineer Approval of street grading, streets shall be surfaced, in accordance with the latest recommended plans and specifications provided to and approved by the City. Developer shall wait to pave the bituminous wear course on streets until the earlier of the following to occur: (1) three years from the date of installation of the bituminous base course; and (2) the completion of 75% of the residential homes construction for the applicable phase of the development. Along the curbing of the concrete median at the 60<sup>th</sup> Street entrance, a bituminous ramping wedge must be installed by the developer along with the bituminous base course. Prior to paving the bituminous wear course, the ramping wedge must be milled off. The City will thoroughly inspect the median for damage prior to the installation of the bituminous wear course and may require repairs and/or replacement by Developer depending on the severity of the damage.

The Developer shall be responsible for paving 60<sup>th</sup> Street from Trading Post Trail to Neal Avenue according to plans and specifications prepared by a registered engineer retained by the developer. Plans and specifications shall be submitted to the City of Afton and Denmark Township for review and approval. This construction will be deemed separate from the Development and will require separate security be provided to the City in a form and manner acceptable to the City after review by its Engineer and Attorney. The paving of 60<sup>th</sup> Street shall be included in the "Off-site Improvements" listed under Plan Security Requirements and Description of

Improvements below.

The existing farm access road from Trading Post Trail shall not be used as a construction thoroughfare or road for the development. Upon approval of the final plat, ownership of the farm access road shall be transferred, at no cost, to either or both Dawson/Lewandowski and McConnell, the abutting property owners.

All driveways shall be designed and constructed to fully comply with the provisions of §12-84 of the Afton City Code.

13. Grading and Surfacing of Trails

Trails shall be graded in accordance with the plans approved by the City. All grading and base construction will be in accordance with specifications on file in the Public Works Department. Following Public Works Department approval of trail grading, trails shall be surfaced in accordance with the plans and specifications approved by the City. The City will thoroughly inspect the trails and may require repairs and/or replacement by the Developer. The Developer shall restore the vegetated areas adjacent to the trails within the trail easement area with a seed mix approved by the City.

14. Landscaping

Revegetation

Prairie Restoration shall be the vendor planting the conservation easement and the initial planting of all residential lots with a seed mix matching the one submitted with the preliminary plat application.

The security for the development shall include the initial planting by Prairie Restoration, as well as three additional years of maintenance of the vegetation by Prairie Restoration.

15. Screening of Abutting Properties

Lots 1,2,3,4 Block 2, abutting the Turner Rohde Horse Farm, will have a 100 foot setback instead of the required 50 foot setback. Will Carlson will install ever-green trees and prairie grass as a screening buffer within the 100 foot setback area. Tree height will be a minimum of 12 feet with proper spacing for screening. City to review and approve a tree/vegetation plan for the 100 foot setback area abutting the Turner Rohde Horse Farm, and no tree removals shall be allowed in this area without the approval of the City.

Lot 13 Block 2 and lots 1,2,3, 4 Block 3 that are abutting the Graham, Dawson/Lewandowski, McConnell, Rickard, Mettler, Dickes and Forbes properties will

also have an increased setback of 100 feet. Will Carlson will also provide ever-green trees in locations that help screen sightlines to new homes.

Will Carlson has 2.5 acres of land abutting the Turner Rohde Horse Farm that are not being used in the development site requirements or lots. He will either provide an easement for use of this land or the sale of this land for \$1.00 to the Turner Rohde Horse Farm owners.

Tree border to be provided to block farm access road from the development on eastern boundary.

Tree border to be provided along eastern boundary of the development abutting existing properties.

The Security for the development shall include all screening of abutting properties, as well as all trees to be planted on the individual lots of the subdivision

16. Other Governmental Jurisdictions

The Developer shall be responsible for securing all necessary approvals and permits from all appropriate Federal, State, Regional, and local jurisdictions prior to the commencement of site grading or construction and prior to the City awarding construction contracts for public utilities. This includes any and all approvals necessary for the preparation or design of the conservation easements.

All grading, drainage and erosion control plans or measures are subject to review and approval by the South Washington County Watershed District.

17. Other Private Improvements

Developer shall be responsible for the installation, pursuant to plans approved by the City, of electricity, telephone, natural gas, and other private utilities for the development. These items shall be installed underground in a common trench to the extent feasible (except for such appurtenant equipment related thereto as is normally installed above ground, such as transformers, meters, and the like) and in the platted utility easements provided in the Plat.

A. Plan Security Requirements for Plat Improvements

Estimated Costs for the Improvements listed below shall be verified as shown by the Developer's Engineer construction estimates.

<u>Description of Improvement</u>	<u>Estimated Cost</u>
1. Removals, Grading and Erosion Control	\$447,485.25
2. Plat Improvements	
a. Storm Sewer and Ponding	\$213,669.50
b. Roadway Construction	\$441,778.00

c. Signage	\$ -
d. Landscaping	\$ 215,642.75
3. Street Sweeping and Debris Control above	\$ Included in Item 1
a. Utility Protection and Repair above	\$ Included in Item 2
b. Wetland Protection, Certification and Cleaning above	\$ Included in Item 1
Subtotal of items 1-3	\$1,318,575.50
Subtotal X 125%	\$1,648,219.38
Estimated Legal, Engineering and Administrative fee (5%)	\$ 66,000
Subtotal plus Legal, Eng., & Admin. Fees	\$1,384,575.50
<b>TOTAL SECURITY REQUIREMENT</b>	<b>\$1,714,219.38</b>

Plan Security Requirements for Off-Site Improvements

Estimated Costs for the Improvements listed below shall be verified as shown by the Developer's Engineer construction estimates.

<u>Description of Improvement</u>	<u>Estimated Cost</u>
Off-site Improvements	
a. Roadway Construction/Improvements	\$200,000

Subtotal X 125%	\$ 250,000
Estimated Legal, Engineering and Administrative fee (5%)	\$ 10,000
Subtotal plus Legal, Eng., & Admin. Fees	\$ 210,000
<b>TOTAL SECURITY REQUIREMENT</b>	<b>\$ 260,000</b>

The letter of credit securing performance shall include amounts necessary to pay the city's engineers for on-site monitoring, review of plans and specifications and intermediate and final certifications of completion required prior to all fund releases.

Plat improvements and off-site improvements shall be separately secured by separate letters of credit.

It is recognized and noted that the funds associated with each category in paragraph B are for estimating the total Plan security. The City reserves the right to utilize this security partially or wholly to insure the compliance of any and all of the requirements set forth in paragraph A of this document.

B. Construction of Plan Improvements

1. Construction

The construction, installation, materials, and equipment shall be in accordance with Plans and Specifications prepared by the Developer and expressly approved by the City of Afton after approval by its Engineer. All costs associated with said construction; maintenance and operation through Completion of the Development shall be the responsibility of the Developer.

The developer shall give 48-hour notice to the City Administrator prior to start of construction activities.

Under no circumstances will any construction equipment be allowed to use Odell Avenue.

2. Inspection

All of the work shall be under and subject to the inspection and approval of the City and, where appropriate, any other governmental agency having jurisdiction, any costs associated with said inspections shall be borne by the Developer.

Upon notice by the Developer that any of the improvements have been completed, the City Engineer will inspect the improvements in a timely manner to insure that the improvements were constructed in accordance with the approved plans and terms of this Agreement. Stormwater basins will not be accepted until one year after construction has been completed and it is established that they are functioning in accordance with the approved plans.

3. As-built Plans

The Developer shall furnish, at no cost to the City, at least two sets of as-built plans indicating the location of all approved homes and septic systems in place. The plans shall be in a form approved by the City Engineer who shall certify to the City that said plans correctly represent the locations of the utilities as contracted.

4. Faithful Performance of Construction Contracts

The Developer will fully and faithfully comply with all terms and conditions of any and all contracts entered into by the Developer for the installation and construction of all Improvements and hereby

guarantees the workmanship and materials for a period of two (2) years following the City's final acceptance of Improvements. Concurrently with the execution hereof by the Developer, the Developer will furnish to, and at all times thereafter maintain with the City, an irrevocable Letter of Credit, based on one hundred twenty-five percent (125%) of the total estimated cost of the Improvements as indicated in Section B. The Letter of Credit shall be for the exclusive use and benefit of the City of Afton and shall state thereon that the same is issued to guarantee and assure performance by the Developer of all the terms and conditions of this Developer's Agreement and construction of all required improvements in accordance with the ordinances and specifications of the City. Cash Escrow in the amount of \$75,128.80 shall be deposited with the City for payment of Legal, Engineering, and Administrative fees. The City reserves the right to draw, in whole or in part, on any portion of the Letter of Credit and Cash Escrow for guaranteeing the terms and conditions of this agreement. The Letter of Credit shall be renewed or replaced by not later than thirty (30) days prior to its expiration with a like letter. If the Letter of Credit is not renewed by the Developer and the City elects to undertake legal action to compel renewal of the security or any similar remedy, all the City's Legal and Administrative costs incurred in said action shall be borne by the Developer. Once all improvements and punch list items are complete and accepted by the City, the face-value of the letter may be reduced, upon application of the Developer, to an amount necessary to guarantee the two-year warranty following acceptance of the improvements by the City, or to \$100,000, whichever is greater.

All fund releases shall be based on completion of plans and specifications and sign-off by the city's engineers.

The final release of funds shall not occur until all improvements in the development, including construction of homes and accessory structures on all lots, has occurred.

The development agreement shall be personally guaranteed by Will Carlson in a form acceptable to the city.

Costs of completion shall be calculated based on an assumed annual 4%, year over year, cost escalation, with provision for a 10-year build-out.

18. **Escrow for City's Costs.**

- a. The Developer agrees to establish a non-interest-bearing escrow account with the City in an amount determined by the City Administrator or his designee for the payment of all costs incurred by the City related to the

development of the Subdivision including, but not limited to, the following (See Exhibit 1 for breakdown of costs):

- i. Planning/ Review
  - ii. Administration - 3% of Developer Improvement Costs
  - iii. City Engineering
  - iv. Street lighting installation (by utility company)
  - v. Traffic signing improvements
  - vi. Boulevard tree planting
  - vii. Street, storm sewer and pond maintenance
  - viii. Property Taxes. Should the recording of the Final Plat occur after July 1<sup>st</sup>, any and all property taxes on any public property dedicated as a part of this plat shall be the responsibility of the Developer.
- b. If the above escrow amounts are insufficient, the Developer shall make such additional deposits as required by the City. The City shall have a right to reimburse itself from the Escrow upon notice to the Developer, with suitable documentation supporting the charges.
- c. Reduction of Security Guarantee for Improvements
- The Developer may request reduction of the Security Guarantee based on prepayment or the value of the completed improvements at the time of the requested reduction. If requested by the Developer, the City will perform an evaluation of the work completed only twice per calendar year. If additional evaluations are requested, the Developer will be responsible for the estimated costs incurred by the City for performing the additional evaluations. The amount of reduction will be determined by the City.
- d. Payment of Costs and Assessments for Plan Improvements
- If the construction of the Plan Improvements does not proceed, the Developer hereby agrees to pay the City for the costs incurred by the City for engineering services, detailed design, right-of-way acquisition, and related City and consultant legal, administrative and fiscal costs incurred regarding the proposed Plan Improvements.
- e. Easements
- Prior to approval of the final plat, the Developer shall dedicate to the City, at no cost, all temporary and permanent easements necessary for the construction of the Plan Improvements as determined by the City. All such easements required by the City shall be provided on City easement

documents, containing such terms and conditions as the City shall determine.

All permanent easements necessary for the installation and maintenance of stormwater Improvements shall be shown on the final plat and be granted to the City upon recording of said plat. All other required easements such as roadway, path, trail, scenic, and wetland conservation easements, shall be fully executed by the grantee and submitted to the City on separate documents prior to the execution of the final plat by the City. Copies of the recorded documents shall be provided to the City.

After recording of said plat, additional easements necessitated by Developer initiated changes to the landscaping or grading design shall be provided on an amended final plat and be granted to the City upon recording of said plat. Separate documents in lieu of an amended final plat may be allowed at the City's discretion.

f. Required Prepayment of any Assessment upon Sale of Developer

If a transfer of a lot is made, before a building permit will be issued, all delinquencies shall be paid on said lot in a manner agreeable to the Developer and the City.

19. **Homeowners Association**

a. The homeowner's association restrictive covenants shall contain a provision that in the event the homeowner's association becomes insolvent or ceases operating control shall at its option be transferred to the city of Afton or another method of succession shall be dictated by the City.

b. The homeowner's association documents shall contain a waiver of assessment appeal running in favor of the city.

c. The provision in the homeowner's association restrictive covenants allowing changes in lots upon the vote of 2/3 of the residents shall be changed to comply with Afton's requirements.

d. The city of Afton shall be a named insured on the homeowner association insurance policy and the policy shall cover those risks identified by the city, including but not limited to coverage for personal injuries and any other losses occurring as a result of the public use of the walking trails on the conservation area.

e. The homeowner's association shall be required to indemnify and hold the city of Afton harmless from all losses incurred as a result of the public's use of the conservation area walking trails.

- f. Covenant amendment provisions in the homeowner's restrictive covenants permitting changes after a certain number of years have passed shall be amended to remove the current conflict with restrictions on future subdivision of PLCD lots and other provisions of Afton's ordinances.
- g. Architectural controls shall be removed from the homeowner's association restrictive covenants.
- h. Provisions on setbacks shall be removed from the homeowner's restrictive covenants and Afton's restrictions shall control.
- i. The provisions restricting certain pets shall be removed from the homeowner's restrictive covenants; Afton's ordinances shall control pets.
- j. The Home Owners Association (HOA) plan and documents to be reviewed and approved by the city attorney.
- k. HOA to develop stormwater pond maintenance plan for eastern boundary
- l. The developer /HOA shall be responsible for on-going maintenance of the 5550 Odell parcel

20. **Conservation Easement**

The developer shall grant a conservation easement over the required open space parcels to the Minnesota Land Trust, the provisions of which shall be approved by both the City and the Minnesota Land Trust.

**General Provisions:**

A. Binding Effect and Modifications

- 1. The terms and provisions hereof shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto and shall be binding upon all future owners of all or any part of the PLCD/ Subdivision and shall be deemed covenants running with the land. References herein to Developer, if there be more than one, shall mean each and all of them. The Developer's Agreement, at the option of the City, shall be placed on record so as to give notice hereof to subsequent purchasers and encumbrances of all or any part of the PLCD/Subdivision and all recording fees, if any, shall be paid by the Developer.

The City and Developer understand and agree that this Development may be constructed in multiple phases and that each phase shall be consistent with the approved preliminary plat. Each additional phase shall be subject to approval by Amendment of this Agreement after review by the City.

## 2. Final Plat Approval

The City agrees to give final approval to the plat of the Subdivision and approval of the Development Agreement upon execution and delivery of this Developer's Agreement and of all required documents, and security.

## 3. Incorporation of Reference

All plans, special provisions, proposals, specifications, and contracts for the improvements furnished and let pursuant to this Developer's Agreement shall be and hereby are made part of this Developer's Agreement by reference as fully as if set out herein in full.

## 4. Conditions of Approval

- a. No grading or building permits shall be issued by the City unless the plans or application are in conformance with the City's Comprehensive Plan, the conditions of PLCD approval, and engineering standards as determined by the City Engineer, this agreement, approval of site clean-up and remediation in whole or in part by the MPCA, and all local, state and federal regulations.
- b. If the Developer does not pay all bills submitted by the City pursuant to the Developer's Agreement within thirty (30) days after receipt, the City may halt all plat development work until the bills are paid in full, and that the Developer shall reimburse the City for its costs incurred in the enforcement of this Developer's Agreement including reasonable engineering and attorney's fees.

## 5. Notice/Remedies on Default or Violation of this Developer's Agreement

- a. Whenever any event of default or failure to conform to the terms and conditions of this Developer's Agreement occurs, the City shall give written notice of the event of default or failure to perform to the Developer by United States Mail at its last known addresses. If the Developer fails to cure the event of default or failure to perform within fifteen 15 days after the date of the mailed notice, in addition to any other remedy provided in this Developer's Agreement and without waiver of any such right, the City may avail itself of any or all of the following remedies for as long as the Developer is in default.
  - 1) Halt all plat development work and construction of development improvements until such time as the event of default is cured.
  - 2) Refuse to issue building permits or occupancy permits as to any lot until such time as the event of default is cured.
  - 3) Apply to a court of competent jurisdiction to enjoin continuation of the event of default.

- 4) If the event of default is a failure of the Developer to complete, construct, install or correct the development improvements in accordance with the plans and specifications and this Developer's Agreement, the City may perform the construction or work and the Developer shall reimburse the City for its expenses incurred. This provision shall be a license granted by the Developer to the City to act but shall not require the City to take any such action. The Developer consents to such an action by the City and waives any claims Developer may have against the City for damage in the event the City exercises its rights in accordance with this provision. This remedy is in addition to and not in lieu of the City's right to draw on all security referenced in this Developer's Agreement.
- 5) Terminate this Developer's Agreement by written notice to Developer, at which time all terms and conditions as contained herein shall be of no further force and effect and all obligations of the parties imposed hereunder shall be null and void.
- 6) Draw upon and utilize Developer's funds and/or security in order to cover the costs of the City in order to correct the event of default.
- 7) Role of Signed Guarantor. It is expressly understood by the Parties herein that the Guarantor identified by and signing this Agreement as Guarantor is the fee owner of the property and will be providing all or a portion of the funding needed by the Developer for the completion of the project. If there is a default caused by a failure of the Developer to complete, construct, install or correct the development improvements in accordance with the plans and specifications and this Developer's Agreement, the Guarantor may undertake, with the consent of the City, to complete those improvements under the terms of the Development Agreement and either replace the Developer as the designated Developer herein, or substitute, with the consent of the City, another designated Developer for the purpose of completing the improvements noted herein.

## 6. Indemnification

To the fullest extent permitted by law, the Developers shall indemnify and hold harmless the City of Afton, its agents and employees from and against any and all claims, damages, losses or expenses, including but not limited to attorney's fees, arising out of the issuance of this Developer's Agreement by the City of Afton.

## 7. Guarantee and Warranty Bond

The Developer shall guarantee all construction associated with the Improvements for a period of twenty-four months following acceptance of the improvements. The guarantee shall be assured by the provision of a performance bond naming the City of Afton as the assured party.

Performance of all obligations under this Development Agreement shall be further guaranteed by William Carlson, the owner of the property being developed, in a form and manner acceptable to the City.

8. Insurance Coverage

The Developer shall arrange for insurance coverage as required by State Law and shall provide the following minimum coverages:

<b>Policy</b>	<b>Minimum Coverage</b>
General Liability Each Occurrence	\$ 1,500,000
Fire	50,000
Medical Expense	1,000/10,000
Limited Pollution	1,000,000
Workers Comp	Statutory
Umbrella Policy	3,000,000

The City of Afton and its Agents shall be a Named Insured's on the insurance policies and require that face amount of these policies meet the minimum statutory requirements for local governments.

9. Homeowners Association.

A homeowners association whose membership will consist of owners of the residential parcels of the Development will be created in a manner and form to be reviewed and approved by the City Attorney. The Homeowners Association will own all common areas of the Development, which will include the Outlots created in the Final Plat, subject to any easements thereon. The organizational documents of the Homeowners Association shall provide that in the event of dissolution of the Association, the City may, in its discretion, the properties under its ownership and control may be transferred to the City. The organizational documents shall further provide for a waiver of any assessment appeals in favor of the City.

The organization documents shall provide for the means by which the members can be assessed for the costs of maintenance of common areas, including the conservations easements. The same documents shall provide a means of enforcement of the requirement that 60% of the surface area of each of the lots created on the plat shall be in prairie grasses, flowers and other plants.



J.P. BUSH HOMES, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF MINNESOTA )

) ss.

**AFFIDAVIT OF AUTHORITY TO**

**ACT**

COUNTY OF WASHINGTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, a Notary Public within and for said County personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who being each by me duly sworn did say that they are respectively the \_\_\_\_\_ and the \_\_\_\_\_ of \_\_\_\_\_, the Minnesota Corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors and said \_\_\_\_\_ and \_\_\_\_\_, under the authority granted to them by written consent of the management committee thereof, dated \_\_\_\_\_, acknowledged said instrument to be the free act and deed of said limited liability company..

\_\_\_\_\_  
Notary Public

**ALBERT W. CARLSON U/T/D February 17, 2010**

**BY:** \_\_\_\_\_  
Albert W. Carlson,  
Trustee

STATE OF MINNESOTA            )  
  ) ss.           **AFFIDAVIT OF AUTHORITY TO ACT**  
COUNTY OF WASHINGTON        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, a Notary Public within and for said County personally appeared Albert W. Carlson, to me personally known, who being by me duly sworn did say that he is the Trustee of the **Trust Agreement of Albert W. Carlson U/T/D February 17,2010**, a Minnesota Trust organized under the Laws of the State of Minnesota, in the foregoing instrument, and that said instrument was signed in behalf of said Trust by authority provided under the terms of that Agreement and acknowledged said action to be the free act and deed of said Trust.

\_\_\_\_\_  
Notary Public

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

## **Meeting Date Nov. 14, 2018**

### **Council Memo**

To: Mayor Bend and Members of the City Council  
From: Ron Moorse, City Administrator  
Date: November 7, 2018  
Re: Downtown Project Update

- 
1. Punchlist Item Completion Status. The City Engineer will provide an update regarding the punchlist items completed and yet to be completed.
  2. Background Regarding Easement, Retaining Wall, Drainage and Proposed House on Gehrke Property.

Attached is a copy of the easement agreement between the City and the Gehrke's regarding the removal of a nonconforming house and the construction of a new house on the property in a more conforming location. The adjacent property owner to the north is concerned about the retaining wall, drainage and new house construction. The City Engineer will provide information and materials regarding these concerns at the work session.

**MEMORANDUM OF AGREEMENT**  
Afton Downtown Project

WSB Project No: 1856-321  
Parcel No.: 72  
Fee Owner: James and Judith Gehrke

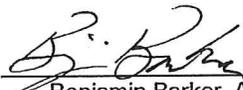
On this 21 day of April, 2015, James F. Gehrke and Judith M. Gehrke, Owner of the above described parcel of property located in County of Washington, State of Minnesota, did execute and deliver a conveyance of real estate rights to the City of Afton.

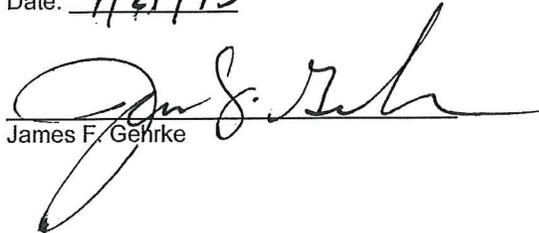
This agreement is now made and entered as a Memorandum of all the terms, and the only terms, agreed upon in connection with the above transaction. It is hereby acknowledged and agreed upon between the parties that:

1. The Owners have been furnished with the approved estimate of just compensation for the property acquired and a summary statement of the basis for the estimate. The Owners understand that the acquired property is for use in connection with the construction of the Downtown Levee and Sanitary Sewer Project.
2. The Owners understand and acknowledge that Agent for the City of Afton has no direct, indirect, present, or contemplated future personal interest in the property or in any benefits from the acquisition of the property.
3. That in full compensation for the conveyance of said property rights, the City of Afton shall pay the Owners the sum of One Hundred Twenty-Nine Thousand Nine Hundred and no/100 Dollars (\$129,900.00) for easements and damages. Owner understands that payment will be made on or before July 30, 2015, and is contingent on settlement approval by the City of Afton.
4. The Owners understand that the easement will be recorded in a timely matter to keep the project on schedule.
5. In the event of a clerical error, Grantor, whether one or more, agree to cooperate in correcting the error including but not limited to resigning all documents.
6. Additionally: The owner and the City of Afton have agreed to the following:
  - a. Upon termination of the temporary easement, the City of Afton agrees that the Owner has the approval to rebuild a single family residential home and garage on the property. Owner agrees to build the structure meeting City Ordinances. If the City Ordinances impacting this parcel change between April 15, 2015 and April 15, 2018, prior to owner constructing a structure, the City agrees to grandfather this parcel under the City Ordinances as of April 15, 2015. If the Owner does not construct a structure prior April 15, 2018, the Owner agrees to build the structure according the City Ordinances at that time. According to Exhibit A, the maximum buildable area meeting City setbacks (as shown in the shaded area) is 1,863 square feet. The total square footage of the Owner's two lots is 17,664 square feet. Therefore, the maximum impervious surface equates to 20% of 17,664 square feet or 3,532 square feet.
  - b. Prior to obtaining a building permit, the two existing lots shall be combined into one lot.
  - c. James Gehrke will be eligible for moving expenses and up to 12 months of storage rental under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

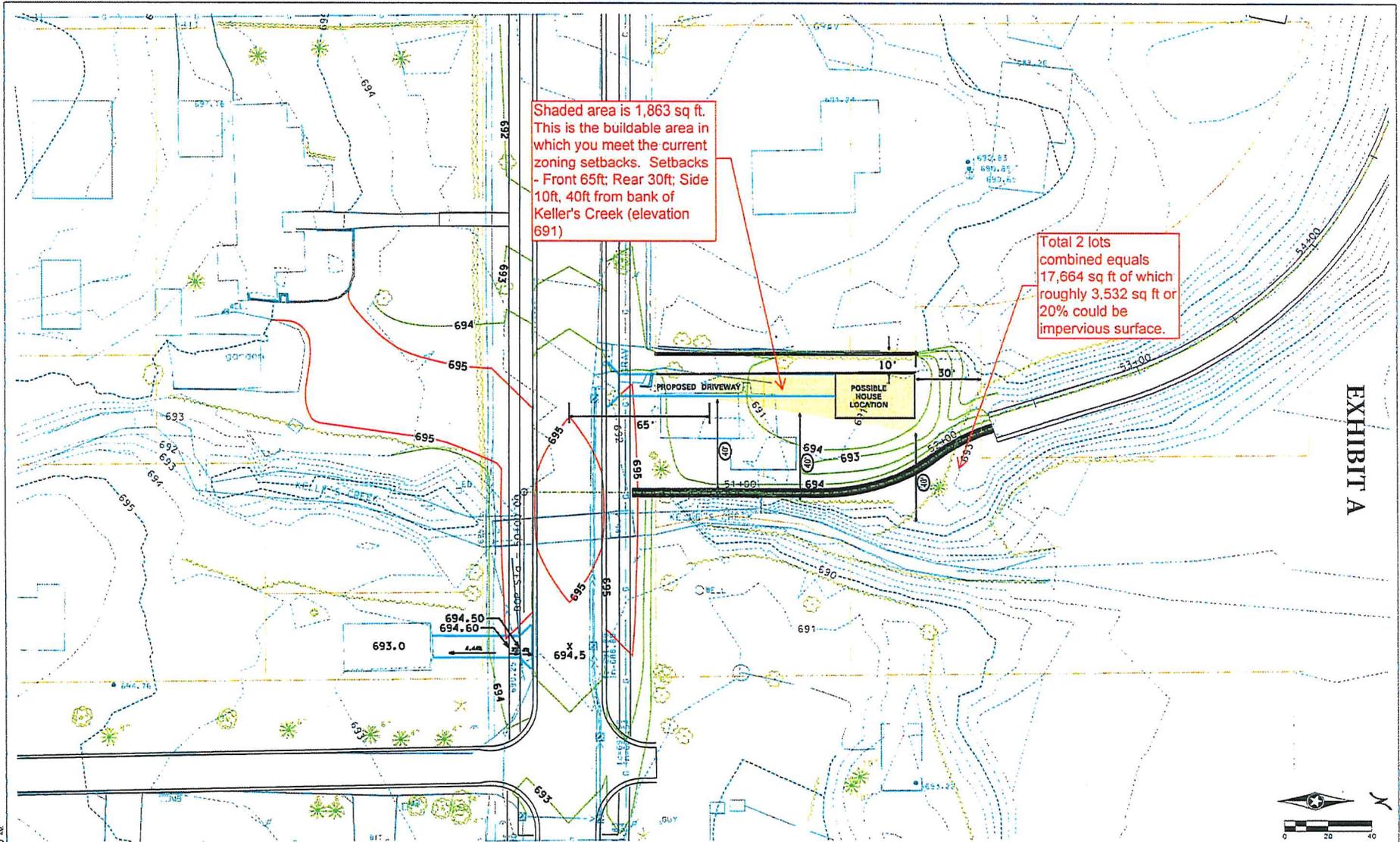
It is understood and agreed that the entire agreement of the parties is contained in this Memorandum of Agreement and Easement Documents dated 4/21/15 and that these documents and agreements include all oral agreements, representations, and negotiations between the parties.

Date: 4/21/15

By:   
Benjamin Barker, Agent for City of Afton

  
James F. Gehrke

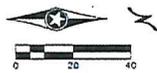
  
Judith M. Gehrke



Shaded area is 1,863 sq ft. This is the buildable area in which you meet the current zoning setbacks. Setbacks - Front 65ft; Rear 30ft; Side 10ft, 40ft from bank of Keller's Creek (elevation 691)

Total 2 lots combined equals 17,664 sq ft of which roughly 3,532 sq ft or 20% could be impervious surface.

EXHIBIT A



PLANNING: JON COUSINS/ASHISH/ASER/ERIC/REID/DAVE  
 6/25/2010 10:27:58 AM

NO.	DATE	BY	REVISIONS

Drawn by: GJT
Plan by:
Checked by:
Approved by:

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY OR UNDER MY DIRECT SUPERVISION AND THAT I AM A LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

DATE: \_\_\_\_\_ LIC. NO. \_\_\_\_\_



477 Temperance Street  
 St. Paul, MN 55101  
 Tel: (651)228-8458 - Fax: (651)228-8488  
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Engineering • Planning • Environmental • Construction

**Downtown Village Improvements Project  
 and Appurtenant Work  
 for the City of  
 Afton, Minnesota**

WSB Project 01856-320
Gehrke / Weed Grading Plan

**EASEMENT AGREEMENT**

THIS AGREEMENT, made this 21st day of April, 2015, between James F. Gehrke and Judith M. Gehrke, husband and wife ("Owner"), and the City of Afton, a Minnesota municipal corporation ("City").

**RECITALS**

- A. Owner is the holder of a fee simple interest in property located in Washington County, Minnesota, which is legally described as follows:

Lot 5, except the East 10 feet thereof, Lot 6, Block 3, Afton, except that part of said lots lying Southerly of a certain creek running Easterly across said lots, Washington County, Minnesota.

AND

The Easterly 10 feet of Lot 5, all of Lot 4, and the Easterly 30 feet of the southerly 20 feet of Lot 3, all in Block 3, Afton, Washington County, Minnesota.

- B. The City desires certain easements for the purposes hereafter set forth, and Owner has agreed to grant such easements upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration given to Owner by the City, the receipt and sufficiency of which is acknowledged, it is agreed:

**AGREEMENTS**

1. **Grant of Easements.**

- a. owner hereby grants to the City for the benefit of the public, a **PERMANENT EASEMENT** over, across and upon that portion of the Property legally described as follows:

Lot 5, except the East 10 feet thereof, Lot 6, Block 3, Afton, except that part of said lots lying Southerly of a certain creek running Easterly across said lots, Washington County, Minnesota.  
AND

The Easterly 10 feet of Lot 5, all of Lot 4, and the Easterly 30 feet of the Southerly 20 feet of Lot 3, all in Block 3, Afton, Washington County, Minnesota.

Said permanent easement lies southerly of the following described line: Commencing at the southwest corner of said Block 3; thence North 00 degrees 10 minutes 40 seconds East, assumed bearing along the west line thereof, 111.98 feet to the point of beginning of said line to be hereinafter described; thence South 89 degrees 50 minutes 45 seconds East, 76.93 feet; thence northeasterly along a tangential curve concave to the north, for 49.05 feet, having a radius of 78.00 feet, and a central angle of 36 degrees 01 minutes 51 seconds to a point of reverse curve; thence northeasterly along said reverse curve, for 19.97 feet, having a radius of 102.00 feet, and a central angle of 11 degrees 13 minutes 03 seconds; thence North 15 degrees 33 minutes 17 seconds East, to the east line of said Lot 6 and there terminating.

This easement (the “**Easement Area**”) is granted for the purposes of flood control and mitigation and constructing, reconstructing, maintaining, repairing and use of a levee (hereinafter referred to as “**Public Improvement**”).

b. a **TEMPORARY CONSTRUCTION EASEMENT** for purposes over, under, and across the following tract of land:

Lot 5, except the East 10 feet thereof, Lot 6, Block 3, Afton, except that part of said lots lying Southerly of a certain creek running Easterly across said lots, Washington County, Minnesota.

AND

The Easterly 10 feet of Lot 5, all of Lot 4, and the Easterly 30 feet of the Southerly 20 feet of Lot 3, all in Block 3, Afton, Washington County, Minnesota.

Said temporary easement lies northerly of the following described line: Commencing at the southwest corner of said Block 3; thence North 00 degrees 10 minutes 40 seconds East, assumed bearing along the west line thereof, 111.98 feet to the point of beginning of said line to be hereinafter described; thence South 89 degrees 50 minutes 45 seconds East, 76.93 feet; thence northeasterly along a tangential curve concave to the north, for 49.05 feet, having a radius of 78.00 feet, and a central angle of 36 degrees 01 minutes 51 seconds to a point of reverse curve; thence northeasterly along said reverse curve, for 19.97 feet, having a radius of 102.00 feet, and a central angle of 11 degrees 13 minutes 03 seconds; thence North 15 degrees 33 minutes 17 seconds East, to the east line of said Lot 6 and there terminating.

2. **Maintenance**. The City shall maintain at its own expense the Easement Area. Said maintenance obligation shall include, without limitation, keeping the same in good and safe condition for the purpose granted herein and reasonably free and clear of foreign objects, debris and obstructions.

3. **Liability and Indemnification; Insurance**. The City hereby agrees to hold the Owner harmless from and against any and all suits, liabilities, costs and other expenses, including

reasonable attorneys' fees, incurred in connection with or arising out of the use of the Easement Area by the City, its contractors and agents or the general public for the purposes granted herein, excluding, however, from such indemnity any loss resulting from acts of the Owner and Owner's invitees, and agrees to defend and indemnify the Owner for any claims arising out of the use of the Easement Area over the Owner's property by the City, its contractors and agents, or the general public. The City shall be responsible for obtaining and maintaining public liability insurance over the Easement Area in such limits as City, in its sole discretion, deems reasonable and sufficient.

4. **Owner's Covenants.** Owner covenants and agrees that:

a. The Easement Area shall not be encroached upon by fill, excavation, plantings of any type, paving or concrete, erection of buildings or permanent enclosures, fences or walls, or other obstructions by Owner which would interfere with, or which would otherwise obstruct access to, the Public Improvement, or any flood control or mitigation activities in any manner by Owner.

b. Owner has the lawful right and authority, without restriction to convey the easements as herein granted, that the Easement Area is not subject to any other interest other than the interest of N/A, mortgagees on the Property who have consented to this Agreement, and that the Easement Area is embraced wholly within the Property.

5. **Binding Effect.** The terms, provisions and easements provided herein shall inure to the benefit of and be binding upon the heirs, legal representatives, successors and assigns of the Owner. The covenants, agreements and easements contained herein shall be deemed to run with, burden and benefit the property.

6. **Termination of Easements.** In the event that use of the Easement Area is at anytime discontinued by the City, the City shall have the right but not the duty, to enter further upon the Easement Area and remove all or any portion of the Public Improvement which has been placed upon, over or under the Easement Area. If not otherwise terminated by then, this temporary easement shall expire on December 31, 2016.

**IN WITNESS WHEREOF**, this Agreement has been executed as of the day and year first above written, subject to all of the terms and conditions herein set forth.

**CITY OF AFTON**

By: Richard M. Bend  
Its Mayor

By: Richard M. Bend  
Its City Administrator

**OWNER**

James F. Gehrke  
James F. Gehrke

Judith M. Gehrke  
Judith M. Gehrke

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

## Meeting Date Nov. 14, 2018

### Council Action Memo

To: Mayor Bend and Members of the City Council  
 From: Ron Moorse, City Administrator  
 Date: November 8, 2018  
 Re: Items in the Preservation and Land Conservation Development (PLCD) Ordinance Needing Clarification or Revision

At its July 17, 2018 meeting, the Council directed staff to review the PLCD ordinance language to identify elements of the language that were in need of clarification or revision. At the August 21 Council meeting, staff provided the outline below regarding elements of the PLCD ordinance that were found to be unclear during the Afton Creek Preserve PLCD review process, or that staff is recommending to be clarified or corrected. The Council directed that this topic be discussed at a work session to confirm the elements to be addressed and to determine the process to be used to clarify the elements of the PLCD ordinance language.

#### PLCD Ordinance Elements to be Clarified, Corrected and/or Revised

1. Sec. 12-2376. Density, Frontage on a Public Street and Length of Cul-de-sac requirements.
  - A. The average density over the proposed PLCD shall not exceed the maximum density permitted in the underlying zoning district.

Questions were raised regarding whether the maximum density allowed is 3 units per qtr-qtr section or 4 units per qtr-qtr section. The Comprehensive Plan specifically indicates that with a PLCD the maximum density is 4 units per qtr-qtr section, but this language is not found anywhere in the zoning code. The zoning code should be revised to include this language.

2. Sec. 12-2376. Density, Frontage on a Public Street and Length of Cul-de-sac requirements
  - B. The maximum length of cul-de-sacs may be exceeded to accommodate curvilinear streets and other design elements that tend to preserve the rural character or other resources within the PLCD.

During the consideration of the Afton Creek Preserve PLCD, there were differing interpretations regarding whether this language, by association, also would allow a proportional additional number of lots on a longer cul-de-sac. This should be clarified.

3. Sec. 12-2379. General development plan.
  5. The proposed total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.

The question was raised regarding whether the need for a road easement through a lot that is not part of the PLCD meets this standard. It would be helpful to clarify the meaning of "form a desirable and unified environment within its own boundaries".

4. Sec. 12-2380. Final development plan.
  - E. The applicant(s) shall grant a Conservation Easement which shall run with the land in perpetuity to the City of Afton, all of the owners of the lots and parcels to be created in the PLCD, all land owners of property within Afton abutting the PLCD and the Minnesota Land Trust (or similar independent third party approved by the City of

Afton), which restricts the lots and parcels, as well as the development rights on the undeveloped parcel(s), within the PLCD to the number of dwelling units approved for the PLCD and the land cover and use approved by the City of Afton as a part of this PLCD.

The MN Land Trust has indicated it is not workable for them to have a large number of parties to the conservation easement.

5. Sec. 12-2382. Conveyance and maintenance of undeveloped parcel.  
A. All land shown on the final development plan as an undeveloped parcel must be conveyed to a homeowners association or similar organization provided in an indenture establishing an association or similar organization for the maintenance of the planned development.

Questions were raised regarding whether the undeveloped parcels were prohibited based on other ordinance provisions that prohibit outlots. This language should be clarified to indicate that the undeveloped parcel is to be created as an allowed outlot,

6. Sec. 12-2377. Coordination with subdivision regulations.  
C. Parcels which contain their maximum permitted density or have been previously subdivided to their permitted density may not be joined to a PLCD.

A clear explanation of what it means to be "joined" to a PLCD is needed. Also, the purpose of this language should be clarified.

7. Sec. 12-2379. General development plan.  
A. An applicant shall make an application for an Administrative Permit following the procedural steps as set forth in Section 12-78.  
Sec. 12-78 relates to Conditional Use Permits, not Administrative Permits. The PLCD ordinance should be revised to require a Conditional Use Permit rather than an administrative permit.

8. Sec. 12-2384. Review and amendments.  
E. Any amendment to the PLCD shall require the same procedures as for the application for an Administrative Permit as set forth in this chapter. This language should be changed to require a Conditional Use Permit rather than an administrative permit.

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

## **Meeting Date Nov. 14, 2018**

### **Council Memo**

To: Mayor Bend and Members of the City Council  
From: Ron Moorse, City Administrator  
Date: November 7, 2018  
Re: Update and Options Regarding the House on the Wastewater Treatment System Property

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The Deputies regularly drive into the Wastewater Treatment System site, as part of their patrol activities in Afton. Recently, a Deputy found that the locks on the house and the garage were both broken, and there was evidence of people gathering – soda cans and food wrappers. Ken Johnson has replaced the locks on both buildings. The Deputy asked what the plan for the house is.

While the Council has discussed possible options for the house, the Council has not had an in-depth discussion regarding the options. Possible options include rental of the house, use of the house as a park building, and demolition of the house. It is not possible to subdivide a conforming lot from the 25 acre parcel to enable the house to be sold. However, it may be possible to place the property in the area of the house under a long term (99 year) lease, and to sell the house subject to the land lease. The City then continues to own the land, but the house can be sold.

To avoid on-going illegal use of the house and garage and possible vandalism to the house and garage, a decision should be made regarding the use of the house, and particularly whether to use the house or demolish it.

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

# Meeting Date Nov. 14, 2018

## Council Memo

To: Mayor Bend and Members of the City Council  
From: Ron Moorse, City Administrator  
Date: November 7, 2018  
Re: 3M Settlement Update

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The Government and 3M Working Group meeting will be held the morning of Wednesday, November 14. Staff will provide an update regarding the meeting at the work session.