

# SUPPLEMENTAL PACKET

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 14, 2018  
Re: Review of the Afton Creek Preserve Conservation Easement and Development Agreement -  
**Supplemental**

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Staff received the attached set of comments regarding the Development Agreement from the attorney for the Afton Creek Preserve developer. These comments have been provided to the City Attorney for his review. In addition, Joe Bush has indicated the language regarding sodding vs. seeding, concrete curb and gutter and lighting needs to be clarified.

Also attached is the conservation easement that was used for the Cedar Bluff development.

## Joe Bush

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**From:** Wendy MacLennan <WMacLennan@dudleyandsmith.com>  
**Sent:** Thursday, November 08, 2018 2:03 PM  
**To:** joe@joebushmn.com; Will Carlson; spograce1@comcast.net  
**Cc:** Steven Opheim; Joe Dudley  
**Subject:** Comments to Draft of Private Improvement Developer's Agreement

Dear Mr. Bush, Mr. Carlson, and Ms. Carlson:

The following are our comments to the latest draft of the Private Improvement Developer's Agreement.

1. The Agreement identifies the Developer as J.P. Bush Homes, Inc. with Albert W. Carlson as Trustee of the Trust Agreement of Albert W. Carlson U/T/D February 17, 2010 as Guarantor. The Developer should be identified as Albert W. Carlson, as Trustee of the trust.
2. The project is identified as a Planned Unit Development (PUD). Other documents associated with the development identify the project as a Preservation Land and Conservation Development (PLCD).
3. On Page 2, the Agreement defines the term "Completion of Development" as "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 plans provided by Developer and approved by the City." The definition is significant because the Agreement provides in Paragraph 7 on page 7 that "the City will perform snow plowing and any other normal City street maintenance after completion of construction and during the Warranty Period" (emphasis added). The terms "completion of construction" and "Warranty Period" are not defined. The implication is that the Developer is responsible for snow plowing and street maintenance prior to the Completion of Development which is not until driveways have been installed on all lots.

Consider that the definition of Completion of Development should be when Developer has completed all Developer Improvements as stated on Pages 3 and 4 of the Agreement.

4. On Page 2 of the Agreement in the section of Land Acquisition, the agreement states that "(t)he developer will provide an acceptable method to assure the long term use of that easement [for the 5500 Odell Avenue parcel] including maintenance thereof, for a period of not less than 40 years" (emphasis added). It is unclear why the reference to 40 years is made. The obligation of the homeowners association to maintain the 5500 Odell Avenue parcel will be perpetual. If there is to be a limit of 40 years, then what occurs beyond that period? The Agreement does not say.
5. On Page 7 regarding Street Maintenance, and as discussed above, the time frame in which the City will be obligated to provide snowplowing or other maintenance should be more clearly defined. In addition, a provision on when the City will provide snowplowing and street maintenance should make clear whether the City will also charge that cost back to the Association for payment. This section also refers to the Developer's financial responsibilities for repair of any damage to the streets and public utilities "from the time of installation until the development is fully completed and approved by the City." As such the Agreement provides responsibilities and obligations in various places to "Completion of the Development" a defined term that is of indefinite length and relates to when all the driveways installed; "completion of construction", which is not defined; and "the development is fully completed" which is not defined.
6. On Page 8 of the Agreement under General Requirements, 6.3, the Developer has the responsibility to "pay the ongoing operational costs for the street lights, including electricity and maintenance costs." Note this ongoing responsibility.

7. On Pages 10-11, Section 15 on Screening of Abutting Properties, there is the requirement of a "100 foot setback" instead of a 50 foot setback and "an increased setback of 100 feet." From what is "setback"? In reference to "an increased setback of 100 feet", does that mean a total of a 100 foot setback or an increase of the setback of 100 feet from 50 feet, for a total of a 150 foot setback? This section should be clarified.
8. On Page 11, Section 17, regarding other Private Improvements, refers to the development as a PUD instead of a PLCD.
9. On Page 15, Section 18.a.viii provides for payment of property taxes in the case of the recording of the Final Plat after July 1. The question arises what is to occur if the recording of the Final Plat is prior to July 1.
10. On Page 15, Section 18.b. provides for the possibility of additional escrow deposits "as required by the City." The question arises how this amount will be determined and what requirements are applied.
11. On Page 18, Section 20.A.5.a. provides for a 15-day period for the Developer to cure defaults. Note that 15 days may not be sufficient time to cure a default because of weather or physical constraints. Allowance for additional time should be made.
12. On Page 19, Section 20.A.6 provides for indemnification by the Developer for any and all claims, damages, losses or expenses, including "arising out of the issuance of this Developer's Agreement by the City of Afton." The question arises how the "issuance" of the Developer's Agreement (which is a decision to enter into a contract) causes damages that are required to be indemnified.
13. On page 19, Section 20.A.7, Guarantee and Warranty Bond, provides that the Developer shall guarantee all construction associated with the improvements for a period of twenty-four months following acceptance of the improvements. The meaning of this provision should be clarified. Note that performance of all obligations under the Development Agreement is to be guaranteed by Mr. Carlson.
14. On Page 20, Paragraph 20.A.9 provides that the "organizational documents of the Homeowners Association shall provide that in the event of the dissolution of the Association, the City may, in its discretion, the properties under its ownership and control may be transferred to the City." This provision should be clarified to refer to the specific properties - - the 2 outlots and the 5500 Odell Avenue parcel, so it is understood the individual lots of the homeowners are not subject to this transfer provision.
15. Mr. Carlson's name is incorrectly stated in several places.

Please contact us with your comments in this regard.

Thank you.

Very truly yours,

Steven C. Opheim  
Joseph J. Dudley, Jr.

Sincerely,  
Wendy S. MacLennan  
Paralegal

Office of County Recorder } SS  
 Washington County, Minnesota

I hereby certify that the within instrument was filed at this Office at Stillwater for record on the 21 day of August, A.D. 2011 at 1:46 o'clock P. M., and was duly recorded in Washington County Records. I have hereunto set my hand and affixed my official seal at Stillwater, in said county this 21 day of Feb A.D. 2012

KEVIN J. CORBID  
 County Recorder

By Rabara Chustance Deputy

Receipt#: 169722

CVE \$46.00



Certified Filed and/or recorded on:  
 8/31/2011 1:46 PM

3852415

Office of the County Recorder  
 Property Records & Taxpayer Services  
 Washington County, MN

Kevin J Corbid, County Recorder

Return to:  
 PREMIER TITLE-BOX  
 7300 METRO BOULEVARD  
 SUITE 300  
 EDINA MN 55439

AMENDED AND RESTATED CONSERVATION EASEMENT

This is an amendment and restatement of that Conservation Easement granted by Afton Development, LLC, a Minnesota limited liability company (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") recorded in the Office of the County Recorder for Washington County, Minnesota, on February 5, 2007, as Document Number 3628599, encumbering certain real property located in Afton, Minnesota. The Conservation Easement is referred to hereafter as the "Original Easement."

This amendment and restatement of the Original Easement (referred to hereafter as the ("Amended and Restated Easement")) amends the boundaries of the real property covered by the Original Easement, adds or substitutes language regarding the restrictions and rights of the parties, and adds the City of Afton (the "City") as a Co-Holder of the Amended and Restated Easement.

The City and the Land Trust are from time to time referred to in this Amended and Restated Easement as (the "Co-Holders").

RECITALS:

- A. OWNER. The Owner is the current owner of approximately 120 acres of real property located in Washington County, Minnesota, platted as Cedar Bluff Homestead 2nd Addition and formerly platted as Cedar Bluff Homestead (hereinafter referred to as "Cedar Bluff Homestead", a clustered residential conservation development. Approximately 71 acres of open space in the development are more fully described below as the "Protected Property." The remaining portions of that real property are being developed for residential use.

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 File # 29663

Premier Title

- B. **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 Amended and Restated Easement and incorporated by this reference.

The Protected Property is located in the City of Afton at the headwaters of Valley Creek, a state designated trout stream. The Valley Creek watershed is located on the eastern edge of the Twin Cities Metropolitan Area and covers approximately 14 square miles. The watershed originally was characterized by savanna, tallgrass prairie and maple-basswood forest. The watershed includes portions of several growing communities including Woodbury, West Lakeland Township, and the City of Afton. Valley Creek itself flows approximately 10 miles through Washington County from its source near Woodbury to Afton, where it empties into the St. Croix River.

The Protected Property includes woodlands and restored prairie located on two (2) Outlots and on portions of twenty-two (22) of the twenty-five (25) total residential lots platted in the proposed clustered residential conservation development known as *Cedar Bluff Homestead*.

The remains of an old farmstead, which includes a stone barn foundation, a silo foundation, and a driveway are currently located on the Protected Property.

The Protected Property is located near other protected open space and conservation property, and as such enhances the habitat and open space value of an extended complex of protected forests, woods, grasslands, and wetlands. The City of Woodbury, with the assistance of Washington County, acquired land for low-impact recreation and wildlife habitat located within one-half mile of the Protected Property. The Minnesota Land Trust holds many conservation easements in the general area.

The Protected Property is located within a regionally significant wildlife corridor identified by the Minnesota Department of Natural Resources and the Metropolitan Conservation Corridors Partnership, a collaboration of public and private conservation entities funded in part by the Minnesota Legislature.

The scenic attributes of the Protected Property include its rural, open and wooded character. Portions of the Protected Property are highly visible to the general public from State Highway 95, also known as Manning Avenue.

- C. **CONSERVATION VALUES.** The Protected Property has the following natural, scenic and open space qualities of significant importance:

- The relatively undeveloped natural character of the Protected Property provides habitat for a variety of plants and animals common to grasslands and woodlands.

- The open space of the Protected Property helps shape the character of the surrounding residential development and provides opportunities for low impact trail use and nature observation by nearby residents.
- The Protected Property provides views of undeveloped open space visible to the public from Manning Avenue, thereby helping to preserve the community's rural character.

Collectively, these natural, scenic, and open space qualities of the Protected Property comprise its "Conservation Values."

These Conservation Values have not been and are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as described above or as authorized below or by the use, maintenance or construction of those structures and improvements that presently exist on the Protected Property or that are authorized below.

D. **CONSERVATION POLICY.** Preservation of the Protected Property will further those governmental policies established by the following:

- 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.
- Minnesota Laws 2009, Chapter 143, Section 2, Subdivision 4(f), which supports the protection of important natural areas in the metropolitan region and portions of the surrounding counties.
- City of Afton 1998 Comprehensive Plan, which includes among its goals the preservation of open space and wildlife habitat and the protection of natural resources and the protection of steep slopes, tree cover, wetlands and other fragile lands through easements, ordinances, or other available means.
- Afton Land Use Code of Ordinances, Article XII, Section 12-2380, Paragraph E, adopted April 20, 2010, which requires that open space in a Preservation and Land Conservation Development shall be subject to a conservation easement restricting its use and development.
- Resolution 2010-16, City of Afton, dated March 16, 2010, certified May 11, 2010, and recorded May 14, 2010, as Document Number 3791256 in the Office of the Washington County Recorder, approving the Open Space Preservation CUP/PUD and final plat of Cedar Bluff Homestead.

- E. **MINNESOTA LAND TRUST.** The Minnesota Land Trust (the "Land Trust") is the holder of the Original Easement. The 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.
- F. **THE CITY OF AFTON.** The City of Afton is a local unit of government and a political subdivision of the State of Minnesota that is qualified to hold conservation easements under Minnesota Statutes Chapter 84C and Section 170(h) of the Internal Revenue Code and related regulations.
- G. **ORIGINAL EASEMENT.** The Original Easement covers approximately 71 acres of land legally described in Exhibit C. Exhibit C is attached hereto and incorporated by this reference.
- H. **CIRCUMSTANCES LEADING TO AMENDED AND RESTATED EASEMENT.** Due to a series of events and economic changes following the execution and recording of the plat for the *Cedar Bluff Homestead* development and the Original Easement, the conservation development did not proceed on the time line required under the terms of the development agreement with the City, resulting in a default by the Owner under that contract. After the default, the City reconsidered the size and number of residential lots on the plat and changed many of its original requirements for plat approval, requiring amendment of the existing plat and the Original Easement.
- The City's revised requirements result in a decrease in the number and configuration of the residential lots from thirty-six (36) lots to twenty-five (25) lots, a slight change in the legal description of the Protected Property, and the location of some of the Protected Property within the individual residential lots, thereby creating multiple future owners of the Protected Property. Additionally, as a condition of approval of the proposed amended plat, Cedar Bluff Homestead 2<sup>nd</sup> Addition, the City requires that it be added as a co-holder of the Amended and Restated Easement.
- I. **NEW LEGAL DESCRIPTIONS AND AMENDED BOUNDARIES AND PLAT.** The Owner has requested modifications to the Original Easement as provided in this Amended and Restated Easement in order to comply with the City's new conditions for approving the Cedar Bluff Homestead 2<sup>nd</sup> Addition plat and to achieve as near as possible its original goal of developing this residential conservation development. The boundaries of the newly described Protected Property as set out in Exhibit A and as generally depicted on the Property Map in Exhibit B include changes necessary to meet the requirements by the City for approval of the Amended and Restated Easement and the amended plat.

- J. **ADDITIONAL CONSERVATION VALUES.** The acreage of the Protected Property and the Conservation Values protected by this Amended and Restated Easement are substantially the same as those of the Original Easement. As a condition of this Amended and Restated Easement, and in order to achieve additional land protection and meet other conservation goals, the Land Trust has required the Owner to provide a financial contribution to the Land Trust to be used for other conservation projects in the Valley Creek watershed.
- K. **INTENT.** The Owner and the Co-Holders are committed to protecting and preserving the Conservation Values of the newly configured and described Protected Property in perpetuity. Accordingly, it is their intent to create a conservation easement over the Protected Property which is binding upon the current Owner and all future owners of the Protected Property and which conveys to the Co-Holders the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.
- L. **SINGLE DOCUMENT AND MODIFICATION OF LANGUAGE.** The Owner and the Land Trust further wish to restate the provisions covering the Protected Property under a single document while clarifying and updating various terms and provisions of the Original Easement.
- M. **AMENDMENT.** The Original Easement allows for amendment provided that the amendment meets the criteria specified in the Original Easement. The Land Trust has determined that the modifications set forth in this Amended and Restated Easement are consistent with conservation purposes of the Original Easement, enhance the Conservation Values protected by the Original Easement, and meet the criteria specified in the Original Easement and the policies of the Land Trust. In addition, the Land Trust and the Owner have obtained the approval of the District Court for Washington County to modify the Original Easement as herein agreed.

NOW THEREFORE, 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 to the Co-Holders and their successors and assigns a perpetual conservation easement over the Protected Property by replacing the legal description in the Original Easement as set out in Exhibit C attached hereto with the legal description set out in Exhibit A attached hereto. The Co-Holders hereby release from the Original Easement any land not covered by the legal description set out in Exhibit A. Further, the Owner and the Co-Holders hereby amend the terms of the Original Easement by replacing the rights, terms and restrictions of the Original Easement with those provided herein.

This Amended and Restated Easement consists of the following rights, terms, and restrictions:

1. **CONSERVATION PURPOSE.** The purpose of this Amended and Restated Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property identified above by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Amended and Restated Easement.

The terms of this Amended and Restated Easement are specifically intended to provide a significant public benefit by:

- Protecting natural habitat for wildlife and plants in a rapidly developing region.
- Protecting this relatively natural setting of undeveloped parcels to facilitate low-impact trail use and nature observation.
- Creating permanent open space in a clustered residential setting called *Cedar Bluff Homestead*.

2. **LAND USE RESTRICTIONS.** Any activity on or use of the Protected Property that is inconsistent with the purposes of this Amended and Restated Easement is prohibited. This prohibition specifically includes any intrusion or future development that would interfere with 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 below 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. Residential Development. No residential use or development of the Protected Property is allowed.
- 2.3. Agricultural Use. Except as specifically provided in this paragraph 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 maintenance or replacement of the apple trees currently located near the southwest corner of Outlot A of the Protected Property, or vegetation management activities allowed in subsection 2.12 below, including haying of the prairie as a management technique to maintain and improve the quality of restored and remnant prairie. Additionally, in Outlot A, the

approximately four (4) -acre area of open space in the vicinity of the original homestead that has not been restored to grassland or prairie may be used for such agricultural or other open space use specified in the Habitat and Open Space Management Plan approved by the Land Trust as provided in subsection 3.3 of this Amended and Restated Easement.

- 2.4. Division of the 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, 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.

This general prohibition does not prohibit the Owner from conveying a platted residential lot that includes a portion or portions of the Protected Property.

Each divided portion of Protected Property located within a residential lot shall remain subject to the terms and conditions of this Amended and Restated Easement. The Owner will provide the Co-Holders with a copy of any survey or map created documenting the new parcels or lots.

This limited right to divide the Protected Property does not include the right to construct any buildings, structures or improvements in addition to those, if any, otherwise permitted by this Amended and Restated Easement.

- 2.5. Right of Way. No right of way shall be granted across the Protected Property in conjunction with any industrial, commercial or residential use or development of other land not protected by this Amended and Restated Easement without prior approval of the Co-Holders.
- 2.6. Density. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Amended and Restated 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 amended plat of *Cedar Bluff Homestead*, recorded prior to this Amended and Restated Easement. No development rights that have been encumbered or extinguished by this Amended and Restated Easement may be transferred to any other property.
- 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 authorized in section 3 or as set forth below:
- a. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced only to serve uses and activities specifically permitted by this Amended and Restated Easement or to serve the overall residential

development of *Cedar Bluff Homestead*. 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 written approval of the Co-Holders as provided in subsection 7.8 of this Amended and Restated Easement.

Adjacent residential developments may, if necessary, benefit from and use the existing drainage and utility easements established on the recorded plat of the Cedar bluff Homestead 2<sup>nd</sup> Addition.

Utility and drainage systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation. Following installation or construction, the surface shall be restored in a timely manner to a condition consistent with the conservation purposes of this Amended and Restated 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 subsection and subsection 3.5 below. The Owner agrees to place and maintain appropriate signs along the boundaries of the Protected Property as designated by the Co-Holders and as provided in subsection 2.7.d. below. Additionally, the Owner agrees that the Co-Holders may place signs on the Protected Property identifying the land as protected.
- c. Roads and Trails. No roads may be established or constructed on the Protected Property without prior written approval the Co-Holders.

Paths or foot trails may be established on the Protected Property for non-motorized, recreational uses as described in the Habitat and Open Space Management Plan required in subsection 3.3 below. Such paths or foot trails may be subject to public easements for trail use.

No other roads, trails or other rights of way may be established or constructed on the Protected Property without the prior written approval of the Co-Holders.

- d. Fences. Prior to beginning construction on the first residential lot in *Cedar Bluff Homestead*, the Owner shall permanently stake all the boundaries of the Protected Property and install temporary boundary fences along those boundaries located within a residential lot. Also at that time, the Owner shall post small permanent signs along the temporary fences located within the residential lots stating that the land is permanently protected with a conservation easement in favor of the Co-Holders. 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 the boundaries of the Protected Property located within the residential lots, prior to beginning construction on the first residential lot.

- 2.8 Dumping. No trash, non-compostable garbage, hazardous or toxic substances, junk or other unsightly material may be dumped or accumulated on the Protected Property.
- 2.9 Mining. No mining, drilling, exploring for or removing of any minerals or fossil fuels from the Protected Property is allowed.
- 2.10. Topography and Surface Alteration. After the grading of *Cedar Bluff Homestead* is completed, no alteration or change in the topography of the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil, sand, gravel, rock or other materials, except as incidental to the development of *Cedar Bluff Homestead* or activities or uses specifically permitted by this Amended and Restated Easement.
- 2.11. Water. With the exception of the drainage easement reserved on the amended plat of *Cedar Bluff Homestead*, no alteration or manipulation 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 in accordance with the Habitat and Open Space Management Plan.
- No activities on or uses of the Protected Property that cause significant erosion or are seriously detrimental to water quality or purity 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 apple trees described in subsection 2.3 above, and in accordance with the Habitat and Open Space Management Plan required in subsection 3.3 below.
  - b. In conjunction with prairie management described in subsection 2.3 above, and in accordance with the Habitat and Open Space Management Plan required in subsection 3.3 below, periodic haying of the prairie is permitted under the supervision of a qualified ecologist and in a manner consistent with the best current scientific knowledge.

- c. As reasonably required to construct and maintain trails, structures and roads as permitted under this Amended and Restated Easement, provided that disturbed vegetation shall be restored following any construction to a condition consistent with the conservation purposes of this Amended and Restated Easement.
  - d. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage.
- 2.13. Vehicles. After the grading of *Cedar Bluff Homestead* is completed, no use of motorized vehicles on the Protected Property is allowed except in conjunction with habitat maintenance or restoration or enhancement, or in conjunction with any limited agricultural use or creation or maintenance of trails as specifically permitted under the Habitat and Open Space Management Plan, or permitted 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 or the use of motor vehicles on any permitted road or driveway.
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 Amended and Restated Easement. The Owner may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Co-Holders before exercising any reserved right that might have an adverse impact on the Conservation Values associated with 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 as a whole, or as a portion thereof located within a residential lot in *Cedar Bluff Homestead*.
- a. Any conveyance or encumbrance of the Protected Property is subject to this Amended and Restated Easement.
  - b. The Owner will reference or insert the terms of this Amended and Restated Easement in any deed or other document by which the Owner conveys title to the Protected Property, or portion thereof which is located within a residential lot.
  - c. The Owner will notify the Co-Holders of any conveyance, including the conveyance of any residential lot, at least 30 days prior to the closing and will

provide the Co-Holders with the name and address, and telephone number of the new owner and a copy of the deed transferring title.

- d. If the Protected Property is owned by an association of homeowners, the Owner shall provide the Co-Holders with the name and address of the contact person for the association. Additionally, the Owner shall provide the Co-Holders, on an annual basis, with a list of the current homeowners in *Cedar Bluff Homestead* with their mailing addresses.

The enforceability or validity of this Amended and Restated Easement will not be impaired or limited by any failure of the Owner to comply with this subsection.

- 3.2. Recreational and Educational Uses. The Protected Property may be used for hiking, cross-country skiing, nature observation or study, and other similar low impact non-motorized recreational and educational programs or activities.

Minor rustic structures such as trail barriers, benches, picnic tables, one gazebo not to exceed 400 square feet, and informational kiosks may be placed on the Protected Property in conjunction with these activities.

The existing stone barn and silo foundation located in Outlot A may be removed or restored and maintained for historic, aesthetic, or interpretive purposes. No expansion of these structures is allowed.

- 3.3. Habitat and Open Space Management Plan. The Protected Property shall be used to create, maintain, restore or enhance habitat for wildlife and native biological communities, and for the construction and maintenance of non-motorized trails in accordance with a Habitat and Open Space Management Plan approved by the Land Trust in writing in accordance with subsection 7.8. below.
- 3.5. Construction Signs. The Owner shall have the right, during the construction and development of *Cedar Bluff Homestead* to erect and maintain necessary promotional signs advertising lots and homes for sale within *Cedar Bluff Homestead*. Such signs shall be removed by the Owner from the Protected Property upon completion of the initial build-out of *Cedar Bluff Homestead*.

4. **CO-HOLDERS' RIGHTS AND REMEDIES.** In order to accomplish the purposes of this Amended and Restated Easement, the Co-Holders have the following rights and remedies:

- 4.1. Right to Enter. The Co-Holders have 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 Amended and Restated Easement.

- b. To obtain evidence for use in seeking judicial or other enforcement of this Amended and Restated 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 Amended and Restated Easement. Any survey or boundary demarcation completed under this provision will be at the Owner's expense.
- d. To otherwise exercise their rights under this Amended and Restated Easement.

4.2. Right of Enforcement. The Co-Holders have the right to prevent or remedy violations of this Amended and Restated Easement through appropriate judicial action brought against the Owner or other responsible party in any court of competent jurisdiction.

- a. Notice. The Co-Holders may not initiate judicial action until the Owner has been given notice of the violation, or threatened violation, of this Amended and Restated Easement and a reasonable opportunity to correct the situation. This provision shall not apply if, in the sole discretion of either Co-Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.
- b. Remedies. Remedies available to the Co-Holders in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to 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, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Amended and Restated Easement or injury to any Conservation Values protected by this Amended and Restated Easement.

These remedies are cumulative and are available without requiring the Co-Holders to prove actual damage to the Conservation Values protected by this Amended and Restated Easement. The Co-Holders and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Amended and Restated Easement.

The Co-Holders are 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 Co-Holders in enforcing this Amended and Restated 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. **Discretionary Enforcement.** Enforcement of the terms of this Amended and Restated Easement is solely at the discretion of the Co-Holders. The Co-Holders do not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Amended and Restated Easement by any delay or prior failure of the Co-Holders in discovering a violation or initiating enforcement proceedings.
- e. **Acts Beyond Owner's Control.** The Co-Holders may not bring any action against the Owner for any change to the Protected Property resulting from causes beyond the Owner's control, such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of persons other than the Owner or the Owner's agents, employees or contractors or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.
- f. **Right to Report.** In addition to other remedies, the Co-Holders have the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

4.3. **Limitation on Rights.** Nothing in this Amended and Restated Easement gives the Co-Holders 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, handling 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 statutes or laws whether federal, state or local in nature, regarding responsibility for environmental conditions associated with contamination.

- 5. **PUBLIC ACCESS.** Nothing in this Amended and Restated Easement gives the general 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 Amended and Restated Easement will be more fully described in a baseline property report on file at the office of the Land Trust. The Owner and the Co-Holders acknowledge that this baseline property report will accurately represent the condition of the Protected Property at the time of this conveyance and may

be used by the Co-Holders in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Amended and Restated Easement and in any enforcement proceeding. This baseline property report, however, is not intended to preclude the use of other information and evidence to establish the present condition of the Protected Property in the event of a future controversy.

## 7. GENERAL PROVISIONS.

7.1. Assignment. This Amended and Restated Easement may be assigned or transferred by the Co-Holders or by one of them only to a conservation organization which is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and which is authorized to hold conservation easements under Minnesota law. Any future holder of this Amended and Restated Easement shall have all of the rights conveyed to the Co-Holders by this Amended and Restated Easement. As a condition of any assignment or transfer, the Co-Holders shall require any future holder of this Amended and Restated Easement to continue to carry out the conservation purposes of this Amended and Restated Easement in perpetuity.

The Co-Holders will notify the Owner of any assignment within fifteen (15) days of the assignment and will provide the Owner with the name and address of the new holder.

7.2. Amendment. Under appropriate circumstances, this Amended and Restated Easement may be modified or amended. However, no amendment or modification will be allowed if, in the sole and exclusive judgment of the Land Trust, it: (i) does not further the purposes of this Amended and Restated Easement, (ii) will adversely impact the Conservation Values protected by this Amended and Restated Easement, (iii) affects the perpetual duration of the Amended and Restated Easement, or (iv) affects the validity of the Amended and Restated Easement under Minnesota law or the status of the Land Trust under Sections 501(c)(3) and 170(h) of the Internal Revenue Code.

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

7.3. Extinguishment. Extinguishment or termination of this Amended and Restated Easement is subject to the following:

- a. This Amended and Restated Easement may be extinguished only through judicial proceedings and only under the following circumstances:
  - (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical, or

(ii) pursuant to the proper exercise of the power of eminent domain.

- b. The Owner recognizes that uses of the Protected Property prohibited by this Amended and Restated Easement may, in the future, become more economically viable than those uses permitted by the Amended and Restated Easement. The Owner also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Amended and Restated Easement.

The Owner and the Co-Holders believe that such changes will increase the public benefit provided by this Amended and Restated Easement. Therefore, such changes are not considered unexpected changes and shall not be deemed to be circumstances justifying the extinguishment of this Amended and Restated Easement as otherwise set forth above.

- 7.4. Proceeds. If this Amended and Restated Easement is extinguished or terminated in whole or in part, the Land Trust is entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount that is equal to the fair market value of this Amended and Restated Easement at the time of the extinguishment but that is not less than an amount equal to the proportionate value that this Amended and Restated Easement bears to the value of the Protected Property as a whole at the time of this conveyance, excluding the value of any buildings or improvements constructed in the future on the Protected Property. The Land Trust shall use its share of any proceeds in a manner consistent with the conservation purposes of this Amended and Restated Easement.

- 7.5. Warranties. The Owner represents and warrants as follows:

- a. The Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Amended and Restated Easement to the Co-Holders.
- b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Amended and Restated Easement.
- c. The 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 Co-Holders harmless against any claims of contamination from such substances.

- 7.6. Real Estate Taxes. The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Co-Holders created by this Amended and Restated Easement. The Co-

Holders may, at their discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from the Owner.

7.7. Ownership Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. The Owner agrees to defend, indemnify and hold the Co-Holders harmless from any and all costs or liability for any personal injury or property damage occurring on or related to the Protected Property or the existence of this Amended and Restated Easement. The Owner will name the Co-Holders as additional insured parties on any general liability insurance policy carried by the Owner with respect to the Protected Property.

7.8. Notice and Approval. Any notice or request for approval required by this Easement must be written and is subject to the following:

a. 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:  
Afton Development, LLC  
3500 Willow Lake Road  
Suite 100  
Vadnais Heights, MN 55110

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

To the City:  
City of Afton  
City Administrator  
3033 St. Croix Trail South,  
P. O. Box 219  
Afton, MN 55001

b. Timing. Unless otherwise specified in this Amended and Restated 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.

c. Content. The notice or request for approval must include sufficient information to allow the Co-Holders to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this

Amended and Restated Easement. At a minimum this would include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Protected Property.

d. Approval. The Co-Holders may withhold their approval if they determine that the proposal is inconsistent with the terms or purposes of this Amended and Restated Easement or that it lacks sufficient information to allow the Co-Holders to reach an informed decision. The Co-Holders may condition their approval on the Owner's acceptance of modifications, which would, in the Co-Holders' judgment, make the proposed activity consistent with the Amended and Restated Easement or otherwise meet any concerns.

7.9. Binding Effect. This Amended and Restated Easement shall run with and burden the Protected Property in perpetuity. The terms of this Amended and Restated 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.

This Amended and Restated Easement creates a property right immediately vested in the Co-Holders and their successors and assigns that cannot be terminated or extinguished except as set out herein.

If at any time the Co-Holders, the Land Trust, or the City, or other holder of this Amended and Restated Easement become the owner of all or a portion of the fee interest in the Protected Property, this Amended and Restated 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.

7.10. Definitions. Unless the context requires otherwise, the term "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. The term "Land Trust" includes the Minnesota Land Trust and its successors or assigns to its interest in this Amended and Restated Easement. The term "City" includes the City of Afton and its successors or assigns to its interest in this Amended and Restated Easement.

7.11. Co-Holders. The rights conveyed to the Land Trust and the City as Co-Holders under this Amended and Restated Easement may be exercised by either of them separately or by both of them jointly, provided, however, that in the event of a disagreement or a conflict between the Land Trust and the City, the sole discretion and judgment of the Land Trust shall prevail and the City shall cooperate fully with the Land Trust's decision. It is nevertheless the intention of the Co-Holders to use all reasonable efforts to coordinate their activities in carrying out their rights and responsibilities under this Amended and Restated

Easement. To that end, the following outlines the general manner in which the Co-Holders intend to carry out their rights and responsibilities:

- a. Monitoring. The Land Trust shall be generally responsible for periodically monitoring the Protected Property for compliance with the terms of this Amended and Restated Easement and will provide the City with the results of such monitoring.
  - b. Notice and Approval. When providing notice or requesting approval as set out in subsection 7.8 above, the Owner shall give notice to both the Land Trust and the City. The Land Trust and the City shall use all reasonable efforts to coordinate their response to any request for approval.
  - c. Enforcement. If either Co-Holder finds that there has been a violation of the terms of this Amended and Restated Easement, that party shall immediately notify the other Co-Holder and both Co-Holders shall use all reasonable efforts to reach agreement on how to proceed.
- 7.12. Termination of Rights and Obligations. A party's rights and obligations under this Amended and Restated Easement terminate upon the transfer or termination of that party's interest in this Amended and Restated 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.
- 7.13. Recording. The Co-Holders will record this Amended and Restated Easement in a timely manner in the official records for the county in which the Protected Property is located. The Co-Holders may re-record this Amended and Restated Easement or any other documents necessary to protect their rights under this Amended and Restated Easement or to assure the perpetual enforceability of this Amended and Restated Easement.
- 7.14. Controlling Law and Construction. This Amended and Restated 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 purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.
- 7.15. Severability. A determination that any provision or specific application of this Amended and Restated Easement is invalid shall not affect the validity of the remaining provisions or any future application.
- 7.16. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably requested by the Co-Holders to carry out in perpetuity the provisions and the intent of this Amended and Restated Easement, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.

- 7.17. Entire Agreement. This document sets forth the entire agreement of the parties with respect to this Amended and Restated Easement and supersedes all prior discussions or understandings.
- 7.18. Signatures. The signatures to this Amended and Restated Easement may be executed and notarized on separate pages that when attached to this document shall constitute one complete document.

[Remainder of page intentionally blank.]



ACCEPTANCE

The MINNESOTA LAND TRUST hereby agrees to and accepts the foregoing Amended and Restated Easement effective as of the 31<sup>st</sup> day of August, 2011.

MINNESOTA LAND TRUST

By: [Signature]  
Kris Larson

Its: Executive Director

STATE OF MINNESOTA )  
COUNTY OF Ramsey ) ss

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of August, 2011, by Kris Larson, the Executive Director of the Minnesota Land Trust, a non-profit corporation under the laws of the State of Minnesota, on behalf of said corporation.

[Signature]  
Notary Public  
My Commission Expires:



The CITY OF AFTON hereby agrees to and accepts the foregoing Amended and Restated Easement effective as of the 31<sup>st</sup> day of August, 2011.

CITY OF AFTON

By: Pat Snyder

Its: Mayor

STATE OF MINNESOTA )  
COUNTY OF Washington ) ss

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of August, 2011, by Pat Snyder, the Mayor of the City of Afton, a local unit of government and a political subdivision of the State of Minnesota, on behalf of the City.

Genia M Setzer

Notary Public

My Commission Expires:

**THIS INSTRUMENT DRAFTED BY:**

Minnesota Land Trust  
2356 University Ave. W.  
Suite 240  
St. Paul, MN 55114



## EXHIBIT A

### Legal Description of Protected Property

That part of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, all in Block 1, and Outlot A, CEDAR BLUFF HOMESTEAD 2ND ADDITION, according to the recorded plat thereof, Washington County; Minnesota, described as follows: Commencing at southwest corner of said Outlot A; thence South 89 degrees 08 minutes 56 seconds East, plat bearing, along the south line of said Outlot A, 50.03 feet, to the east line of the West 50.00 feet of said Outlot A, as measured at a right angle to and parallel with the west line of said Outlot A and the point of beginning of the easement to be described; thence North 01 degrees 16 minutes 13 seconds West, along the east line of the West 50.00 feet of said Outlot A, 1322.22 feet; thence North 00 degrees 58 minutes 00 seconds West, along the east line of the West 50.00 feet of said Outlot A, 1047.25 feet, to a boundary line of said Outlot A; thence South 89 degrees 26 minutes 15 seconds East, along the boundary line of said Outlot A, 555.20 feet, to a corner of said Outlot A; thence North 00 degrees 58 minutes 00 seconds West, along the boundary line of said Outlot A, 231.08 feet, to the most northerly line of said Outlot A; thence South 89 degrees 26 minutes 15 seconds East, along said northerly line, 219.50 feet; thence South 00 degrees 07 minutes 49 seconds East, 596.45 feet; thence southeasterly 778.99 feet, along a tangential curve, concave to the northeast, having a radius of 830.00 feet and a central angle of 53 degrees 46 minutes 27 seconds; thence South 53 degrees 54 minutes 16 seconds East, tangent to last described curve, 333.98 feet; thence easterly 390.97 feet along a tangential curve concave to the north having a radius of 480.00 feet and central angle of 46 degrees 40 minutes 08 seconds; thence southerly and southwesterly 108.75 feet along a non-tangential curve concave to the west having a radius of 73.03 feet, central angle of 85 degrees 18 minutes 53 seconds and having a chord bearing of South 39 degrees 22 minutes 16 seconds West; thence South 82 degrees 01 minutes 43 seconds West, tangent to last described curve 278.57 feet; thence southwesterly 226.48 feet along a tangential curve concave to the southeast having a radius of 205.00 feet and central angle of 63 degrees 17 minutes 53 seconds; thence North 24 degrees 35 minutes 55 seconds West, not tangent to last described curve, 132.18 feet; thence North 63 degrees 32 minutes 06 seconds West, 328.78 feet; thence South 68 degrees 27 minutes 12 seconds West, 173.47 feet; thence South 21 degrees 36 minutes 24 seconds West, 119.37 feet; thence South 06 degrees 00 minutes 39 seconds West, 273.15 feet; thence South 15 degrees 42 minutes 48 seconds West, 645.20 feet to the south line of said Lot 10; thence North 89 degrees 08 minutes 56 seconds West, along the south lines of said Lot 10 and said Outlot A, 444.57 feet, to the point of beginning.

AND

That part of Lots 12, 13, 14, 15, 23, 24, 25, all in Block 1, and Outlot B, CEDAR BLUFF HOMESTEAD 2ND ADDITION, according to the recorded plat thereof, Washington County, Minnesota, described as follows: Commencing at southwest corner of said Outlot A; thence South 89 degrees 08 minutes 56 seconds East, plat bearing, along the south line of said Outlot A, 50.03 feet, to the east line of the West 50.00 feet of said Outlot A, as measured at a right angle to

and parallel with the west line of said Outlot A; thence North 01 degrees 16 minutes 13 seconds West, along the east line of the West 50.00 feet of said Outlot A, 1322.22 feet; thence North 00 degrees 58 minutes 00 seconds West, along the east line of the West 50.00 feet of said Outlot A, 1047.25 feet, to a boundary line of said Outlot A; thence South 89 degrees 26 minutes 15 seconds East, along the boundary line of said Outlot A, 555.20 feet, to a corner of said Outlot A; thence North 00 degrees 58 minutes 00 seconds West, along the boundary line of said Outlot A, 231.08 feet, to the most northerly line of said Outlot A; thence South 89 degrees 26 minutes 15 seconds East, along said northerly line, 219.50 feet; thence South 00 degrees 07 minutes 49 seconds East, 596.45 feet; thence southeasterly 778.99 feet, along a tangential curve, concave to the northeast, having a radius of 830.00 feet and a central angle of 53 degrees 46 minutes 27 seconds; thence South 53 degrees 54 minutes 16 seconds East, tangent to last described curve, 333.98 feet; thence easterly 510.39 feet along a tangential curve concave to the north having a radius of 480.00 feet and central angle of 60 degrees 55 minutes 23 seconds to the northwest corner of said Lot 25 and to the point of beginning of the easement to be described; thence South 32 degrees 23 minutes 28 seconds East, not tangent to last described curve, along a southwesterly line of said Lot 25, a distance of 333.62 feet; thence North 47 degrees 46 minutes 53 seconds East, 206.83 feet; thence North 78 degrees 50 minutes 54 seconds East, 239.90 feet to the east line of said Lot 23; thence South 00 degrees 50 minutes 24 seconds East, along the easterly line of said Lot 23 and the most easterly line of said Outlot B, 1022.14 feet, to the southeast corner of said Outlot B; thence North 89 degrees 08 minutes 56 seconds West, along the south line of said Outlot B and said Lots 12 and 13, a distance of 1288.24 feet, to the southwest corner of said Lot 12; thence North 15 degrees 03 minutes 08 seconds East, along the west line of said Lot 12, a distance of 56.09 feet; thence South 89 degrees 08 minutes 56 seconds East, 667.59 feet; thence North 78 degrees 02 minutes 38 seconds East, 161.12 feet, to the east line of said Lot 13; thence North 28 degrees 57 minutes 53 seconds East, along the east line of said Lot 13 and the east line of said Lot 14, a distance of 269.64 feet, to the most easterly corner of said Lot 14; thence North 57 degrees 15 minutes 51 seconds West, along the northeasterly lines of said Lots 14 and 15, a distance of 716.22 feet; thence South 77 degrees 15 minutes 45 seconds West, 222.28 feet, to a boundary line of said Lot 15; thence North 09 degrees 45 minutes 16 seconds West, along the westerly line of said Lot 15, a distance of 69.45 feet; thence northeasterly, 232.28 feet, along a boundary line of said Lot 15 and a boundary line of said Outlot B, along a tangential curve, concave to the southeast, having a radius of 145.00 feet and a central angle of 91 degrees 46 minutes 59 seconds; thence North 82 degrees 01 minutes 43 seconds East tangent to last described curve 278.57 feet; thence easterly, northeasterly, and northerly 209.57 feet along a tangential curve concave to the northwest having a radius of 133.03 feet and central angle of 90 degrees 15 minutes 33 seconds; thence northeasterly 58.77 feet along a non-tangential curve concave to the northwest having a radius of 480.00 feet, central angle of 07 degrees 00 minutes 57 seconds and having a chord bearing of North 68 degrees 40 minutes 50 seconds East to the point of beginning.

AND

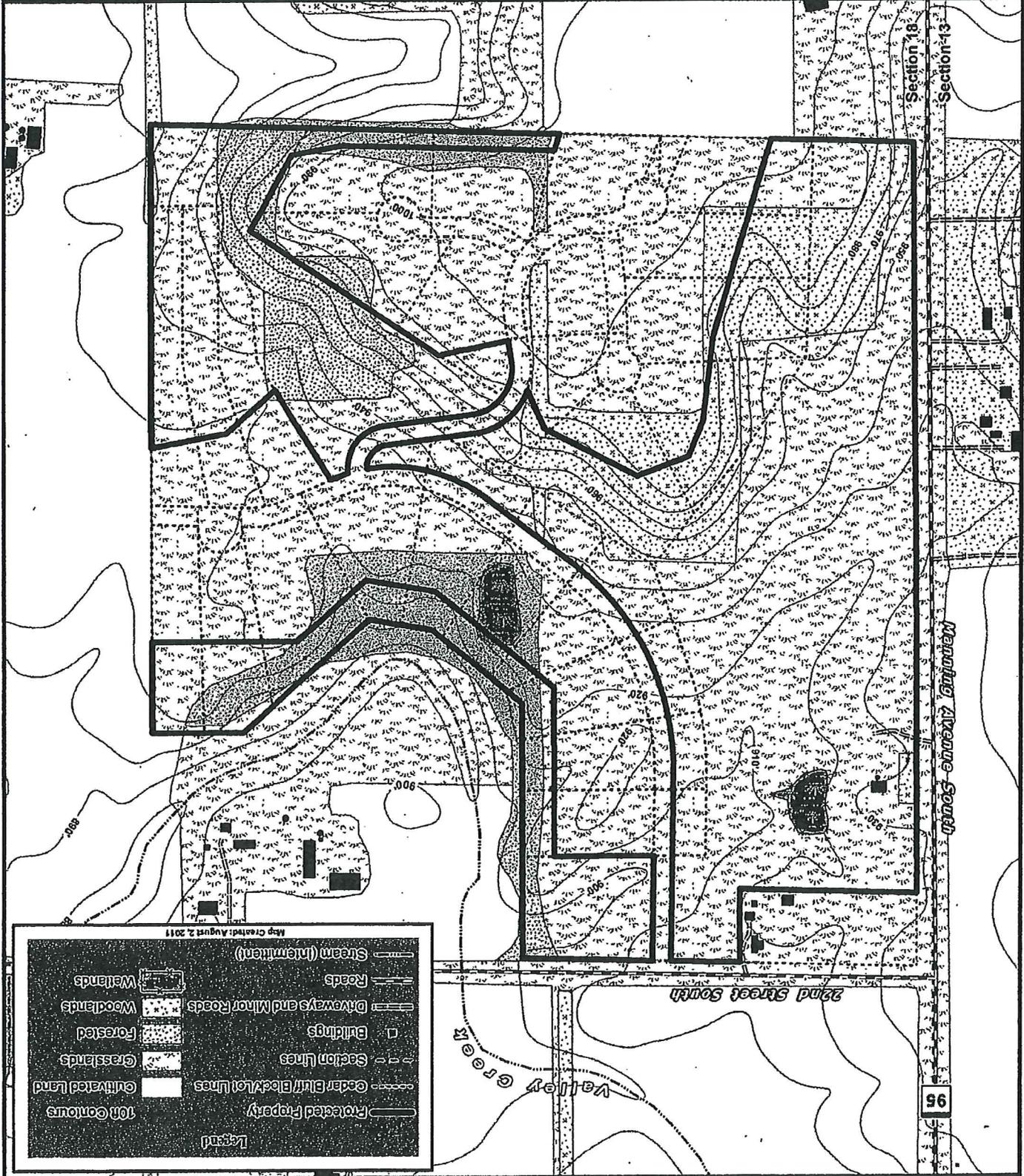
That part of Lots 1, 2, 3, 4, 5, 18, 19, 20, 21, and 22, all in Block 1, and Outlot A, CEDAR BLUFF HOMESTEAD 2ND ADDITION, according to the recorded plat thereof, Washington County, Minnesota, described as follows: Beginning at the northeast corner of said Lot 22; thence South 89 degrees 09 minutes 36 seconds West, plat bearing, along the north lines of said Lot 22 and Lot 21, a distance of 289.15 feet, to the most northerly corner of said Lot 21; thence South 47 degrees 29 minutes 26 seconds West, along the northwest lines of said Lots 21 and 20,

a distance of 531.63 feet, to the most westerly corner of said Lot 20; thence North 81 degrees 21 minutes 46 seconds West, along the northerly lines of said Lots 19 and 18, a distance of 204.86 feet, to a boundary corner of said Lot 18; thence North 51 degrees 20 minutes 53 seconds West, along northeasterly lines of said Lots 18, 5, 4, and 3, a distance of 364.87 feet, to a boundary corner of said Lot 3; thence North 00 degrees 56 minutes 52 seconds West, along the east lines of said Lots 3, 2, 1, and said Outlot A, 807.59 feet, to the most northeasterly corner of said Outlot A; thence North 89 degrees 26 minutes 15 seconds West, along the most northerly line of said Outlot A, 408.81 feet; thence South 00 degrees 07 minutes 49 seconds East, 331.49 feet, to the north line of said Lot 1; thence North 89 degrees 03 minutes 08 seconds East, along the north line of said Lot 1, a distance of 313.40 feet; thence South 00 degrees 56 minutes 52 seconds East, 533.96 feet; thence South 51 degrees 20 minutes 53 seconds East, 482.72 feet; thence South 81 degrees 21 minutes 46 seconds East, 223.72 feet; thence North 47 degrees 29 minutes 26 seconds East, 289.14 feet; thence North 89 degrees 09 minutes 36 seconds East, 460.65 feet to the east line of said Lot 22; thence North 00 degrees 50 minutes 24 seconds West, along the east line of said Lot 22, a distance of 286.51 feet to the point of beginning.

Washington County, Minnesota

Abstract Property

# Exhibit B: Property Map



Map Created: August 2, 2011

Legend	
Protected Property	10ft Contours
Cedar Bluff/Electrical Lines	Cultivated Land
Grasslands	Section Lines
Forested	Buildings
Woodlands	Driveways and Minor Roads
Wetlands	Roads
Stream (Intermittent)	

**Map Resource Information** Site: Cedar Bluff Homesrad Tract: Atron Development, LLC

Washington County - Twp. 26 N. R. 20 W. Sec. 18

Scale: 1" = 400'

Feet: 0, 200, 400

MINNESOTA LAND TRUST

communitygis

Users of this map agree and acknowledge that Community GIS Services Inc. and its licensors shall not be held liable for accuracy of GIS material presented on this map and for any errors or omissions. Community GIS Services Inc. provides property, section lines, buildings, roads, driveways, woodlands, wetlands, and cultivated land. Community GIS Services Inc. provides property, section lines, buildings, roads, driveways, woodlands, wetlands, and cultivated land for accuracy of GIS material presented on this map and for any errors or omissions.

EXHIBIT C

Legal Description of Original Easement

Outlots A, B, C, D, E and F, *Cedar Bluff Homestead*, according to the plat on file and of record in the office of the County Recorder, Washington County, Minnesota

**Memorandum****To: Ron Moore, City of Afton****From: Nick Guilliams, PE****Date: November 14, 2018****Re: 15945 31<sup>st</sup> Street S Drainage and Easement Concerns**

---

This memo is being provided to address drainage and easement concerns from the property owner at 15945 31<sup>st</sup> Street S. The property owner has expressed concerns that the recently completed Downtown Village Improvements Project has created adverse drainage impacts to the property and that the adverse drainage impacts are due to the construction of the retaining wall at 3561 Saint Croix Trail (Gehrke Property) directly south of 15945 31<sup>st</sup> Street S.

Regarding the construction of the retaining wall, the City did obtain an 11-foot temporary easement from the 15945 31<sup>st</sup> Street South Property (Dickinson) to construct the retaining wall on the Gehrke Property. The retaining wall is located entirely on the Gehrke Parcel (figure attached). The retaining wall was necessary due to construction improvements at Kelle's Creek and Saint Croix Trail. As part of the signed easement agreement with James and Judith Gherke, the City agreed to grade a new building pad so that the Gehrke's could construct a new home upon completion of the Downtown Village Improvement Project.

Regarding drainage concerns at 15945 31<sup>st</sup> Street S, there is less area draining to the area today after the completion of the construction improvements. Other than the construction of the retaining wall, no other construction activities took place on the property. Prior to the project, Saint Croix Trail existed in a rural condition with no curb and gutter or adequate storm sewer system. Drainage from the roadway sheet flowed off the road and onto the property at 15945 31<sup>st</sup> Street S.

The road is currently built to an urban standard which conveys roadway drainage along new curb and gutter which then flows into a new storm drainage system. The photos below show the property before and after construction.



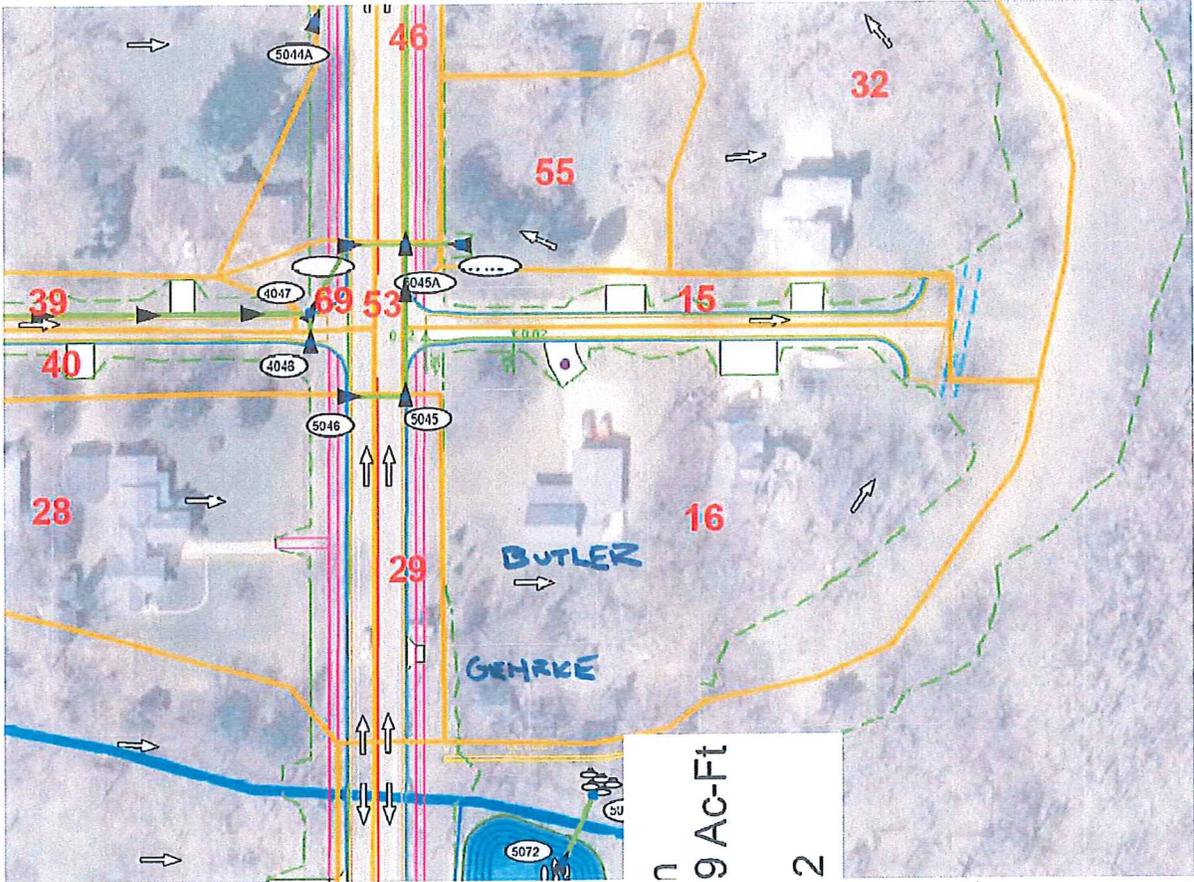
Before



After

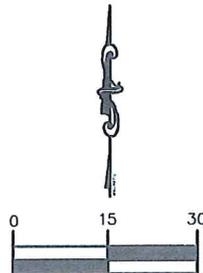
As part of the storm sewer design, WSB prepared a hydraulic report that analyzed existing and proposed drainage areas. The figure below shows that drainage from Saint Croix Trail (drainage area 29) now flows into a new storm water structure labeled 5045. The figure also shows the path of drainage on 15945 31<sup>st</sup> Street S (drainage area 16) which flows east toward the levee.

As a requirement of the building permit for the Gehrke Parcel, fine grading will be required which will direct drainage away from 15945 31<sup>st</sup> Street S and toward Kelle's Creek.





TEMPORARY EASEMENT  
1,335 SQFT



NOTE: PARCEL AREA OBTAINED FROM WASHINGTON COUNTY RECORDS.

**OWNER:**  
Mary Dickinson Trust

**PID:**  
22.028.20.41.0009  
22.028.20.41.0050

**ADDRESS:**  
15895 31st Street South  
P.O. Box 326  
Afton, MN 55001

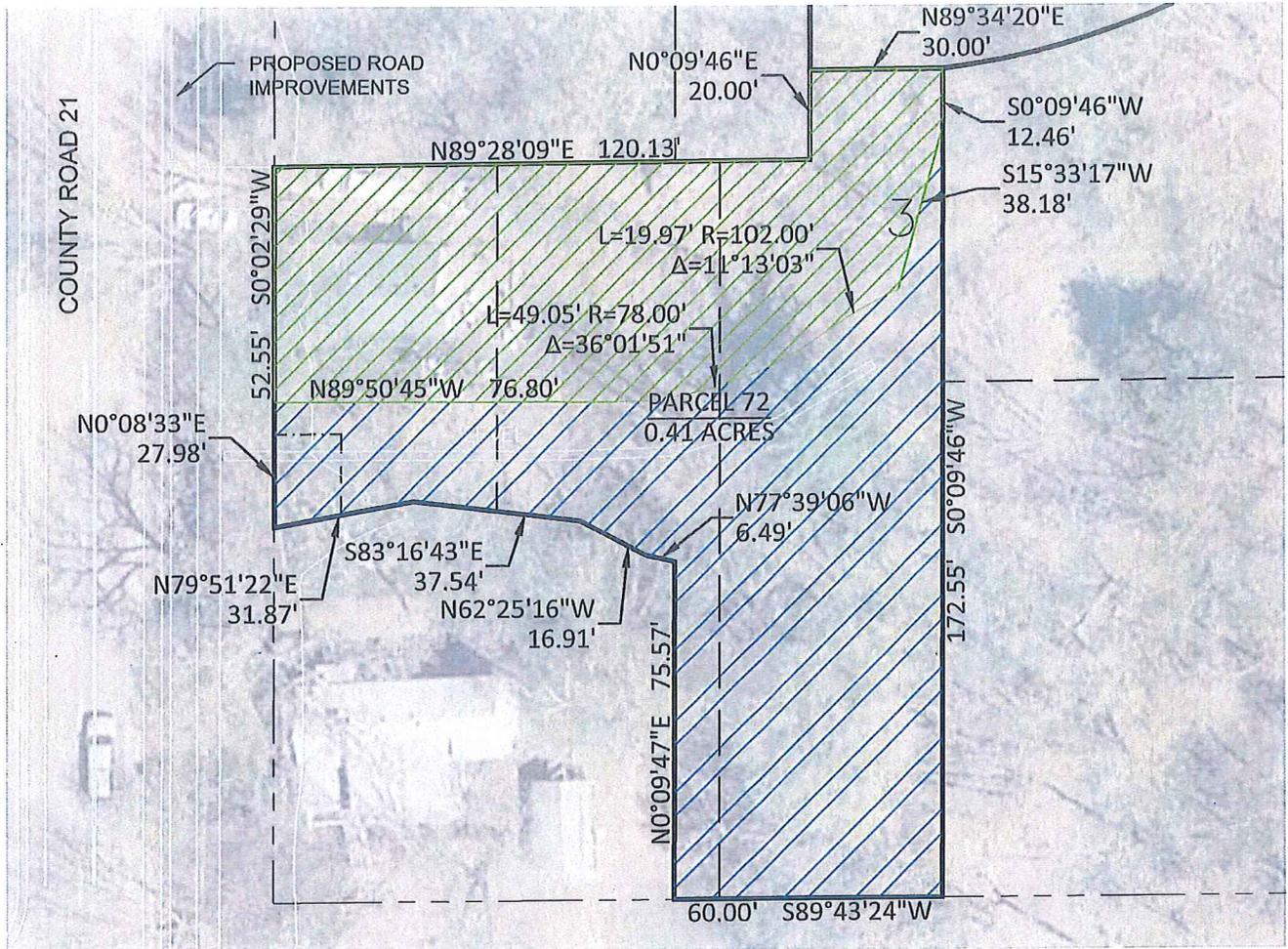
701 Xenia Avenue South, Suite 300  
Minneapolis, MN 55416  
www.wsbang.com

763-511-1700 • Fax 763-511-1700  
INFRASTRUCTURE • ENGINEERING • PLANNING • CONSTRUCTION

**Parcel 77 Sketch**  
**Afton Trail Improvements**  
**Afton, Minnesota**

October 30, 2014 Project No: 1856-32

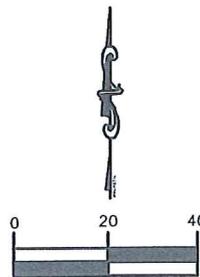
**City of Afton**



PERMANENT EASEMENT  
10,052 SQFT



TEMPORARY EASEMENT  
7,612 SQFT



**OWNER:**  
James and Judith Gehrke

**PID:**  
22.028.20.41.0010

**ADDRESS:**  
P.O. Box 187  
Afton, MN 55001

NOTE: PARCEL AREA OBTAINED FROM  
WASHINGTON COUNTY RECORDS.





540 Gateway Boulevard  
Burnsville, MN 55337  
Tel: 952-737-4660  
Fax: 763-541-1700

Date: June 13, 2017

TO: Ron Moore  
Afton City Administrator

FROM: Benjamin Barker, Easement Acquisition Agent  
WSB & Associates, Inc.  
Consultant for the City of Afton  
(651) 286-8455  
Email: [bbarker@wsbeng.com](mailto:bbarker@wsbeng.com)

Re: PAYMENT REQUEST

City of Afton – Downtown Improvement Project

WSB Project number: 1856-321  
Parcel No: 72  
PIN: 2202820410010 and 220282041001  
Property Address: 3561 St. Croix Trail South, Afton

Make Two Checks of Equal Payment to:

1<sup>st</sup> Check in the Amount of \$6,000.00 to: James Gehrke  
3561 St. Croix Trail South  
Afton, MN 55001

2<sup>nd</sup> Check in the Amount of \$6,000.00 to: Judith Gehrke  
401 N 2<sup>nd</sup> Street, #107  
Minneapolis, MN 55401

Total Payment Amount: \$12,000.00 (\$6,000 + \$6,000)

SSN: Provided to City in 2015

Lender consent: N/A

**Please provide WSB with a copy of the recorded easement and a copy of the check for our records. PLEASE RETURN THE CHECK TO WSB FOR DELIVERY.**

**Notes and Enclosed Documents:**

- 1 – Easement Extension Document
- 1 – Memorandum of Agreement

AMENDMENT TO MEMORANDUM OF AGREEMENT

We certify that on April 21, 2017 we agree to amend the Memorandum of Agreement for the Afton Downtown Project dated and signed on April 21, 2015 (see attached) as follows:

- Clause 6a. – change “April 15, 2018,” to “April 15, 2020”
- Clause 6c. – change “up to 12 months” to “up to 42 months”
- Add Clause 6d. – Add language: The City of Afton agrees to compensate Owner \$12,000.00 for the extension.

All other terms and conditions of the Memorandum of Agreement remain the same.

OWNER



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James F. Gehrke



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Judith M. Gehrke

CITY OF AFTON

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Ron Moore, City Administrator



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Benjamin Barker, Agent for City of Afton

**MEMORANDUM OF AGREEMENT**  
Afton Downtown Project

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

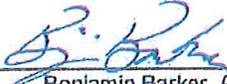
On this 21 day of April, 2015, James F. Gehrke and Judith M. Gehrke, Owner of the above described parcel of property located in County of Washington, State of Minnesota, did execute and deliver a conveyance of real estate rights to the City of Afton.

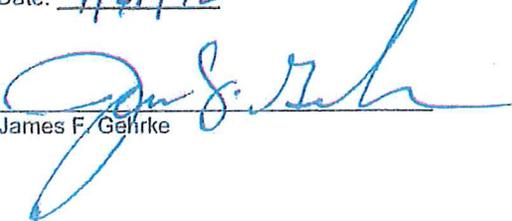
This agreement is now made and entered as a Memorandum of all the terms, and the only terms, agreed upon in connection with the above transaction. It is hereby acknowledged and agreed upon between the parties that:

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

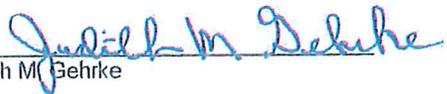
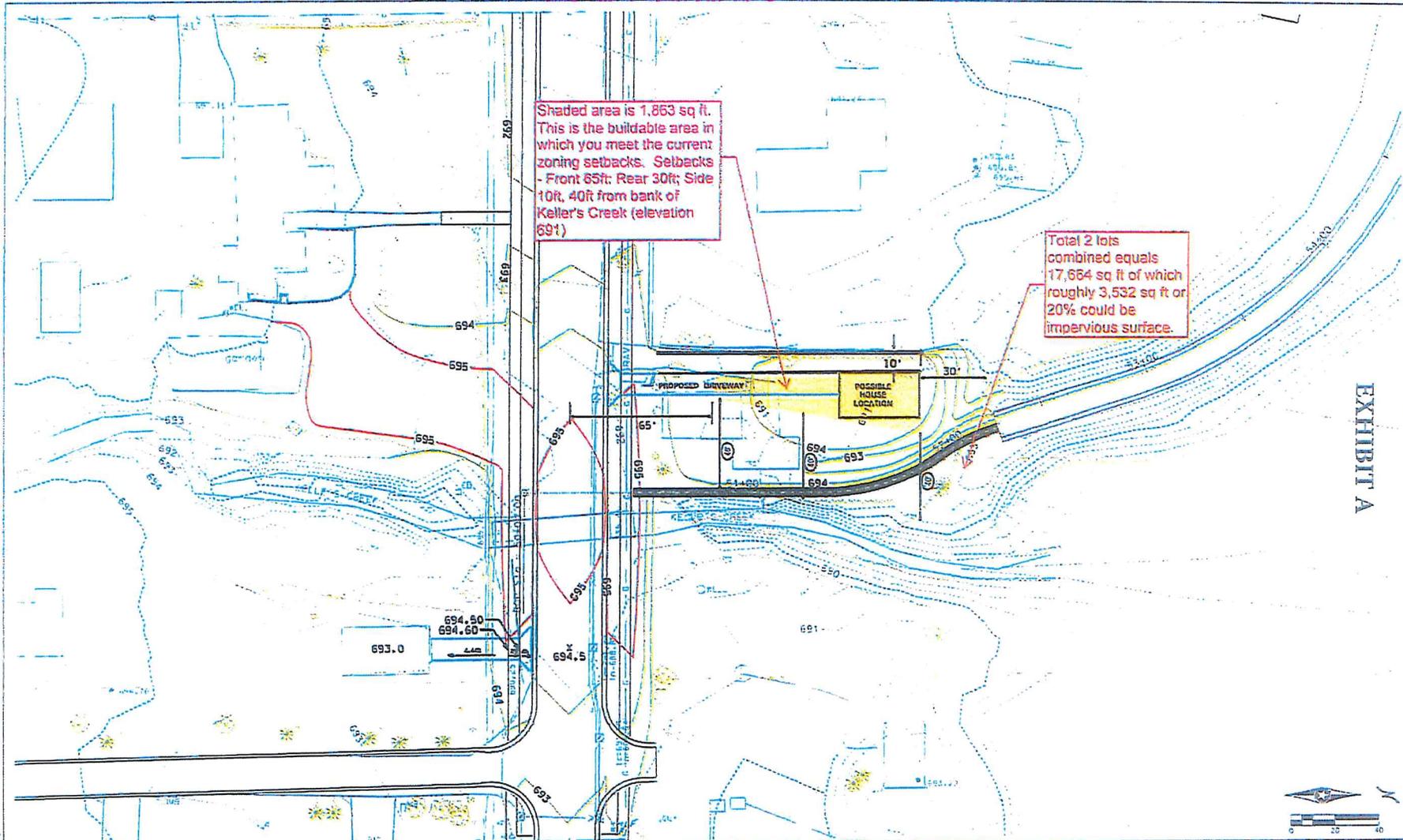
  
Judith M. Gehrke

EXHIBIT A



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.



WATSON ENGINEERING AND SURVEYING, INC. 4/17/2019 10:54:20 AM

<p>DATE: 4/17/2019                  TIME: 10:54:20 AM                  DRAWN BY: [blank]                  CHECKED BY: [blank]                  APPROVED BY: [blank]</p>	<p>PROJECT: [blank]                  SHEET: [blank]                  TOTAL SHEETS: [blank]</p>	<p>477 Tennessee Street                  St. Paul, MN 55103                  Fax: (612) 222-8422 • Fax: (612) 222-8423                  Website: [blank]</p> <p><b>WSB</b>                  WATSON ENGINEERING AND SURVEYING, INC.</p>	<p>Downtown Village Improvements Project                  and Appurtenant Work                  for the City of                  Afton, Minnesota</p>	<p>WSB Project 01858-320</p> <p>Gehrke / Weed Grading Plan</p>
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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 H. Bend  
Its Mayor

By: Richard H. Bend  
Its City Administrator

OWNER

James F. Gehrke  
James F. Gehrke

Judith M. Gehrke  
Judith M. Gehrke

WASHINGTON COUNTY, MINNESOTA

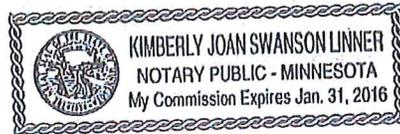
\_\_\_\_\_  
Auditor-Treasurer

BY: \_\_\_\_\_  
Deputy

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of April, 2015, by Richard Bend, the Mayor, and Ronald Moose, the City Administrator, of the City of Afton, a Minnesota municipal corporation, who executed this Agreement and acknowledged that they executed the same on behalf of the City of Afton.

Kim Swanson Linner  
Notary Public



STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of April, 2015, by James F. Gehrke and Judith M. Gehrke.

Benjamin David Barker  
Notary Public



This Instrument was drafted by:  
Holstad & Knaak, PLC  
Attorneys at Law  
4501 Allendale Drive  
St. Paul, MN 55127.  
651-490-9078