

**MEETING DATE:** April 28, 2016

**TITLE:** Authorization to enter into an agreement for crossing repair and conveyance of easements over Painter Marsh

**RESOLUTION NUMBER:** 16-041

**PREPARED BY:** Renae Clark

**E-MAIL:** rclark@minnehahacreek.org

**TELEPHONE:** 952-641-4510

**REVIEWED BY:**  Administrator  Counsel  Program Director: James Wisker  
 Board Committee  Engineer  Other

**WORKSHOP ACTION:**

<input type="checkbox"/> Advance to Board mtg. Consent Agenda. action.	<input type="checkbox"/> Advance to Board meeting for discussion prior to
<input type="checkbox"/> Refer to a future workshop (date): _____ (date): _____	<input type="checkbox"/> Refer to taskforce or committee
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): <u>Action</u>	

**PURPOSE or ACTION REQUESTED:**

Authorization to enter into an agreement for the conveyance of easements for eight parcels and the District's repair of a cattle crossing.

**PROJECT/PROGRAM LOCATION:**

Painter Creek Subwatershed – See attached map

**PROJECT TIMELINE:**

- 2015 Negotiated easement terms
- May 2016 execute easements
- May 2016 solicit quotes for reconstruction of the crossing
- Fall 2016 estimated timing for construction

**PROJECT/PROGRAM COST:**

Fund name and number: Project Maintenance and Land Management, 2003

Current budget: \$546,429

Expenditures to date: \$13,483

Requested amount of funding: \$14,670\*

\*The engineer's estimate of construction for the crossing repair is \$37,870. Because the crossing was repaired by the District in 2008, and its disrepair is due in part to recent flooding, its reconstruction is eligible for Federal Emergency Management Agency (FEMA) funding which is being coordinated by the District. FEMA has

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Resolutions are not final until approved by the Board and signed by the Board Secretary.**

approved a reimbursement amount of \$23,200. The remaining funds needed for construction will be precisely known upon receipt of quotes which is scheduled to be brought for Board consideration in May 2016.

#### **PAST BOARD ACTIONS:**

- Resolution 06-025: Acting under MN Statute 103 E.701 as the public drainage authority, the MCWD Board of Managers authorized the District to undertake repair of a cattle crossing of Painter Creek on property owned by Dean and Dawn Mooney, leased by Marvin Johnson.
- Resolution 15-060: Authorization of a Memorandum of Understanding with Marvin Johnson, Dean and Dawn Mooney and Hilltop Farm to perform conservation area planning and repair of a cattle crossing within an approximate 350 acre area over Painter Marsh within the City of Independence and authorization to contract with Wenck Associates for the design of a new cattle crossing.

#### **SUMMARY:**

The requested Board Action seeks approval of an Agreement between MCWD, Marvin Johnson, Dean and Dawn Mooney and Hilltop Farm under which the MCWD will receive perpetual conservation easements on eight parcels allowing the MCWD perform habitat/wetland enhancement and manage hydrology on a large portion of Painter marsh and, in exchange, will repair an existing crossing over the Painter Creek channel and maintain the crossing for five years. Because the existing crossing, which was repaired by the District in 2008, is in disrepair due in some measure to recent flooding, its repair or reconstruction is eligible for Federal Emergency Management Agency (FEMA) funding which is being coordinated by the District. .

The Painter Creek Subwatershed is a developing area in the western portion of MCWD. Painter Creek, also known as county Ditch 10, an altered natural watercourse and a public drainage system constructed in 1908, drains from the headwaters at Lake Katrina (Baker Park Reserve), through Painter Marsh to Jennings Bay on Lake Minnetonka. Jennings Bay is currently on the State Impaired Waters List and has historically had water quality issues. In 2004, MCWD undertook a Painter Creek Feasibility Study to assess the methods available to restore water quality to Jennings Bay and its tributary area, with primary emphasis on the Painter Creek Subwatershed and identified opportunities within Painter Marsh. The marsh in its current extent lies on portions of about 16 parcels. Four of these are owned by Marvin Johnson, one by Grace Johnson, one by Dean and Dawn Mooney, and three by Hilltop Farm. Three are owned by the District. The others are owned by private parties.

A cattle crossing over Painter Creek where it enters the northern edge of the marsh, on the property of Dean and Dawn Mooney, was repaired by the District in 2008, in its role as drainage authority. The crossing is primarily utilized by Marvin Johnson who leases the land. As part of discussions with members of the Johnson family regarding the disrepair of the crossing due in part to the 2014 high water, the District and members of the Johnson family have memorialized in a memorandum of understanding mutual conservation goals for Painter Marsh and adjacent properties.

The memorandum of understanding outlined the following general areas of collaboration:

1. Physical assessment of the hydrologic, hydraulic and ecological conditions of Painter Marsh and the potential for a beneficial restoration and conservation plan.
2. Cooperation in review of Owners' intentions for maintenance, use and development of their properties and the compatibility of Owners' intentions with preservation and ecological improvement of Painter Marsh. At Owners' request, the District would assist in reviewing the regulatory context under WCA and District rules and in consulting with the City of Independence with respect to city land use plans, ordinances and controls.

3. The District, in consultation with and with cooperation of Owners, would prepare for a reconstructed crossing. For this purpose, the District would take steps to seek to secure FEMA funding and applicable permits and would authorize the District engineer to prepare a design in accordance with legal constraints. The MOU stated that the warranty for the crossing design and responsibility for construction would be determined in a subsequent, legally binding agreement.

4. Cooperation in the development of the terms of easements that would protect the water quality, flood management and ecological features of Painter Marsh and allow the District to undertake projects to preserve and enhance those features. Owners would also facilitate contact with other property owners not signatory to the MOU and assist to gain those owners' cooperation in the goals of the MOU and in conveying easements necessary to support the District's work.

Subsequently, an agreement and an easement for each of the eight parcels was developed consistent with the intentions set forth in the MOU. Staff and the Johnsons remain in cooperation to pursue easements throughout remaining areas of Painter Marsh.

Staff is currently in the process of soliciting quotes for construction of the crossing and expects to bring a recommendation for Board consideration in May. FEMA representatives have advised that the work is eligible for funding up to \$23,200. Work not covered by FEMA funding, along with the approximately \$8,000 design cost, will be funded from the District's budgeted Project Maintenance and Land Management funds.

**ATTACHMENTS:**

1. Parcel Identification Map
2. Agreement for Crossing Repair and Conveyance of Easements
  - a. Attachment A: Easements
    - 1) G. Johnson
    - 2) Mooney
    - 3) M. Johnson
    - 4) M. Johnson
    - 5) Hilltop Farm
    - 6) Hilltop Farm
    - 7) Attachment B to easements: 945.57 description and 944 description
    - 8) Attachment C to easements: Proposed Painter Marsh Overall Easements
  - b. Attachment B: Cattle Crossing Plan

**RESOLUTION**

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**RESOLUTION NUMBER: 16-041**

**TITLE: Authorization to enter into an agreement for crossing repair and conveyance of easements over Painter Marsh**

- WHEREAS, the Minnehaha Creek Watershed District has identified the Painter Creek subwatershed as a priority area for Capital Improvements in its 2007 watershed management plan (WMP);
- WHEREAS, under the watershed law and its WMP, the District is responsible to manage wetland and related surface water resources within its boundaries for public flood management, water quality and ecological benefits;
- WHEREAS, the District also serves as the drainage authority under Minnesota Statutes chapter 103E for public drainage systems within the watershed including Painter Creek (County Ditch 10);
- WHEREAS, the U.S. Army Corps of Engineers (USACE) has performed feasibility work for wetland and related water resource restoration within the Painter Creek subwatershed including Painter Marsh, and the USACE and the District is exploring opportunities to implement identified restoration work through cooperation and cost-sharing;
- WHEREAS, the Board of Managers authorized a memorandum of understanding (MOU) with Marvin Johnson, Dean and Dawn Mooney, and Hilltop Farm, owners of land underlying Painter Marsh, to explore means to achieve preservation and ecological improvement of Painter Marsh consistent with these parties' intent as to the maintenance, use and development of their properties and to prepare for reconstruction of a cattle crossing over Painter Creek damaged by recent high water; and
- WHEREAS, staff, in consultation with Marvin Johnson, Dean and Dawn Mooney and Hilltop Farm have prepared plans for a reconstructed cattle crossing and easements to convey rights to MCWD and the U.S. Army Corps of Engineers to perform ecological restoration work within Painter Marsh.

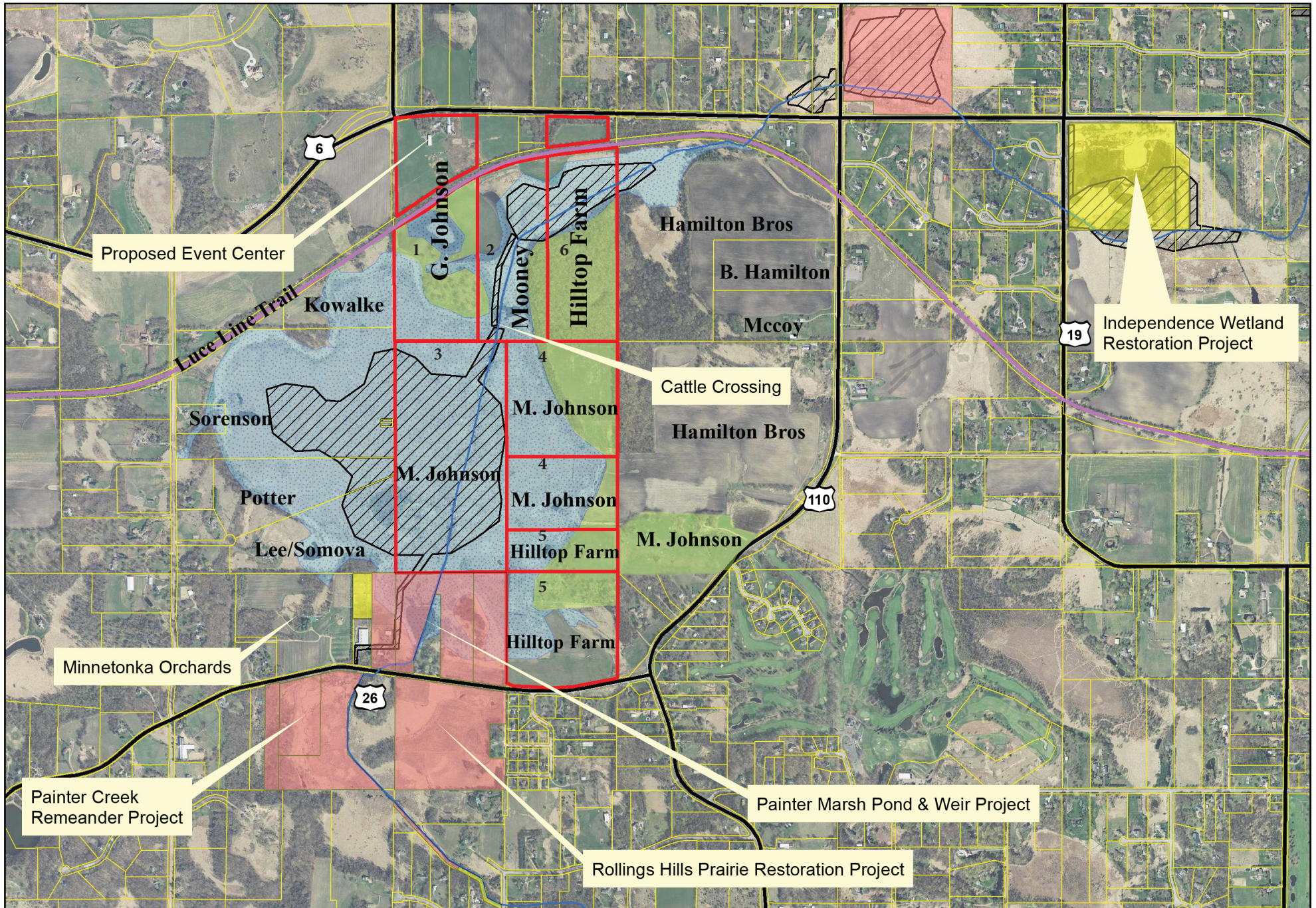
NOW, THEREFORE, BE IT RESOLVED that the District Administrator is authorized to execute the attached Agreement for Crossing Repair and Conveyance of Easements, and all easements to be conveyed thereunder as attached, with non-material changes and on advice of counsel, as well as any additional access easements required, and to take all steps necessary to provide for the recording or registration of the easements and the District's fulfillment of its obligations under the agreement;

Resolution Number 16-041 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: April 25, 2016.

\_\_\_\_\_  
Secretary Date: \_\_\_\_\_



# PAINTER CREEK PARCEL IDENTIFICATION MAP



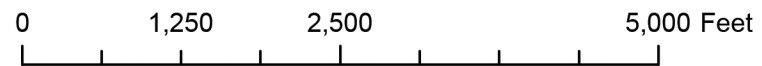
**MCWD Properties**

- Conservation Easement
- Fee Title

**Potential Painter Marsh Easements**

- Proposed USACE Project Easement
- Proposed Upland Easement

- Painter Creek
- Luce Line Trail
- Johnson Family Parcels
- Parcel Boundary
- USACE Construction Limit



1-6 PROPOSED EASEMENTS





## **AGREEMENT for CROSSING REPAIR and CONVEYANCE of EASEMENTS**

**Minnehaha Creek Watershed District, Marvin Johnson, Grace Johnson,  
Dean and Dawn Mooney and Hilltop Farms Inc.**

**Painter Marsh, City of Independence**

This Agreement for Crossing Repair and Conveyance of Easements (“Agreement”) is made among the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota (“District”), and Marvin Johnson; Dean and Dawn Mooney; and Hilltop Farm, a Johnson family trust, owners of land surrounding and including Painter Marsh within the City of Independence (together, “Owners”).

### **Statement of Purpose**

A. Under governing law and its adopted watershed management plan, the District is responsible to manage wetland and related surface water resources within its boundaries for public flood management, water quality and ecological benefits. In addition, the District is the drainage authority under Minnesota Statutes chapter 103E for public drainage systems within the watershed and, within the City of Independence, implements the Minnesota Wetland Conservation Act (WCA) and District rules governing impacts to wetlands.

B. Painter Marsh occupies an area of about 350 acres, lying between County Roads 6 and 26. It is within a 13.5-square-mile watershed that drains to Jennings Bay, Lake Minnetonka. Jennings Bay is listed on the State Impaired Waters List. Painter Marsh encompasses approximately 6,000 lineal feet of Painter Creek. This portion of the creek also is within Hennepin County Judicial Ditch #10, a public drainage system under state law. Painter Marsh is contiguous to and encompasses lands that the District owns, or on which it holds easements, for conservation purposes and on which it has built and maintains capital improvements to protect and improve ecosystem function and water quality.

C. The marsh in its current extent of ordinary flowage lies on portions of 16 parcels of record, more or less. Four of these are owned by Marvin Johnson, one by Dean and Dawn Mooney, and one by Hilltop Farm. Three are owned by the District. The others are owned by private parties not signatory to this MOU.

D. Owners’ parcels presently are subject to non-intensive uses including large-lot single-family residential use, cattle pasture, woodlot, and maple syruping. Owners

are interested in preserving and enhancing the ecological condition of the marsh while also preserving use and economic value of their lands.

E. A cattle crossing over the creek where it enters the northern edge of the marsh, on the property of Dean and Dawn Mooney, was repaired by the District in 2008, in its role as drainage authority. The crossing is again in disrepair due in some measure to recent flooding. Its repair or reconstruction may be eligible for Federal Emergency Management Agency (FEMA) funding. The crossing is of use to Owners for cattle access to pasture, woodlot access and other purposes.

F. The District's purposes include managing and maintaining public drainage systems within its boundaries, assisting property owners to responsibly manage their wetland and stream resources, and acting to improve water quality and ecology. Federal funds, through the U.S. Army Corps of Engineers, may become available to the District for water resource enhancement work within Painter Marsh.

G. Pursuant to a June 16, 2015 memorandum of understanding among the District and Owners, the District has prepared design plans for crossing reconstruction. The parties now wish to proceed with cooperative efforts to reconstruct the crossing for Owners' benefit while advancing mutual conservation objectives consistent with Owners' desired use of their properties.

**THEREFORE** this Agreement rests on mutual consideration and states legally binding terms to achieve the purposes stated above.

### Agreement

1. Owners own in fee the following tracts of land:

35-118-24-23-0001 Grace Johnson 6325 County Road 6 Maple Plain, MN 55359	35-118-24-24-0003 Dean and Dawn Mooney 6165 County Road 6 Maple Plain, MN 55359
35-118-24-24-0002 Hilltop Farm Inc. Address unassigned	35-118-24-31-0001 Marvin Johnson Address unassigned
35-118-24-32-0001 Marvin Johnson Address unassigned	35-118-24-34-0001 Marvin Johnson Address unassigned

35-118-24-34-0002 Hilltop Farm Inc. Address unassigned	02-117-24-21-0001 Hilltop Farm Inc. Address unassigned
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The owner(s) of record for each listed tract will execute an easement materially identical to the corresponding easement in Attachment A, attached hereto and incorporated herein.

2. On receiving a fully executed easement from an Owner, the District will promptly file the easement for recording or registration at the Office of the Hennepin County Recorder - Registrar of Titles. On filing of easements for all tracts listed in paragraph 1, above, the District will be obligated to reconstruct and maintain the cattle crossing pursuant to paragraphs 4-5, below.

3. If all easements required under paragraph 2, above, have not been executed and delivered to the District by May 31, 2016, this Agreement will be deemed rescinded and the District will execute a release of easement that the Owner may file on the title for each easement that has been filed.

4. Attachment B to this Agreement, incorporated herein, is a plan for reconstruction of the cattle crossing on the tract listed in paragraph 1 owned by Dean and Dawn Mooney. Within one year of the vesting of the District's obligation under paragraph 2, above, the District, through such contracts as it may deem appropriate, will complete reconstruction of the crossing in material conformance to Attachment B and materially in the location stated therein. A delay due to an Act of God will forgive a failure to meet this deadline provided that the District proceeds promptly to completion thereafter. The District will give the Mooneys written notice of substantial and final completion. On final completion of the crossing reconstruction, the Mooneys will assume ownership of the reconstructed crossing.

5. The District, at its cost, will maintain the crossing in accordance with its duty as the drainage authority pursuant to Minnesota Statutes chapter 103E, to the extent of such a duty, and otherwise for a period of five (5) years from the date reconstruction is substantially complete, so that the crossing does not become a hydraulic obstruction and so that its use as a cattle crossing may be maintained. The District is not, however, responsible for repair due to an act of an Owner, an Owner's successor in title, or anyone acting under the permission or authority of either, other than the ordinary use contemplated herein.

6. The parties recognize that soil conditions under the crossing are poor and that the life expectancy of the proposed crossing repair will depend heavily on actual weather conditions and use. Therefore, the District represents only that the crossing as reconstructed and maintained by the District will be structurally sound as an ordinary cattle crossing, and conform materially to Attachment B, for the maintenance period stated in paragraph 5. The District does not represent that the crossing is suitable for any other use or purpose, nor does it represent that the crossing will meet requirements of the land use authority or any other regulatory authority for the purpose of any future proposed use of the surrounding lands.

7. The District may seek and apply external funds for its reconstruction and maintenance obligations under this Agreement. Owners will cooperate with the District as necessary for the District to apply or qualify for such funds, provided that doing so creates no more than incidental expense and no additional property encumbrance.

8. The District and Owners will continue to cooperate to review Owner's intentions for maintenance of their properties and the compatibility of Owners' intentions with preservation and ecological improvement of Painter Marsh and surrounding land. At Owners' request, the District may assist in reviewing the regulatory context under WCA and District rules and in consulting with the City of Independence with respect to city land use plans, ordinances and controls.

9. The District holds each Owner harmless, and agrees to defend and indemnify each Owner, from and against any and all suits, actions, causes of action, proceedings, claims, costs and damages to the extent caused by the District's failure to conform to the representation of paragraph 6, above. Nothing in this Agreement creates a right in any third party or affects any immunity, defense or liability limit the District or an Owner enjoys under law.

10. Each Owner and the District remains solely responsible to maintain liability and other insurance for their own acts and omissions under this Agreement and their own property interests.

11. A party will not exercise a right of enforcement against another party for injury or alteration to real property or fixtures resulting from a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm and earth movement resulting from natural forces, and the act of a third party not under the authority or control of the party.

12. All recitals above are a part of this Agreement. This Agreement is effective when fully executed by all Owners and the District. Signature in counterparts is effective. The District and an Owner may amend this Agreement only with respect to that Owner's property and only by a writing duly executed by both parties and meeting all requirements of law.

Each party signs below, intending thereby to be legally bound:

**MINNEHAHA CREEK WATERSHED DISTRICT**

*Approved for Form and Execution:*

\_\_\_\_\_  
*MCWD Counsel*

\_\_\_\_\_  
Sherry White, President  
15320 Minnetonka Blvd  
Minnetonka, MN 55345

Date:

\_\_\_\_\_  
Marvin Johnson  
6325 County Road 6  
Maple Plain, MN 55359

Date:

\_\_\_\_\_  
Dean Mooney  
6165 County Road 6  
Maple Plain, MN 55359

Date:

\_\_\_\_\_  
Dawn Mooney  
6165 County Road 6  
Maple Plain, MN 55359

Date:

**HILLTOP FARM, a family trust**

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Marvin Johnson, President/Trustee  
6325 County Road 6  
Maple Plain, MN 55359

Date:

**ESTATE of GRACE JOHNSON**

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Marvin Johnson, Executor

Date:

(3511824230001 -#2)

**EASEMENT**

**On the Property of Grace Johnson  
Hennepin County, Minnesota**

**Legal description of burdened property:  
Attachment A**

**THIS EASEMENT is entered into by and between Grace Johnson, a single person (“Owner”), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.**

**WITNESS:**

**A. Owner owns in fee simple certain real property located at 6325 County Road 6, Maple Plain, MN 55359, in Hennepin County, Minnesota (the “Burdened Property”).**

**B. The easement here conveyed is a perpetual easement: (i) to construct and maintain hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installing rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and planting and maintaining vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes (“Management Easement”); and (ii) to maintain and flow water on a part of the Burdened Property (“Flowage Easement”) (together, “Easement”).**

**THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts the Easement on the Burdened Property, as specifically set forth herein.**

**1. Easement Description. The Management and Flowage Easements are as legally described on Attachment B hereto and as delineated on the site plan**



at Attachment C hereto, each incorporated herein. The Management Easement is established at elevation 944.0 feet and the Flowage Easement is established at 945.57 feet. In the event that the legal description, delineation and elevation do not coincide, the legal description controls.

2. MCWD's Access Rights. Owner conveys to the MCWD the right in perpetuity to cross and recross the Burdened Property on foot, and with motorized vehicles and equipment, in order to inspect, maintain and repair a cattle crossing located on the tract directly east of the Burdened Property. This right of access is restricted to that portion of the Burdened Property legally described in Attachment B and delineated as the "Access Route" on Attachment C. The MCWD will not occupy the Access Route except for crossing purposes and will repair any damage to the Access Route caused by its use or use by its representatives, agents, contractors or subcontractors pursuant to this Easement. Owner makes no representation as to its fee ownership of that portion of the Access Route labeled on Attachment C as "Cartway" or as to its encumbrance by a third party, but grants this access right to the extent of its property interest underlying the Access Route.

3. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. The MCWD may modify lands within the Management Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. The MCWD may remove surface vegetation, brush and trees within the Management Easement Area. The MCWD owns all right, title and interest in any spoils, soil or timber produced thereby but will deposit the material in an upland location on Owner's property at Owner's request on reasonable terms arranged with Owner.

b. Flowage and Flow Management. The MCWD may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Flowage Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Flowage Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. The MCWD may install rock, bioengineered elements and fabricated structures within the Management Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Vegetation. The MCWD may plant vegetation within the Management Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeded, mowing, weeding, use of approved herbicides and controlled burns within the Management Easement Area.

e. Signs. The MCWD may install signs within the Management Easement Area stating that it is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 3, the MCWD may use the Easement Area for purposes including but not limited to site inspection and testing; performing surveys and other actions for compliance with cultural resource preservation laws; performing due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement.

4. Owner's Reserved Rights. Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply only within the Easement Area.

a. Prohibited Uses. Owner will not perform or knowingly allow others to perform acts on the Easement Area or Access Route that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. Construction. Owner will not construct or install within the Management Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Owner will not install within the Management Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior

written approval of and in accordance with terms specified by the MCWD.

d. Surface Alteration. Owner will not alter surface soils or vegetation within the Management Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Soil and Water Degradation. Owner will not engage in an activity or use within or adjacent to the Management Easement Area that results in the mobilization or movement of sediments or pollutants within or into the Management Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Management Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Management Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Management Easement Area, and in each case with written MCWD approval.

h. Crossing. Notwithstanding any other term of this Easement, Owner may cross the Easement Area by motorized vehicle, and may construct and maintain a crossing or other suitable surface for a motorized vehicle, within those corridors labeled on Attachment C as "Owner Crossing." Absent a crossing or surface, Owner will use a defined track. A crossing or surface is subject to MCWD approval, which will be based on reasonably minimizing land disturbance and preserving hydrology, and which the MCWD will not unreasonably withhold or delay. The MCWD will not disapprove a crossing or surface as excessive to the extent its design is necessary to meet the requirements of the land use authority for the use for which the associated land is permitted. This paragraph does not operate in derogation of the Flowage Easement and Owner will be responsible to design and construct the crossing or surface as Owner believes satisfactory for her purposes in recognition of the existence of the Flowage Easement.

5. Recitations Incorporated. All recitations are a part of this agreement.

6. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to the MCWD, where the MCWD is defined to include authorized MCWD representatives, agents, designees, contractors and subcontractors.

7. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.

8. Owner's Warranty. Owner warrants to MCWD as follows:

a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject.

b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and

Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

9. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of the Easement Area. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

10. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

11. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

12. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that the MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

13. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

14. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and

all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of activity pursuant to this Easement by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

15. Insurance. Owner and the MCWD each is solely responsible to maintain liability and other insurance for its own uses of and authority over the Burdened Property.

16. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

17. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury, alteration or encroachment within the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

18. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

**OWNER**

Grace Johnson  
6325 County Road 6  
Maple Plain MN 55359

**MCWD**

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

19. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly recording this Easement at the Hennepin County Office of Property Records.

OWNER

Date:

\_\_\_\_\_  
Grace Johnson

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016,  
by Grace Johnson.

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Sherry Davis White, President

Date:

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

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

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401



**ATTACHMENT A**

**LEGAL DESCRIPTION: BURDENED PROPERTY**

**ATTACHMENT B**

**LEGAL DESCRIPTION: MANAGEMENT EASEMENT, FLOWAGE  
EASEMENT, ACCESS ROUTE**

**ATTACHMENT C**

**SITE PLAN**

DRAFT

(3511824240003 -#1)

**EASEMENT**

**On the Property of Dean and Dawn Mooney  
Hennepin County, Minnesota**

**Legal description of burdened property:  
Attachment A**

**THIS EASEMENT is entered into by and between Dean and Dawn Mooney, each the spouse of the other (together, "Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.**

**WITNESS:**

**A. Owner owns jointly in fee simple certain real property located at 6165 County Road 6, Maple Plain, MN 55359, in Hennepin County, Minnesota (the "Burdened Property").**

**B. The easement here conveyed is a perpetual easement: (i) to construct and maintain hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installing rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; planting and maintaining vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes; and, in accordance with paragraph 3(d), below, to reconstruct and repair a cattle crossing over the Painter Creek channel ("Management Easement"); and (ii) to maintain and flow water on a part of the Burdened Property ("Flowage Easement") (together, "Easement").**

**THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts the Easement on the Burdened Property, as specifically set forth herein.**

1. **Easement Description.** The Management and Flowage Easements are as legally described on Attachment B hereto and as delineated on the site plan at Attachment C hereto, each incorporated herein. The Management Easement is established at elevation 944.0 feet and the Flowage Easement is established at 945.57 feet. In the event that the legal description, delineation and elevation do not coincide, the legal description controls.

2. **MCWD's Access Rights.** Owner conveys to the MCWD the right in perpetuity to cross and recross the Burdened Property on foot, and with motorized vehicles and equipment, in order to exercise its rights under sections 3 and 9, below. This right of access is restricted to that portion of the Burdened Property legally described in Attachment B and delineated as the "Access Route" on Attachment C. The MCWD will not occupy the Access Route except for crossing purposes and will repair any damage to the Access Route caused by its use or use by its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement.

3. **MCWD's Easement Rights.** Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. **Land and Vegetation Alteration.** The MCWD may modify lands within the Management Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. The MCWD may remove surface vegetation, brush and trees within the Management Easement Area. The MCWD owns all right, title and interest in any spoils, soil or timber produced thereby but will deposit the material in an upland location on Owner's property at Owner's request on reasonable terms arranged with Owner.

b. **Flowage and Flow Management.** The MCWD may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Flowage Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Flowage Easement Area, including the remainder of the Burdened Property.

c. **Rock, Bioengineered Elements and Associated Structures.** The MCWD may install rock, bioengineered elements and fabricated structures within the Management Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Cattle Crossing. A preexisting cattle crossing is located as indicated on Attachment C. The MCWD may reconstruct and maintain this crossing and associated bank stabilization elements within the approximate location of the preexisting crossing. This paragraph does not create an MCWD obligation to reconstruct or maintain the crossing. Any such obligation will be established through separate agreement or covenant.

e. Vegetation. The MCWD may plant vegetation within the Management Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Management Easement Area.

f. Signs. The MCWD may install signs within the Management Easement Area stating that it is subject to this Easement and describing the purposes to which it is dedicated.

g. Design, Construction and Associated Rights. For the purposes authorized in this section 3, the MCWD may use the Easement Area for purposes including but not limited to site inspection and testing; performing surveys and other actions for compliance with cultural resource preservation laws; performing due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement.

4. Owner's Reserved Rights. Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply only within the Easement Area.

a. Prohibited Uses. Owner will not perform or knowingly allow others to perform acts on the Easement Area or Access Route that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

- b. Construction. Owner will not construct or install within the Management Easement Area a permanent or temporary structure, surface or improvement of any kind.
- c. Utilities. Owner will not install within the Management Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.
- d. Surface Alteration. Owner will not alter surface soils or vegetation within the Management Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.
- e. Soil and Water Degradation. Owner will not engage in an activity or use within or adjacent to the Management Easement Area that results in the mobilization or movement of sediments or pollutants within or into the Management Easement Area.
- f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Management Easement Area.
- g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Management Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Management Easement Area, and in each case with written MCWD approval.
5. Recitations Incorporated. All recitations are a part of this agreement.
6. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to the MCWD, where the MCWD is defined to include authorized MCWD representatives, agents, designers, contractors and subcontractors.
7. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any

other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.

8. Owner's Warranty. Owner warrants to MCWD as follows:

a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject.

b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

9. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of the Easement Area. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

10. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body,

including the MCWD, as it may apply to the Burdened Property or any activity on it.

11. **Reserved Rights.** Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

12. **Property Transfer.** Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that the MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

13. **Taxes and Liens.** Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

14. **Indemnification.** The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of activity pursuant to this Easement by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

15. **Insurance.** Owner and the MCWD each is solely responsible to maintain liability and other insurance for its own uses of and authority over the Burdened Property.

16. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

17. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury, alteration or encroachment within the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

18. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

**OWNER**

Dean and Dawn Mooney  
6165 County Road 6  
Maple Plain MN 55359

**MCWD**

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

19. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly recording this Easement at the Hennepin County Office of Property Records.





**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Sherry Davis White, President

Date:

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

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

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

**ATTACHMENT A**

**LEGAL DESCRIPTION: BURDENED PROPERTY**

**ATTACHMENT B**

**LEGAL DESCRIPTION: MANAGEMENT EASEMENT, FLOWAGE  
EASEMENT, ACCESS ROUTE**

**ATTACHMENT C**

**SITE PLAN**

**DRAFT**

(3511824320001 -3)

**EASEMENT**

**On the Property of Marvin D. Johnson  
Hennepin County, Minnesota**

**Legal description of burdened property:  
Attachment A**

**THIS EASEMENT is entered into by and between Marvin D. Johnson, a single person (“Owner”), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.**

**WITNESS:**

**A. Owner owns in fee simple certain real property with unassigned address located in Maple Plain, MN 55359, in Hennepin County, Minnesota (the “Burdened Property”).**

**B. The easement here conveyed is a perpetual easement: (i) to construct and maintain hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installing rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and planting and maintaining vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes (“Management Easement”); and (ii) to maintain and flow water on a part of the Burdened Property (“Flowage Easement”) (together, “Easement”).**

**THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts the Easement on the Burdened Property, as specifically set forth herein.**

**1. Easement Description. The Management and Flowage Easements are as legally described on Attachment B hereto and as delineated on the site plan**

at Attachment C hereto, each incorporated herein. The Management Easement is established at elevation 944.0 feet and the Flowage Easement is established at 945.57 feet. In the event that the legal description, delineation and elevation do not coincide, the legal description controls.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. The MCWD may modify lands within the Management Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. The MCWD may remove surface vegetation, brush and trees within the Management Easement Area. The MCWD owns all right, title and interest in any spoils, soil or timber produced thereby but will deposit the material in an upland location on Owner's property at Owner's request on reasonable terms arranged with Owner.

b. Flowage and Flow Management. The MCWD may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Flowage Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Flowage Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. The MCWD may install rock, bioengineered elements and fabricated structures within the Management Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Vegetation. The MCWD may plant vegetation within the Management Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Management Easement Area.

e. Signs. The MCWD may install signs within the Management Easement Area stating that it is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD may use the Easement Area

for purposes including but not limited to site inspection and testing; performing surveys and other actions for compliance with cultural resource preservation laws; performing due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement.

3. **Owner's Reserved Rights.** Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply only within the Easement Area.

a. **Prohibited Uses.** Owner will not perform or knowingly allow others to perform acts on the Easement Area that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. **Construction.** Owner will not construct or install within the Management Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. **Utilities.** Owner will not install within the Management Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. **Surface Alteration.** Owner will not alter surface soils or vegetation within the Management Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. **Soil and Water Degradation.** Owner will not engage in an activity or use within or adjacent to the Management Easement Area that results in the mobilization or movement of sediments or pollutants within or into the Management Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Management Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Management Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Management Easement Area, and in each case with written MCWD approval.

h. Crossing. Notwithstanding any other term of this Easement, Owner may cross the Easement Area by motorized vehicle, and may construct and maintain a crossing or other suitable surface for a motorized vehicle, within the corridor labeled on Attachment C as "Owner Crossing." Absent a crossing or surface, Owner will use a defined track. A crossing or surface is subject to MCWD approval, which will be based on reasonably minimizing land disturbance and preserving hydrology, and which the MCWD will not unreasonably withhold or delay. The MCWD will not disapprove a crossing or surface as excessive to the extent its design is necessary to meet the requirements of the land use authority for the use for which the associated land is permitted. This paragraph does not operate in derogation of the Flowage Easement and Owner will be responsible to design and construct the crossing or surface as Owner believes satisfactory for its purposes in recognition of the existence of the Flowage Easement.

4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to the MCWD, where the MCWD is defined to include authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives,

agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.

7. **Owner's Warranty.** Owner warrants to MCWD as follows:

a. **Authority to Convey.** Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject.

b. **Pending Actions.** No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. **Liens.** No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. **Hazardous Materials.** Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. **Inspection and Enforcement.** The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of the Easement Area. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. **Regulatory Authorities Not Affected.** This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.



10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that the MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of activity pursuant to this Easement by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each is solely responsible to maintain liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury, alteration or encroachment within the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

**OWNER**

Marvin D. Johnson  
[address]

**MCWD**

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity

with the Burdened Property. The MCWD bears the cost of duly recording this Easement at the Hennepin County Office of Property Records.

**OWNER**

\_\_\_\_\_ Date:  
Marvin D. Johnson

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Marvin D. Johnson, a single person.

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_ Date:  
Sherry Davis White, President

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

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

**This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401**

**DRAFT**

**ATTACHMENT A**

**LEGAL DESCRIPTION: BURDENED PROPERTY**

**ATTACHMENT B**

**LEGAL DESCRIPTION: MANAGEMENT EASEMENT, FLOWAGE  
EASEMENT**

**ATTACHMENT C**

**SITE PLAN**

**DRAFT**

(3511824310001/3511824340001 -4)

**EASEMENT**

**On the Property of Marvin D. Johnson  
Hennepin County, Minnesota**

**Legal description of burdened property:  
Attachment A**

**THIS EASEMENT is entered into by and between Marvin D. Johnson, a single person (“Owner”), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.**

**WITNESS:**

**A. Owner owns in fee simple certain real property with unassigned address located in Maple Plain, MN 55359, in Hennepin County, Minnesota (the “Burdened Property”).**

**B. The easement here conveyed is a perpetual easement: (i) to construct and maintain hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installing rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and planting and maintaining vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes (“Management Easement”); and (ii) to maintain and flow water on a part of the Burdened Property (“Flowage Easement”) (together, “Easement”).**

**THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts the Easement on the Burdened Property, as specifically set forth herein.**

**1. Easement Description. The Management and Flowage Easements are as legally described on Attachment B hereto and as delineated on the site plan**

at Attachment C hereto, each incorporated herein. The Management Easement is established at elevation 944.0 feet and the Flowage Easement is established at 945.57 feet. In the event that the legal description, delineation and elevation do not coincide, the legal description controls.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. The MCWD may modify lands within the Management Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. The MCWD may remove surface vegetation, brush and trees within the Management Easement Area. The MCWD owns all right, title and interest in any spoils, soil or timber produced thereby but will deposit the material in an upland location on Owner's property at Owner's request on reasonable terms arranged with Owner.

b. Flowage and Flow Management. The MCWD may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Flowage Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Flowage Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. The MCWD may install rock, bioengineered elements and fabricated structures within the Management Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Vegetation. The MCWD may plant vegetation within the Management Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Management Easement Area.

e. Signs. The MCWD may install signs within the Management Easement Area stating that it is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD may use the Easement Area

for purposes including but not limited to site inspection and testing; performing surveys and other actions for compliance with cultural resource preservation laws; performing due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement.

3. **Owner's Reserved Rights.** Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply only within the Easement Area.

a. **Prohibited Uses.** Owner will not perform or knowingly allow others to perform acts on the Easement Area that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. **Construction.** Owner will not construct or install within the Management Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. **Utilities.** Owner will not install within the Management Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. **Surface Alteration.** Owner will not alter surface soils or vegetation within the Management Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. **Soil and Water Degradation.** Owner will not engage in an activity or use within or adjacent to the Management Easement Area that results in the mobilization or movement of sediments or pollutants within or into the Management Easement Area.



- f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Management Easement Area.
- g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Management Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Management Easement Area, and in each case with written MCWD approval.
4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to the MCWD, where the MCWD is defined to include authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.
7. Owner's Warranty. Owner warrants to MCWD as follows:
- a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject.
- b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of the Easement Area. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened

Property, provided that the MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of activity pursuant to this Easement by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each is solely responsible to maintain liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury, alteration or encroachment within the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency

conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

**OWNER**

Marvin D. Johnson  
[address]

**MCWD**

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly recording this Easement at the Hennepin County Office of Property Records.

**OWNER**

\_\_\_\_\_  
Marvin D. Johnson

Date:

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016,  
by Marvin D. Johnson, a single person.

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Sherry Davis White, President

Date:

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

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

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

**ATTACHMENT A**

**LEGAL DESCRIPTION: BURDENED PROPERTY**

**ATTACHMENT B**

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EASEMENT**

**ATTACHMENT C**

**SITE PLAN**

**DRAFT**

(3511824340002/0211724210001 -5)

**EASEMENT**

**On the Property of Hilltop Farm Inc.  
Hennepin County, Minnesota**

**Legal description of burdened property:  
Attachment A**

**THIS EASEMENT is entered into by and between Hilltop Farm Inc. (“Owner”), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.**

**WITNESS:**

**A. Owner owns in fee simple certain real property with unassigned address located in Maple Plain, MN 55359, in Hennepin County, Minnesota (the “Burdened Property”).**

**B. The easement here conveyed is a perpetual easement: (i) to construct and maintain hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installing rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and planting and maintaining vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes (“Management Easement”); and (ii) to maintain and flow water on a part of the Burdened Property (“Flowage Easement”) (together, “Easement”).**

**THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts the Easement on the Burdened Property, as specifically set forth herein.**

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at Attachment C hereto, each incorporated herein. The Management Easement is established at elevation 944.0 feet and the Flowage Easement is established at 945.57 feet. In the event that the legal description, delineation and elevation do not coincide, the legal description controls.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. The MCWD may modify lands within the Management Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. The MCWD may remove surface vegetation, brush and trees within the Management Easement Area. The MCWD owns all right, title and interest in any spoils, soil or timber produced thereby but will deposit the material in an upland location on Owner's property at Owner's request on reasonable terms arranged with Owner.

b. Flowage and Flow Management. The MCWD may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Flowage Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Flowage Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. The MCWD may install rock, bioengineered elements and fabricated structures within the Management Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Vegetation. The MCWD may plant vegetation within the Management Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Management Easement Area.

e. Signs. The MCWD may install signs within the Management Easement Area stating that it is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD may use the Easement Area



for purposes including but not limited to site inspection and testing; performing surveys and other actions for compliance with cultural resource preservation laws; performing due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement.

3. **Owner's Reserved Rights.** Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply only within the Easement Area.

a. **Prohibited Uses.** Owner will not perform or knowingly allow others to perform acts on the Easement Area that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. **Construction.** Owner will not construct or install within the Management Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. **Utilities.** Owner will not install within the Management Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. **Surface Alteration.** Owner will not alter surface soils or vegetation within the Management Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. **Soil and Water Degradation.** Owner will not engage in an activity or use within or adjacent to the Management Easement Area that results in the mobilization or movement of sediments or pollutants within or into the Management Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Management Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Management Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Management Easement Area, and in each case with written MCWD approval.

h. Crossing. Notwithstanding any other term of this Easement, Owner may cross the Easement Area by motorized vehicle, and may construct and maintain a crossing or other suitable surface for a motorized vehicle, within the corridor labeled on Attachment C as "Owner Crossing." Absent a crossing or surface, Owner will use a defined track. A crossing or surface is subject to MCWD approval, which will be based on reasonably minimizing land disturbance and preserving hydrology, and which the MCWD will not unreasonably withhold or delay. The MCWD will not disapprove a crossing or surface as excessive to the extent its design is necessary to meet the requirements of the land use authority for the use for which the associated land is permitted. This paragraph does not operate in derogation of the Flowage Easement and Owner will be responsible to design and construct the crossing or surface as Owner believes satisfactory for its purposes in recognition of the existence of the Flowage Easement.

4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to the MCWD, where the MCWD is defined to include authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives,

agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.

7. **Owner's Warranty.** Owner warrants to MCWD as follows:

a. **Authority to Convey.** Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject.

b. **Pending Actions.** No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. **Liens.** No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. **Hazardous Materials.** Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. **Inspection and Enforcement.** The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of the Easement Area. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. **Regulatory Authorities Not Affected.** This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that the MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of activity pursuant to this Easement by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each is solely responsible to maintain liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury, alteration or encroachment within the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

**OWNER**

Hilltop Farm Inc.  
[address]

**MCWD**

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
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**OWNER**  
Hilltop Farm Inc.

\_\_\_\_\_ Date:  
By: [name, title]

**STATE OF MINNESOTA**  
**COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016,  
by \_\_\_\_\_ as \_\_\_\_\_ of Hilltop  
Farm Inc.

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Sherry Davis White, President

Date:

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

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

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

**ATTACHMENT A**

**LEGAL DESCRIPTION: BURDENED PROPERTY**

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EASEMENT**

**ATTACHMENT C**

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DRAFT



(3511824240002 -6)

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Hennepin County, Minnesota**

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at Attachment C hereto, each incorporated herein. The Management Easement is established at elevation 944.0 feet and the Flowage Easement is established at 945.57 feet. In the event that the legal description, delineation and elevation do not coincide, the legal description controls.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. The MCWD may modify lands within the Management Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. The MCWD may remove surface vegetation, brush and trees within the Management Easement Area. The MCWD owns all right, title and interest in any spoils, soil or timber produced thereby but will deposit the material in an upland location on Owner's property at Owner's request on reasonable terms arranged with Owner.

b. Flowage and Flow Management. The MCWD may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Flowage Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Flowage Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. The MCWD may install rock, bioengineered elements and fabricated structures within the Management Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Vegetation. The MCWD may plant vegetation within the Management Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Management Easement Area.

e. Signs. The MCWD may install signs within the Management Easement Area stating that it is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD may use the Easement Area

for purposes including but not limited to site inspection and testing; performing surveys and other actions for compliance with cultural resource preservation laws; performing due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement.

3. **Owner's Reserved Rights.** Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply only within the Easement Area.

a. **Prohibited Uses.** Owner will not perform or knowingly allow others to perform acts on the Easement Area that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. **Construction.** Owner will not construct or install within the Management Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. **Utilities.** Owner will not install within the Management Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. **Surface Alteration.** Owner will not alter surface soils or vegetation within the Management Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. **Soil and Water Degradation.** Owner will not engage in an activity or use within or adjacent to the Management Easement Area that results in the mobilization or movement of sediments or pollutants within or into the Management Easement Area.

- f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Management Easement Area.
- g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Management Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Management Easement Area, and in each case with written MCWD approval.
4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to the MCWD, where the MCWD is defined to include authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.
7. Owner's Warranty. Owner warrants to MCWD as follows:
- a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject.
- b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of the Easement Area. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened

Property, provided that the MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of activity pursuant to this Easement by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each is solely responsible to maintain liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury, alteration or encroachment within the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency

conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

**OWNER**

Hilltop Farm Inc.  
[address]

**MCWD**

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly recording this Easement at the Hennepin County Office of Property Records.

**OWNER**

Hilltop Farm Inc.

Date:

\_\_\_\_\_  
By: [name, title]

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016,  
by \_\_\_\_\_ as \_\_\_\_\_ of Hilltop  
Farm Inc.

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Sherry Davis White, President

Date:

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

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

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401



**ATTACHMENT A**

**LEGAL DESCRIPTION: BURDENED PROPERTY**

**ATTACHMENT B**

**LEGAL DESCRIPTION: MANAGEMENT EASEMENT, FLOWAGE  
EASEMENT**

**ATTACHMENT C**

**SITE PLAN**

**DRAFT**

945.57 DESCRIPTION:

That part of the following described property:

(Insert affected property legal description here)

Which lies within the following described lands:

Commencing at the northwest corner of Section 35, Township 118, Range 24, Hennepin County, Minnesota; thence South 00 degrees 35 minutes 36 seconds East, along the west line of said Section 35, a distance of 1627.51 feet to the point of beginning of the lands to be described:

Thence North 47 degrees 18 minutes 16 seconds East for a distance of 115.69 feet;  
Thence South 57 degrees 16 minutes 54 seconds East for a distance of 90.42 feet;  
Thence South 37 degrees 16 minutes 26 seconds East for a distance of 109.97 feet;  
Thence South 52 degrees 54 minutes 20 seconds East for a distance of 128.32 feet;  
Thence South 72 degrees 25 minutes 06 seconds East for a distance of 97.40 feet;  
Thence North 60 degrees 08 minutes 25 seconds East for a distance of 98.18 feet;  
Thence North 33 degrees 01 minutes 22 seconds East for a distance of 52.42 feet;  
Thence North 29 degrees 07 minutes 15 seconds West for a distance of 50.26 feet;  
Thence North 51 degrees 22 minutes 48 seconds West for a distance of 201.77 feet;  
Thence North 87 degrees 56 minutes 02 seconds West for a distance of 64.39 feet;  
Thence South 58 degrees 17 minutes 23 seconds West for a distance of 79.33 feet;  
Thence North 41 degrees 51 minutes 21 seconds West for a distance of 104.51 feet;  
Thence North 11 degrees 44 minutes 27 seconds East for a distance of 31.27 feet;  
Thence North 06 degrees 34 minutes 28 seconds West for a distance of 110.62 feet;  
Thence North 54 degrees 30 minutes 48 seconds East for a distance of 175.79 feet;  
Thence North 61 degrees 51 minutes 06 seconds East for a distance of 187.02 feet;  
Thence South 86 degrees 51 minutes 18 seconds East for a distance of 82.08 feet;  
Thence South 62 degrees 53 minutes 41 seconds East for a distance of 131.04 feet;  
Thence South 41 degrees 07 minutes 15 seconds East for a distance of 324.50 feet;  
Thence South 04 degrees 59 minutes 25 seconds East for a distance of 113.42 feet;  
Thence South 63 degrees 26 minutes 23 seconds East for a distance of 127.93 feet;  
Thence South 88 degrees 49 minutes 36 seconds East for a distance of 178.12 feet;  
Thence North 45 degrees 34 minutes 03 seconds East for a distance of 78.13 feet;  
Thence North 07 degrees 53 minutes 35 seconds East for a distance of 116.92 feet;  
Thence North 17 degrees 08 minutes 59 seconds West for a distance of 123.25 feet;  
Thence North 08 degrees 00 minutes 37 seconds East for a distance of 80.84 feet;  
Thence North 27 degrees 34 minutes 35 seconds West for a distance of 196.45 feet;  
Thence North 46 degrees 32 minutes 41 seconds West for a distance of 172.74 feet;  
Thence North 13 degrees 37 minutes 07 seconds East for a distance of 203.25 feet;  
Thence North 71 degrees 07 minutes 42 seconds East for a distance of 442.22 feet;  
Thence South 48 degrees 50 minutes 15 seconds East for a distance of 120.11 feet;  
Thence South 73 degrees 38 minutes 53 seconds East for a distance of 105.92 feet;  
Thence South 82 degrees 20 minutes 46 seconds East for a distance of 132.21 feet;  
Thence North 49 degrees 25 minutes 02 seconds East for a distance of 78.27 feet;  
Thence North 68 degrees 02 minutes 54 seconds East for a distance of 74.26 feet;  
Thence North 25 degrees 49 minutes 29 seconds East for a distance of 79.45 feet;  
Thence North 63 degrees 34 minutes 58 seconds East for a distance of 132.95 feet;  
Thence North 81 degrees 59 minutes 31 seconds East for a distance of 179.60 feet;  
Thence North 88 degrees 55 minutes 01 seconds East for a distance of 339.35 feet;  
Thence North 69 degrees 54 minutes 45 seconds East for a distance of 69.64 feet;  
Thence North 77 degrees 31 minutes 37 seconds East for a distance of 269.13 feet;

Thence North 83 degrees 52 minutes 31 seconds East for a distance of 166.00 feet;  
Thence South 83 degrees 20 minutes 08 seconds East for a distance of 145.21 feet;  
Thence North 85 degrees 06 minutes 43 seconds East for a distance of 77.95 feet;  
Thence North 68 degrees 44 minutes 01 seconds East for a distance of 152.90 feet;  
Thence North 82 degrees 31 minutes 49 seconds East a distance of 437.51 feet;  
Thence South 80 degrees 10 minutes 59 seconds East for a distance of 313.69 feet;  
Thence South 26 degrees 49 minutes 15 seconds West for a distance of 67.19 feet;  
Thence North 75 degrees 29 minutes 08 seconds West for a distance of 214.92 feet;  
Thence South 78 degrees 59 minutes 58 seconds West for a distance of 248.87 feet;  
Thence South 63 degrees 02 minutes 22 seconds West for a distance of 340.38 feet;  
Thence South 11 degrees 42 minutes 49 seconds West for a distance of 527.77 feet;  
Thence South 84 degrees 18 minutes 38 seconds West for a distance of 240.22 feet;  
Thence North 61 degrees 40 minutes 43 seconds West for a distance of 335.86 feet;  
Thence South 78 degrees 11 minutes 33 seconds West for a distance of 107.56 feet;  
Thence South 17 degrees 51 minutes 16 seconds West for a distance of 156.42 feet;  
Thence South 74 degrees 40 minutes 58 seconds West for a distance of 95.68 feet;  
Thence South 37 degrees 41 minutes 12 seconds West for a distance of 351.81 feet;  
Thence South 64 degrees 43 minutes 44 seconds West for a distance of 59.97 feet;  
Thence North 87 degrees 53 minutes 59 seconds West for a distance of 72.58 feet;  
Thence South 60 degrees 09 minutes 16 seconds West for a distance of 120.41 feet;  
Thence South 82 degrees 45 minutes 10 seconds West for a distance of 67.79 feet;  
Thence North 79 degrees 13 minutes 56 seconds West for a distance of 88.13 feet;  
Thence South 74 degrees 39 minutes 37 seconds West for a distance of 185.40 feet;  
Thence South 37 degrees 52 minutes 31 seconds West for a distance of 164.30 feet;  
Thence South 09 degrees 58 minutes 22 seconds West for a distance of 229.60 feet;  
Thence South 14 degrees 43 minutes 21 seconds East for a distance of 195.58 feet;  
Thence South 06 degrees 26 minutes 35 seconds West for a distance of 303.48 feet;  
Thence South 23 degrees 33 minutes 14 seconds East for a distance of 147.81 feet;  
Thence South 16 degrees 48 minutes 09 seconds East for a distance of 194.32 feet;  
Thence South 13 degrees 49 minutes 31 seconds East for a distance of 359.08 feet;  
Thence South 24 degrees 45 minutes 41 seconds East for a distance of 520.48 feet;  
Thence South 34 degrees 50 minutes 20 seconds East for a distance of 256.24 feet;  
Thence South 52 degrees 55 minutes 47 seconds East for a distance of 282.98 feet;  
Thence South 47 degrees 04 minutes 11 seconds East for a distance of 187.04 feet;  
Thence South 04 degrees 07 minutes 10 seconds East for a distance of 285.48 feet;  
Thence South 32 degrees 49 minutes 47 seconds West for a distance of 218.30 feet;  
Thence South 20 degrees 42 minutes 23 seconds West for a distance of 213.58 feet;  
Thence South 36 degrees 47 minutes 27 seconds West for a distance of 104.30 feet;  
Thence South 17 degrees 15 minutes 08 seconds East for a distance of 41.36 feet;  
Thence South 77 degrees 03 minutes 20 seconds East for a distance of 69.92 feet;  
Thence South 13 degrees 52 minutes 35 seconds East for a distance of 36.26 feet;  
Thence South 79 degrees 14 minutes 06 seconds West for a distance of 93.17 feet;  
Thence South 48 degrees 19 minutes 33 seconds West for a distance of 248.93 feet;  
Thence South 39 degrees 16 minutes 14 seconds West for a distance of 255.26 feet;  
Thence South 43 degrees 33 minutes 50 seconds West for a distance of 93.07 feet;  
Thence South 28 degrees 59 minutes 46 seconds West for a distance of 74.35 feet;  
Thence South 23 degrees 57 minutes 30 seconds East for a distance of 59.41 feet;  
Thence South 31 degrees 40 minutes 41 seconds West for a distance of 70.77 feet;  
Thence South 82 degrees 55 minutes 04 seconds West for a distance of 74.28 feet;  
Thence South 39 degrees 29 minutes 11 seconds West for a distance of 40.53 feet;  
Thence South 18 degrees 33 minutes 33 seconds East for a distance of 87.79 feet;  
Thence South 09 degrees 46 minutes 23 seconds East for a distance of 114.22 feet;  
Thence South 78 degrees 11 minutes 00 seconds East for a distance of 154.43 feet;

Thence North 85 degrees 43 minutes 29 seconds East for a distance of 168.82 feet;  
Thence South 81 degrees 59 minutes 49 seconds East for a distance of 141.72 feet;  
Thence North 87 degrees 23 minutes 20 seconds East for a distance of 120.17 feet;  
Thence South 72 degrees 13 minutes 59 seconds East for a distance of 104.20 feet;  
Thence South 58 degrees 23 minutes 53 seconds East for a distance of 131.93 feet;  
Thence South 27 degrees 51 minutes 57 seconds East for a distance of 151.24 feet;  
Thence South 19 degrees 05 minutes 33 seconds East for a distance of 131.55 feet;  
Thence South 10 degrees 48 minutes 29 seconds West for a distance of 188.71 feet;  
Thence South 40 degrees 12 minutes 10 seconds West for a distance of 106.09 feet;  
Thence North 72 degrees 07 minutes 09 seconds West for a distance of 73.11 feet;  
Thence North 55 degrees 31 minutes 17 seconds West for a distance of 129.60 feet;  
Thence North 74 degrees 08 minutes 07 seconds West for a distance of 184.06 feet;  
Thence North 45 degrees 33 minutes 05 seconds West for a distance of 414.18 feet;  
Thence South 55 degrees 05 minutes 56 seconds West for a distance of 31.13 feet;  
Thence South 08 degrees 23 minutes 19 seconds East for a distance of 134.26 feet;  
Thence South 30 degrees 07 minutes 33 seconds East for a distance of 133.32 feet;  
Thence South 73 degrees 52 minutes 58 seconds East for a distance of 175.96 feet;  
Thence South 37 degrees 17 minutes 58 seconds East for a distance of 65.98 feet;  
Thence South 07 degrees 18 minutes 06 seconds West for a distance of 116.38 feet;  
Thence South 77 degrees 59 minutes 50 seconds West for a distance of 260.89 feet;  
Thence South 84 degrees 01 minutes 40 seconds West for a distance of 583.84 feet;  
Thence South 84 degrees 59 minutes 57 seconds West for a distance of 243.79 feet;  
Thence North 85 degrees 40 minutes 28 seconds West for a distance of 118.93 feet;  
Thence North 72 degrees 22 minutes 05 seconds West for a distance of 205.60 feet;  
Thence North 55 degrees 50 minutes 56 seconds West for a distance of 148.44 feet;  
Thence North 76 degrees 47 minutes 29 seconds West for a distance of 83.79 feet;  
Thence North 50 degrees 18 minutes 09 seconds West for a distance of 62.58 feet;  
Thence South 89 degrees 59 minutes 14 seconds West for a distance of 107.83 feet;  
Thence South 56 degrees 00 minutes 28 seconds West for a distance of 63.30 feet;  
Thence South 00 degrees 55 minutes 02 seconds East for a distance of 125.48 feet;  
Thence South 56 degrees 48 minutes 15 seconds West for a distance of 67.89 feet;  
Thence South 86 degrees 04 minutes 11 seconds West for a distance of 88.59 feet;  
Thence South 75 degrees 02 minutes 38 seconds West for a distance of 151.35 feet;  
Thence North 70 degrees 12 minutes 22 seconds West for a distance of 126.99 feet;  
Thence North 64 degrees 12 minutes 12 seconds West for a distance of 35.72 feet;  
Thence North 27 degrees 31 minutes 19 seconds West for a distance of 41.32 feet;  
Thence North 57 degrees 25 minutes 36 seconds East for a distance of 55.62 feet;  
Thence South 84 degrees 57 minutes 48 seconds East for a distance of 143.18 feet;  
Thence North 65 degrees 26 minutes 03 seconds East for a distance of 116.99 feet;  
Thence North 27 degrees 24 minutes 08 seconds West for a distance of 95.39 feet;  
Thence North 72 degrees 20 minutes 04 seconds West for a distance of 163.61 feet;  
Thence North 62 degrees 06 minutes 31 seconds West for a distance of 139.61 feet;  
Thence North 40 degrees 59 minutes 37 seconds West for a distance of 205.73 feet;  
Thence North 36 degrees 34 minutes 53 seconds West for a distance of 151.75 feet;  
Thence North 10 degrees 01 minutes 50 seconds West for a distance of 134.21 feet;  
Thence North 22 degrees 04 minutes 07 seconds East for a distance of 207.51 feet;  
Thence North 14 degrees 01 minutes 42 seconds East for a distance of 290.52 feet;  
Thence North 30 degrees 25 minutes 40 seconds West for a distance of 53.31 feet;  
Thence North 75 degrees 52 minutes 58 seconds West for a distance of 171.08 feet;  
Thence South 88 degrees 40 minutes 37 seconds West for a distance of 125.18 feet;  
Thence South 38 degrees 20 minutes 16 seconds West for a distance of 272.47 feet;  
Thence South 05 degrees 02 minutes 02 seconds West for a distance of 165.14 feet;  
Thence South 10 degrees 00 minutes 46 seconds West for a distance of 180.30 feet;

Thence South 41 degrees 25 minutes 13 seconds West for a distance of 95.46 feet;  
Thence North 86 degrees 14 minutes 04 seconds West for a distance of 144.33 feet;  
Thence North 09 degrees 41 minutes 34 seconds West for a distance of 79.54 feet;  
Thence North 15 degrees 06 minutes 57 seconds East for a distance of 117.79 feet;  
Thence North 29 degrees 56 minutes 55 seconds East for a distance of 207.68 feet;  
Thence North 56 degrees 18 minutes 24 seconds West for a distance of 309.64 feet;  
Thence North 21 degrees 12 minutes 47 seconds West for a distance of 186.00 feet;  
Thence North 33 degrees 27 minutes 58 seconds East for a distance of 88.58 feet;  
Thence North 58 degrees 37 minutes 53 seconds East for a distance of 168.78 feet;  
Thence North 07 degrees 56 minutes 23 seconds East for a distance of 66.77 feet;  
Thence North 40 degrees 10 minutes 39 seconds West for a distance of 122.79 feet;  
Thence North 58 degrees 25 minutes 44 seconds West for a distance of 172.81 feet;  
Thence North 67 degrees 42 minutes 58 seconds West for a distance of 142.69 feet;  
Thence North 62 degrees 39 minutes 44 seconds West for a distance of 268.04 feet;  
Thence North 63 degrees 53 minutes 35 seconds West for a distance of 149.61 feet;  
Thence North 55 degrees 32 minutes 41 seconds West for a distance of 70.19 feet;  
Thence North 43 degrees 55 minutes 33 seconds West for a distance of 98.27 feet;  
Thence North 35 degrees 11 minutes 39 seconds West for a distance of 187.12 feet;  
Thence North 24 degrees 36 minutes 40 seconds West for a distance of 166.68 feet;  
Thence North 20 degrees 53 minutes 24 seconds West for a distance of 280.81 feet;  
Thence North 17 degrees 50 minutes 51 seconds West for a distance of 173.29 feet;  
Thence North 73 degrees 51 minutes 21 seconds West for a distance of 29.47 feet;  
Thence South 69 degrees 11 minutes 55 seconds West for a distance of 72.34 feet;  
Thence North 41 degrees 24 minutes 02 seconds West for a distance of 28.76 feet;  
Thence North 33 degrees 57 minutes 05 seconds East for a distance of 61.61 feet;  
Thence North 02 degrees 52 minutes 26 seconds East for a distance of 209.70 feet;  
Thence North 16 degrees 38 minutes 06 seconds East for a distance of 256.47 feet;  
Thence North 04 degrees 01 minutes 48 seconds West for a distance of 75.32 feet;  
Thence North 30 degrees 40 minutes 33 seconds East for a distance of 248.60 feet;  
Thence North 36 degrees 35 minutes 21 seconds East for a distance of 136.05 feet;  
Thence North 40 degrees 48 minutes 06 seconds East for a distance of 112.25 feet;  
Thence North 51 degrees 28 minutes 54 seconds East for a distance of 107.45 feet;  
Thence North 70 degrees 25 minutes 56 seconds East for a distance of 226.66 feet;  
Thence South 88 degrees 04 minutes 17 seconds East for a distance of 119.46 feet;  
Thence South 71 degrees 49 minutes 43 seconds East for a distance of 126.42 feet;  
Thence South 53 degrees 29 minutes 05 seconds East for a distance of 231.18 feet;  
Thence South 67 degrees 46 minutes 38 seconds East for a distance of 183.09 feet;  
Thence North 77 degrees 19 minutes 43 seconds East for a distance of 111.74 feet;  
Thence North 42 degrees 49 minutes 10 seconds East for a distance of 97.61 feet;  
Thence North 06 degrees 37 minutes 13 seconds East for a distance of 184.02 feet;  
Thence North 19 degrees 26 minutes 14 seconds West for a distance of 108.94 feet;  
Thence North 48 degrees 25 minutes 12 seconds West for a distance of 128.96 feet;  
Thence North 00 degrees 50 minutes 30 seconds West for a distance of 93.83 feet;  
Thence North 20 degrees 27 minutes 22 seconds East for a distance of 334.42 feet;  
Thence North 58 degrees 47 minutes 21 seconds East for a distance of 128.20 feet;  
Thence North 89 degrees 47 minutes 34 seconds East for a distance of 164.06 feet;  
Thence North 85 degrees 21 minutes 27 seconds East for a distance of 163.64 feet;  
Thence North 38 degrees 26 minutes 34 seconds East for a distance of 229.21 feet;  
Thence North 77 degrees 27 minutes 23 seconds East for a distance of 168.81 feet;  
Thence North 47 degrees 18 minutes 16 seconds East for a distance of 43.99 feet to the point of beginning.

EXCEPT any part which lies within the railroad right of way.

AND ALSO EXCEPT that part described as follows:

Commencing at the northwest corner of Section 35, Township 118, Range 24, Hennepin County, Minnesota; thence South 00 degrees 35 minutes 36 seconds East, along the west line of said Section 35, a distance of 1958.35 feet; thence North 89 degrees 24 minutes 24 seconds East a distance of 394.03 feet to the point of beginning of the lands to be described:

Thence North 76 degrees 57 minutes 52 seconds East for a distance of 44.07 feet;  
Thence South 65 degrees 36 minutes 01 seconds East for a distance of 92.84 feet;  
Thence South 89 degrees 00 minutes 52 seconds East for a distance of 75.82 feet;  
Thence North 81 degrees 34 minutes 11 seconds East for a distance of 76.86 feet;  
Thence North 72 degrees 57 minutes 31 seconds East for a distance of 68.21 feet;  
Thence South 88 degrees 12 minutes 40 seconds East for a distance of 61.88 feet;  
Thence North 66 degrees 30 minutes 17 seconds East for a distance of 70.26 feet;  
Thence South 69 degrees 37 minutes 23 seconds East for a distance of 77.67 feet;  
Thence South 36 degrees 55 minutes 02 seconds East for a distance of 90.74 feet;  
Thence South 23 degrees 20 minutes 21 seconds East for a distance of 38.22 feet;  
Thence South 09 degrees 17 minutes 02 seconds East for a distance of 50.02 feet;  
Thence South 05 degrees 33 minutes 07 seconds West for a distance of 56.61 feet;  
Thence South 29 degrees 33 minutes 11 seconds West for a distance of 57.52 feet;  
Thence South 27 degrees 49 minutes 01 seconds West for a distance of 20.02 feet;  
Thence South 00 degrees 32 minutes 46 seconds West for a distance of 33.81 feet;  
Thence South 21 degrees 48 minutes 52 seconds East for a distance of 50.28 feet;  
Thence South 20 degrees 21 minutes 39 seconds West for a distance of 68.56 feet;  
Thence South 66 degrees 36 minutes 06 seconds West for a distance of 34.05 feet;  
Thence South 84 degrees 05 minutes 09 seconds West for a distance of 53.12 feet;  
Thence North 75 degrees 09 minutes 50 seconds West for a distance of 82.98 feet;  
Thence North 59 degrees 47 minutes 08 seconds West for a distance of 51.82 feet;  
Thence North 30 degrees 47 minutes 26 seconds West for a distance of 33.35 feet;  
Thence North 17 degrees 44 minutes 09 seconds East for a distance of 69.79 feet;  
Thence North 09 degrees 22 minutes 28 seconds East for a distance of 73.21 feet;  
Thence North 18 degrees 49 minutes 24 seconds West for a distance of 30.95 feet;  
Thence North 66 degrees 06 minutes 43 seconds West for a distance of 31.01 feet;  
Thence South 85 degrees 11 minutes 23 seconds West for a distance of 30.71 feet;  
Thence South 40 degrees 50 minutes 01 seconds West for a distance of 28.08 feet;  
Thence South 17 degrees 25 minutes 43 seconds West for a distance of 51.63 feet;  
Thence South 28 degrees 43 minutes 37 seconds West for a distance of 73.06 feet;  
Thence South 59 degrees 48 minutes 23 seconds West for a distance of 16.19 feet;  
Thence South 85 degrees 11 minutes 59 seconds West for a distance of 38.47 feet;  
Thence North 88 degrees 16 minutes 58 seconds West for a distance of 32.23 feet;  
Thence North 72 degrees 58 minutes 49 seconds West for a distance of 37.40 feet;  
Thence North 61 degrees 01 minutes 53 seconds West for a distance of 51.18 feet;  
Thence North 42 degrees 39 minutes 34 seconds West for a distance of 60.85 feet;  
Thence North 34 degrees 56 minutes 21 seconds West for a distance of 35.56 feet;  
Thence North 22 degrees 55 minutes 49 seconds West for a distance of 43.00 feet;  
Thence North 03 degrees 13 minutes 36 seconds West for a distance of 45.79 feet;  
Thence North 12 degrees 54 minutes 57 seconds West for a distance of 44.71 feet;  
Thence North 02 degrees 20 minutes 35 seconds East for a distance of 86.68 feet;  
Thence North 46 degrees 26 minutes 00 seconds East for a distance of 14.71 feet to the point of beginning.

AND ALSO EXCEPT that part described as follows:

Commencing at the west quarter corner of Section 35, Township 118, Range 24, Hennepin County, Minnesota; thence South 00 degrees 35 minutes 19 seconds East, along the west line of said Section 35, a distance of 1832.00 feet to the point of beginning of the lands to be described:

Thence South 86 degrees 16 minutes 57 seconds East for a distance of 34.84 feet;  
Thence South 76 degrees 26 minutes 17 seconds East for a distance of 42.83 feet;  
Thence South 58 degrees 38 minutes 37 seconds East for a distance of 22.98 feet;  
Thence South 33 degrees 29 minutes 37 seconds East for a distance of 17.78 feet;  
Thence South 03 degrees 54 minutes 11 seconds East for a distance of 10.55 feet;  
Thence South 25 degrees 10 minutes 25 seconds West for a distance of 17.44 feet;  
Thence South 44 degrees 45 minutes 37 seconds West for a distance of 45.21 feet;  
Thence South 30 degrees 34 minutes 56 seconds West for a distance of 74.83 feet;  
Thence South 35 degrees 20 minutes 47 seconds West for a distance of 53.35 feet;  
Thence South 22 degrees 10 minutes 46 seconds West for a distance of 33.61 feet;  
Thence South 35 degrees 29 minutes 34 seconds West for a distance of 46.21 feet;  
Thence South 60 degrees 50 minutes 07 seconds West for a distance of 21.10 feet;  
Thence North 83 degrees 24 minutes 19 seconds West for a distance of 22.93 feet;  
Thence North 51 degrees 43 minutes 41 seconds West for a distance of 40.53 feet;  
Thence North 45 degrees 53 minutes 16 seconds West for a distance of 87.37 feet;  
Thence North 37 degrees 10 minutes 33 seconds West for a distance of 43.30 feet;  
Thence North 12 degrees 24 minutes 12 seconds West for a distance of 27.86 feet;  
Thence North 07 degrees 01 minutes 43 seconds East for a distance of 33.06 feet;  
Thence North 36 degrees 18 minutes 20 seconds East for a distance of 49.55 feet;  
Thence North 59 degrees 58 minutes 30 seconds East for a distance of 54.47 feet;  
Thence North 71 degrees 09 minutes 17 seconds East for a distance of 85.25 feet;  
Thence North 80 degrees 34 minutes 36 seconds East for a distance of 42.91 feet;  
Thence South 86 degrees 16 minutes 57 seconds East for a distance of 5.53 feet to the point of beginning.

944 CONTOUR DESCRIPTION:

That part of the following described property:

(Insert affected property legal description here)

Which lies within the following described lands:

Commencing at the northwest corner of Section 35, Township 118, Range 24, Hennepin County, Minnesota; thence South 00 degrees 35 minutes 36 seconds East, along the west line of said Section 35, a distance of 1676.21 feet to the point of beginning of the lands to be described:

Thence North 80 degrees 58 minutes 43 seconds East for a distance of 57.91 feet;  
Thence South 75 degrees 21 minutes 18 seconds East for a distance of 196.64 feet;  
Thence South 47 degrees 44 minutes 21 seconds East for a distance of 153.99 feet;  
Thence South 03 degrees 25 minutes 21 seconds East for a distance of 312.74 feet;  
Thence South 25 degrees 48 minutes 29 seconds East for a distance of 94.47 feet;  
Thence South 44 degrees 13 minutes 38 seconds East for a distance of 69.77 feet;  
Thence South 68 degrees 45 minutes 44 seconds East for a distance of 102.44 feet;  
Thence South 85 degrees 59 minutes 44 seconds East for a distance of 125.15 feet;  
Thence South 52 degrees 12 minutes 14 seconds East for a distance of 101.25 feet;  
Thence South 72 degrees 35 minutes 34 seconds East for a distance of 125.64 feet;  
Thence North 78 degrees 07 minutes 08 seconds East for a distance of 94.41 feet;  
Thence North 44 degrees 35 minutes 17 seconds East for a distance of 88.86 feet;  
Thence North 02 degrees 56 minutes 53 seconds East for a distance of 163.33 feet;  
Thence North 11 degrees 29 minutes 39 seconds West for a distance of 155.33 feet;  
Thence North 39 degrees 18 minutes 28 seconds West for a distance of 113.04 feet;  
Thence North 66 degrees 38 minutes 30 seconds West for a distance of 102.65 feet;  
Thence South 70 degrees 58 minutes 25 seconds West for a distance of 66.40 feet;  
Thence South 76 degrees 21 minutes 30 seconds West for a distance of 206.19 feet;  
Thence North 23 degrees 35 minutes 01 seconds West for a distance of 197.48 feet;  
Thence North 44 degrees 13 minutes 17 seconds East for a distance of 94.28 feet;  
Thence North 45 degrees 25 minutes 22 seconds West for a distance of 165.81 feet;  
Thence North 51 degrees 40 minutes 41 seconds West for a distance of 133.82 feet;  
Thence North 84 degrees 09 minutes 07 seconds West for a distance of 126.93 feet;  
Thence North 24 degrees 05 minutes 05 seconds West for a distance of 151.50 feet;  
Thence North 56 degrees 42 minutes 20 seconds East for a distance of 161.89 feet;  
Thence North 62 degrees 19 minutes 53 seconds East for a distance of 172.45 feet;  
Thence South 87 degrees 47 minutes 05 seconds East for a distance of 68.93 feet;  
Thence South 62 degrees 20 minutes 56 seconds East for a distance of 136.06 feet;  
Thence South 42 degrees 08 minutes 01 seconds East for a distance of 294.93 feet;  
Thence South 05 degrees 15 minutes 33 seconds West for a distance of 101.77 feet;  
Thence South 29 degrees 25 minutes 33 seconds West for a distance of 66.99 feet;  
Thence South 56 degrees 37 minutes 01 seconds West for a distance of 154.87 feet;  
Thence South 23 degrees 48 minutes 05 seconds East for a distance of 59.22 feet;  
Thence North 87 degrees 07 minutes 03 seconds East for a distance of 124.95 feet;  
Thence North 44 degrees 21 minutes 26 seconds East for a distance of 134.91 feet;  
Thence North 87 degrees 41 minutes 45 seconds East for a distance of 263.21 feet;  
Thence North 49 degrees 55 minutes 44 seconds East for a distance of 91.75 feet;  
Thence North 07 degrees 53 minutes 37 seconds East for a distance of 156.84 feet;  
Thence North 26 degrees 24 minutes 36 seconds West for a distance of 63.83 feet;  
Thence North 01 degrees 30 minutes 10 seconds West for a distance of 126.67 feet;  
Thence North 26 degrees 47 minutes 35 seconds West for a distance of 198.38 feet;



Thence North 34 degrees 40 minutes 14 seconds West for a distance of 139.49 feet;  
Thence North 07 degrees 05 minutes 18 seconds East for a distance of 173.48 feet;  
Thence North 70 degrees 03 minutes 13 seconds East for a distance of 105.63 feet;  
Thence South 75 degrees 24 minutes 55 seconds East for a distance of 63.32 feet;  
Thence North 73 degrees 54 minutes 52 seconds East for a distance of 77.74 feet;  
Thence North 44 degrees 08 minutes 15 seconds East for a distance of 63.85 feet;  
Thence North 61 degrees 36 minutes 23 seconds East for a distance of 74.58 feet;  
Thence South 59 degrees 45 minutes 24 seconds East for a distance of 135.92 feet;  
Thence South 75 degrees 26 minutes 16 seconds East for a distance of 263.71 feet;  
Thence North 48 degrees 40 minutes 38 seconds East for a distance of 354.29 feet;  
Thence North 81 degrees 41 minutes 29 seconds East for a distance of 168.84 feet;  
Thence North 87 degrees 54 minutes 40 seconds East for a distance of 354.37 feet;  
Thence North 73 degrees 30 minutes 13 seconds East for a distance of 156.40 feet;  
Thence North 81 degrees 21 minutes 32 seconds East for a distance of 161.38 feet;  
Thence North 87 degrees 25 minutes 58 seconds East for a distance of 170.39 feet;  
Thence South 83 degrees 32 minutes 51 seconds East for a distance of 165.03 feet;  
Thence North 79 degrees 04 minutes 34 seconds East for a distance of 185.21 feet;  
Thence North 88 degrees 39 minutes 37 seconds East for a distance of 57.30 feet;  
Thence North 79 degrees 37 minutes 07 seconds East a distance of 545.03 feet;  
Thence South 77 degrees 31 minutes 18 seconds East for a distance of 153.49 feet;  
Thence South 20 degrees 54 minutes 43 seconds West for a distance of 52.49 feet;  
Thence North 75 degrees 28 minutes 01 seconds West for a distance of 204.86 feet;  
Thence South 78 degrees 38 minutes 03 seconds West for a distance of 250.83 feet;  
Thence South 76 degrees 40 minutes 11 seconds West for a distance of 337.63 feet;  
Thence South 67 degrees 09 minutes 55 seconds West for a distance of 101.57 feet;  
Thence South 17 degrees 34 minutes 47 seconds East for a distance of 62.67 feet;  
Thence South 07 degrees 51 minutes 01 seconds East for a distance of 79.81 feet;  
Thence South 00 degrees 24 minutes 13 seconds East for a distance of 158.71 feet;  
Thence South 12 degrees 52 minutes 36 seconds West for a distance of 216.43 feet;  
Thence South 82 degrees 22 minutes 30 seconds West for a distance of 188.61 feet;  
Thence North 66 degrees 59 minutes 38 seconds West for a distance of 333.10 feet;  
Thence South 86 degrees 46 minutes 04 seconds West for a distance of 123.98 feet;  
Thence South 26 degrees 28 minutes 20 seconds West for a distance of 173.67 feet;  
Thence South 59 degrees 08 minutes 51 seconds West for a distance of 71.62 feet;  
Thence South 50 degrees 52 minutes 17 seconds West for a distance of 74.54 feet;  
Thence South 34 degrees 00 minutes 45 seconds West for a distance of 281.17 feet;  
Thence South 68 degrees 09 minutes 02 seconds West for a distance of 69.24 feet;  
Thence North 89 degrees 33 minutes 34 seconds West for a distance of 51.57 feet;  
Thence South 61 degrees 28 minutes 29 seconds West for a distance of 129.68 feet;  
Thence South 80 degrees 16 minutes 46 seconds West for a distance of 61.28 feet;  
Thence North 79 degrees 52 minutes 44 seconds West for a distance of 88.06 feet;  
Thence South 75 degrees 08 minutes 37 seconds West for a distance of 191.84 feet;  
Thence South 38 degrees 54 minutes 46 seconds West for a distance of 172.71 feet;  
Thence South 09 degrees 37 minutes 13 seconds West for a distance of 232.97 feet;  
Thence South 15 degrees 33 minutes 15 seconds East for a distance of 195.63 feet;  
Thence South 10 degrees 11 minutes 49 seconds West for a distance of 298.38 feet;  
Thence South 27 degrees 50 minutes 15 seconds East for a distance of 168.37 feet;  
Thence South 14 degrees 17 minutes 48 seconds East for a distance of 186.07 feet;  
Thence South 14 degrees 10 minutes 09 seconds East for a distance of 366.05 feet;  
Thence South 25 degrees 20 minutes 44 seconds East for a distance of 388.69 feet;  
Thence South 23 degrees 03 minutes 08 seconds East for a distance of 122.57 feet;  
Thence South 35 degrees 08 minutes 32 seconds East for a distance of 271.88 feet;  
Thence South 52 degrees 53 minutes 31 seconds East for a distance of 284.93 feet;

Thence South 48 degrees 23 minutes 45 seconds East for a distance of 182.97 feet;  
Thence South 00 degrees 30 minutes 49 seconds West for a distance of 275.30 feet;  
Thence South 29 degrees 07 minutes 19 seconds West for a distance of 399.05 feet;  
Thence South 47 degrees 43 minutes 55 seconds West for a distance of 109.57 feet;  
Thence South 05 degrees 12 minutes 58 seconds East for a distance of 94.70 feet;  
Thence South 77 degrees 31 minutes 01 seconds East for a distance of 116.55 feet;  
Thence South 25 degrees 43 minutes 29 seconds West for a distance of 15.46 feet;  
Thence South 82 degrees 29 minutes 45 seconds West for a distance of 121.04 feet;  
Thence South 41 degrees 49 minutes 52 seconds West for a distance of 32.64 feet;  
Thence South 27 degrees 46 minutes 02 seconds West for a distance of 67.83 feet;  
Thence South 43 degrees 27 minutes 45 seconds West for a distance of 149.38 feet;  
Thence South 41 degrees 08 minutes 30 seconds West for a distance of 320.64 feet;  
Thence South 36 degrees 05 minutes 43 seconds West for a distance of 224.67 feet;  
Thence South 29 degrees 50 minutes 30 seconds West for a distance of 45.31 feet;  
Thence South 01 degrees 38 minutes 23 seconds West for a distance of 277.51 feet;  
Thence South 62 degrees 42 minutes 57 seconds East for a distance of 72.74 feet;  
Thence North 65 degrees 09 minutes 50 seconds East for a distance of 96.22 feet;  
Thence North 82 degrees 09 minutes 19 seconds East for a distance of 241.25 feet;  
Thence South 81 degrees 42 minutes 42 seconds East for a distance of 138.84 feet;  
Thence North 83 degrees 05 minutes 01 seconds East for a distance of 96.71 feet;  
Thence South 70 degrees 54 minutes 04 seconds East for a distance of 125.01 feet;  
Thence South 56 degrees 36 minutes 21 seconds East for a distance of 118.90 feet;  
Thence South 28 degrees 56 minutes 23 seconds East for a distance of 166.45 feet;  
Thence South 03 degrees 14 minutes 33 seconds East for a distance of 88.68 feet;  
Thence South 09 degrees 55 minutes 33 seconds West for a distance of 169.38 feet;  
Thence South 46 degrees 02 minutes 31 seconds West for a distance of 66.05 feet;  
Thence North 76 degrees 52 minutes 17 seconds West for a distance of 51.22 feet;  
Thence North 65 degrees 19 minutes 31 seconds West for a distance of 297.00 feet;  
Thence 478.89 feet along a non-tangential curve concave to the northeast which has a central angle of 18 degrees 57 minutes 23.2 seconds, a radius of 1447.44 feet, chord bearing North 45 degrees 45 minutes 51 seconds West, and chord length of 476.71 feet;  
Thence South 29 degrees 45 minutes 09 seconds West for a distance of 50.91 feet;  
Thence South 03 degrees 31 minutes 33 seconds West for a distance of 124.55 feet;  
Thence South 25 degrees 06 minutes 19 seconds East for a distance of 177.90 feet;  
Thence South 06 degrees 10 minutes 31 seconds East for a distance of 226.29 feet;  
Thence South 57 degrees 23 minutes 01 seconds West for a distance of 102.77 feet;  
Thence South 82 degrees 18 minutes 52 seconds West for a distance of 185.44 feet;  
Thence South 85 degrees 31 minutes 54 seconds West for a distance of 350.20 feet;  
Thence South 88 degrees 14 minutes 14 seconds West for a distance of 242.46 feet;  
Thence North 86 degrees 59 minutes 28 seconds West for a distance of 118.39 feet;  
Thence North 75 degrees 43 minutes 14 seconds West for a distance of 185.77 feet;  
Thence North 57 degrees 03 minutes 16 seconds West for a distance of 160.01 feet;  
Thence North 72 degrees 00 minutes 43 seconds West for a distance of 85.27 feet;  
Thence North 40 degrees 58 minutes 46 seconds West for a distance of 58.33 feet;  
Thence South 86 degrees 34 minutes 49 seconds West for a distance of 127.71 feet;  
Thence South 48 degrees 27 minutes 39 seconds West for a distance of 79.61 feet;  
Thence South 10 degrees 33 minutes 17 seconds West for a distance of 113.33 feet;  
Thence South 50 degrees 55 minutes 28 seconds West for a distance of 52.40 feet;  
Thence South 72 degrees 59 minutes 22 seconds West for a distance of 220.32 feet;  
Thence North 71 degrees 38 minutes 17 seconds West for a distance of 158.24 feet;  
Thence North 20 degrees 15 minutes 28 seconds West for a distance of 26.02 feet;  
Thence North 48 degrees 01 minutes 53 seconds East for a distance of 25.83 feet;  
Thence North 89 degrees 58 minutes 16 seconds East for a distance of 158.46 feet;

Thence North 65 degrees 54 minutes 29 seconds East for a distance of 124.36 feet;  
Thence North 16 degrees 29 minutes 16 seconds East for a distance of 81.30 feet;  
Thence North 68 degrees 52 minutes 51 seconds West for a distance of 237.75 feet;  
Thence North 28 degrees 52 minutes 22 seconds West for a distance of 76.97 feet;  
Thence North 62 degrees 21 minutes 15 seconds West for a distance of 136.86 feet;  
Thence North 41 degrees 20 minutes 52 seconds West for a distance of 97.42 feet;  
Thence North 49 degrees 01 minutes 15 seconds West for a distance of 81.53 feet;  
Thence North 18 degrees 28 minutes 10 seconds West for a distance of 195.14 feet;  
Thence North 39 degrees 27 minutes 08 seconds East for a distance of 199.18 feet;  
Thence North 24 degrees 32 minutes 01 seconds West for a distance of 86.93 feet;  
Thence North 04 degrees 32 minutes 09 seconds East for a distance of 99.19 feet;  
Thence North 10 degrees 36 minutes 14 seconds East for a distance of 168.73 feet;  
Thence North 35 degrees 51 minutes 22 seconds West for a distance of 50.54 feet;  
Thence North 77 degrees 05 minutes 48 seconds West for a distance of 186.56 feet;  
Thence North 88 degrees 57 minutes 11 seconds West for a distance of 134.17 feet;  
Thence South 36 degrees 32 minutes 35 seconds West for a distance of 309.88 feet;  
Thence South 02 degrees 21 minutes 56 seconds West for a distance of 132.91 feet;  
Thence South 78 degrees 45 minutes 46 seconds West for a distance of 139.62 feet;  
Thence North 19 degrees 36 minutes 43 seconds East for a distance of 171.71 feet;  
Thence North 54 degrees 35 minutes 48 seconds West for a distance of 328.79 feet;  
Thence North 10 degrees 35 minutes 41 seconds West for a distance of 113.57 feet;  
Thence North 30 degrees 33 minutes 43 seconds East for a distance of 101.28 feet;  
Thence North 48 degrees 27 minutes 38 seconds East for a distance of 180.80 feet;  
Thence North 23 degrees 40 minutes 00 seconds West for a distance of 140.28 feet;  
Thence North 59 degrees 39 minutes 47 seconds West for a distance of 74.29 feet;  
Thence North 61 degrees 13 minutes 43 seconds West for a distance of 164.35 feet;  
Thence North 67 degrees 59 minutes 26 seconds West for a distance of 154.26 feet;  
Thence North 63 degrees 05 minutes 45 seconds West for a distance of 404.33 feet;  
Thence North 54 degrees 51 minutes 51 seconds West for a distance of 77.73 feet;  
Thence North 43 degrees 00 minutes 19 seconds West for a distance of 87.66 feet;  
Thence North 17 degrees 45 minutes 19 seconds West for a distance of 63.60 feet;  
Thence North 52 degrees 10 minutes 54 seconds West for a distance of 70.18 feet;  
Thence North 35 degrees 28 minutes 13 seconds West for a distance of 58.09 feet;  
Thence North 23 degrees 58 minutes 55 seconds West for a distance of 192.65 feet;  
Thence North 21 degrees 09 minutes 07 seconds West for a distance of 254.31 feet;  
Thence North 17 degrees 58 minutes 51 seconds West for a distance of 235.30 feet;  
Thence North 79 degrees 51 minutes 40 seconds West for a distance of 26.04 feet;  
Thence North 09 degrees 57 minutes 50 seconds West for a distance of 138.95 feet;  
Thence North 03 degrees 22 minutes 46 seconds East for a distance of 60.28 feet;  
Thence North 19 degrees 36 minutes 23 seconds East for a distance of 249.74 feet;  
Thence North 12 degrees 52 minutes 32 seconds West for a distance of 86.12 feet;  
Thence North 30 degrees 45 minutes 18 seconds East for a distance of 254.80 feet;  
Thence North 38 degrees 52 minutes 42 seconds East for a distance of 138.12 feet;  
Thence North 44 degrees 11 minutes 44 seconds East for a distance of 97.58 feet;  
Thence North 55 degrees 39 minutes 28 seconds East for a distance of 132.24 feet;  
Thence North 71 degrees 52 minutes 04 seconds East for a distance of 215.01 feet;  
Thence South 86 degrees 37 minutes 47 seconds East for a distance of 79.47 feet;  
Thence South 71 degrees 56 minutes 32 seconds East for a distance of 130.99 feet;  
Thence South 59 degrees 40 minutes 40 seconds East for a distance of 104.85 feet;  
Thence South 51 degrees 48 minutes 17 seconds East for a distance of 122.85 feet;  
Thence South 66 degrees 31 minutes 55 seconds East for a distance of 188.71 feet;  
Thence North 76 degrees 47 minutes 49 seconds East for a distance of 121.19 feet;  
Thence North 43 degrees 08 minutes 45 seconds East for a distance of 113.92 feet;

Thence North 06 degrees 15 minutes 48 seconds East for a distance of 181.06 feet;  
Thence North 17 degrees 13 minutes 50 seconds West for a distance of 223.96 feet;  
Thence North 10 degrees 10 minutes 34 seconds West for a distance of 173.24 feet;  
Thence North 19 degrees 50 minutes 55 seconds East for a distance of 220.39 feet;  
Thence North 57 degrees 22 minutes 46 seconds East for a distance of 92.93 feet;  
Thence South 89 degrees 17 minutes 49 seconds East for a distance of 314.23 feet;  
Thence North 57 degrees 09 minutes 46 seconds East for a distance of 157.49 feet;  
Thence North 39 degrees 19 minutes 33 seconds East for a distance of 170.84 feet;  
Thence North 80 degrees 58 minutes 43 seconds East for a distance of 135.21 feet to the point of beginning.

EXCEPT any part which lies within the railroad right of way.

AND ALSO EXCEPT that part described as follows:

Commencing at the west quarter corner of Section 35, Township 118, Range 24, Hennepin County, Minnesota;  
thence South 00 degrees 35 minutes 19 seconds East, along the west line of said Section 35, a distance of 1820.60 feet to the point of beginning of the lands to be described:

Thence South 81 degrees 20 minutes 42 seconds East for a distance of 46.86 feet;  
Thence South 76 degrees 46 minutes 04 seconds East for a distance of 34.69 feet;  
Thence South 64 degrees 55 minutes 06 seconds East for a distance of 24.75 feet;  
Thence South 32 degrees 04 minutes 44 seconds East for a distance of 30.46 feet;  
Thence South 00 degrees 57 minutes 20 seconds West for a distance of 17.02 feet;  
Thence South 37 degrees 15 minutes 11 seconds West for a distance of 26.72 feet;  
Thence South 50 degrees 37 minutes 27 seconds West for a distance of 30.53 feet;  
Thence South 31 degrees 22 minutes 06 seconds West for a distance of 79.05 feet;  
Thence South 34 degrees 40 minutes 54 seconds West for a distance of 59.41 feet;  
Thence South 13 degrees 36 minutes 33 seconds West for a distance of 18.09 feet;  
Thence South 30 degrees 43 minutes 34 seconds West for a distance of 43.88 feet;  
Thence South 39 degrees 57 minutes 17 seconds West for a distance of 31.82 feet;  
Thence South 75 degrees 46 minutes 44 seconds West for a distance of 19.67 feet;  
Thence North 77 degrees 39 minutes 09 seconds West for a distance of 30.50 feet;  
Thence North 46 degrees 33 minutes 01 seconds West for a distance of 112.58 feet;  
Thence North 40 degrees 02 minutes 07 seconds West for a distance of 58.29 feet;  
Thence North 29 degrees 58 minutes 12 seconds West for a distance of 19.31 feet;  
Thence North 05 degrees 46 minutes 35 seconds West for a distance of 22.60 feet;  
Thence North 10 degrees 28 minutes 34 seconds East for a distance of 26.53 feet;  
Thence North 18 degrees 17 minutes 57 seconds East for a distance of 21.18 feet;  
Thence North 42 degrees 49 minutes 58 seconds East for a distance of 41.95 feet;  
Thence North 59 degrees 34 minutes 56 seconds East for a distance of 42.00 feet;  
Thence North 69 degrees 19 minutes 41 seconds East for a distance of 70.90 feet;  
Thence North 75 degrees 43 minutes 24 seconds East a distance of 78.87 feet;  
Thence South 81 degrees 20 minutes 42 seconds East for a distance of 4.50 feet to the point of beginning.





**LEGEND**

- EXISTING EASEMENT
- PROPOSED 944 CONTOUR EASEMENT
- PROPOSED 945.57 CONTOUR EASEMENT

#	DESCRIPTION	XXX	XXX	XX/XX/XX
REV	REVISION DESCRIPTION	DWN	APP	REV DATE

SEAL

PRIME CONSULTANT



Responsive partner. Exceptional outcomes.

PROJECT TITLE  
PAINTER MARSH EASEMENT ASSISTANCE



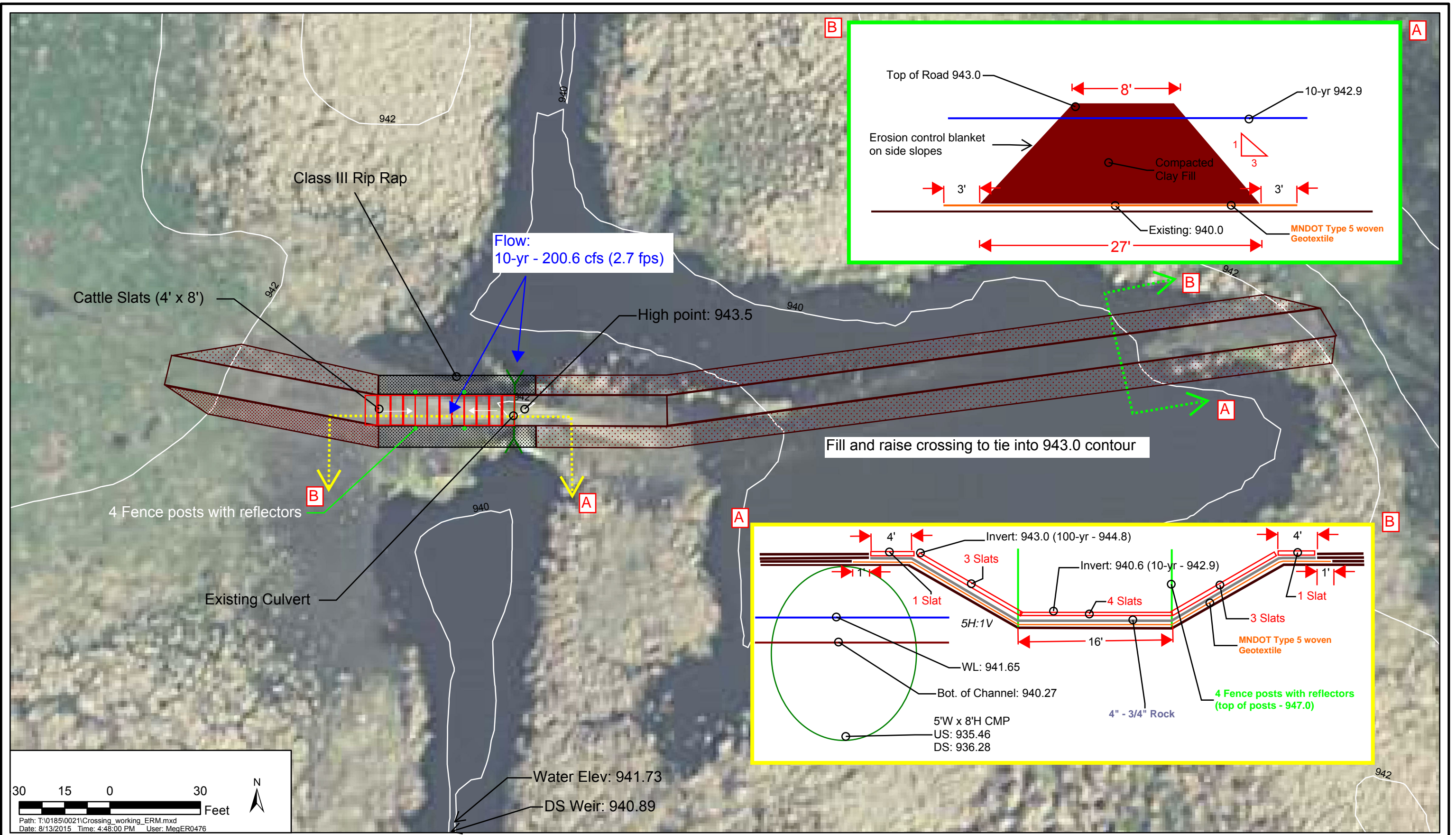
MINNEHAHA CREEK  
WATERSHED DISTRICT  
QUALITY OF WATER, QUALITY OF LIFE

SHEET TITLE  
PROPOSED PAINTER MARSH  
OVERALL EASEMENTS

DWN BY MJS	CHK'D	APP'D	DWG DATE FEB 2016
PROJECT NO. 0185-0037	SHEET NO. FIGURE 1	SCALE AS SHOWN	REV NO.







Path: T:\0185\0021\Crossing\_working\_ERM.mxd  
Date: 8/13/2015 Time: 4:48:00 PM User: MegER0476

MINNEHAHA CREEK WATERSHED DISTRICT

Painter Creek Cattle Crossing Overview



FEB 2016

Figure 1