



STAFF REPORT

DATE: August 7, 2019

CONSENT

AGENDA ITEM: Approve Agreement Regarding Easements and Temporary Access for the CSAH 19 and Hudson Boulevard Intersection Improvements

SUBMITTED BY: Jack Griffin, City Engineer

REVIEWED BY: Kristina Handt, City Administrator
Sarah Sonalla, City Attorney
Chad Isakson, Project Engineer

ISSUE BEFORE COUNCIL: Should the City Council approve an Agreement Regarding Easements and Temporary Access with MFC Properties 94 Limited Partnership for the CSAH 19 and Hudson Boulevard Intersection Improvements?

BACKGROUND: On June 4, 2019 the City Council awarded a contract for the CSAH-19 and Hudson Boulevard Intersection Improvements. The improvements include the installation of a traffic light at CSAH-19 and Hudson Boulevard with dedicated left and right turn lanes constructed along each of the Hudson Boulevard approaches. The improvements also include the addition of storm sewer improvements and a stormwater infiltration basin.

To facilitate the improvements the City must acquire 498 sq.ft. of permanent drainage and utility easement, 941 sq.ft. of right-of-way along Hudson Boulevard, and 3946 sq.ft. of temporary construction easement from MFC Properties 94 Limited Partnership on Parcel ID 3402921440009.

PROPOSAL DETAILS/ANALYSIS: The City has successfully negotiated the acquisition of the required easements from MFC properties and has prepared the attached Agreement Regarding Easements and Temporary Access to outline the agreement terms. As a part of the agreement MFC properties will be allowed to construct a temporary secondary access to the buildings at 9947 Hudson Boulevard (The Shoppes at Lakewood Crossing). The temporary access must be removed once a secondary access can be established with the development of the property just west of Lakewood Crossing. Additional terms and conditions are outlined in the attached agreement, including a \$25,000 contribution from MFC Properties toward to the CSAH19-Hudson Boulevard intersection project, and an agreement by the City to not assess for the improvements. With the execution of this agreement all necessary easements to complete the CSAH 19 and Hudson Boulevard Intersection Improvements will have been acquired.

FISCAL IMPACT: The City will receive a \$25,000 contribution toward the CSAH 19 and Hudson Boulevard Intersection Improvements.

RECOMMENDATION: Staff is recommending that the City Council, *as part of the Consent Agenda*, approve the Agreement Regarding Easements and Temporary Access with the property owner of Parcel ID 3402921440009. If removed from the consent agenda, the recommended motion is as follows:

“Move to approve the Agreement Regarding Easements and Temporary Access with the property owner of Parcel ID 3402921440009.”

ATTACHMENTS:

1. MFC Properties Drainage and Utility Easement Agreement.

AGREEMENT REGARDING EASEMENTS AND TEMPORARY ACCESS

This Agreement Regarding Easements and Temporary Access (this "Agreement") is made this 17th day of JULY, 2019, by and between the City of Lake Elmo, Minnesota, a Minnesota municipal corporation (the "City") and MFC Properties 94 Limited Partnership, a Minnesota limited partnership (the "Owner"), and CM Properties 94 Limited Partnership, a Minnesota limited partnership ("Owner's Affiliate").

Recitals

WHEREAS, the Owner is the fee owner of real property legally described on the attached Exhibit A (the "Property"); and

WHEREAS, the Owner's Affiliate is fee owner of the real property legally described on the attached Exhibit A-1 ("Affiliate Property"); and

WHEREAS, the City is constructing improvements in the area of the Property to the intersection of CSAH-19 and Hudson Boulevard, which include the installation of a traffic signal at CSAH-19 and Hudson Boulevard with dedicated right and left turn lanes constructed along each of the Hudson Boulevard approaches along with the addition of storm sewer improvements (the "Project"); and

WHEREAS, in order for the City to be able to construct the Project, it is in need of a temporary construction easement, a drainage and utility easement, and a right-of-way easement over the Property (collectively "the Easements"); and

WHEREAS, the Owner is willing to grant the City the Easements and the Owner's Affiliate shall contribute \$25,000 towards the City's costs for the Project, provided that the City agree to allow the Owner's Affiliate, its successors and assigns, to construct a temporary second access to the Property off of Hudson Boulevard in the location shown on the attached Exhibit B (the "Temporary Access") and to not assess the Owner or Owner's Affiliate for the cost of the Project; and

WHEREAS, the City is willing to not assess the Property or Affiliate Property for the cost of the Project and to allow the Temporary Access provided that the Owner's Affiliate removes the Temporary Access when the property to the west is developed.

Terms and Conditions

1. Easements. The Owner shall grant the City the Easements using the form of easements provided in the attached Exhibit C (the "Temporary Construction Easement"), Exhibit D (the "Drainage and Utility Easement"), and Exhibit E (the "Right of Way Easement"). Said Easements

shall be executed by the Owner upon execution of this Agreement by both parties. Said Easements shall be granted to the City by the Owner at no charge to the City. The City shall be responsible for recording said Easements (with the exception of the Temporary Construction Easement which shall not be recorded) and this Agreement.

2. Owner Payment. The Owner's Affiliate shall pay the City \$25,000 towards the City's costs for the Project. Said payment shall be made to the City upon execution of this Agreement by all parties.

3. Special Assessments. The City agrees that it will not specially assess the Property or Affiliate Property for the costs of the Project.

4. Temporary Access. The City agrees to allow the Owner or Owner's Affiliate, their respective agents and contractors, to construct the Temporary Access from the Affiliate Property to Hudson Boulevard. Said access shall be constructed by the Owner's Affiliate at the Owner's Affiliate expense in the location shown on the attached Exhibit B. The Owner's Affiliate shall install a culvert under the Temporary Access in order to allow drainage patterns on the Property to remain. The City will allow the Temporary Access to remain until the neighboring property to the west is developed. In the event that a second access to the Property is constructed on the neighboring property, the Owner's Affiliate shall remove the Temporary Access within 60 days of being notified by the City in writing that the new access is complete. In the event that the Owner's Affiliate does not remove the Temporary Access within this time period, the City may remove it at the Owner's and the Owner's Affiliate's expense. In that event, the Owner and Owner's Affiliate consent to the City levying a special assessment against the Property for its removal costs in accordance with Minnesota Statutes Section 429.061. The principal amount of the special assessment shall be the actual costs incurred by the City to remove the Temporary Access. The special assessment shall not exceed \$50,000. In the event that the City must remove the Temporary Access, the Owner and Owner's Affiliate waives its notice of hearing and hearing on the special assessment levied by the City to finance the removal, pursuant to Minnesota Statutes Section 429.061 and specifically requests that the special assessment be levied against the Property by the City without a hearing. The Owner and Owner's Affiliate also waives their right to appeal the levy of the special assessment in accordance with this Agreement pursuant to Minnesota Statutes Section 429.081. The Owner and Owner's Affiliate further specifically agree with respect to this special assessment against the Property that; 1) all requirements of Minnesota Statutes Chapter 429 with which the City does not comply with are hereby waived; and 2) the increase in fair market value of the Property resulting from the removal of the Temporary Access will be at least equal to the amount of the special assessment levied against the Property and that such increase in fair market value is a special benefit to the Property. The special assessment levied against the Property shall be payable over such period as the City may determine, but not less than five years, and shall bear interest at a rate determined by the City, but not more than eight percent per year. The first installment of the principal and interest shall be included in the first tax rolls completed after the adoption of the City Council resolution levying the special assessment.

5. Permanent Access. Owner's Affiliate and the City prefer to have a shared and permanent access between the Affiliate Property and the property adjacent to the west of the Affiliate Property commonly known as the Ebertz property (the Ebertz Property"). Therefore, sometime after the

execution of this Agreement and before final City approval of the development plans for the Ebertz Property, Owner's Affiliate with the support and encouragement of the City, shall attempt to negotiate permanent access in the approximate location shown on Exhibit B (the "Permanent Access"). The Permanent Access shall be shared between the owners of the Affiliate Property and the Ebertz Property and shall be acquired and constructed, including any required turn lane, at the sole cost of the owners of the Affiliate Property and the Ebertz Property, at no cost to the City. At any time, the owner of the Affiliate Parcel may construct the Temporary Access in accordance with the provisions of Section 4.

6. Indemnification. The Owner and Owner's Affiliate agrees to indemnify, save harmless, and defend the City and its officials, employees, agents, and contractors from and against any and all claims, actions, damages, liability, and expense in connection with personal injury or property damage arising from or out of the construction and use of the Temporary Access and the City's allowance of the Temporary Access except to the extent caused by the negligence, gross negligence, or any willful or wanton misconduct by the City, its officials, employees, agents, or contractors or the City's requirement that the Temporary Access be removed as provided in Section 4 hereof.

7. Insurance. The Owner's Affiliate shall ensure that all work performed by it pursuant to this Agreement is covered by a commercial liability insurance policy with liability limits of at least \$1,500,000. The Owner's Affiliate shall furnish the City with proof of insurance upon request.

8. Amendments. This Agreement may be modified only through written amendments signed by both parties to this Agreement.

9. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, all of which shall constitute one and the same instrument.

10. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

11. Binding Effect. The terms and conditions of this Agreement shall run with the land and be binding on the parties and their successors and assigns.

IN WITNESS OF THE FOREGOING, each of the parties has executed this Agreement as of the date first written above.

CITY OF LAKE ELMO

By: _____
Mike Pearson
Its: Mayor

By: _____
Julie Johnson
Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by Mike Pearson and Julie Johnson, the Mayor and City Clerk, respectively of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the City.

Notary Public

NOTARY STAMP OR SEAL

**MFC PROPERTIES 94
LIMITED PARTNERSHIP**

By: Martin F. Colon

Martin F. Colon

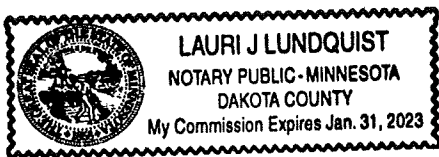
Its: General Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF Dakota)

The foregoing instrument was acknowledged before me this 17th day of July, 2019 by Martin F. Colon, the General Partner of MFC Properties 94 Limited Partnership, a Minnesota limited partnership, on behalf of the partnership.

Lauri J. Lundquist
Notary Public

NOTARY STAMP OR SEAL



**CM PROPERTIES 94
LIMITED PARTNERSHIP**

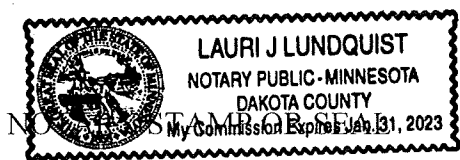
By: Martin F. Colon

Martin F. Colon

Its: General Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF Dakota)

The foregoing instrument was acknowledged before me this 17th day of July, 2019 by Martin F. Colon, the General Partner of CM Properties 94 Limited Partnership, a Minnesota limited partnership, on behalf of the partnership.



Lauri J. Lundquist
Notary Public

THIS INSTRUMENT DRAFTED BY:

Kennedy & Graven, Chartered (SJS)
470 US Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

Legal Description of the Property

The East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 34, Township 29, Range 21, lying Westerly of that part thereof embraced within Washington County Highway Right of Way Plat No. 48-19B and lying Northerly of Minnesota Department of Transportation Right of Way Plat Number 82-43, according to the United States Government Survey thereof and situate in Washington County, Minnesota.

EXHIBIT A-1

Legal Description of the Affiliate Property

Lots 2 and 3, Block 1, Lakewood Crossing 2nd Addition, Washington County, Minnesota.

EXHIBIT B

Depiction of the Temporary Access

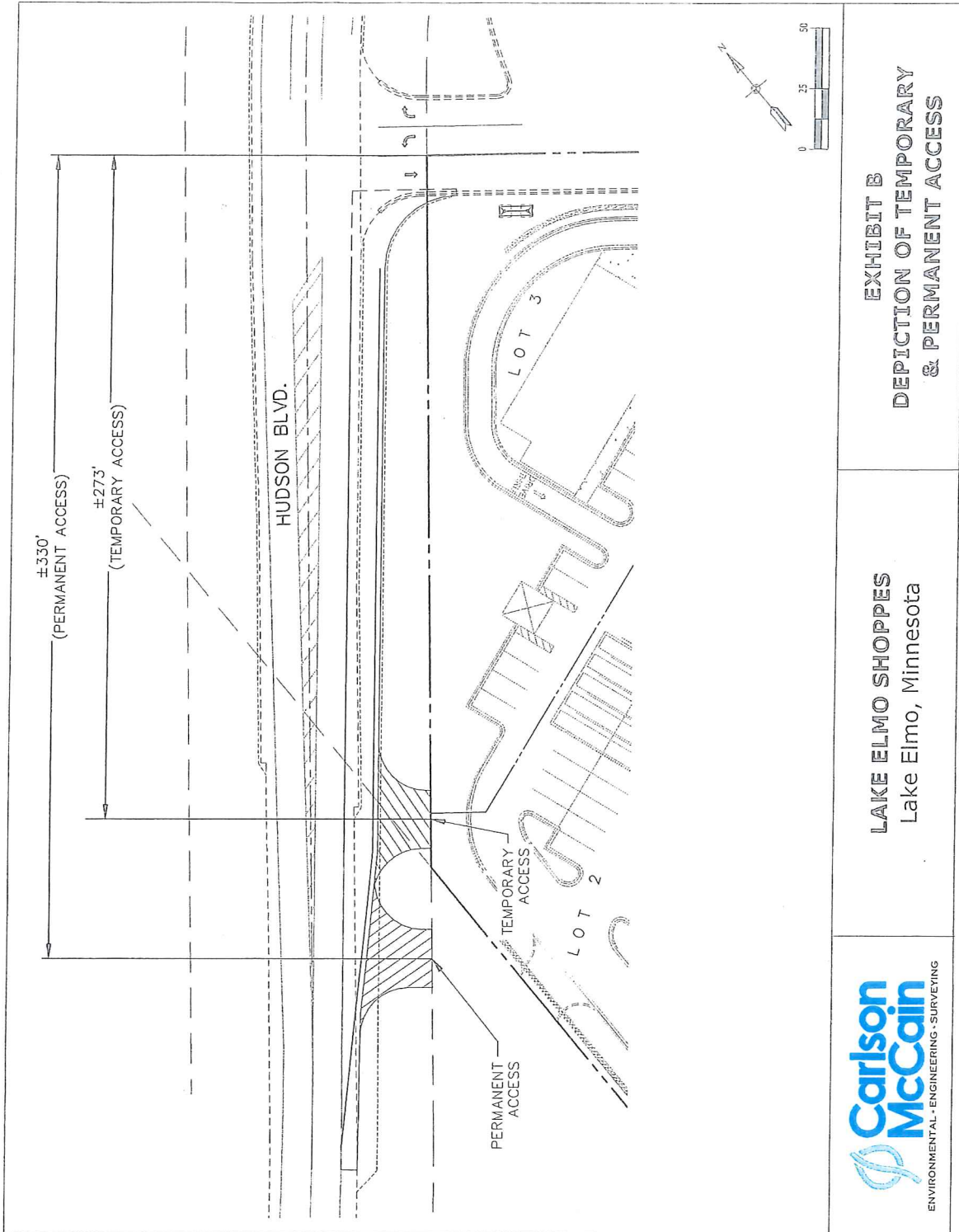


EXHIBIT B
DEPICTION OF TEMPORARY
& PERMANENT ACCESS

LAKE ELMO SHOPPES
Lake Elmo, Minnesota

**Carlson
McCain**
ENVIRONMENTAL • ENGINEERING • SURVEYING

Save Date: 07/17/19 f:\jobs\4961 - 4980\4976 - lake elmo retail\phase 2\cad\engineering\phase 1\4976_access exhibit.dwg

EXHIBIT C

Form of Temporary Construction Easement

TEMPORARY CONSTRUCTION EASEMENT

THIS INSTRUMENT is made by MFC Properties 94 Limited Partnership, a Minnesota limited partnership, Grantor, in favor of the City of Lake Elmo, a Minnesota municipal corporation, Grantee, (the "City").

Recitals

- A. Grantor is the fee owner of the following described property in Washington County, Minnesota:

The East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 34, Township 29, Range 21, lying Westerly of that part thereof embraced within Washington County Highway Right of Way Plat No. 48-19B and lying Northerly of Minnesota Department of Transportation Right of Way Plat Number 82-43, according to the United States Government Survey thereof and situate in Washington County, Minnesota

(the "Property").

- B. Grantor desires to grant to the City a temporary construction easement (the "Easement") according to the terms and conditions contained herein.

Terms of Temporary Construction Easement

2. Grant of Temporary Construction Easement. For good and valuable consideration, receipt of which is acknowledged by Grantor, Grantor grants and conveys to the City the following Easement which is described on Exhibit A, (the "Easement Area") and depicted on Exhibit B attached hereto.

2. Scope of Easement. The above-described Easement includes the rights of the City, its contractors, agents, and employees to enter the Easement Area at all reasonable times for the purposes of constructing roadway, grading, and drainage and utility improvements on the Property as described on the plans for the project, Project No. _____ (the "Work").

The temporary easement granted herein also includes the right to cut, trim, or remove any landscaping, improvements, or vegetation within the Easement Area that in the City's judgment

unreasonably interferes with the Work. The City will restore the Property affected by the Work, including the replacement of vegetation and landscaping that is within the Easement Area, to the condition that it was in prior to the Work being performed. Restoration will be completed no later than expiration date of this easement.

Grantor will not erect, construct, or create any building, improvement, obstruction or structure of any kind within the Easement Area during the term of this Easement, either above or below the surface or change the grade thereof without the express written permission of the City.

3. Warranty of Title. Grantor warrants that it is the fee owner of the Property and that it has the right, title, and capacity to convey the Easement herein to the City.

4. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on Grantor and its successors and assigns.

5. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants that may have existed on, or that relate to the Easement Area or the Property prior to the date of this instrument.

6. Term. The Easement granted herein shall expire no later than **July 1, 2020.**

STATE DEED TAX DUE HEREON: NONE

Dated this 17th day of July, 2019.

GRANTOR

MFC PROPERTIES 94 LIMITED
PARTNERSHIP

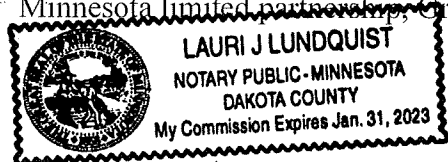
By: Martin F. Colon
Martin F. Colon
Its: General Partner

STATE OF MINNESOTA }

SS.

COUNTY OF DAKOTA

The foregoing instrument was acknowledged before me this 17th day of July, 2019, by Martin F. Colon, the General Partner of MFC Properties 94 Limited Partnership, a Minnesota limited partnership, Grantor.



Lauri J. Lundquist
Notary Public

NOTARY STAMP OR SEAL

THIS INSTRUMENT DRAFTED BY:

Kennedy & Graven, Chartered (SJS)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A TO TEMPORARY CONSTRUCTION EASEMENT

A 10.00 foot temporary construction easement for roadway, grading, drainage and utility purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 15.00 feet to the right of a line hereinafter described as "Line A."

Together with a 5.00 foot temporary construction easement for roadway and drainage purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 15.00 feet to the right of a line hereinafter described as "Line B."

Together with a 15.00 foot temporary construction easement for roadway and drainage purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 15.00 feet to the right of a line hereinafter described as "Line C."

"Line A" is described as commencing at Right of Way Boundary Corner B301 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43 as the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota; thence North 89 degrees 53 minutes 53 seconds West, along the boundary of said plat, 95.00 feet; thence North 00 degrees 04 minutes 12 seconds West, a distance of 25.00 feet to the point of beginning; thence North 89 degrees 53 minutes 53 seconds West, parallel with the boundary of said plat 82-43, 15.37 feet; thence continuing parallel with the boundary of said plat 82-43 and westerly for 112.50 feet on a tangential curve, concave to the south, having a radius of 573.22 feet and a delta angle of 11 degrees 14 minutes 43 seconds, and said "Line A" there terminating.

"Line B" is described as beginning at the terminus of said "Line A"; thence southwesterly along the prolongation of said "Line A," parallel with the boundary of said Minnesota Department of Transportation Right of Way Plat No. 82-43 a distance of 400.22 feet, along the continuation of the curve described in "Line A," having a radius of 573.22 feet and a delta angle of 40 degrees 00 minutes 13 second; thence continuing parallel with said plat boundary, South 38 degrees 51 minutes 11 seconds West, a distance of 120.81 feet and said "Line B" there terminating.

"Line C" is described as beginning at the terminus of said "Line B"; thence southwesterly along the prolongation of said "Line B," parallel with the boundary of said Minnesota Department of Transportation Right of Way Plat No. 82-43 a distance of 45.45 feet to the east line of the West Half of the Southeast Quarter of the Southeast Quarter and said "Line C" there terminating.

Less and Except a 5.00 foot perpetual easement for drainage and utility purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 5.00 feet to the right of a line described as follows:

Commencing at Right of Way Boundary Corner B301 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43 as the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota; thence North 89 degrees 53 minutes 53 seconds West, along the boundary of said plat, 95.00 feet; thence North 00 degrees 04 minutes 12 seconds West, a distance of 25.00 feet to the point of beginning; thence North 89 degrees 53 minutes 53 seconds West, parallel with the boundary of said plat 82-43, 15.37 feet; thence continuing parallel with the boundary of said plat 82-43 and westerly for 83.90 feet on a tangential curve, concave to the south, having a radius of 573.22 feet and a delta angle of 08 degrees 23 minutes 10 seconds, and said line there terminating.

Containing 3,946 square feet, more or less

EXHIBIT D

Form of Drainage and Utility Easement

DRAINAGE AND UTILITY EASEMENT

THIS INSTRUMENT is made by MFC Properties 94 Limited Partnership, a Minnesota limited partnership, Grantor, in favor of the City of Lake Elmo, a Minnesota municipal corporation, Grantee (the "City").

Recitals

- A. Grantor is the fee owner of the Property (the "Property") located in Washington County Minnesota and legally described on Exhibit A attached hereto.
- B. Grantor desires to grant to the City an easement according to the terms and conditions contained herein.

Terms of Easement

1. Grant of Easement. For good and valuable consideration, receipt of which is acknowledged by Grantor, Grantor grants and conveys to the City a perpetual, non-exclusive drainage and utility Easement (the "Easement") over, under, and across the portion of the Property described on Exhibit B (the "Easement Area") and depicted on Exhibit C attached hereto.

2. Scope of Easement. The perpetual, non-exclusive Easement granted herein includes the right of the City, its contractors, agents, and employees to enter the Easement Area at all reasonable times for the purpose of locating, constructing, reconstructing, operating, maintaining, inspecting, altering, and repairing the utilities, drainage ways, and stormwater facilities in the described Easement Area.

The Easement granted herein also includes the right to cut, trim, or remove from the Easement Area such improvements, trees, shrubs, or other vegetation, and to prohibit obstructions and grading alterations as in the City's judgment unreasonably interfere with the Easement or the function of the facilities located therein.

3. Warranty of Title. The Grantor warrants it is the owner of the Property and has the right, title and capacity to convey to the City the Easement herein.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Easement Area or Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on the Grantor, its successors and assigns.

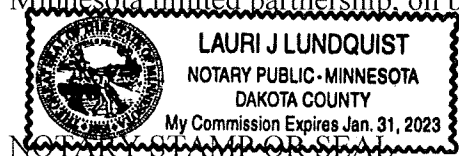
Dated this 17th day of July, 2019.

MFC PROPERTIES 94 LIMITED PARTNERSHIP

By: Martin F. Colon
Martin F. Colon
Its: General Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this 17th day of July, 2019 by Martin F. Colon, the General Partner of MFC Properties 94 Limited Partnership, a Minnesota limited partnership, on behalf of the partnership, Grantor.



Lauri J. Lundquist
Notary Public

THIS INSTRUMENT DRAFTED BY:

Kennedy & Graven, Chartered (SJS)
470 US Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A TO DRAINAGE AND UTILITY EASEMENT

Legal Description of the Property

The East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 34, Township 29, Range 21, lying Westerly of that part thereof embraced within Washington County Highway Right of Way Plat No. 48-19B and lying Northerly of Minnesota Department of Transportation Right of Way Plat Number 82-43, according to the United States Government Survey thereof and situate in Washington County, Minnesota.

EXHIBIT B TO DRAINAGE AND UTILITY EASEMENT

Legal Description of the Easement Area

A 5.00 foot perpetual easement for drainage and utility purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 5.00 feet to the right of a line described as follows:

Commencing at Right of Way Boundary Corner B301 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43 as the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota; thence North 89 degrees 53 minutes 53 seconds West, along the boundary of said plat, 95.00 feet; thence North 00 degrees 04 minutes 12 seconds West, a distance of 25.00 feet to the point of beginning; thence North 89 degrees 53 minutes 53 seconds West, parallel with the boundary of said plat 82-43, 15.37 feet; thence continuing parallel with the boundary of said plat 82-43 and westerly for 83.90 feet on a tangential curve, concave to the south, having a radius of 573.22 feet and a delta angle of 08 degrees 23 minutes 10 seconds, and said line there terminating.

Containing 498 square feet, more or less

EXHIBIT C TO DRAINAGE AND UTILITY EASEMENT

Depiction of the Easement Area

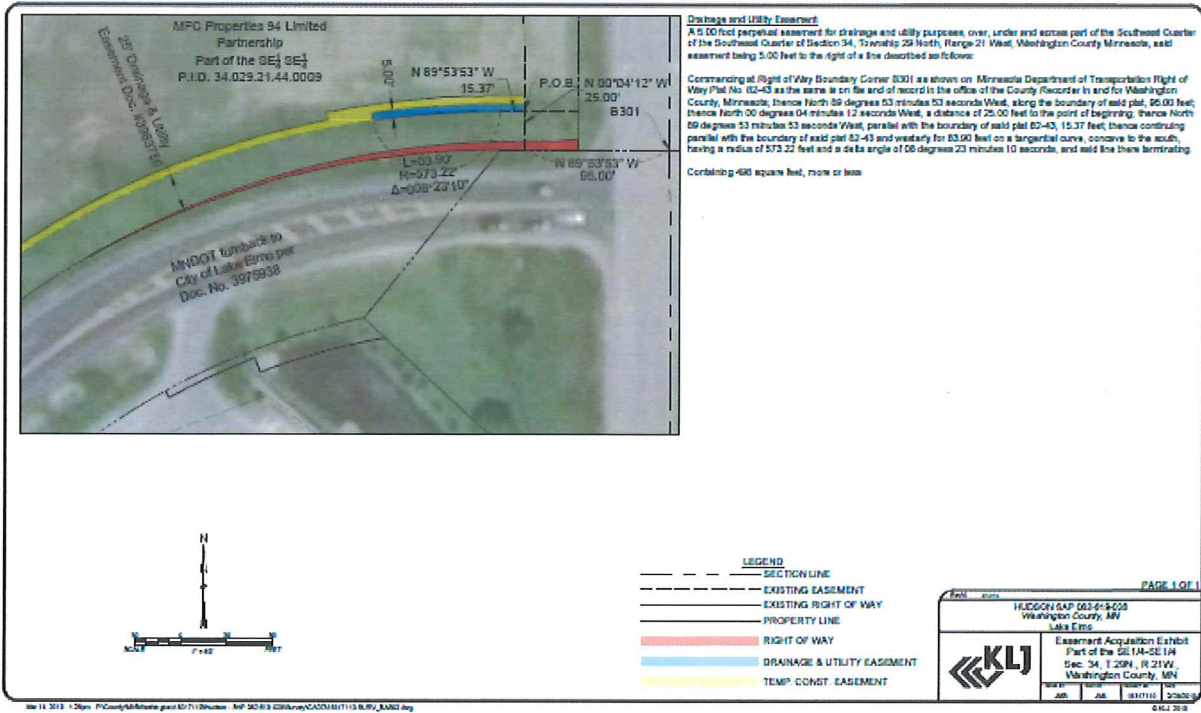


EXHIBIT E
Form of Right of Way Easement

RIGHT-OF-WAY EASEMENT

THIS INSTRUMENT is made by MFC Properties 94 Limited Partnership, a Minnesota limited partnership, Grantor, in favor of the City of Lake Elmo, Minnesota, a municipal corporation under the laws of the State of Minnesota, Grantee (the "City").

Recitals

- A. Grantor is the fee owner of property in Washington County, Minnesota, legally described on the attached Exhibit A (the "Property").
- B. Grantor desires to grant to the City a non-exclusive permanent right-of-way easement, according to the terms and conditions contained herein.

Terms of Easement

3. Grant of Easement. For good and valuable consideration, receipt of which is hereby acknowledged by Grantor, Grantor grants and conveys to the City a permanent, non-exclusive easement for public right-of-way purposes over, under, across, and through that part of the Property legally described on Exhibit B and shown on the map attached as Exhibit C (the "Easement Area").
2. Scope of Easement. The above-described right-of-way easement includes the rights of the City, its contractors, agents, and employees to do whatever is necessary for enjoyment of the rights granted herein to use the Easement Area for a public road, drainage and utilities and related purposes including the right to enter the Easement Area for purposes of constructing, operating, maintaining, altering, grading, repairing, replacing, or removing a road, sanitary sewer, storm sewer, watermain or other public improvements, including but not limited to, the right itself, or to allow public or private utility companies, to place, maintain, improve, repair, replace, and remove utilities and related facilities within the Easement Area, and the rights to cut, trim, or remove trees, shrubs, or other vegetation existing within the Easement Area, and to prohibit obstructions and grading alterations now or in the future as in City's judgment unreasonably interfere with the use or maintenance of the Easement Area. The City agrees that the southern boundary of the Property shall be used for the purposes of calculating setbacks applicable in the Property.

3. Warranty of Title. Grantor warrants that Grantor is the fee owner of the Property and has the right, title, and capacity to convey to the City the easement herein.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Easement Area or the Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on Grantor, Grantor's successors and assigns.

STATE DEED TAX DUE HEREON: NONE

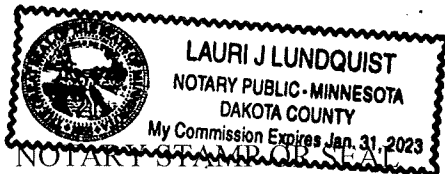
Dated this 17th day of July, 2019.

MFC PROPERTIES 94 LIMITED PARTNERSHIP

By: Martin F. Colon
Martin F. Colon
Its: General Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this 17th day of July, 2019 by Martin F. Colon, the General Partner of MFC Properties 94 Limited Partnership, a Minnesota limited partnership, on behalf of the partnership, Grantor.



Lauri J. Lundquist
Notary Public

THIS INSTRUMENT DRAFTED BY AND SHOULD BE RETURNED TO:
Kennedy & Graven, Chartered (SJS)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A TO RIGHT OF WAY EASEMENT

Legal Description of the Property

The East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 34, Township 29, Range 21, lying Westerly of that part thereof embraced within Washington County Highway Right of Way Plat No. 48-19B and lying Northerly of Minnesota Department of Transportation Right of Way Plat Number 82-43, according to the United States Government Survey thereof and situate in Washington County, Minnesota.

EXHIBIT B TO RIGHT OF WAY EASEMENT

Legal Description of the Easement Area

That part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, described as follows:

Commencing at Right of Way Boundary Corner B301 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43 as the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota; thence North 89 degrees 53 minutes 53 seconds West, along the boundary of said plat, 60.00 feet to west line of Washington County Highway Right of Way Plat No. 48-19 Bas the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota and to the point of beginning; thence North 00 degrees 04 minutes 12 seconds West, along said west line, a distance of 6.80 feet; thence South 85 degrees 19 minutes 55 seconds West, a distance of 13.20 feet; thence South 89 degrees 40 minutes 34 seconds West, a distance of 26.89 feet; thence southwesterly for 291.33 feet on a tangential curve, concave to the southeast, having a radius of 566.61 feet and a delta angle of 29 degrees 27 minutes 32 seconds to the northerly boundary line of said Minnesota Department of Transportation Right of Way Plat No. 82-43; thence northeasterly along said boundary line of Minnesota Department of Transportation Right of Way Plat No. 82-43 and along a non-tangential curve concave to the southeast, having a radius of 548.22 feet, a delta angle of 29 degrees 14 minutes 00 seconds and a chord that bears North 75 degrees 29 minutes 07 seconds East to Right of Way Boundary Corner B8 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43; thence South 89 degrees 53 minutes 53 seconds East, a distance of 50.44 feet to the point of beginning.

Containing 941 square feet, more or less

Depiction of the Easement Area



AGREEMENT REGARDING EASEMENTS AND TEMPORARY ACCESS

This Agreement Regarding Easements and Temporary Access (this "Agreement") is made this 17th day of JULY, 2019, by and between the City of Lake Elmo, Minnesota, a Minnesota municipal corporation (the "City") and MFC Properties 94 Limited Partnership, a Minnesota limited partnership (the "Owner"), and CM Properties 94 Limited Partnership, a Minnesota limited partnership ("Owner's Affiliate").

Recitals

WHEREAS, the Owner is the fee owner of real property legally described on the attached Exhibit A (the "Property"); and

WHEREAS, the Owner's Affiliate is fee owner of the real property legally described on the attached Exhibit A-1 ("Affiliate Property"); and

WHEREAS, the City is constructing improvements in the area of the Property to the intersection of CSAH-19 and Hudson Boulevard, which include the installation of a traffic signal at CSAH-19 and Hudson Boulevard with dedicated right and left turn lanes constructed along each of the Hudson Boulevard approaches along with the addition of storm sewer improvements (the "Project"); and

WHEREAS, in order for the City to be able to construct the Project, it is in need of a temporary construction easement, a drainage and utility easement, and a right-of-way easement over the Property (collectively "the Easements"); and

WHEREAS, the Owner is willing to grant the City the Easements and the Owner's Affiliate shall contribute \$25,000 towards the City's costs for the Project, provided that the City agree to allow the Owner's Affiliate, its successors and assigns, to construct a temporary second access to the Property off of Hudson Boulevard in the location shown on the attached Exhibit B (the "Temporary Access") and to not assess the Owner or Owner's Affiliate for the cost of the Project; and

WHEREAS, the City is willing to not assess the Property or Affiliate Property for the cost of the Project and to allow the Temporary Access provided that the Owner's Affiliate removes the Temporary Access when the property to the west is developed.

Terms and Conditions

1. **Easements.** The Owner shall grant the City the Easements using the form of easements provided in the attached Exhibit C (the "Temporary Construction Easement"), Exhibit D (the "Drainage and Utility Easement"), and Exhibit E (the "Right of Way Easement"). Said Easements

shall be executed by the Owner upon execution of this Agreement by both parties. Said Easements shall be granted to the City by the Owner at no charge to the City. The City shall be responsible for recording said Easements (with the exception of the Temporary Construction Easement which shall not be recorded) and this Agreement.

2. Owner Payment. The Owner's Affiliate shall pay the City \$25,000 towards the City's costs for the Project. Said payment shall be made to the City upon execution of this Agreement by all parties.

3. Special Assessments. The City agrees that it will not specially assess the Property or Affiliate Property for the costs of the Project.

4. Temporary Access. The City agrees to allow the Owner or Owner's Affiliate, their respective agents and contractors, to construct the Temporary Access from the Affiliate Property to Hudson Boulevard. Said access shall be constructed by the Owner's Affiliate at the Owner's Affiliate expense in the location shown on the attached Exhibit B. The Owner's Affiliate shall install a culvert under the Temporary Access in order to allow drainage patterns on the Property to remain. The City will allow the Temporary Access to remain until the neighboring property to the west is developed. In the event that a second access to the Property is constructed on the neighboring property, the Owner's Affiliate shall remove the Temporary Access within 60 days of being notified by the City in writing that the new access is complete. In the event that the Owner's Affiliate does not remove the Temporary Access within this time period, the City may remove it at the Owner's and the Owner's Affiliate's expense. In that event, the Owner and Owner's Affiliate consent to the City levying a special assessment against the Property for its removal costs in accordance with Minnesota Statutes Section 429.061. The principal amount of the special assessment shall be the actual costs incurred by the City to remove the Temporary Access. The special assessment shall not exceed \$50,000. In the event that the City must remove the Temporary Access, the Owner and Owner's Affiliate waives its notice of hearing and hearing on the special assessment levied by the City to finance the removal, pursuant to Minnesota Statutes Section 429.061 and specifically requests that the special assessment be levied against the Property by the City without a hearing. The Owner and Owner's Affiliate also waives their right to appeal the levy of the special assessment in accordance with this Agreement pursuant to Minnesota Statutes Section 429.081. The Owner and Owner's Affiliate further specifically agree with respect to this special assessment against the Property that; 1) all requirements of Minnesota Statutes Chapter 429 with which the City does not comply with are hereby waived; and 2) the increase in fair market value of the Property resulting from the removal of the Temporary Access will be at least equal to the amount of the special assessment levied against the Property and that such increase in fair market value is a special benefit to the Property. The special assessment levied against the Property shall be payable over such period as the City may determine, but not less than five years, and shall bear interest at a rate determined by the City, but not more than eight percent per year. The first installment of the principal and interest shall be included in the first tax rolls completed after the adoption of the City Council resolution levying the special assessment.

5. Permanent Access. Owner's Affiliate and the City prefer to have a shared and permanent access between the Affiliate Property and the property adjacent to the west of the Affiliate Property commonly known as the Ebertz property (the Ebertz Property"). Therefore, sometime after the

execution of this Agreement and before final City approval of the development plans for the Ebertz Property, Owner's Affiliate with the support and encouragement of the City, shall attempt to negotiate permanent access in the approximate location shown on Exhibit B (the "Permanent Access"). The Permanent Access shall be shared between the owners of the Affiliate Property and the Ebertz Property and shall be acquired and constructed, including any required turn lane, at the sole cost of the owners of the Affiliate Property and the Ebertz Property, at no cost to the City. At any time, the owner of the Affiliate Parcel may construct the Temporary Access in accordance with the provisions of Section 4.

6. Indemnification. The Owner and Owner's Affiliate agrees to indemnify, save harmless, and defend the City and its officials, employees, agents, and contractors from and against any and all claims, actions, damages, liability, and expense in connection with personal injury or property damage arising from or out of the construction and use of the Temporary Access and the City's allowance of the Temporary Access except to the extent caused by the negligence, gross negligence, or any willful or wanton misconduct by the City, its officials, employees, agents, or contractors or the City's requirement that the Temporary Access be removed as provided in Section 4 hereof.

7. Insurance. The Owner's Affiliate shall ensure that all work performed by it pursuant to this Agreement is covered by a commercial liability insurance policy with liability limits of at least \$1,500,000. The Owner's Affiliate shall furnish the City with proof of insurance upon request.

8. Amendments. This Agreement may be modified only through written amendments signed by both parties to this Agreement.

9. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, all of which shall constitute one and the same instrument.

10. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

11. Binding Effect. The terms and conditions of this Agreement shall run with the land and be binding on the parties and their successors and assigns.

IN WITNESS OF THE FOREGOING, each of the parties has executed this Agreement as of the date first written above.

CITY OF LAKE ELMO

By: _____
Mike Pearson
Its: Mayor

By: _____
Julie Johnson
Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by Mike Pearson and Julie Johnson, the Mayor and City Clerk, respectively of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the City.

Notary Public

NOTARY STAMP OR SEAL

**MFC PROPERTIES 94
LIMITED PARTNERSHIP**

By: Martin F. Colon

Martin F. Colon

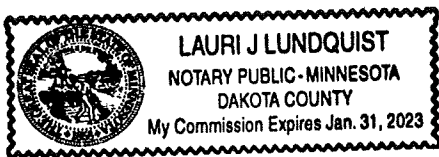
Its: General Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF Dakota)

The foregoing instrument was acknowledged before me this 17th day of July, 2019 by Martin F. Colon, the General Partner of MFC Properties 94 Limited Partnership, a Minnesota limited partnership, on behalf of the partnership.

Lauri J. Lundquist
Notary Public

NOTARY STAMP OR SEAL



**CM PROPERTIES 94
LIMITED PARTNERSHIP**

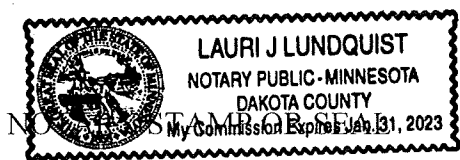
By: Martin F. Colon

Martin F. Colon

Its: General Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF Dakota)

The foregoing instrument was acknowledged before me this 17th day of July, 2019 by Martin F. Colon, the General Partner of CM Properties 94 Limited Partnership, a Minnesota limited partnership, on behalf of the partnership.



Lauri J. Lundquist
Notary Public

THIS INSTRUMENT DRAFTED BY:

Kennedy & Graven, Chartered (SJS)
470 US Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

Legal Description of the Property

The East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 34, Township 29, Range 21, lying Westerly of that part thereof embraced within Washington County Highway Right of Way Plat No. 48-19B and lying Northerly of Minnesota Department of Transportation Right of Way Plat Number 82-43, according to the United States Government Survey thereof and situate in Washington County, Minnesota.

EXHIBIT A-1

Legal Description of the Affiliate Property

Lots 2 and 3, Block 1, Lakewood Crossing 2nd Addition, Washington County, Minnesota.

EXHIBIT B

Depiction of the Temporary Access

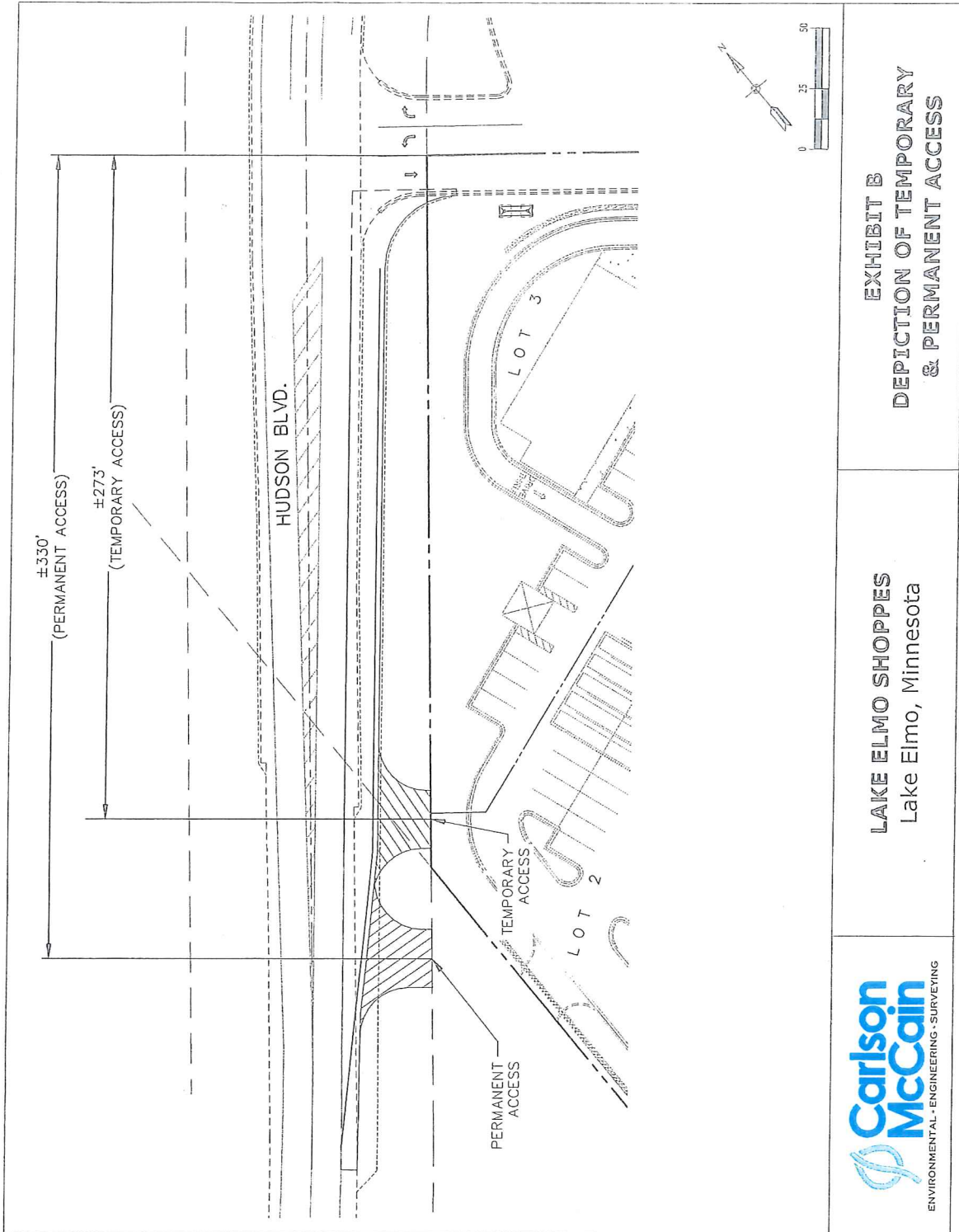


EXHIBIT B
DEPICTION OF TEMPORARY
& PERMANENT ACCESS

LAKE ELMO SHOPPES
Lake Elmo, Minnesota

**Carlson
McCain**
ENVIRONMENTAL • ENGINEERING • SURVEYING

Save Date: 07/17/19 f:\jobs\4961 - 4980\4976 - lake elmo retail\phase 2\cad\engineering\phase 1\4976_access exhibit.dwg

EXHIBIT C

Form of Temporary Construction Easement

TEMPORARY CONSTRUCTION EASEMENT

THIS INSTRUMENT is made by MFC Properties 94 Limited Partnership, a Minnesota limited partnership, Grantor, in favor of the City of Lake Elmo, a Minnesota municipal corporation, Grantee, (the "City").

Recitals

- A. Grantor is the fee owner of the following described property in Washington County, Minnesota:

The East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 34, Township 29, Range 21, lying Westerly of that part thereof embraced within Washington County Highway Right of Way Plat No. 48-19B and lying Northerly of Minnesota Department of Transportation Right of Way Plat Number 82-43, according to the United States Government Survey thereof and situate in Washington County, Minnesota

(the "Property").

- B. Grantor desires to grant to the City a temporary construction easement (the "Easement") according to the terms and conditions contained herein.

Terms of Temporary Construction Easement

2. Grant of Temporary Construction Easement. For good and valuable consideration, receipt of which is acknowledged by Grantor, Grantor grants and conveys to the City the following Easement which is described on Exhibit A, (the "Easement Area") and depicted on Exhibit B attached hereto.

2. Scope of Easement. The above-described Easement includes the rights of the City, its contractors, agents, and employees to enter the Easement Area at all reasonable times for the purposes of constructing roadway, grading, and drainage and utility improvements on the Property as described on the plans for the project, Project No. _____ (the "Work").

The temporary easement granted herein also includes the right to cut, trim, or remove any landscaping, improvements, or vegetation within the Easement Area that in the City's judgment

unreasonably interferes with the Work. The City will restore the Property affected by the Work, including the replacement of vegetation and landscaping that is within the Easement Area, to the condition that it was in prior to the Work being performed. Restoration will be completed no later than expiration date of this easement.

Grantor will not erect, construct, or create any building, improvement, obstruction or structure of any kind within the Easement Area during the term of this Easement, either above or below the surface or change the grade thereof without the express written permission of the City.

3. Warranty of Title. Grantor warrants that it is the fee owner of the Property and that it has the right, title, and capacity to convey the Easement herein to the City.

4. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on Grantor and its successors and assigns.

5. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants that may have existed on, or that relate to the Easement Area or the Property prior to the date of this instrument.

6. Term. The Easement granted herein shall expire no later than **July 1, 2020.**

STATE DEED TAX DUE HEREON: NONE

Dated this 17th day of July, 2019.

GRANTOR

MFC PROPERTIES 94 LIMITED
PARTNERSHIP

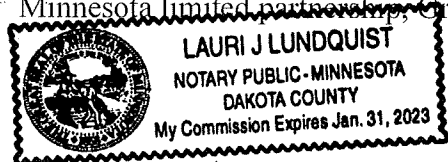
By: Martin F. Colon
Martin F. Colon
Its: General Partner

STATE OF MINNESOTA }

SS.

COUNTY OF DAKOTA

The foregoing instrument was acknowledged before me this 17th day of July, 2019, by Martin F. Colon, the General Partner of MFC Properties 94 Limited Partnership, a Minnesota limited partnership, Grantor.



Lauri J. Lundquist
Notary Public

NOTARY STAMP OR SEAL

THIS INSTRUMENT DRAFTED BY:

Kennedy & Graven, Chartered (SJS)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A TO TEMPORARY CONSTRUCTION EASEMENT

A 10.00 foot temporary construction easement for roadway, grading, drainage and utility purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 15.00 feet to the right of a line hereinafter described as "Line A."

Together with a 5.00 foot temporary construction easement for roadway and drainage purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 15.00 feet to the right of a line hereinafter described as "Line B."

Together with a 15.00 foot temporary construction easement for roadway and drainage purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 15.00 feet to the right of a line hereinafter described as "Line C."

"Line A" is described as commencing at Right of Way Boundary Corner B301 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43 as the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota; thence North 89 degrees 53 minutes 53 seconds West, along the boundary of said plat, 95.00 feet; thence North 00 degrees 04 minutes 12 seconds West, a distance of 25.00 feet to the point of beginning; thence North 89 degrees 53 minutes 53 seconds West, parallel with the boundary of said plat 82-43, 15.37 feet; thence continuing parallel with the boundary of said plat 82-43 and westerly for 112.50 feet on a tangential curve, concave to the south, having a radius of 573.22 feet and a delta angle of 11 degrees 14 minutes 43 seconds, and said "Line A" there terminating.

"Line B" is described as beginning at the terminus of said "Line A"; thence southwesterly along the prolongation of said "Line A," parallel with the boundary of said Minnesota Department of Transportation Right of Way Plat No. 82-43 a distance of 400.22 feet, along the continuation of the curve described in "Line A," having a radius of 573.22 feet and a delta angle of 40 degrees 00 minutes 13 second; thence continuing parallel with said plat boundary, South 38 degrees 51 minutes 11 seconds West, a distance of 120.81 feet and said "Line B" there terminating.

"Line C" is described as beginning at the terminus of said "Line B"; thence southwesterly along the prolongation of said "Line B," parallel with the boundary of said Minnesota Department of Transportation Right of Way Plat No. 82-43 a distance of 45.45 feet to the east line of the West Half of the Southeast Quarter of the Southeast Quarter and said "Line C" there terminating.

Less and Except a 5.00 foot perpetual easement for drainage and utility purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 5.00 feet to the right of a line described as follows:

Commencing at Right of Way Boundary Corner B301 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43 as the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota; thence North 89 degrees 53 minutes 53 seconds West, along the boundary of said plat, 95.00 feet; thence North 00 degrees 04 minutes 12 seconds West, a distance of 25.00 feet to the point of beginning; thence North 89 degrees 53 minutes 53 seconds West, parallel with the boundary of said plat 82-43, 15.37 feet; thence continuing parallel with the boundary of said plat 82-43 and westerly for 83.90 feet on a tangential curve, concave to the south, having a radius of 573.22 feet and a delta angle of 08 degrees 23 minutes 10 seconds, and said line there terminating.

Containing 3,946 square feet, more or less

EXHIBIT B TO TEMPORARY CONSTRUCTION EASEMENT

Depiction of the Easement Area

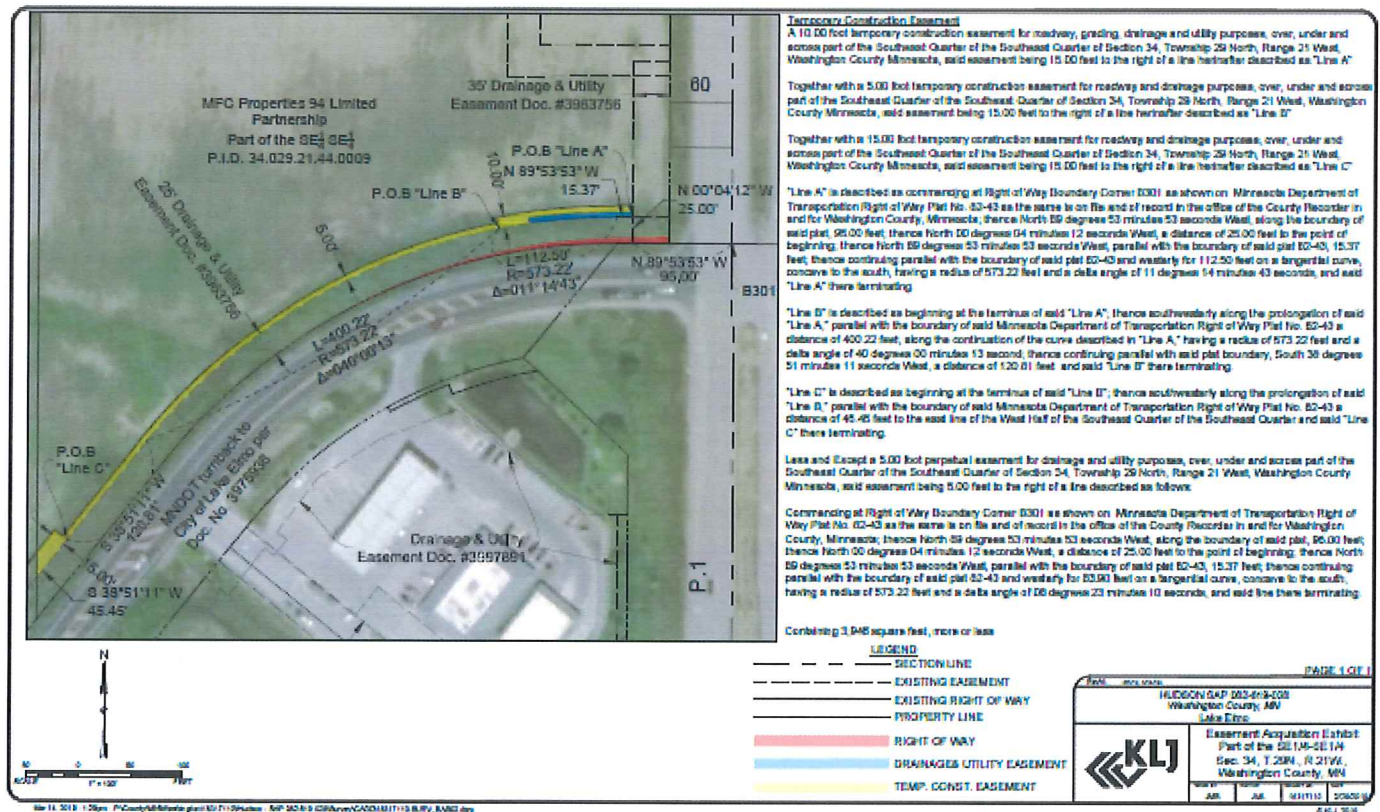


EXHIBIT D

Form of Drainage and Utility Easement

DRAINAGE AND UTILITY EASEMENT

THIS INSTRUMENT is made by MFC Properties 94 Limited Partnership, a Minnesota limited partnership, Grantor, in favor of the City of Lake Elmo, a Minnesota municipal corporation, Grantee (the "City").

Recitals

- A. Grantor is the fee owner of the Property (the "Property") located in Washington County Minnesota and legally described on Exhibit A attached hereto.
- B. Grantor desires to grant to the City an easement according to the terms and conditions contained herein.

Terms of Easement

1. Grant of Easement. For good and valuable consideration, receipt of which is acknowledged by Grantor, Grantor grants and conveys to the City a perpetual, non-exclusive drainage and utility Easement (the "Easement") over, under, and across the portion of the Property described on Exhibit B (the "Easement Area") and depicted on Exhibit C attached hereto.

2. Scope of Easement. The perpetual, non-exclusive Easement granted herein includes the right of the City, its contractors, agents, and employees to enter the Easement Area at all reasonable times for the purpose of locating, constructing, reconstructing, operating, maintaining, inspecting, altering, and repairing the utilities, drainage ways, and stormwater facilities in the described Easement Area.

The Easement granted herein also includes the right to cut, trim, or remove from the Easement Area such improvements, trees, shrubs, or other vegetation, and to prohibit obstructions and grading alterations as in the City's judgment unreasonably interfere with the Easement or the function of the facilities located therein.

3. Warranty of Title. The Grantor warrants it is the owner of the Property and has the right, title and capacity to convey to the City the Easement herein.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Easement Area or Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on the Grantor, its successors and assigns.

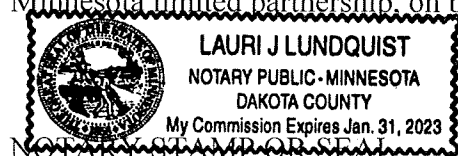
Dated this 17th day of July, 2019.

MFC PROPERTIES 94 LIMITED PARTNERSHIP

By: Martin F. Colon
Martin F. Colon
Its: General Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this 17th day of July, 2019 by Martin F. Colon, the General Partner of MFC Properties 94 Limited Partnership, a Minnesota limited partnership, on behalf of the partnership, Grantor.



Lauri J. Lundquist
Notary Public

THIS INSTRUMENT DRAFTED BY:

Kennedy & Graven, Chartered (SJS)
470 US Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A TO DRAINAGE AND UTILITY EASEMENT

Legal Description of the Property

The East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 34, Township 29, Range 21, lying Westerly of that part thereof embraced within Washington County Highway Right of Way Plat No. 48-19B and lying Northerly of Minnesota Department of Transportation Right of Way Plat Number 82-43, according to the United States Government Survey thereof and situate in Washington County, Minnesota.

EXHIBIT B TO DRAINAGE AND UTILITY EASEMENT

Legal Description of the Easement Area

A 5.00 foot perpetual easement for drainage and utility purposes, over, under and across part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, said easement being 5.00 feet to the right of a line described as follows:

Commencing at Right of Way Boundary Corner B301 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43 as the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota; thence North 89 degrees 53 minutes 53 seconds West, along the boundary of said plat, 95.00 feet; thence North 00 degrees 04 minutes 12 seconds West, a distance of 25.00 feet to the point of beginning; thence North 89 degrees 53 minutes 53 seconds West, parallel with the boundary of said plat 82-43, 15.37 feet; thence continuing parallel with the boundary of said plat 82-43 and westerly for 83.90 feet on a tangential curve, concave to the south, having a radius of 573.22 feet and a delta angle of 08 degrees 23 minutes 10 seconds, and said line there terminating.

Containing 498 square feet, more or less

Depiction of the Easement Area



EXHIBIT E
Form of Right of Way Easement

RIGHT-OF-WAY EASEMENT

THIS INSTRUMENT is made by MFC Properties 94 Limited Partnership, a Minnesota limited partnership, Grantor, in favor of the City of Lake Elmo, Minnesota, a municipal corporation under the laws of the State of Minnesota, Grantee (the "City").

Recitals

- A. Grantor is the fee owner of property in Washington County, Minnesota, legally described on the attached Exhibit A (the "Property").
- B. Grantor desires to grant to the City a non-exclusive permanent right-of-way easement, according to the terms and conditions contained herein.

Terms of Easement

3. Grant of Easement. For good and valuable consideration, receipt of which is hereby acknowledged by Grantor, Grantor grants and conveys to the City a permanent, non-exclusive easement for public right-of-way purposes over, under, across, and through that part of the Property legally described on Exhibit B and shown on the map attached as Exhibit C (the "Easement Area").
2. Scope of Easement. The above-described right-of-way easement includes the rights of the City, its contractors, agents, and employees to do whatever is necessary for enjoyment of the rights granted herein to use the Easement Area for a public road, drainage and utilities and related purposes including the right to enter the Easement Area for purposes of constructing, operating, maintaining, altering, grading, repairing, replacing, or removing a road, sanitary sewer, storm sewer, watermain or other public improvements, including but not limited to, the right itself, or to allow public or private utility companies, to place, maintain, improve, repair, replace, and remove utilities and related facilities within the Easement Area, and the rights to cut, trim, or remove trees, shrubs, or other vegetation existing within the Easement Area, and to prohibit obstructions and grading alterations now or in the future as in City's judgment unreasonably interfere with the use or maintenance of the Easement Area. The City agrees that the southern boundary of the Property shall be used for the purposes of calculating setbacks applicable in the Property.

3. Warranty of Title. Grantor warrants that Grantor is the fee owner of the Property and has the right, title, and capacity to convey to the City the easement herein.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Easement Area or the Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on Grantor, Grantor's successors and assigns.

STATE DEED TAX DUE HEREON: NONE

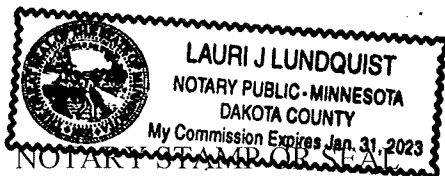
Dated this 17th day of July, 2019.

MFC PROPERTIES 94 LIMITED PARTNERSHIP

By: Martin F. Colon
Martin F. Colon
Its: General Partner

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this 17th day of July, 2019 by Martin F. Colon, the General Partner of MFC Properties 94 Limited Partnership, a Minnesota limited partnership, on behalf of the partnership, Grantor.



Lauri J. Lundquist
Notary Public

THIS INSTRUMENT DRAFTED BY AND SHOULD BE RETURNED TO:
Kennedy & Graven, Chartered (SJS)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A TO RIGHT OF WAY EASEMENT

Legal Description of the Property

The East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 34, Township 29, Range 21, lying Westerly of that part thereof embraced within Washington County Highway Right of Way Plat No. 48-19B and lying Northerly of Minnesota Department of Transportation Right of Way Plat Number 82-43, according to the United States Government Survey thereof and situate in Washington County, Minnesota.

EXHIBIT B TO RIGHT OF WAY EASEMENT

Legal Description of the Easement Area

That part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County Minnesota, described as follows:

Commencing at Right of Way Boundary Corner B301 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43 as the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota; thence North 89 degrees 53 minutes 53 seconds West, along the boundary of said plat, 60.00 feet to west line of Washington County Highway Right of Way Plat No. 48-19 Bas the same is on file and of record in the office of the County Recorder in and for Washington County, Minnesota and to the point of beginning; thence North 00 degrees 04 minutes 12 seconds West, along said west line, a distance of 6.80 feet; thence South 85 degrees 19 minutes 55 seconds West, a distance of 13.20 feet; thence South 89 degrees 40 minutes 34 seconds West, a distance of 26.89 feet; thence southwesterly for 291.33 feet on a tangential curve, concave to the southeast, having a radius of 566.61 feet and a delta angle of 29 degrees 27 minutes 32 seconds to the northerly boundary line of said Minnesota Department of Transportation Right of Way Plat No. 82-43; thence northeasterly along said boundary line of Minnesota Department of Transportation Right of Way Plat No. 82-43 and along a non-tangential curve concave to the southeast, having a radius of 548.22 feet, a delta angle of 29 degrees 14 minutes 00 seconds and a chord that bears North 75 degrees 29 minutes 07 seconds East to Right of Way Boundary Corner B8 as shown on Minnesota Department of Transportation Right of Way Plat No. 82-43; thence South 89 degrees 53 minutes 53 seconds East, a distance of 50.44 feet to the point of beginning.

Containing 941 square feet, more or less

