

## WATER CONTROL FACILITY EASEMENT PURCHASE AGREEMENT

**THIS PURCHASE AGREEMENT** (the "Agreement") is made between **John E. McGillen & Pamela K. McGillen Family Trust** ("Seller"), by its Trustees John E. McGillen and Pamela K. McGillen, and the **Le Sueur County Board of Commissioners, Drainage Authority of Le Sueur County, Minnesota, for Le Sueur County Ditch 61** ("Drainage Authority"). Seller is the owner of real property legally described as:

Southeast Quarter of the Northwest Quarter of Section 23, Township 110 North,  
Range 24 West, Le Sueur County, Minnesota

(the "Property") (Parcel Number: 02.023.0200).

The Drainage Authority is in the process of planning for a water control facility in conjunction with the improvement of Le Sueur County Ditch (CD) 61. The drainage authority has determined that the most feasible location for a water control facility is on Seller's property which is already encumbered by open ditch alignments of CD 61.

In consideration of this Agreement, Seller and the Drainage Authority agree as follows:

- 1. Sale of Easement and Other Interests.** Seller agrees to sell to the Drainage Authority, and the Drainage Authority agrees to buy from Seller, a permanent easement (the "Easement Parcel") as depicted in **Exhibit A**. The Permanent Easement totals approximately 31.1 acres. Additionally, Seller agrees to sell to the Drainage Authority, and the Drainage Authority agrees to buy from Seller the rights of entry over the Property necessary to access the Easement Area during construction and for subsequent inspection and maintenance of the water control facility.
  
- 2. Purchase Price and Manner of Payment.** The purchase price to be paid by the Drainage Authority to Seller for all interests, whether characterized as compensation or damages, shall be **Two Hundred Twenty-Eight Thousand Seven Hundred Thirty-four and 44/100 DOLLARS (\$228,734.44)** ("Purchase Price").

Payment shall be made as follows:

First, the Purchase Price shall be off-set against seller's drainage assessments, if any, related to the improvement of CD 61.

Second, any remaining portion of the Purchase Price shall be paid to Seller, at Seller's option in one or more installments commencing not sooner than two weeks (14 days) after the contract for construction of the improvement of CD 61 is awarded or any appeals arising from the proceedings to improve CD 61 are resolved, whichever is later. In advance of payment, Seller shall execute and deliver an Internal Revenue Form W9 to the Le Sueur County Auditor-Treasurer.

**Contingencies.** The Drainage Authority intends to use the Easement Area for the purpose of constructing and maintaining a water control facility in conjunction with the improvement of CD 61. The Drainage Authority shall be responsible for conducting the survey of the Easement Area, determining the suitability of the Easement Area, and securing funding and permitting for the water control facility. Seller shall provide Drainage Authority with all information in his possession that might be helpful in determining the suitability of the Easement Area. As further contingency, construction of the water control facility is contingent on the establishment of the CD 61 improvement, the award of a construction contract for the improvement of CD 61 and resolution of any appeals arising from the proceedings to improve CD 61. If any such contingencies have not been satisfied on or before the Closing Date, then this Agreement may be terminated, at Drainage Authority's option, by written notice from Drainage Authority to the Seller. Such notice of termination may be given at any time on or before the Closing Date. In the event of termination, neither party will have any further rights or obligations regarding this Agreement. Drainage Authority shall have the right to unilaterally waive any contingency by written notice to Seller. The Drainage Authority shall use its best efforts to initiate construction after harvest of any growing crop after the Closing Date.

3. **Closing.** The closing of the purchase and sale contemplated by this Agreement shall occur no earlier than two weeks (14 days) after the contract for construction of the improvement of CD 61 is awarded or any appeals arising from the proceedings to improve CD 61 are resolved, whichever is later. (the "Closing Date"). The Closing shall take place at a mutually agreed upon location.

4. **Seller's Closing Documents.** On the Closing Date, Seller shall execute and/or deliver to Drainage Authority the following (collectively, "Seller's Closing Documents"):

- a. **Easement Document.** At closing, Seller agrees to execute an easement substantially similar to **Exhibit B** ("Perpetual Conservation Easement for Drainage Management and Flowage"). The Easement Document shall be recorded with the Le Sueur County Recorder's Office.
- b. **Other Documents.** Seller shall deliver all other documents reasonably determined by Drainage Authority to be necessary to transfer marketable easement interest in the Easement Area to Drainage Authority free and clear of all encumbrances as well as any documents necessary to ensure compliance with Internal Revenue Service reporting requirements. In advance of or concurrent with payment, Seller shall execute and deliver an Internal Revenue Form W9 to the Le Sueur County Auditor-Treasurer.

5. **Recording Costs.** Drainage Authority will pay the recording fee for the Easement Document. Seller will pay the cost of recording all documents necessary to place record title in the condition warranted and requested of Seller in this Agreement.

6. **Marketable Title.** Upon closing, Seller shall execute and deliver the Easement Document in favor of Drainage Authority, conveying a marketable easement interest in the Easement Area, subject only to:

- a. Building and zoning laws, ordinances, and state and federal regulations;
- b. Reservation of any mineral rights by the State of Minnesota;
- c. Other interests of record; and
- d. Encumbrances disclosed in **Exhibit C.**

If the Easement Area is encumbered by a mortgage, Seller shall secure a consent from the lender for the Easement.

7. **Representations and Warranties by Seller.** Seller represents and warrants to Drainage Authority as follows:

- a. **Title.** Seller owns the Easement Area, free and clear of all encumbrances, except those listed in **Exhibit C.**
- b. **Authority.** Seller has full and complete lawful authority to enter into this Purchase Agreement, as well as execute the Easement Document on the Closing Date.
- c. **Environmental Laws.** To the best of Seller's knowledge, no toxic chemicals or wastes, petroleum, pollutants, contaminants or hazardous substance as defined by any law or regulation have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Easement Area. There are no known wells within the meaning of Minn. Stat. §1031.005, no individual sewage treatment systems, and no above ground or underground tanks located in or about the Easement Area. Seller has or will prior to the Closing Date disclose to Drainage Authority all environmental reports and studies with respect to the Property which are in Seller's possession. Seller is not aware of any methamphetamine production that has occurred on the Property. To the best of Seller's knowledge, the Property is free from items of archeological significance.
- d. **Proceedings.** There is no action, litigation, investigation, condemnation or proceeding of any kind pending or threatened against Seller or any portion of the Easement Area or Property.
- e. **Representations and Warranties.** The representations and warranties of Seller contained in this Agreement must be true now and on the Closing Date, as if made on the Closing Date.

**8. Seller to Allow Access.** Seller shall allow Drainage Authority, and Drainage Authority's agents, access to the Property without charge and at all reasonable times for the purpose of Drainage Authority's surveying, testing, and investigation of the Easement Area, provided that Drainage Authority's activities do not unreasonably interfere with the ongoing operation of the Property. Drainage Authority shall pay all costs and expenses of such investigation and testing. Drainage Authority shall further repair and restore any damage to the Property caused by or occurring during Drainage Authority's testing and return the Property to substantially the same condition as existed prior to such entry.

**9. Seller's Continued Interest.** Seller shall remain the underlying fee owner of the Easement Area and shall continue to possess the right to use and enjoy the Easement Area in any manner that is consistent with the Easement Document. Seller shall remain responsible for all taxes and assessments on the Easement Area. Seller shall have a right of access to maintain existing drain tiles within the Easement Area as provided in the Easement Document.

**10. Remedies.** If Drainage Authority defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice to Drainage Authority. If Drainage Authority fails to cure such default within 15 days of the date of such notice, this Agreement will terminate. The termination of this Agreement will be the sole remedy available to Seller for such default by Drainage Authority, and Drainage Authority will not be liable for damages or specific performance. If Seller defaults under this Agreement, this provision does not preclude Drainage Authority from seeking and recovering specific performance of this Agreement including other remedies.

**11. Notices.** Any notice required is given in accordance with this Agreement by delivering it by United States mail, postage prepaid, properly addressed as follows:

**If to Seller:**

Timothy L. Warnemumde, Esq.  
Christian, Keogh, Moran and King  
P.O. Box 22  
Montgomery, MN 56069  
[twarnemunde@ckmklegal.com](mailto:twarnemunde@ckmklegal.com)

**If to Drainage Authority:**

Le Sueur County Auditor-Treasurer  
Attn: Dani Blaschko  
88 South Park Avenue  
Le Center, MN 56057-1644  
[daniblaschko@co.le-sueur.mn.us](mailto:daniblaschko@co.le-sueur.mn.us)

**cc:** Rinke Noonan  
c/o John Kolb  
1015 W. St. Germain St., Suite 300

St. Cloud, MN 56301  
[jkolb@rinkenoonan.com](mailto:jkolb@rinkenoonan.com)

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit in the United States' Mail.

**12. Entire Agreement; Modification.** This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.

**13. Binding Effect.** This Agreement binds and benefits the parties and their successors and assigns.

**14. Survival.** All of the terms, representations and warranties in this Agreement will survive and be enforceable after the Closing.

**15. Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement. Facsimile and emailed pdf signatures shall have the same effect as originals.

Seller and Drainage Authority have executed this Agreement as of the date first written above.

Dated: \_\_\_\_\_, 2021

Dated: \_\_\_\_\_, 2021

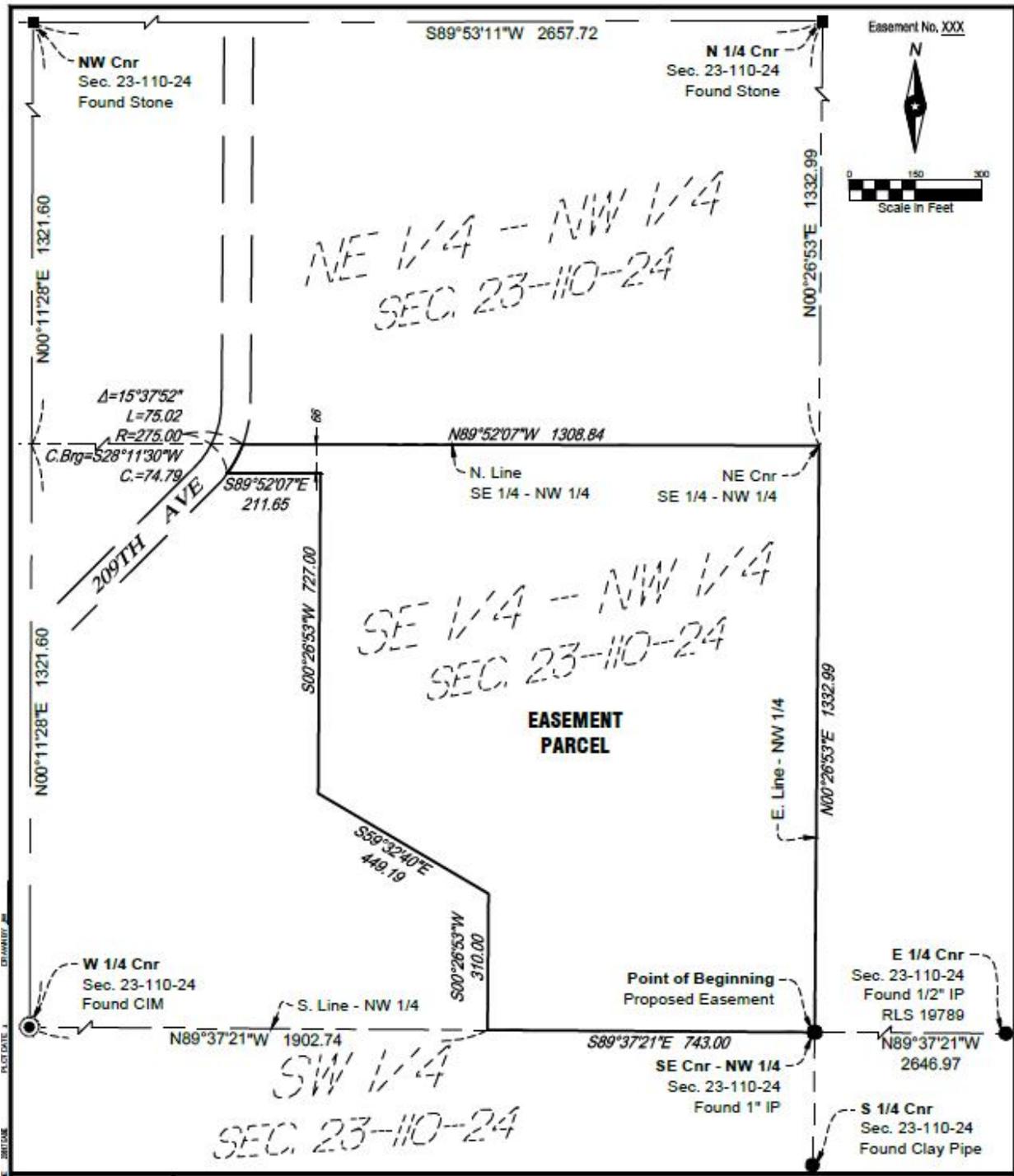
\_\_\_\_\_  
**John E. McGillen**  
Trustee of the John E. McGillen & Pamela  
K. McGillen Family Trust

\_\_\_\_\_  
**Steve Rohlfig**  
Chairman, Le Sueur County Board of  
Commissioners, Drainage Authority for Le  
Sueur County Ditch 61

\_\_\_\_\_  
**Pamela K. McGillen**  
Trustee of the John E. McGillen & Pamela  
K. McGillen Family Trust

\_\_\_\_\_  
**Pam Simonette**  
Auditor-Treasurer, Le Sueur County

**EXHIBIT A  
(Easement Area Depiction)**



**EASEMENT PARCEL:**

All that part of the Southeast Quarter of the Northwest Quarter of Section 23, Township 110 North, Range 24West, Le Sueur County, Minnesota, described as follows:

Commencing at the East Quarter corner of said Section 23; thence North 89 degrees 37 minutes 21 seconds West (assumed bearing), 2646.97 feet to the Southeast corner of said Southeast Quarter of the Northwest Quarter, said point also being the point of beginning of the parcel to be described; thence North 00 degrees 26 minutes 53 seconds East on the east line of said Northwest Quarter, a distance of 1332.99 feet to the Northeast Corner of said Southeast Quarter of the Northwest Quarter; thence North 89 degrees 52 minutes 07 seconds West, 1308.84 feet on the north line of said Southeast Quarter of the Northwest Quarter, to a point on the easterly right of way line of 209th Avenue; thence southwesterly 75.02 feet along said right of way line and along a curve concave to the west, not tangent with last described line, said curve has a radius of 275.00 feet, a central angle of 15 degrees 37 minutes 52 seconds, the chord of said curve bears South 28 degrees 11 minutes 30 seconds West, 74.79 feet to a point on a line that is parallel to and 66.00 feet south of the north line of said Southeast Quarter of the Northwest Quarter; thence South 89 degrees 52 minutes 07 seconds East, 211.65 feet; thence South 00 degrees 26 minutes 53 seconds West, 727.00 feet; thence South 59 degrees 32 minutes 40 seconds East, 449.19 feet; thence South 00 degrees 26 minutes 53 seconds West, 310.00 feet to a point on the south line of said Northwest Quarter; thence South 89 degrees 37 minutes 21 seconds East, on said south line, a distance of 743.00 feet to the point of beginning.

and shown as the "Easement Parcel" on the survey map attached hereto and made a part hereof.

Said area is 31.1 Acres

**EXHIBIT B**

**PERPETUAL CONSERVATION EASEMENT FOR DRAINAGE MANAGEMENT AND FLOWAGE**

This perpetual conservation easement, hereinafter referred to as the "Easement", is conveyed by **John E. McGillen and Pamela K. McGillen as Trustees of the John E. McGillen & Pamela K. McGillen Family Trust**, hereinafter collectively referred to as the "Grantor(s)", to the **County Ditch 61** drainage system, hereinafter referred to as the "Drainage System", and is to be held by **Le Sueur County**, hereinafter referred to as the "Drainage Authority", in accordance with Minn. Stat. ch. 103E *Drainage* and Minn. Stat. ch. 84C *Conservation Easements*.

**WITNESSETH**

WHEREAS, the Drainage Authority is authorized by Minn. Stat. ch. 103E to undertake multipurpose drainage management practices to reduce erosion and sedimentation, reduce peak flows and flooding, and improve water quality while protecting drainage system efficiency and reducing drainage system maintenance; AND

WHEREAS, the Drainage Authority is authorized to accept and use funds from sources other than, or in addition to, those derived from assessments based on the benefits of the drainage system for the purposes of wetland preservation or restoration or creation of water quality improvements or flood control, and the sources of funding may be used outside the benefited area but must be within the watershed of the drainage system; AND

WHEREAS, in order to establish, construct and maintain multipurpose drainage management practices, the Drainage Authority must hold necessary property interests, including the rights to enter, occupy and flow water over affected real property; AND

WHEREAS, such property interests may be conveyed by and protected in this Easement; AND

WHEREAS, the Grantor(s) are the owners of real property, which lies over, adjacent to or in the watershed of the Drainage System, as described in a Legal Description and depicted in an associated Exhibit A map, attached hereto and incorporated herein, which is the burdened parcel hereinafter referred to as the "Easement Area"; AND

WHEREAS, the Grantor(s) desire to convey this Easement on such lands to the Drainage Authority for the benefit of the Drainage System.

NOW, THEREFORE, the Grantor(s), for themselves, their heirs, successors and assigns, in consideration of the sum of **Two Hundred Twenty-Eight Thousand Seven Hundred Thirty-four and 44/100** DOLLARS (\$**228,734.44**), do hereby grant, convey and warrant this Easement in accordance with the terms and conditions as hereafter set forth, over and upon the Easement Area.

Said Easement Area consists of a total of **31.1** acres. The Grantor(s) are responsible for obtaining all necessary signatures to convey this Easement to the Drainage Authority.

This Easement is granted for the establishment, construction and maintenance of multipurpose drainage management practices, including both structural and non-structural components for water quantity, water quality and associated drainage and conservation purposes, in accordance with the applicable project plans on file at the office of the Drainage Authority.

This Easement shall include the right to flow and reflow water within the Easement Area that does not worsen flooding conditions on land adjacent to the Easement Area.

No rights are granted to the general public for access to or entry upon the lands described herein. This Easement is non-exclusive. Grantor(s) shall retain all rights of possession and use of the Easement Area subject to the terms of this Easement.

FURTHER, the Grantor(s) represent and warrant that there are no hazardous substances pollutants or contaminants in or on the Easement Area, and that the Grantor(s), their heirs, successors, and assigns shall not place any toxic or hazardous substances, pollutants or contaminants in or on the Easement Area.

FURTHER, the Grantor(s), their heirs, successors and assigns warrant the perpetual right of entry to the Easement Area from a public road to allow the Drainage Authority and its authorized agents to enter upon the Easement Area for the purposes of construction, reconstruction, maintenance, repair, inspection and enforcement of this Easement. The Drainage Authority and its authorized agents must exercise reasonable care when entering the Easement Area and must correct or compensate for damage caused during ingress or egress.

FURTHER, the Grantor(s), for themselves, their heirs, successors, and assigns warrant that they:

1. Shall authorize the Drainage Authority and its authorized agents to establish and maintain non-structural wetland and native upland vegetative cover and structural practices, in accordance with the applicable project plans on file at the office of the Drainage Authority, and in accordance with applicable Minnesota Board of Water and Soil Resources guidelines. Maintenance includes any necessary noxious weed control, pest control, replanting of vegetative cover, and repair of structural practices. Any amendment to the project plans shall include the opportunity for review and comment by the Grantor(s) to the Drainage Authority.
2. Shall not interfere with, alter, modify or destroy any multipurpose drainage management practices in the Easement Area.
3. Shall authorize the Drainage Authority and its authorized agents to install and maintain any and all signs and posts indicating the location of the Easement Area.
4. Shall allow only the Drainage Authority and its authorized agents to manage and control water levels on the Easement Area.
5. Shall not appropriate water from any existing or restored wetlands within the Easement Area without prior written consent from the Drainage Authority and obtainment of all necessary permits.

6. Shall not produce agricultural crops on the Easement Area except as provided in provision 8, below. Interim land uses established prior to the recording of this Easement may be continued until the end of the current growing season of the year this Easement is recorded.
7. Shall not remove or harvest any trees on the Easement Area except as authorized by the Drainage Authority to maintain the perennial vegetation established and maintained in accordance with the project plans.
8. Shall not graze livestock on the Easement Area. Haying once a year, after August 1, may be allowed under separate agreement with the Drainage Authority.
9. Shall not place any materials, substances, or objects, or erect or construct any type of structure, temporary or permanent, on the Easement Area.
10. Shall not use any wetland areas restored under this easement for environmental regulatory or wetland mitigation purposes required under federal or state law.
11. Shall notify the Drainage Authority in writing of the name(s) and address(es) of new owner(s) within 30 days after conveyance of all or part of the title or interest in the Easement Area.
12. Shall pay when due all taxes and assessments, if any, which may be levied against the Easement Area. Because the purpose of the multipurpose drainage management practices under this Easement involves water quantity or quality control on the Drainage System, the Easement Area may be subject to valuation consideration pursuant to Minn. Stat. § 273.117 *Conservation Property Tax Valuation*.
13. Shall support the protection and management of the Easement Area in accordance with the provisions set forth in this Easement and the project plans for multipurpose drainage management practices in the Easement Area.
14. Shall agree that the rights, title, interests, and prohibitions created by this Easement constitute things of value to the Drainage Authority. If there is any failure of the Grantor(s) to comply with any of the provisions of this Easement, the Drainage Authority or other applicable authority shall have any legal or equitable remedy allowed by law, and the right: 1) to enter upon the Easement Area to perform necessary work for prevention or mediation of damage to the Easement Area; and 2) to assess all expenses incurred by the Drainage Authority (including attorney fees and costs) against the Grantor(s), to be immediately owed and paid to the Drainage Authority.
15. Shall indemnify and hold harmless the Drainage Authority, its employees, agents, and assigns from any and all liabilities, claims, and any other expenses (whether legal or equitable in nature, and including without limitation attorney fees and costs) to which the Drainage Authority may be subject or incur relating to the Easement Area, including but not limited to those which may arise from Grantor's negligent acts, omissions, or breach of any representation, warranty, or agreement contained in this Easement, or violations of any federal, state, or local laws.

FURTHER, the Drainage Authority and the Drainage System, as beneficiaries of this Easement, shall indemnify and hold harmless the Grantor(s), its successors and assigns from any and all liabilities, claims, and any other expenses (whether legal or equitable in nature, and including without limitation attorney fees and costs) to which the Grantor(s) may be subject or incur relating to the Drainage Authority's use of the Easement Area for water storage purposes, including but not limited to those which may arise from the Drainage Authority's negligent acts, omissions, or breach of any representation, warranty, or agreement contained in this Easement, or violations of any federal, state, or local laws.

FURTHER, any ambiguities in this Easement shall be construed in a manner which best effectuates the purposes of providing water quantity or quality control and associated drainage and conservation purposes.

FURTHER, in the event the Drainage System is abandoned in accordance with Minn. Stat. ch. 103E, this Easement will continue to be held by a local government unit that served as the Drainage Authority for the abandoned Drainage System.

FURTHER, in the event of the dissolution of the Drainage Authority or local government unit holding the Easement, the easement interest will be assigned to a governmental entity qualified to hold and monitor this Easement.

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IN WITNESS WHEREOF, the Grantor(s) and Drainage Authority have caused this Easement to be duly executed.

**GRANTOR(S) SIGNATURE(S):**

\_\_\_\_\_  
Signature

**ACKNOWLEDGMENT:**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_.

(Notary Stamp or Seal)

\_\_\_\_\_  
NOTARY PUBLIC

**ACCEPTANCE**

Pursuant to Minn. Stat. ch. 84C *Conservation Easements*, the Drainage Authority accepts this Easement.

**DRAINAGE AUTHORITY SIGNATURE:**

\_\_\_\_\_  
Signature, Title

**ACKNOWLEDGMENT:**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_.

(Notary Stamp or Seal)

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NOTARY PUBLIC

**THIS INSTRUMENT DRAFTED BY:**

RINKE NOONAN (JCK)

1015 West St. Germain Street, Suite 300

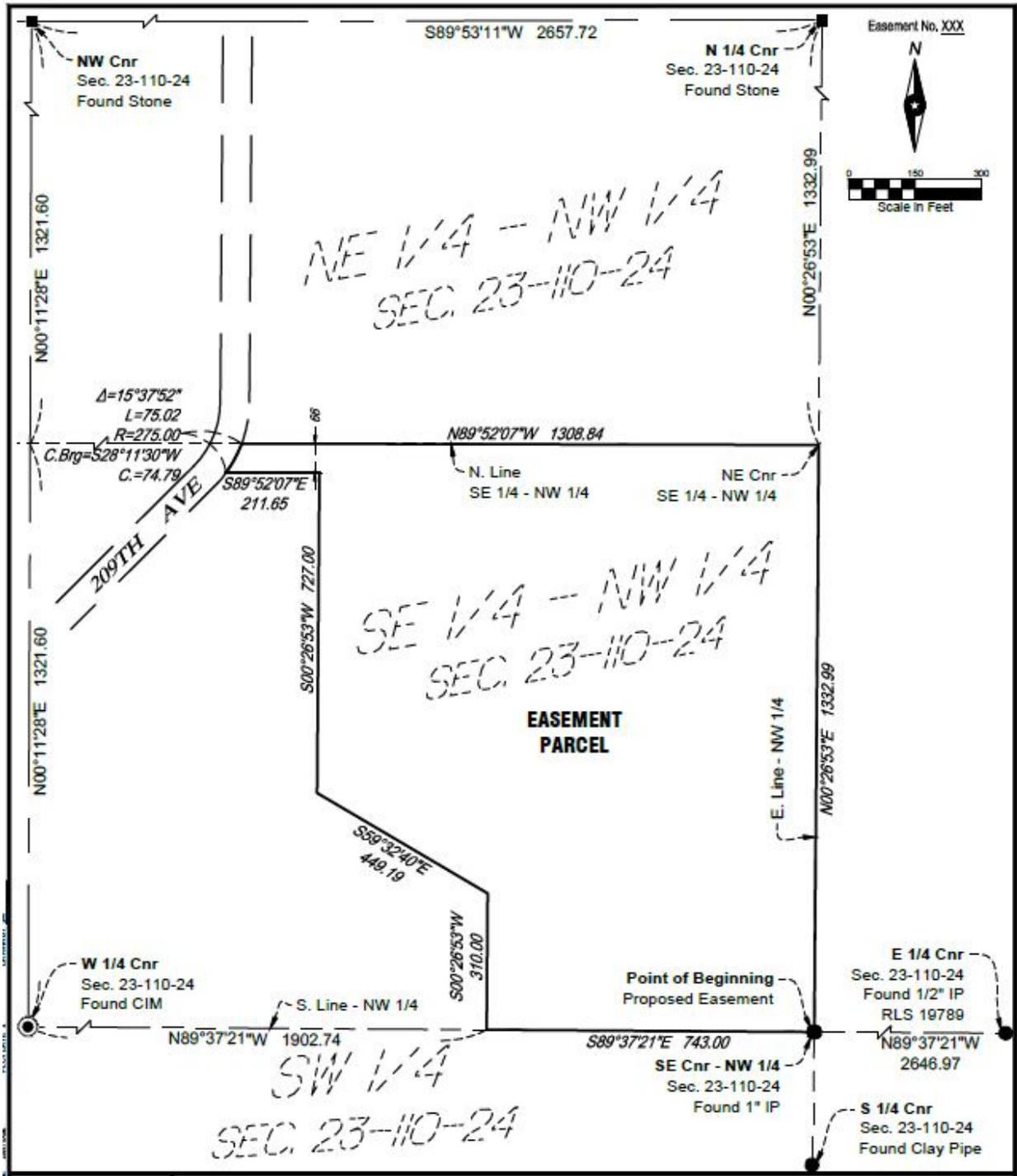
P.O. Box 1497

St. Cloud, MN 56302-1497

(320) 251-6700

Our File No. 27866-0001

**ATTACHMENT A**  
**(Permanent Easement Description)**



**EASEMENT PARCEL:**

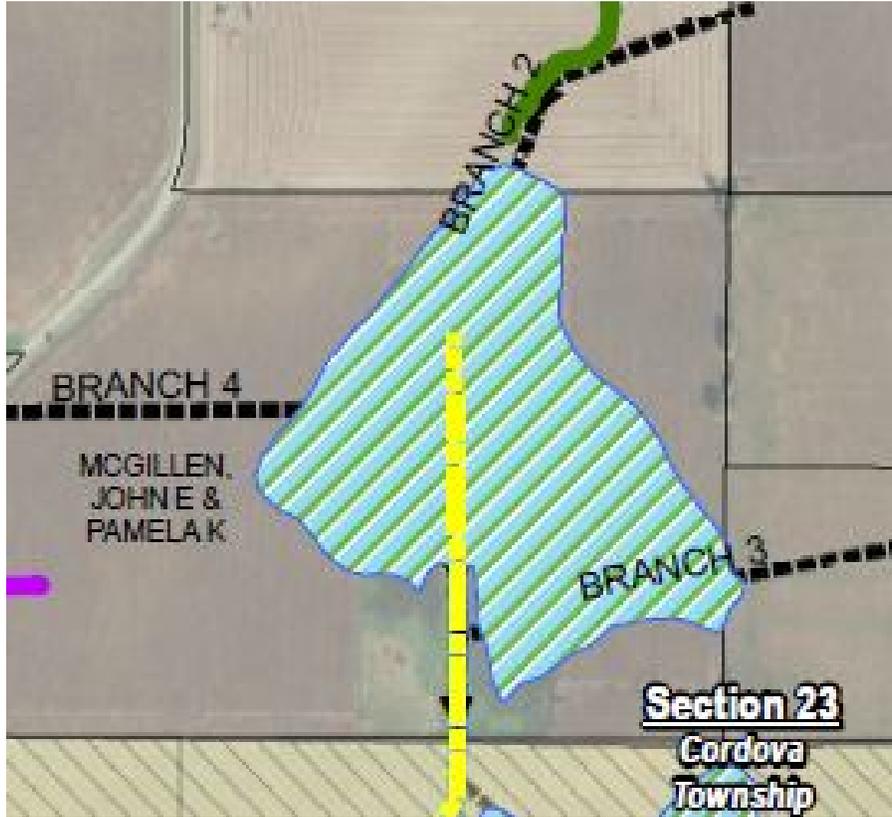
All that part of the Southeast Quarter of the Northwest Quarter of Section 23, Township 110 North, Range 24 West, Le Sueur County, Minnesota, described as follows:

Commencing at the East Quarter corner of said Section 23; thence North 89 degrees 37 minutes 21 seconds West (assumed bearing), 2646.97 feet to the Southeast corner of said Southeast Quarter of the Northwest Quarter, said point also being the point of beginning of the parcel to be described; thence North 00 degrees 26 minutes 53 seconds East on the east line of said Northwest Quarter, a distance of 1332.99 feet to the Northeast Corner of said Southeast Quarter of the Northwest Quarter; thence North 89 degrees 52 minutes 07 seconds West, 1308.84 feet on the north line of said Southeast Quarter of the Northwest Quarter, to a point on the easterly right of way line of 209th Avenue; thence southwesterly 75.02 feet along said right of way line and along a curve concave to the west, not tangent with last described line, said curve has a radius of 275.00 feet, a central angle of 15 degrees 37 minutes 52 seconds, the chord of said curve bears South 28 degrees 11 minutes 30 seconds West, 74.79 feet to a point on a line that is parallel to and 66.00 feet south of the north line of said Southeast Quarter of the Northwest Quarter; thence South 89 degrees 52 minutes 07 seconds East, 211.65 feet; thence South 00 degrees 26 minutes 53 seconds West, 727.00 feet; thence South 59 degrees 32 minutes 40 seconds East, 449.19 feet; thence South 00 degrees 26 minutes 53 seconds West, 310.00 feet to a point on the south line of said Northwest Quarter; thence South 89 degrees 37 minutes 21 seconds East, on said south line, a distance of 743.00 feet to the point of beginning.

and shown as the "Easement Parcel" on the survey map attached hereto and made a part hereof.

Said area is 31.1 Acres

**ATTACHMENT C**  
**(Sketch of Easement Area)**



**EXHIBIT C**  
**(Permitted Encumbrances)**

List encumbrances, if any: None