

Goodhue Co. Abstract

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GOODHUE COUNTY ABSTRACT
433 WEST THIRD STREET SUITE 100
REDWING, MN 55066

Received from:

GOODHUE COUNTY ABSTRACT

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by Joel Johnson and Audery Johnson, AKA Audrey Johnson, husband and wife, (the "Owner") to the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the "Land Trust").

BACKGROUND

- A. **OWNER.** The Owner is the current owner of approximately 154 acres of real property located in Houston County, Minnesota. That real property is more fully described below as the "Protected Property."

The Protected Property is part of a larger tract of land owned by the Owner.

- B. **MINNESOTA LAND TRUST.** The Minnesota Land Trust is a non-profit corporation organized and operated exclusively for charitable and educational purposes including the preservation and protection of land in its natural, scenic or other open space condition. The Land Trust is a public charity as defined in Sections 501(c)(3) and 509(a) of the Internal Revenue Code and an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations, possessing the commitment to protect the conservation purpose of this conservation easement (the "Conservation Purpose") and the resources to enforce the restrictions.
- C. **PROTECTED PROPERTY.** The Protected Property is that real property legally described in Exhibit A and generally depicted on the "Property Map" in Exhibit B. Both exhibits are attached to this conservation easement and incorporated by this reference.

The Protected Property is located approximately six miles east of Rushford Village in Money Creek Township in Houston County, Minnesota. The Protected Property lies within Minnesota's Blufflands Ecological Subsection, which is dominated by the Mississippi River and is characterized by bluff prairies, steep forested bluffs and stream valleys. According to the Minnesota State Wildlife Action Plan, this subsection contains 156 species in greatest conservation need, the highest total number of all 25 subsections in the state.

The Protected Property consists of approximately 34 acres of cultivated land, 50 acres of grasslands, 18 acres of woodlands, 52 acres of forested land, less than 1 acre of water and 2,786 linear feet of an unnamed intermittent stream.

Existing improvements on the Protected Property include a pole shelter, a storage shed, a primitive outhouse, two gravel driveways, a snowmobile trail, primitive field roads and trails, fencing and a man-made pond. These improvements are more specifically described in the baseline property report referred to in section 6 of this conservation easement.

The Protected Property is adjacent to an approximately 2-acre parcel owned by the Owner and an approximately 3.5-acre parcel owned by the Owner, but not included in the Protected Property.

The Protected Property is currently used for agriculture, wildlife food plots, snowmobiling, nature observation, camping, hunting and limited timber harvest.

The natural attributes of the Protected Property include the relatively natural wildlife habitat provided by the open grasslands that include a broad native sand prairie, openings of dry prairie bedrock bluff, an intermittent stream, oak savannah, scattered woodlands, sand barrens, and hillsides primarily covered with hardwood forest. These natural attributes provide habitat for a variety of species in greatest conservation need such as timber rattlesnakes, Henslow's sparrows, prothonotary warblers, red-shouldered hawks and Louisiana water-thrushes, as established by the Minnesota Department of Natural Resources in *Tomorrow's Habitat for the Wild and Rare; An Action Plan for Minnesota Wildlife, Minnesota's Comprehensive Wildlife Conservation Strategy*, 2006. Specifically, timber rattlesnakes have been observed on the Protected Property.

The Protected Property is a key component in a larger complex of protected properties in the area and lies within the statutory boundary of Richard J. Dorer State Forest. The Protected Property is adjacent to and lies along the northern boundary of the Vinegar Ridge Recreation Area. It also lies in close proximity to the Chisholm Valley and Ferndale Ridge Wildlife Management Areas, the Root River State Trail, and the Vinegar Ridge Equestrian Trail.

The Protected Property lies within the Root River watershed, approximately a quarter-mile east of the river channel. The Root River watershed drains over 1,600 square miles stretching across five counties in Minnesota, eventually making its way to the Mississippi River. An intermittent stream on the west side of the Protected Property flows into a perennial stream, which meets with the Root River to the south and west of the Protected Property.

The scenic attributes of the Protected Property arise from its rural, agricultural, and natural character, which include steep river bluffs nearly 500 feet high, secluded stream valleys, broad fields, and sand barrens, typical of the area and highly visible to the public traveling along River Drive or from adjacent public lands. Portions of the Protected Property are also visible to the public traveling along Historic Bluff Country Scenic Byway (Highway 16), the Root River State Trail, and the Root River State Water Trail.

The Protected Property is located in an area experiencing the fragmentation of private land ownership, trending from large land holdings by a single family into numerous smaller parcels owned by unrelated parties and managed inconsistently. This fragmentation encourages more scattered rural development, and has the potential to disconnect, shrink, and degrade contiguous corridors of critical wildlife habitat. Significant development of the Protected Property or conversion of its grasslands or forests to extensive cultivated fields could negatively impact the water quality of the intermittent stream that eventually drains into the Root River and the Mississippi River. Also, development of the Protected Property would impair the scenic and natural character of the local rural landscape.

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

- The undeveloped and relatively natural character of the Protected Property provides significant habitat for a variety of wildlife and plants, including timber rattlesnakes, bull snakes, and Hill's thistle.
- The open and natural character of the Protected Property provides scenic views enjoyed by the general public from the Historic Bluff Country Scenic Byway (State Highway 16), the Root River State Trail, the Root River State Water Trail, River Drive, and adjacent State lands.
- Protection of the Protected Property in its natural and undeveloped condition will help to preserve the water quality and integrity of the Root River, which is a major tributary to the Mississippi River.

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

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

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

- Minnesota Statutes Section 97A.056, which governs the Outdoor Heritage Fund and Minnesota Laws 2013, Regular Session, Chapter 137, Article 1, Section 2, Subdivision 5(c), which provides funding from that Fund to acquire permanent conservation easements in high quality prairie, forest and riparian habitat in the Root River watershed.
 - Minnesota Statutes Chapter 103A, which promotes protection of Minnesota's waters and their adjacent lands, and Minnesota Statutes Section 103A.206 in particular, which recognizes the economic and environmental importance of maintaining and enhancing the soil and water resources of this state and the role of private lands in these conservation efforts to, among other things, preserve natural resources, protect water quality, preserve wildlife, and protect public lands and waters.
 - Minnesota Statutes Chapter 84C, which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality.
 - 1998 Houston County Comprehensive Plan and 2008 update, pages 8, 9, 10, 13, 14, 15 and 16 which establish and confirm the County's commitment to preserve, through a variety of tools, the scenic and ecologically significant areas of the County.
 - Minnesota Statutes Section 85.32, Subdivision 1, which recognizes the importance of canoe and boating routes on certain Minnesota rivers that have scenic value, including the Root River.
 - Minnesota Statutes Section 85.015, Subdivision 7, which establishes the Root River State Trail as a part of the Blufflands trail system for non-motorized riding and biking.
 - Historic Bluff Country Scenic Byway classification for Minnesota Highway 16 (designated as Minnesota State Scenic Byways by the Minnesota Departments of Transportation-Environmental Studies and as National Scenic Byway by FHWA National Scenic Byways Program, June 13, 2002), featuring this route as an outstanding example of scenic, historic, recreational, cultural, historic and natural landscapes.
- F. **CONSERVATION INTENT.** The Owner and the Land Trust are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current Owner and all future owners of the Protected Property and that conveys to the Land Trust the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.
- G. **FUNDING.** Funding for the acquisition of this conservation easement has been provided by Minnesota's Outdoor Heritage Fund as recommended by the Lessard-Sams Outdoor Heritage Council (LSOHC). Specifically, this Easement was funded through the Root River

Protection and Restoration program under grant number 65951. The purpose of this grant is to acquire permanent easements protecting habitat for important wildlife species in strategically targeted areas of outstanding biodiversity in Southeast Minnesota's Root River watershed.

Due to this funding, this conservation easement is subject to Minnesota Statutes Section 97A.056, which specifically requires that a notice of funding agreement pertaining to the conservation easement interest must be recorded against the Protected Property. This notice of funding agreement contains the following statement: "This interest in real property shall be administered in accordance with the terms, conditions, and purposes of the grant agreement controlling the acquisition of the property. The interest in real property, or any portion of the interest in real property, shall not be sold, transferred, pledged, or otherwise disposed of or further encumbered without obtaining the prior written approval of the Lessard-Sams Outdoor Heritage Council or its successor. The ownership of the interest in real property shall transfer to the state if: (1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or accomplishment plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation."

CONVEYANCE OF CONSERVATION EASEMENT

Pursuant to the laws of the State of Minnesota, and in particular Minnesota Statutes Chapter 84C, and in consideration of the facts recited above and the mutual covenants contained herein, and for the further consideration of a charitable donation of a portion of the fair market value of the conservation easement and the payment of One Hundred Five Thousand and No/ 100s Dollars (\$105,000.00), the Owner hereby conveys and warrants to the Land Trust and its successors and assigns a perpetual conservation easement over the Protected Property. This conservation easement creates a property right immediately vested in the Land Trust and consists of the rights, terms, and restrictions set out below (the "Easement.")

The Owner also conveys and warrants to the Land Trust and its successors and assigns an easement for access to the Protected Property. The terms of that access easement are described in more detail in section 4 of this Easement.

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

This Conservation Purpose is accomplished by confining the development, management and use of the Protected Property to activities and improvements that are consistent with the preservation of these Conservation Values, by prohibiting activities and improvements that

significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

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

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

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

- 2.1. Industrial Activity. No industrial use of the Protected Property is allowed.
- 2.2. Commercial Activity. No commercial use of the Protected Property is allowed except for that agricultural use, habitat management, minimal commercial recreational use, or other use specifically permitted in section 3 of this Easement or except as incidental to other uses or activities specifically permitted in this Easement.
- 2.3. Agricultural Use. No agricultural use of the Protected Property is allowed except as specifically permitted in section 3 of this Easement.
- 2.4. Residential Use and Development. No residential use or development of the Protected Property is allowed.
- 2.5. Division of the Protected Property. The Protected Property may not be divided, subdivided, or partitioned regardless of whether it now consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes except as specifically set out below.
 - a. To convey a portion of the Protected Property to a conservation entity defined in section 7.1 of this Easement.
 - b. The correction or adjustment of boundary lines to resolve an ownership dispute.
- 2.6. Development Rights. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage, open space, or natural resource use or extraction under otherwise applicable laws, regulations, or ordinances controlling land use. The development rights that have been encumbered or extinguished by this Easement may not be transferred to any other property or used to obtain any regulatory mitigation credits.

2.7. Rights of Way. No new right of way shall be granted across the Protected Property by the Owner in conjunction with any industrial, commercial, residential or other use or development of other land not protected by this Easement without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement. This provision does not affect any rights of way existing at the time of this conveyance.

2.8. Improvements. No temporary or permanent utilities, roads or other improvements of any kind may be placed or constructed on the Protected Property except as specifically permitted in section 3 of this Easement or as set forth below:

- a. Utilities. No utility systems or facilities may be installed on the Protected Property without prior written approval of the Land Trust under the provisions of section 7.6 of this Easement.
- b. Signs. No billboards or other signs may be placed or erected on the Protected Property except for small, unlighted signs for informational or interpretive purposes that do not impair or interfere with the natural habitat or scenic qualities of the Protected Property.

The Owner agrees that the Land Trust, as a recipient of a grant from Minnesota's Outdoor Heritage Fund for the acquisition of this Easement, may display a sign with the Clean Water, Land and Legacy Amendment logo as required and where practicable at access points to the Protected Property.

Also, with the Owner's permission, the Land Trust may place signs on the Protected Property identifying the land as protected with a conservation easement.

- c. Roads. Existing roads, including field roads, and the unimproved driveways may be maintained but may not be widened or relocated without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement.

No other roads, driveways or parking areas may be established or constructed on the Protected Property without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement.

- d. Trails. Unpaved paths or foot trails may be established and maintained for non-motorized and limited motorized recreational uses. Trails may be established, maintained and used only in a manner that does not result in significant erosion or that impairs or interferes with the natural habitat, water quality or scenic quality of the Protected Property.
- e. Fences. Fences may be constructed, maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by this Easement.

Fences may not be located or constructed in a manner that impairs or interferes with the natural habitat or scenic quality of the Protected Property or interferes with established wildlife corridors.

- f. Existing Structures. The existing buildings and structures may be maintained, repaired and renovated, but not replaced or expanded.

The Owner may remove the existing buildings and structures or permit them to deteriorate, provided that in the event the deteriorating buildings and structures create a hazard or a nuisance, the Owner shall remove them or the hazard or nuisance as necessary. If the Owner removes the existing buildings and structures, or any part of them, the Owner shall restore the affected area to a condition consistent with the Conservation Values of the Protected Property.

- g. Outdoor Lighting. No permanent outdoor lighting is allowed.

- 2.9. Dumping. No trash, non-compostable garbage, debris, unserviceable vehicles or equipment, junk, animal waste, other unsightly material or hazardous or toxic substances may be dumped or accumulated on the Protected Property. This does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted by this Easement, or the periodic and measured application of manure to cultivated fields. This does not prohibit temporary placement of building materials, debris or refuse containers if incidental to activities and construction permitted by this Easement.
- 2.10. Mining and Extraction. No mining, drilling, exploring for, or removing any minerals, sand, gravel, rock, water, or fossil fuels from the Protected Property is allowed.
- 2.11. Topography and Surface Alteration. No alteration or change in the topography or the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil or other material.

This does not, however, include or prohibit surface alterations incidental to any construction or other activities or uses otherwise specifically permitted by this Easement.

Any alteration resulting from an otherwise permitted activity or use shall be undertaken with minimal disturbance to soils, topography and vegetation and with proper erosion control practices. At the conclusion of the activity, the surface shall be restored in a timely manner to a condition consistent with the Conservation Purpose of this Easement.

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

- 2.12. Water. No alteration, manipulation, extraction, or diversion of natural watercourses, wetlands or other surface or subsurface bodies of water or creation of new wetlands or water bodies is allowed except to restore or enhance wildlife habitat or native biological communities, to improve or enhance the function and quality of existing wetlands or water bodies or as specifically permitted in section 3 of this Easement.

This does not prohibit the installation of wells under the provisions of section 2.8 above or water uses incidental to activities and uses otherwise specifically permitted by this Easement including agricultural uses specifically permitted in section 3.

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

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

- 2.13. Vegetation Management. No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:

- a. In conjunction with agricultural activities, forest management or habitat management as specifically permitted in section 3 of this Easement.
- b. As reasonably required to construct or maintain buildings, structures, roads, trails and other improvements specifically permitted under this Easement and provided that following any construction vegetation shall be restored in a timely manner to a condition consistent with the Conservation Purpose of this Easement.
- c. In conjunction with landscaping or personal gardening in the area depicted as "Garden Area" on the Property Map.
- d. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury, or property damage.
- e. To remove diseased, downed, or dead timber for firewood or other personal use.
- f. Harvesting naturally occurring plants, fungi, or their products (i.e. mushrooms, berries, nuts, herbs, prairie seed, roots, etc.) in a manner that maintains a sustainable growth and reproduction cycle for the harvested plant populations and the surrounding natural community.

Nothing in this section allows the intentional introduction of recognized invasive vegetation on the Protected Property.

- 2.14. Vehicles. Limited off-road use of motorized vehicles is permitted only as needed for allowed agricultural or forest management activities; habitat management, restoration or enhancement activities; Owners with handicaps for allowed activities; or for emergency circumstances. In addition to the above allowed uses, snowmobiles may be also be used on the marked snowmobile trail (MN state trail #137 – Money Creek Trail), as permitted in section 3 below, or by the Owner. Other motorized vehicles like ATVs or tractors may be used to maintain this state trail. Motorized vehicles may be used only in a manner that does not result in significant soil erosion, disturbance to wildlife, or impairment to or interference with the natural habitat, water quality, or scenic quality of the Protected Property.

This provision is not intended to otherwise limit the use of motorized vehicles on roads or driveways permitted under this Easement or in conjunction with construction and maintenance of permitted buildings, structures, roads, trails and other improvements.

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

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

- 3.1. Right to Convey. The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property. This right to convey the Protected Property is subject to the following provisions.
- a. Covered Transactions. Any lease, deed or other conveyance or any encumbrance of the Protected Property is subject to this Easement.
 - b. Notice to New Owner. The Owner will reference or insert the terms of this Easement in any deed or other document by which the Owner conveys title to or any interest in the Protected Property. The Owner will also specify to what extent rights reserved under this Easement have been exercised, if at all, and are no longer available for use by a new owner and which reserved rights are specifically allocated to the property being conveyed.
 - c. Notice to Land Trust. The Owner will notify the Land Trust of any proposed conveyance of title to the Protected Property at least fifteen (15) days before closing. The Owner will also provide the Land Trust with the name and address of the new owner of the Protected Property and a copy of the deed transferring title within fifteen (15) days after closing. Notice and documents shall be sent to the Land Trust as set out in section 7.6 of this Easement.

- d. Designated Representative. If the Protected Property is owned by a trust, business entity or any common or jointly held ownership, the Owner shall designate a representative authorized to receive notice on behalf of the Owner and provide the Land Trust with the name and address of the designated representative. The Owner shall notify the Land Trust of any change in the designated representative and provide the Land Trust with the new name, address and other contact information within fifteen (15) days after the change.
- e. Notice of Action Affecting Easement. The Owner will also notify the Land Trust of any proposed condemnation or any claim, legal proceeding, foreclosure or other legal action that might affect title to the Protected Property or the validity or enforceability of this Easement.

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

3.2. Agricultural Use. The Protected Property may be used and developed for agricultural purposes only as follows or as specifically allowed:

- a. Type of Use. The Protected Property may be used to raise or produce crops, livestock, and livestock products, and for all related agricultural activities. This includes the right to establish, reestablish, maintain, and use cultivated fields, orchards, nurseries, woodlots, tree farms and pastures.
- b. Government Programs. The Protected Property may be enrolled in government sponsored agricultural conservation programs that minimize soil erosion and provide or enhance wildlife habitat.
- c. Feed Lots. In no event is a feedlot permitted anywhere on the Protected Property. A feedlot is defined as follows: open ground or buildings or a combination of open ground and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which manure may accumulate or where the concentration of animals is such that a vegetative cover cannot be maintained. Open lots used for feeding and rearing poultry are considered feedlots. Areas immediately adjacent to supplemental feeding and watering areas are not considered feedlots
- d. Location. Agricultural use is confined to those areas depicted as "Cultivated Land" on the Property Map.
- e. Other Uses. This section is not intended to restrict or prohibit personal pets, beekeeping, maple syrup collection, or vegetation management activities allowed in section 2.13 of this Easement.

- 3.3. Habitat Management. The Protected Property may be used to create, maintain, restore, or enhance habitat like grasslands, prairies, forests, wetlands, and other habitat for wildlife and native biological communities in accordance with a management plan approved by the Land Trust under the provisions of section 7.6 of this Easement. The Owner may maintain existing wildlife food plots and remove timber and other wood products and otherwise manage the vegetation on the Protected Property in accordance with this approved management plan or as otherwise permitted under section 2.13 or section 3.2 of this Easement.

Specifically, those areas identified as "Grasslands" on the Protected Property may be managed in a manner that promotes the open, grassland cover type according to a habitat management plan approved by the Land Trust under the provisions of section 7.6 of this Easement. Any other areas of the Protected Property, including those areas designated as "Cultivated Land" or "Garden Area" on the Property Map, that are restored to grassland or prairie at a future date shall remain in such grassland or prairie state after such restoration and may be managed according to the approved habitat management plan.

- 3.4. Recreational and Educational Uses. The Protected Property may be used for recreational activities like hiking, cross-country skiing, horseback riding, limited snowmobiling as provided in section 2.14 of the Easement, camping, hunting, trapping, nature observation or study, and other non-intensive recreational and educational programs or activities that have no more than a negligible impact on the Conservation Values of the Protected Property.

The Protected Property may not be used for more than minimal commercial recreational purposes.

In conjunction with permitted recreational uses, minor rustic structures such as tents and tent platforms, trail barriers, benches, hunting blinds or stands and informational kiosks that do not impair or interfere with the natural habitat or scenic qualities of the Protected Property may be placed on the Protected Property, provided, however, that no such structures are permitted in areas depicted as "Grasslands" on the Property Map or areas restored to grasslands or prairie under section 3.3 of the Easement. Such structures may not be used for continuous residential use and no utilities may be installed to service such structures without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement.

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

- 4.1. Right to Enter. The Land Trust has the right to enter the Protected Property at reasonable times and in a reasonable manner for the following purposes:

- a. To inspect the Protected Property and to monitor compliance with the terms of this Easement.
 - b. To obtain evidence for use in seeking judicial or other enforcement of this Easement.
 - c. To survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Easement. Any survey completed under this provision will be at the Owner's expense.
 - d. To otherwise exercise its rights under this Easement.
- 4.2. Access. In order to enter the Protected Property, the Land Trust is granted an access easement over that other property currently owned by the Owner and described in Exhibit C attached to this Easement and incorporated by this reference.
- 4.3. Right of Enforcement. The Land Trust has the right to prevent or remedy violations of this Easement, including prohibiting the construction of buildings or improvements, through appropriate judicial action brought in any court of competent jurisdiction, or through other methods of dispute resolution, against the Owner or other responsible party.
- a. Notice. The Land Trust may not initiate judicial action until the Owner has been given notice of the violation, or threatened violation, of this Easement and a reasonable opportunity to correct the situation. This provision shall not apply if in the Land Trust's sole discretion and exclusive judgment immediate judicial action is necessary to prevent or mitigate significant impairment to or interference with the Conservation Values of the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.
 - b. Remedies. In enforcing this Easement, the Land Trust has the right to:
 - Temporary or permanent injunctive relief for any violation or threatened violation of this Easement.
 - Require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement.
 - Specific performance or declaratory relief.
 - Recover damages resulting from a violation of this Easement or injury to any Conservation Values associated with the Protected Property.

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

The Land Trust and the Owner agree that the damages created by a violation of this Easement may be determined by calculating the cost of acquiring a

conservation easement over similar property. The Land Trust and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement.

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

- c. Costs of Enforcement. The Owner shall be responsible for all reasonable costs incurred by the Land Trust in enforcing this Easement, including without limitation costs of suit, attorneys' fees, and expenses related to restoration of the Protected Property. If, however, the Owner ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs and attorneys' fees.
- d. Enforcement Decisions. Enforcement of the terms of this Easement is solely at the discretion of the Land Trust. The Land Trust does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the Land Trust in discovering a violation or initiating enforcement proceedings. The Land Trust shall not be barred by any applicable statute of limitations in bringing any action to enforce the terms of this Easement.
- e. Acts Beyond Owner's Control. The Land Trust may not bring an action against the Owner for any change to the Protected Property resulting from any of the following:
 - Causes beyond the Owner's control such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of third parties.
 - Reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

Actions by the Owner's lessees, agents, employees or contractors are not considered unauthorized acts of third parties.

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

- f. Right to Report. In addition to other remedies, the Land Trust has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.
- g. Enforcement Rights of Others. Nothing in this Easement is intended to create any right to enforce this Easement in any third party where no such right otherwise exists under this Easement or under law.

- 4.4. Limitation on Rights. Nothing in this Easement gives the Land Trust the right or responsibility to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, the Minnesota Environmental Response and Liability Act, or other similar successor federal, state or local statutes or laws regarding responsibility for environmental conditions associated with contamination.
5. **PUBLIC ACCESS**. Although the public benefits from this Easement through the preservation and protection of the Conservation Values of the Protected Property, nothing in this Easement gives the public a right to enter upon or use the Protected Property where no such right existed prior to, or separate from the conveyance of this Easement.

The Owner retains the right to permit any public use of the Protected Property consistent with the preservation and protection of the Conservation Values of the Protected Property and the terms and restrictions of this Easement, including the restrictions on commercial recreational use set out in section 3 of this Easement.

The public does, however, have the right to view the Protected Property from nearby publicly accessible areas including the Historic Bluff Country Scenic Byway (state highway 16), the Root River State Trail, the Root River Canoe route, adjacent State lands, and River Drive.

6. **DOCUMENTATION**. The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement will be more fully described in a baseline property report on file at the office of the Land Trust. The Owner and the Land Trust acknowledge that this property report will accurately represent the condition of the Protected Property at the time of this conveyance and may be used by the Land Trust in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This property report, however, is not intended to preclude the use of other information and evidence to document the present condition of the Protected Property in the event of a future controversy.

7. **GENERAL PROVISIONS**.

- 7.1. Assignment. Subject to the provisions of Minnesota Statutes Section 97A.056, this Easement may be assigned or transferred by the Land Trust only to a conservation entity defined as a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and as an authorized conservation easement holder under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the Land Trust by this Easement.

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

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

- 7.2. Amendment. Subject to the provisions of Minnesota Statutes Section 97A.056, and under appropriate circumstances, this Easement may be modified or amended. However, the Land Trust may in its sole discretion and exclusive judgment refuse to agree to any amendment or modification of this Easement, including any amendment in which the following apply:

- The amendment is inconsistent with the Conservation Purpose of this Easement.
- The amendment will impair or interfere with the Conservation Values of the Protected Property.
- The amendment affects the perpetual duration of this Easement.
- The amendment affects the validity of this Easement under Minnesota law or the status of the Land Trust under Sections 501(c)(3) and 170(h) of the Internal Revenue Code or successor or related law.
- The amendment creates or results in impermissible private benefit or private inurement as prohibited by 501(c)(3) of the Internal Revenue Code.

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

- 7.1. Termination. This Easement may be terminated or extinguished in whole or in part only as set out in this section and subject to the provisions of Minnesota Statutes Section 97A.056.

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

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

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

The Land Trust will use its share of any proceeds in a manner consistent with the Conservation Purpose of this Easement and in accordance with Minnesota Statutes Section 97A.056.

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

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

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

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

exempt the Protected Property or the Owner from otherwise applicable laws or regulations.

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

- c. Indemnity. The Owner shall defend, indemnify, and hold the Land Trust harmless from any and all costs or liability for any loss, damage, or personal injury occurring on or related to the Protected Property or the existence of this Easement, except to the extent attributable to the negligence of the Land Trust.
- d. Insurance. The Owner will name the Land Trust as an additional insured on any general liability insurance policy carried by the Owner with respect to the Protected Property.
- e. Future Environmental Condition. The Owner is solely responsible for Owner's use or release on the Protected Property of any hazardous or toxic substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, the Minnesota Environmental Response and Liability Act, or other similar successor federal, state or local law or regulation regarding responsibility for environmental conditions associated with contamination. The Owner shall take all steps necessary to assure any needed containment or remediation resulting from any release of such substance.

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

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

To the Owner:
Joel Johnson
Audery Johnson
21600 River Drive
Houston, Minnesota 55943

To the Land Trust:
Minnesota Land Trust
2356 University Avenue West

- c. Timing. Unless otherwise specified in this Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.
 - d. Content. The notice or request for approval must include sufficient information to allow the Land Trust to make an informed decision on whether any proposed activity is consistent with the terms and Conservation Purpose of this Easement. At a minimum, this should include:
 - The location, nature, and scope of the proposed activity.
 - The proposed use, design, and location of any building, structure or improvement.
 - The plan for any needed restoration of the Protected Property following construction.
 - Any potential impact on the Conservation Values of the Protected Property.
 - e. Approval Decisions. The Land Trust may withhold its approval if it determines in its sole discretion that the proposal may impair or interfere with the Conservation Values of the Protected Property or is inconsistent with the terms or Conservation Purpose of this Easement or lacks sufficient information to allow the Land Trust to reach an informed decision. The Land Trust may condition its approval on the Owner's acceptance of modifications, which would, in the Land Trust's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.
- 7.5. Binding Effect. This Easement creates a property right immediately vested in the Land Trust and its successors and assigns that cannot be terminated or extinguished except as set out herein.

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

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

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

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

Other terms may be defined throughout this Easement.

- 7.7. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.
- 7.8. Recording. The Land Trust will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The Land Trust may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement.
- 7.9. Interpretation. This Easement shall be interpreted as follows:
 - a. Controlling Law and Construction. This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C and Minnesota Statutes Section 97A.056 and Minnesota Laws 2013, Regular Session, Chapter 137, Article 1, Section 2, Subdivision 5(c).
 - b. Severability. A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.
 - c. Captions. Captions have been inserted in this document solely for convenience of reference and shall have no effect upon interpretation or construction.
 - d. Future Economic Condition. A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible or impractical for continued use of the Property for conservation purposes and shall not constitute grounds for terminating the Easement.

- 7.10. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably needed by the Land Trust to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any error or mutual mistake, legal description or title matter or to comply with any federal, state, or local law, rule or regulation.
- 7.11. Entire Agreement. This document sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions or understandings.
- 7.12. Signatures. This Easement may be completed with the signatures of the parties to this Easement executed and notarized on separate pages which when attached to this document shall constitute one complete document.

The remainder of this page has been intentionally left blank.

IN WITNESS WHEREOF, the Owner has voluntarily executed this Easement on the 5th day of Sept., 2014.

OWNER:

Joel Johnson

Audery Johnson, by Joel Johnson as AIF
Audery Johnson, AKA Audrey Johnson, by Joel Johnson, as attorney-in-fact for Audery Johnson

EXEMPT FROM STATE DEED TAX

State of MINNESOTA)) ss
County of Winona)

Donna Trchus
Houston County Treasurer

The foregoing instrument was acknowledged before me this 5th day of Sept., 2014, by Joel Johnson and Audery Johnson, AKA Audrey Johnson, by Joel Johnson, as attorney-in-fact for Audery Johnson, husband and wife.

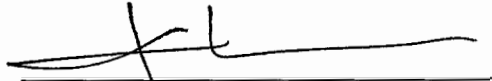


Angela A. Bocher
Notary Public
My Commission Expires:

ACCEPTANCE

The MINNESOTA LAND TRUST hereby accepts the foregoing Easement effective as of this 5th day of September, 2014.

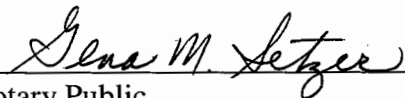
MINNESOTA LAND TRUST

By: 
Kris Larson

Its: Executive Director

State of MINNESOTA)
) ss
County of RAMSEY)

The foregoing instrument was acknowledged before me this 4th day of September, 2014, by Kris Larson, the Executive Director of the Minnesota Land Trust, a non-profit corporation under the laws of the State of Minnesota, on behalf of said corporation.


Notary Public
My Commission Expires:



This document drafted by:

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

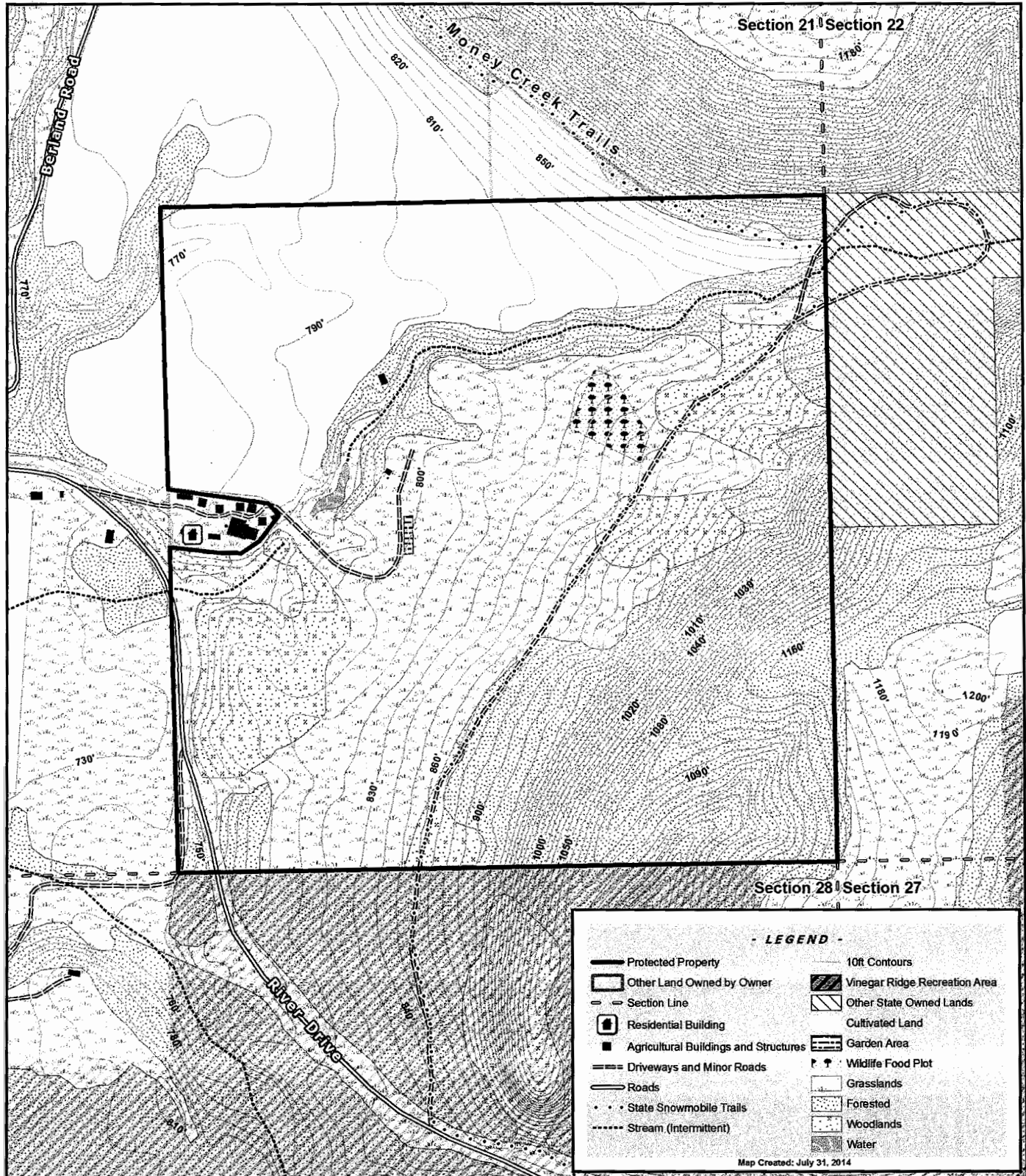
Exhibit A

Legal Description of Protected Property

The Southeast Quarter (SE1/4) of Section Twenty-One (21) Township One Hundred Four (104) Range Seven (7), Houston County, Minnesota.

Except that part of the Southeast Quarter of Section 21, Township 104 North, Range 7 West, Houston County, Minnesota, described as follows: Commencing at the southwest corner of said Southeast Quarter; thence northerly on a Minnesota State Plane Grid Azimuth from north of 359 degrees 40 minutes 16 seconds along the west line of said Southeast Quarter 1295.85 feet to the point of beginning; thence easterly 97 degrees 35 minutes 59 seconds azimuth 192.10 feet; thence easterly 92 degrees 28 minutes 13 seconds azimuth 94.43 feet; thence northeasterly 57 degrees 34 minutes 04 seconds azimuth 85.17 feet; thence northeasterly 38 degrees 52 minutes 00 seconds azimuth 126.64 feet; thence northwesterly 320 degrees 42 minutes 40 seconds azimuth 64.70 feet; thence westerly 278 degrees 49 minutes 53 seconds azimuth 401.20 feet to the west line of said Southeast Quarter; thence southerly 179 degrees 40 minutes 16 seconds azimuth along said west line 226.48 feet to the point of beginning.

Exhibit B: Property Map



Map Resource Information

Protected Property & Other Property, Buildings, Section Lines, Roads, Driveways & Minor Roads, Contours, Streams, Cultivated Land, Garden Area, Wildlife Food Plot, Grasslands, Forested, Woodlands, & Water created by Community GIS Services Inc.

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

Site: Root River - Tract: Johnson

Houston County - Twp. 104 N Rng. 7 W Sec. 21



Map Scale:

1 in = 500 ft

0 250 500 1,000 Feet

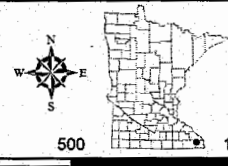


Exhibit C

Ingress and Egress Easement Legal Description

That part of the Southeast Quarter of Section 21, Township 104 North, Range 7 West, Houston County, Minnesota, described as follows: Commencing at the southwest corner of said Southeast Quarter; thence northerly on a Minnesota State Plane Grid Azimuth from north of 359 degrees 40 minutes 16 seconds along the west line of said Southeast Quarter 1295.85 feet to the point of beginning; thence easterly 97 degrees 35 minutes 59 seconds azimuth 192.10 feet; thence easterly 92 degrees 28 minutes 13 seconds azimuth 94.43 feet; thence northeasterly 57 degrees 34 minutes 04 seconds azimuth 85.17 feet; thence northeasterly 38 degrees 52 minutes 00 seconds azimuth 126.64 feet; thence northwesterly 320 degrees 42 minutes 40 seconds azimuth 64.70 feet; thence westerly 278 degrees 49 minutes 53 seconds azimuth 401.20 feet to the west line of said Southeast Quarter; thence southerly 179 degrees 40 minutes 16 seconds azimuth along said west line 226.48 feet to the point of beginning.