

No delinquent taxes

Transfer Entered

Sep 11, 2018 2:00 PM

Hennepin County, Minnesota
Mark Chapin
County Auditor and Treasurer



Doc No **A10590329**

Certified, filed and/or recorded on
Sep 11, 2018 2:00 PM

Office of the County Recorder
Hennepin County, Minnesota
Martin McCormick, County Recorder
Mark Chapin, County Auditor and Treasurer

Deputy 120

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Document Recording Fee \$46.00

Document Total \$48.00

PID(s)

09-117-23-21-0001

DECLARATION OF EASEMENTS
(HVAC Equipment and Well)

THIS DECLARATION OF EASEMENTS is made as of July 31, 2018, by Judson M. Dayton and Shelley Mydra-Dayton, husband and wife, individually and as trustees of The Judson M. Dayton Revocable Trust Agreement dated October 31, 1988, as amended ("Declarants").

RECITALS:

- A. Declarants are the owners of Lots 1 and 2 and Outlot A, Block 1, Topside, Hennepin County, Minnesota.
- B. Certain air conditioning equipment and facilities and the connections thereto (collectively, the "HVAC Equipment") serving the house on Lot 2, Block 1, Topside ("Lot 2"), encroach onto, and are located on, Lot 1, Block 1, Topside ("Lot 1"). The area where the HVAC Equipment is located (the "HVAC Easement Area") is legally described on Exhibit A hereto and depicted on Exhibit B hereto.
- C. A well and the piping therefrom (collectively, the "Well") that provides water to the pond on Lot 2 is located on Lot 1. The area where the Well is located (the "Well Easement Area") is also legally described on Exhibit A hereto and depicted on Exhibit B hereto. Together the HVAC Easement Area and the Well Easement Area are referred to herein as the "Easement Areas."
- D. Declarants desire to create easements over the Easement Areas, as

easements appurtenant to Lot 2, to permit the continued use of the Easement Areas by the owners from time to time of Lot 2, for the HVAC Equipment and Well.

NOW, THEREFORE, Declarants hereby declare, create, grant and convey to the owners of Lot 2, and their qualified contractors and repairpersons, as necessary, as easements appurtenant to Lot 2, a perpetual, exclusive easement (subject to the terms hereof including the terms of paragraphs 1, 2 and 3 below) for maintaining and repairing the HVAC Equipment and Well over, on and within the respective Easement Areas. All maintenance and repair of the HVAC Equipment or Well shall be the sole responsibility of the owners of Lot 2. The foregoing declaration and grant of easements includes, but not by way of limitation, the right to enter the Easement Areas to maintain, operate and repair, as may be necessary from time to time, the HVAC Equipment and the Well, as may be applicable. The owners of Lot 2, from time to time, shall have the right to make such use of the Easement Areas as is reasonably necessary and advisable for the maintenance, operation and repair of the HVAC Equipment or Well, as the case may be. Nothing herein limits the right of the owner of Lot 1 to enter onto or use the Easement Areas in any manner and for any purpose that is consistent with the reasonable use of the Easement Areas by the owner of Lot 2 as contemplated herein.

Notwithstanding the foregoing:

1. In the event the existing house on Lot 2 is demolished, removed or relocated, or is reconstructed to the extent of more than 50% of the total finished square footage thereof, or in the event the HVAC Equipment is no longer functional and must be replaced, then the rights and easements created and declared hereby with respect to the HVAC Easement Area shall automatically cease and terminate one year after the date such demolition, removal, relocation or reconstruction commences or after such obsolescence, and within the foregoing one year period the HVAC Equipment shall be removed from the Easement Area, and all damage caused by such removal repaired, by the then owner or owners of Lot 2, at their sole cost and expense. Further, in such event, upon the expiration of the one year period, the then owners of Lot 2 shall execute and deliver to the then owners of Lot

1 a recordable quit claim deed or other form of release and termination, releasing and terminating the rights and easements over the HVAC Easement Area.

2. The provisions set forth in paragraph 1 above shall also apply in the event (a) Declarants deed Lot 2 (or a part of Lot 2 which includes the HVAC Easement Area) to an entity or person unrelated to any one or more of the Declarants, and (b) following such conveyance to an unrelated third party, the then owner of Lot 1 requests such removal by notice to the then owner of Lot 2 or the then owner of that part of Lot 2 which includes the HVAC Easement Area.

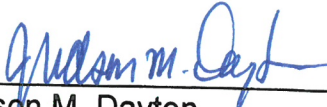
3. In the event that the Well fails and must be replaced, or is abandoned and is no longer used by the owner or owners of Lot 2 for the supply of water to the pond on Lot 2, for a continuous period of more than one year, then the rights and easements created and declared hereby with respect to the Well Easement Area shall automatically cease and terminate one year after the date of such failure or abandonment, and within the foregoing one year period the Well shall be capped, with the prior consent of the owner of Lot 1, and abandoned in accordance with applicable law, by the then owner or owners of Lot 2, at their sole cost and expense. Further, in such event, upon the expiration of the one year period, the then owners of Lot 2 shall execute and deliver to the then owners of Lot 1 a recordable quit claim deed or other form of release and termination, releasing and terminating the rights and easements over the Well Easement Area.

The owners of Lot 2 hereby release, indemnify, defend and save the the owners of Lot 1, and Lot 1 harmless from any and all liability, damage, expenses, causes of action, suits, claims or judgments arising from injury to person or property and occurring due to use of the Easement Areas by the owners of Lot 2, their successors, assigns, contractors, repairpersons, employees, agents and invitees.

The foregoing easements shall burden Lot 1 for the benefit of Lot 2, shall run with the land, and will bind the owners of Lot 1 and the owners of Lot 2 and their respective successors and assigns.

IN DECLARATION OF THE FOREGOING, the Declarants have executed this Declaration as of the day and year first set forth above.

DECLARANTS:



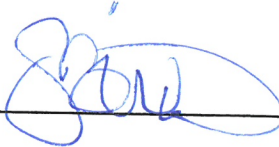
Judson M. Dayton



Shelley Mydra Dayton

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on July 31, 2018,
by Judson M. Dayton and Shelley Mydra-Dayton, husband and wife, individually and as
trustees of The Judson M. Dayton Revocable Trust Agreement dated October 31, 1988,
as amended.



Notary Public

This instrument was drafted by:

John B. Winston
Winston Law Office
815 Wayzata Blvd. East
Wayzata, Mn 55391
612-341-9800

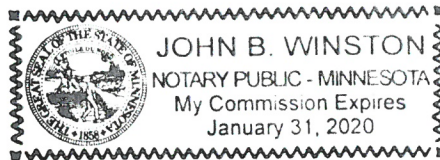


EXHIBIT A

HVAC EASEMENT AREA

An Easement for HVAC Units & Structure
On Lot 1, Block 1, TOPSIDE
For the benefit of Lot 2, Block 1, TOPSIDE

An easement for existing air conditioning units and an associated structure over, under and across that part of Lot 1, Block 1, TOPSIDE, described as follows: Commencing at the most easterly corner of said Lot 1; thence on an assumed bearing of South 59 degrees 01 minutes 41 seconds West along the southeasterly line of said Lot 1 a distance of 233.73 feet to an angle point in said southeasterly line; thence South 25 degrees 07 minutes 14 seconds West along said southeasterly line 240.31 feet to an angle point in said southeasterly line; thence South 22 degrees 12 minutes 41 seconds West along said southeasterly line a distance of 78.00 feet to the point of beginning of said easement; thence North 72 degrees 45 minutes 30 seconds West a distance of 23.00 feet; thence South 17 degrees 14 minutes 30 seconds West 26.00 feet; thence South 72 degrees 45 minutes 30 seconds East to said southeasterly line; thence northeasterly along said southeasterly line to the point of beginning.

WELL EASEMENT AREA

An Easement for an Existing Well
on Lot 1, Block 1, TOPSIDE
For the benefit of Lot 2, Block 1, TOPSIDE

An easement for an existing well over, under and across that part of Lot 1, Block 1, TOPSIDE, described as follows: Commencing at the most easterly corner of said Lot 1; thence on an assumed bearing of South 59 degrees 01 minutes 41 seconds West along the southeasterly line of said Lot 1 a distance of 233.73 feet to an angle point in said southeasterly line; thence South 25

degrees 07 minutes 14 seconds West along said southeasterly line 95.00 feet to the point of beginning of said easement; thence North 64 degrees 52 minutes 46 seconds West 15.00 feet; thence South 25 degrees 07 minutes 14 seconds West 10.00 feet; thence South 64 degrees 52 minutes 46 seconds East 15.00 feet to said southeasterly line; thence northeasterly along said southeasterly line to the point of beginning.

EXHIBIT *B1*
A/C EASEMENT
HVAC

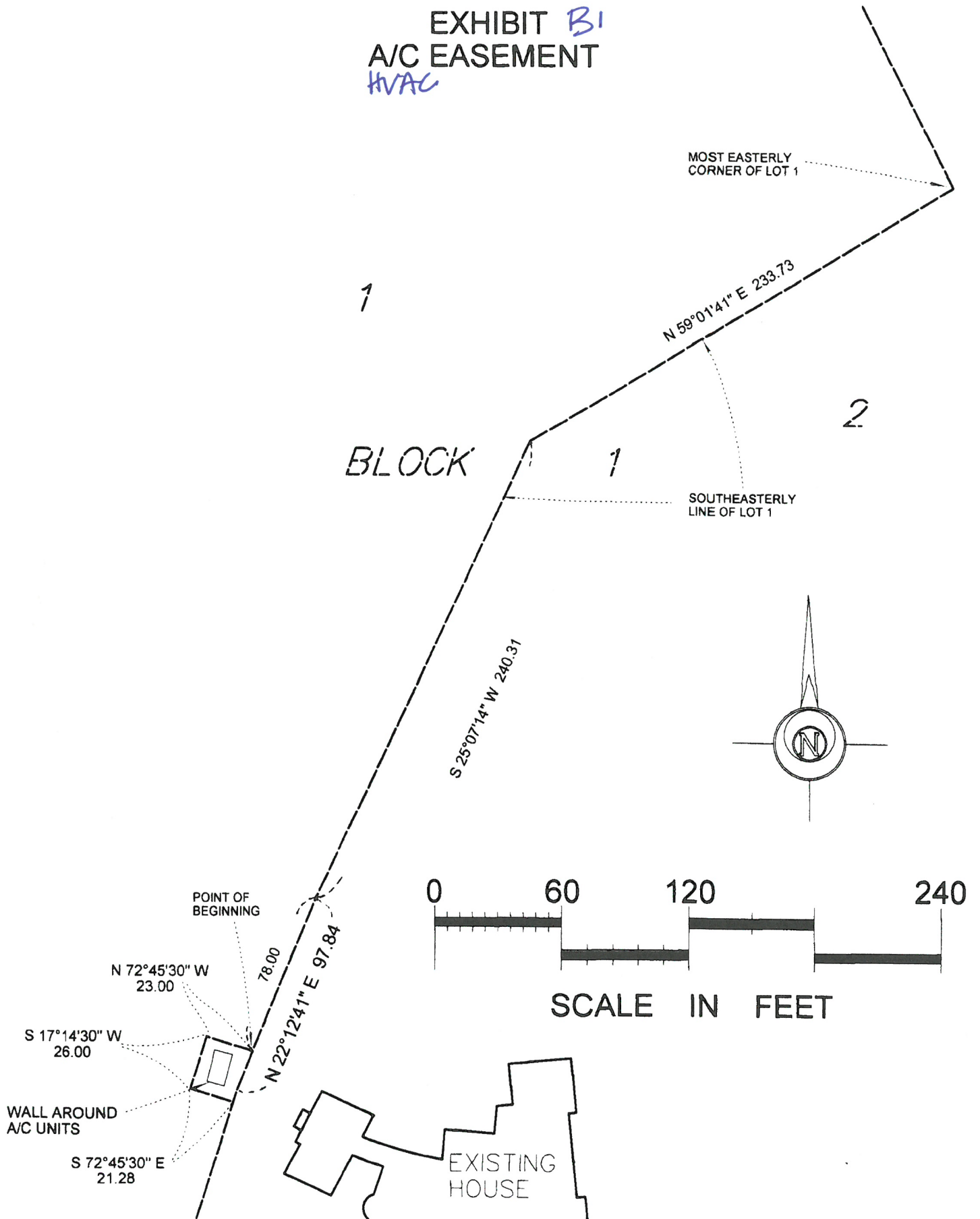
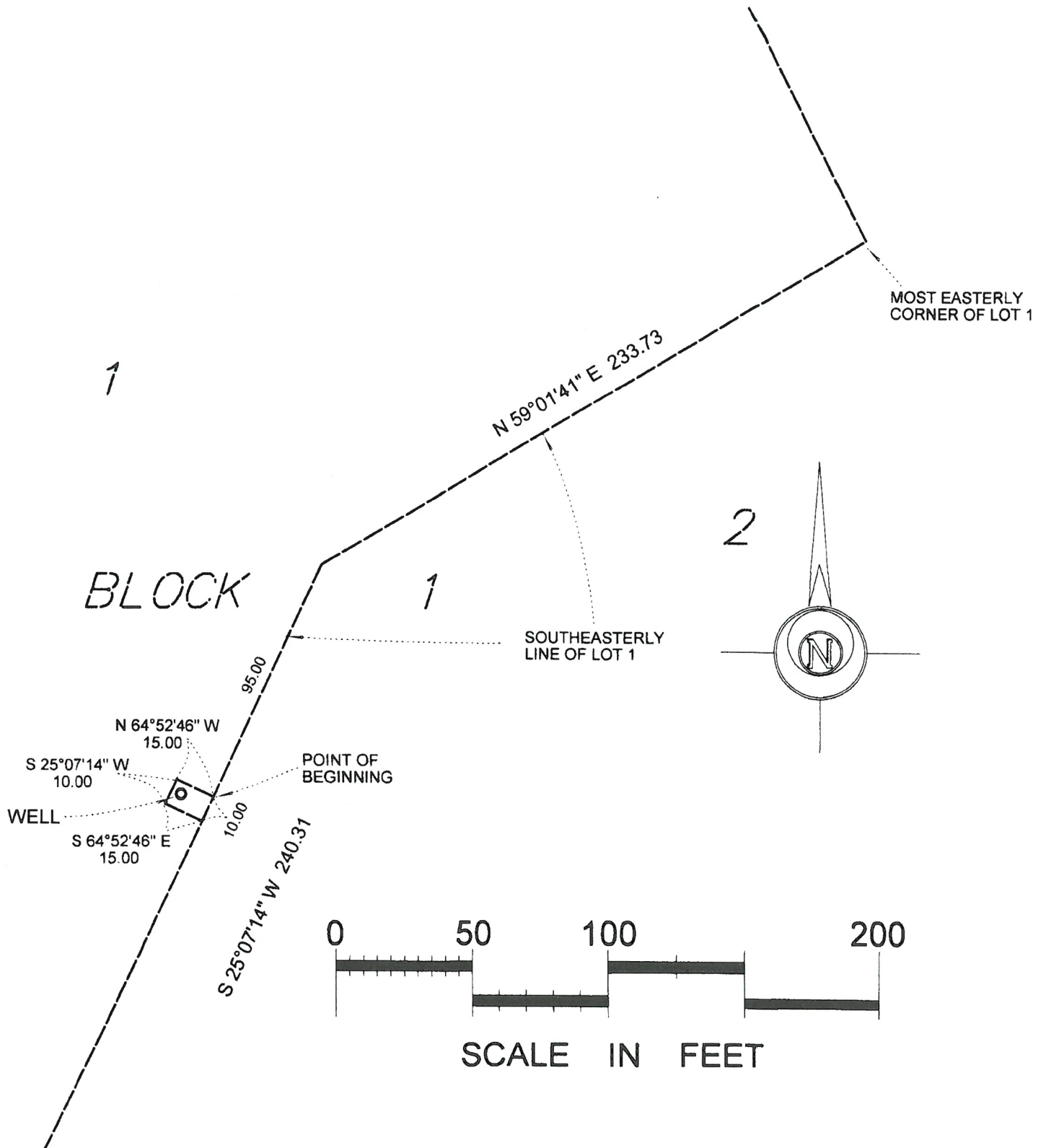


EXHIBIT B2 WELL EASEMENT



MORTGAGEE CONSENT


The undersigned mortgagee, being the owner and holder of that certain mortgage (the "Mortgage") dated October 14, 2011; executed by Judson M. Dayton and Shelley Mydra-Dayton, husband and wife, as Mortgagor, to Julia W. Dayton, as Mortgagee; and filed for record October 21, 2011, as Document Number A9705964, in the office of the Hennepin County Recorder hereby consents to the foregoing Declaration of Easements, and agrees that the Mortgage shall be subject and subordinate to the Easements granted therein.

Julia W. Dwyer

Julia W. Dayton

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss.

The foregoing instrument was acknowledged before me on June 11, 2018, by Julia W. Dayton, a single person.



Notary Public

