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Hennepin County, Minnesota  
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Mark Chapin, County Auditor and Treasurer

Deputy 120

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<b>Document Total</b>	<b>\$48.00</b>
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TOPSIDE DECLARATION  
OF  
SHARED DRIVEWAY AND UTILITY EASEMENT  
AND  
RELATED COVENANTS

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TREE PRESERVATION COVENANTS

THIS DECLARATION is made as of July 31, 2018, by Judson M. Dayton and Shelley Mydra-Dayton, husband and wife, individually and as Trustees under The Judson M. Dayton Revocable Trust Agreement dated October 31, 1988, as amended (the "Declarant"). The foregoing Trust is referred to herein as the "Trust."

R E C I T A L S :

A. Declarant owns certain real estate situated in the City of Orono (the "City"), Hennepin County (the "County"), Minnesota that has been platted into two lots, being "Lot 1" and "Lot 2," and one outlot, being "Outlot A," in the plat of Topside. Lot 1 and Lot 2 are referred to together as the "Lots" and each, a "Lot." Outlot A is referred to herein as the "Outlot." The Lots and the Outlot are referred to herein collectively as the "Property" or as "Topside." A survey map or plat map which shows the Property is attached hereto for reference as Exhibit A.

B. The legal descriptions of the Lots are Lot 1 and Lot 2, Block 1, Topside, according to the recorded plat thereof, Hennepin County, Minnesota. The legal description of the Outlot is Outlot A, Block 1, Topside, according to the recorded plat thereof, Hennepin County, Minnesota. (The Outlot is at various times also referred to herein as the "Easement Area.")

C. Declarant desires to create a shared driveway easement over the Outlot, for vehicular and pedestrian access and for public utility access purposes to and from the Lots to and from Old Crystal Bay Road South (also known as Hennepin County Road No. 84).

D. The shared driveway is referred to herein as the "Driveway." The Driveway shall be constructed within the Outlot at least ten (10) feet southerly of and along the northerly line of the Outlot in the approximate location as shown on Exhibit A and labeled "GRAVEL DRIVEWAY."

E. Declarant also desires to preserve trees within the northerly ten (10) feet of Outlot A, within the northerly ten (10) feet of Lot 1, and within ten (10) feet of either side of the common lot line between Lot 1 and Lot 2.

NOW, THEREFORE, the Declarant and its and their successors and assigns, hereby covenant and agree as follows, and hereby declare and create the following perpetual, nonexclusive driveway and utility access easement and related covenants, all of which shall run with title to the Property, and be binding upon the respective owners and occupants (respectively, the "Owners" and the "Occupants") from time to time of the Lots and the Outlot:

1. Declaration of Driveway and Utility Easement; Use of Easements.

1.1 Declarant hereby declares, grants, transfers and conveys to the Owners of the Lots, and their respective heirs, personal representatives, successors and assigns, (i) a perpetual, nonexclusive easement over the Driveway (the "Driveway Easement") for (i) private driveway ingress and egress, both

pedestrian and vehicular, and (ii) a perpetual, nonexclusive easement over the Outlot for utility purposes (the "Utility Easement"), to permit utility companies and utility contractors to install, construct, maintain, repair and replace (as necessary) utility equipment and facilities including overhead or buried electric, telephone and cable television lines and related facilities and underground electric, gas, water, sewer, telephone and cable television lines and related facilities over, under and across the Outlot, for the nonexclusive use and benefit of the Lots, and for the nonexclusive use and benefit of and by the Owners and Occupants and their guests and invitees; provided, however, any public service corporation installing and/or constructing utility lines and facilities shall confine its easement in accordance with Minn. Stat. 301B.03, as the same may be amended or replaced from time to time. The Driveway Easement and the Utility Easement are collectively referred to herein as the "Easements."

1.2 The use of the Easements created by this Declaration shall in each instance be subject to all terms and conditions of this Declaration.

1.3 Except as may be necessary in connection with the maintenance or improvement of the Easement Area, no Owner or Occupant shall obstruct or interfere with the rights and privileges of other Owners or Occupants in the Easement Area. No Owner or Occupant shall obstruct or interfere with the passage of any vehicle over or across the Driveway Easement. No vehicles shall be parked in or on the Outlot, except on a temporary and occasional basis, as, by example, in the case of a social event or party occurring on one of the Lots.

1.4 An Owner may delegate his/her/its right of enjoyment to the Easements to such Owner's tenants who may occupy such Owner's Lot, and to such Owner's guests and invitees.

1.5 No Owner may exempt himself from the liability for paying such Owner's Cost Share of Easement Area Costs, as those terms are hereinafter defined, by waiver of the use or enjoyment of the Driveway Easement, or by the abandonment of such Owner's Lot.

1.6 No building, edifice, structure, monument, fence, sign or other above grade improvement shall be located, placed, erected or constructed within the



Outlot without the prior written approval of Declarant, or the Declarant's assignee or successor as the Owner of the Outlot, which approval will not be unreasonably withheld, conditioned, or delayed.

2. Driveway Installation; Easement Area Costs; Capital Improvements.

2.1 Declarant shall be responsible for the initial installation and improvement of the Driveway, and shall pay the initial cost thereof. The Driveway shall be constructed within Outlot A at least 10 feet southerly of the northerly line of the Plat of Topside in the approximate location as depicted on Exhibit A attached hereto and labeled "GRAVEL DRIVEWAY."

2.2 From and after the date of the initial installation and improvement of the Driveway, as set forth by Declarant's written notice to the Owners, the Owners, from time to time, of the Lots shall pay, in the respective Cost Shares set forth below, all costs, fees, expenses and other charges and expenditures associated with the Easements (the "Easement Area Costs"), as reasonably determined by the Administrator, as that term is defined below, including without limitation: (a) all costs of maintaining, repairing and replacing, if necessary, the Driveway within the Outlot to at least the standard of quality as may be required from time to time by any applicable regulations and ordinances of the County or City and otherwise in a good and safe condition; (b) all costs of snow plowing and snow removal, sanding and salting, as necessary, sweeping and the clearing of any debris, lighting, striping and curbing, all as may be reasonably necessary or as may be required by applicable County or City regulations or ordinances; (c) such real estate taxes and assessments, if any, that may be levied on Outlot A; (d) the expense of such landscaping and grounds maintenance, including tree and brush removal, on the Outlot adjacent to the Driveway as may be required from time to time to maintain the Driveway and the landscaping associated therewith on the Outlot in a neat, clean, well-maintained and attractive condition; (e) such capital expenditures as may be reasonably required to repair, maintain and replace, if necessary, the Driveway within the Outlot and any related Outlot A improvements, and to keep the same in good condition and repair, with improvements beyond the foregoing

to be addressed as set forth in Section 2.3 below; (f) the cost of installing and maintaining any directional signage; (g) the prorata costs of any caretaker, administrator, secretarial assistant or other person employed or retained to manage or maintain the Driveway and adjacent landscaping, or to account for and invoice Easement Area Costs; and (g) any maintenance, repair and replacement costs, expenses, capital expenditures, fees and any other charges that may relate to the Utility Easement.

2.3. Notwithstanding the foregoing, following the initial installation and improvement of the Driveway, the Administrator's right to make and charge for capital improvements (including, by example and not by way of limitation, entrance monuments or pillars, paver stones, fencing, and bordering trees or shrubbery) shall be limited as follows. The Administrator may propose ordinary and typical capital improvements to the Owners, and include with the proposal, as may be applicable, plans, specifications, cost estimates and a proposed schedule for installation. The Owners shall accept or reject such proposal(s) within 30 days of receipt thereof. A failure to respond to a proposal within such 30 day period shall be deemed acceptance. Upon acceptance, the Administrator may proceed with the proposed improvement, and charge the cost thereof to the Owners on the same 50/50 Cost Share basis as other Easement Area Costs. If an Owner rejects the proposal within said 30 day period, the Administrator may nonetheless proceed with the proposed improvement, but in that event may not charge the other Owner(s) for its/their Cost Share(s) thereof. Regardless of the foregoing, the Administrator shall not install any capital improvement that is extreme, ornate, out of the ordinary or otherwise unusual, when compared to improvements to other shared driveways or roadways serving Lake Minnetonka properties, without the prior consent of all Owners.

3. Cost Shares. The respective Owners of the two Lots shall each pay and be responsible for equal 50% percentage shares ("Cost Share" or "Cost Shares") of the Easement Area Costs. Notwithstanding the foregoing, should the Administrator, as that term is defined below, determine that Easement Area Costs were caused or increased

solely by the act or actions of the Owners of only one of the Lots, as in the case of that Lot Owner's negligence or intentionally wrongful act or actions, or such Owner's excessive or extraordinary use of the Outlot, then in any of those events, the Administrator may adjust the equal share percentages set forth above to reflect the damage or excessive use by that Owner or those Owners.

4. Administration. The Owners of the most easterly Lot, being Lot 2, and such Owners' successors and assigns, shall administer the provisions of this Declaration unless and until the Owners of the Lots both agree to the appointment of a different Administrator. The Owner then acting as the Administrator of this Declaration (the "Administrator"), in his, her or its reasonable discretion, shall make all decisions with respect to what Outlot repair or improvements is to be performed, what times or frequency the repairs or Outlot A improvements are to be made, and what Easement Area Costs are to be incurred and billed, and what times or frequency the billings are to be made. The Administrator, in his, her or its reasonable discretion, may determine the procedure for billing the Owners of the Lots, and may bill the Owners in advance of Easement Area Costs being incurred. Such costs may be billed for such periods of time, and at such frequency as the Administrator may reasonably determine from time to time. The Administrator shall pay any Outlot real estate taxes and special assessments subject to reimbursement by the Owners, as part of Easement Area Costs. The Administrator shall maintain, or cause to be maintained, the Driveway and adjacent landscaping on Outlot A in a neat, clean and attractive manner and in a manner at least consistent with the applicable provisions of the County's or City's ordinances, and otherwise in a good and safe condition. The decisions of the Administrator shall be at the Administrator's reasonable discretion; provided, however, that an Owner may seek, by action for declaratory judgment or other available remedy, a determination by the Hennepin County District Court of the reasonableness of the Administrator's decisions. In such event, the Court's decision of reasonableness shall be determinative, and the prevailing party in any such proceeding may recover from the non-prevailing party the prevailing party's reasonable costs and attorney's fees in such proceeding.

5. Payment of Cost Shares.

5.1 Each Owner of a Lot shall pay the Administrator a sum equal to such Owner's Cost Share, in monthly, quarterly, semi-annual or annual installments, as determined by the Administrator. Unless otherwise elected by the Administrator, such installments shall be payable in advance, and shall be due on the first day of such payment period. Installments not paid within fifteen (15) days of the due date thereof shall accrue interest from such due date at the rate of three percent (3%) per annum above the prime rate published in the Money Rates section of the *Wall Street Journal* (or a comparable substitute rate chosen by the Administrator, if the *Wall Street Journal* prime rate is no longer available), or at the highest interest rate permitted by law, whichever is less (the "Default Rate"). If payable in advance, such installments shall be based on the Administrator's reasonable estimate of Easement Area Costs made and given to each Owner of a Lot at the beginning of each calendar year or as soon thereafter as may be reasonable. Within sixty (60) days after the end of each calendar year, the Administrator shall furnish an itemized statement of actual Easement Area Costs and each Lot Owner's Cost Share thereof together with copies of any bills, invoices or other documents to substantiate such statement. If, at the end of any calendar year, the amount paid by the Owner of a Lot during the preceding calendar year is less than such Owner's Cost Share, as shown on the statement, such Owner shall pay such deficiency within thirty (30) days of notice thereof. In the event such Owner has paid more than its Cost Share, as shown on the statement, such overpayment shall be credited against the next payment due the Administrator hereunder. The Administrator may, after reasonable prior notice to the Owners, change its billing procedure or change its estimate of Easement Area Costs to reflect changes in the cost of items constituting Easement Area Costs. Simultaneously with the Administrator's notice, the Administrator shall provide the Owners documentation showing such changes in the cost of items constituting Easement Area Costs.

5.2 The Easement Area Costs and the books and records of the Administrator relating thereto may be audited by any Owner or its authorized representative during normal business hours, on reasonable prior notice to the Administrator. If an Owner challenges the Administrator's computations of the Easement Area Costs, such Owner shall give the Administrator notice stating its objections. If such Owner's audit of the

Easement Area Costs indicates that such Owner overcharged therefor, the Administrator shall promptly repay all such overpayment to such Owner and adjust such Owner's estimated payments of Easement Area Costs if necessary. If such Owner's audit indicates that it was overcharged five percent (5%) or more of the amount such Owner should have paid, the Administrator shall promptly reimburse such Owner for all of its expenses and fees incurred for the audit.

6. Liability Insurance; Waivers of Claims. The Owners shall carry, for the benefit of themselves as a part of their property insurance, or as a rider thereto, liability insurance relating to their use and enjoyment of the Easements. Each Owner hereby waives any claims against each other Owner and against the Owner of the Outlot for damages resulting from, or in any way related to, the use and enjoyment of the Easements, except to the extent such claim is due to the negligence, willful misconduct or illegal acts of any other Owner or Occupant.

7. Enforcement.

7.1 Remedies. In the event of any violation or threatened violation of any of the terms, restrictions, covenants or conditions provided in this Declaration, any one or more of (i) the Administrator, (ii) the Owners of the Lots, (iii) the Owner of the Outlot, and (iv) any of their respective successors or assigns, shall have the right to any remedy available at law or in equity, including, without limitation, the right to enjoin such violation or threatened violation in a court of competent jurisdiction, as well as the right to obtain an order compelling specific performance of the obligations set forth herein, and to recover their reasonable attorneys' fees and costs incurred in prosecuting any such action to obtain an injunction or order compelling specific performance. In addition, in the event the Administrator has not cured a default by it within the notice period provided below, any Owner or Owners may cure such default, and set off the cost of curing such default from future payments of Easement Area Costs due from such Owner or Owners effecting such cure.

7.2 Act of God. If performance of any act or obligation hereunder, except the obligation to pay Easement Area Costs, is prevented or delayed by act of God, war, labor dispute or other cause or causes beyond the reasonable control of the party who is to perform such obligation, the time for the performance of the act or obligation shall be extended for the period that such act or performance is delayed or prevented by any such cause.

7.3 Notice Before Default. An Owner shall not be in default under this Declaration, except under such provisions as require payment or performance on or before a specific date or within a specified period of time, unless such Owner has been given a written notice specifying the default, and fails to cure it within thirty (30) days of such notice, which cure period will be extended as reasonably required to cure such default if the default is not reasonably curable within thirty (30) days, so long as the Owner commences diligently curing such default within such thirty (30) day period

7.4 Collection of Cost Shares. Each present Owner of a Lot, and each future Owner of a Lot, whether or not it shall be so expressed in the conveyance or assignment to such Owner, hereby covenants with the Owners of the other Lot that such Owner shall pay promptly when due such Owner's Cost Share of Easement Area Costs. Each Owner's Cost Share of Easement Area Costs, together with interest at the Default Rate, and costs and reasonable attorneys' fees incurred in collection thereof, shall be a lien against such Owner's Lot from the date such Cost Share, or any installment payment thereof, becomes delinquent, and such lien may be enforced by foreclosure thereof in the same as a mortgage, either by action or by advertisement, the power of sale being hereby expressly granted. However, such lien shall be subordinate to the lien of any first mortgage on a Lot, and the sale or transfer of a Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Percentage Share as to payments thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve a Lot or its Owner from liability for any installments of Easement Area Costs thereafter becoming due or from the lien thereof. Any lien claim filed for record pursuant hereto shall terminate one (1) year after the filing

thereof, unless a foreclosure has been initiated before the end of the one-year period. In addition, each such installment of Easement Area Costs, together with interest thereon at the Default Rate, and costs and reasonable attorneys' fees incurred in collection thereof, shall be the personal obligation of the person or entity who was the Owner of the Lot at the time such installment became payable. The personal obligation for delinquent payments of Easement Area Costs shall not pass to such Owner's successors in title unless expressly assumed by them. Such personal obligations may be enforced by an action at law and by judgment against the Owner in question.

8. Condemnation. In the event the whole or any part of, or any interest in, the Outlot is or are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, the Owner(s) of the Outlot shall be entitled to the entire award, compensation or other payment made by reason of the taking of the Outlot or any part thereof, or any interest therein. Notwithstanding the foregoing, each Lot Owner shall be free to pursue independently claims in condemnation relating to a denial or curtailment of access to such Owner's Lot or to the diminution in value of such Owner's Lot by reason of the loss of access.

9. Future Conveyances. The Easements and the covenants created and declared by this Declaration shall be incorporated by reference in all future conveyances, mortgages, assignments and other transfers of the Lots or the Outlot, or portions thereof; provided, however, that notwithstanding any failure to incorporate this Declaration by reference in such future conveyances, mortgages, assignments and other transfers, such easements and covenants shall run with the Lots and the Outlot as easements and covenants appurtenant thereto without the necessity of specific reference thereto or conveyance, assignment, mortgage or other transfer thereof.

10. No Dedication. Nothing contained in this Declaration shall be deemed to constitute a gift, grant or dedication of any portion of the Outlot to the general public for



any public purpose whatsoever, it being the intention of the Declarant that, except as otherwise set forth herein, this Declaration shall be limited to the nonexclusive use of the Owners and Occupants of the Lots.

11. Amendment; Termination. The Easements and the covenants created and declared by this Declaration may, at any time and from time to time, be amended or terminated upon the filing for record in the office of the Hennepin County Recorder/Registrar of Titles an agreement amending or terminating this Declaration, as the case may be, executed in the manner required by law for the recording of a conveyance of real property by all of the then Owners, both legal and equitable, of the Lots and the Outlot, and consented to by the mortgagees of the Lots and the Outlot, if a Lot or the Outlot is then subject to a mortgage or mortgages.

12. Term. The covenants created by this Declaration shall continue in full force and effect for so long as the Easements created and declared hereby shall continue.

13. Warranties of Title. Declarant represents and warrants that the parties comprising the Declarant are the fee owners of the Lots and the Outlot as of the date hereof.

14. Tree Preservation Covenants. Declarant wishes to preserve trees along the northerly boundary line of Outlot A and along the common boundary line between Lot 1 and Lot 2. Accordingly, Declarant hereby declares and creates a tree preservation area (the "Tree Preservation Area") described as follows:

The northerly ten (10) feet of Outlot A and the northerly ten (10) feet of Lot 1, Block 1, Topside, together with the easterly ten (10) feet of Lot 1 and the westerly ten (10) feet of Lot 2, Block 1, Topside.

The Owners of the Property from time to time, and such Owners' heirs, representatives, successors and assigns, shall use all reasonable effort and take all reasonable steps to



preserve and maintain the trees located within the Tree Preservation Area, and shall not cut down or remove those trees, unless the same become so damaged or diseased that to maintain the same would cause an unsightly or dangerous condition. During any construction on a Lot, the Owner of such Lot under construction shall use all reasonable care, caution and protection to prevent such construction from damaging or destroying the trees within the Tree Preservation Area.

15. Miscellaneous.

15.1 Notices. Any notices and other communications permitted or required by the provisions of this Declaration shall be in writing and shall be deemed to have been properly given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage, or delivery by national overnight courier, and addressed to the respective addresses of the Owners of the Lots or the Outlot, as the case may be, or to a different address within the United States of America as otherwise designated by an Owner following at least ten (10) days prior notice thereof to the other Owners. Each such notice shall be effective upon being so deposited. The time period within which a response to any such notice must be given shall commence to run one business day after the date the notice is given. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving at least ten (10) days' notice thereof, a Declarant, Owner or Occupant shall have the right from time to time and at any time during the term of this Declaration to change its address and shall have the right to specify as its address any other address within the United States of America. As of the date of this Declaration, Declarant's address for notice purposes is 825 Old Crystal Bay Road, Wayzata, MN 55391-9365. When the Lots are sold, the Owner(s) of the Lots shall provide the Administrator their respective addresses for notice purposes.

15.2 No Partnership. Nothing contained in this Declaration and no action by the Declarant or Owners shall be deemed or construed by the Declarant or

Owners or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among any of the Declarant or Owners.

15.3 Severability. If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) shall not be affected thereby, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

15.4 Governing Law. This Declaration shall be construed in accordance with the laws of the State of Minnesota.

15.5 Captions. The captions of the paragraphs of this Declaration are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

15.6 Time. Time is of the essence of this Declaration.

15.7 Binding Effect. The provisions of this Declaration shall be binding on the Owners and their respective successors and assigns.

IN AGREEMENT, this Declaration has been executed by the Declarant effective as of the date first above written.

*[Signatures appear on following page.]*

THIS INSTRUMENT DRAFTED BY:

John B. Winston, Winston Law Office, 815 Wayzata Blvd. East, Wayzata, MN 55391

**DECLARANT:**

Judson M. Dayton

Judson M. Dayton, individually and as Trustee under The Judson M. Dayton Revocable Trust Agreement dated October 31, 1988, as amended

Shelley Mydra-Dayton

Shelley Mydra-Dayton, individually and as Trustee under The Judson M. Dayton Revocable Trust Agreement dated October 31, 1988, as amended

State of Minnesota)

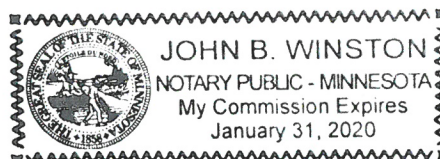
) ss.

County of Hennepin)

This instrument was acknowledged before me on July 21, 2018, by Judson M. Dayton and Shelley Mydra-Dayton, husband and wife, as individuals and as Trustees under The Judson M. Dayton Revocable Trust Agreement dated October 31, 1988, as amended.

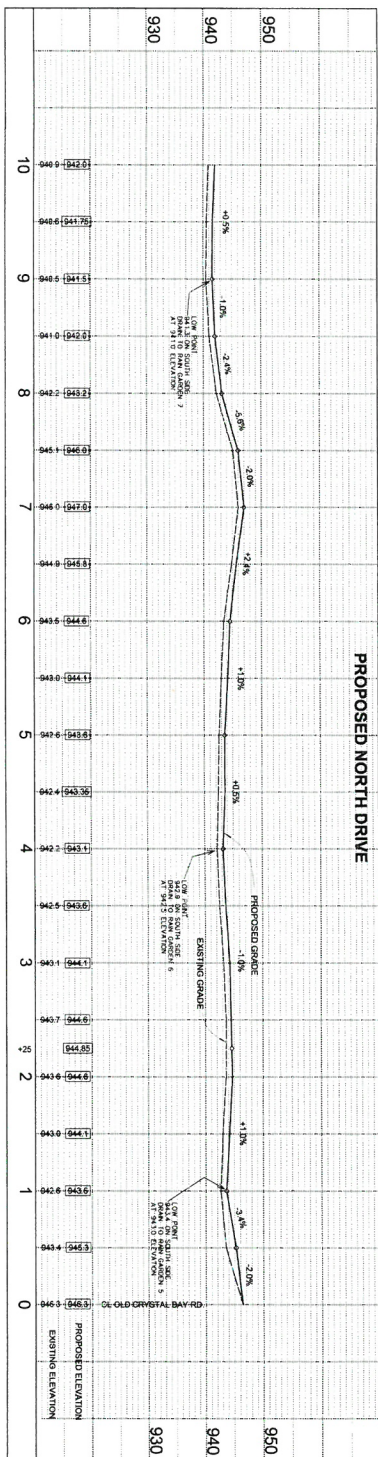
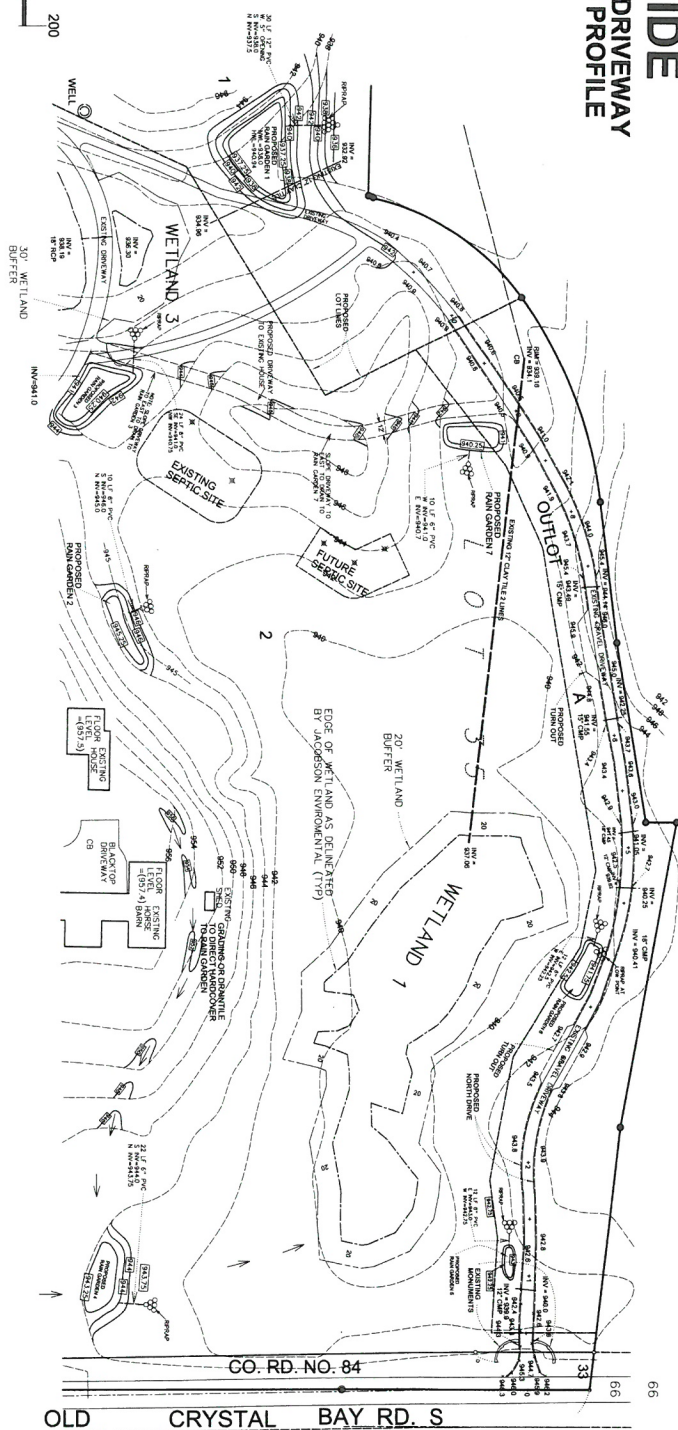
[Signature]

Notary Public



18-096

## TOPSIDE PROPOSED DRIVEWAY PLAN AND PROFILE



3

### REVISIONS

DATE	REVISIONS
7-12-18	UPDATED NO CHANGES
7-25-18	ADDED RAIN GARDENS
8-15-18	ADDITIONAL DETAILS
8-24-18	REVISED RAIN GARDENS

### DESIGNER

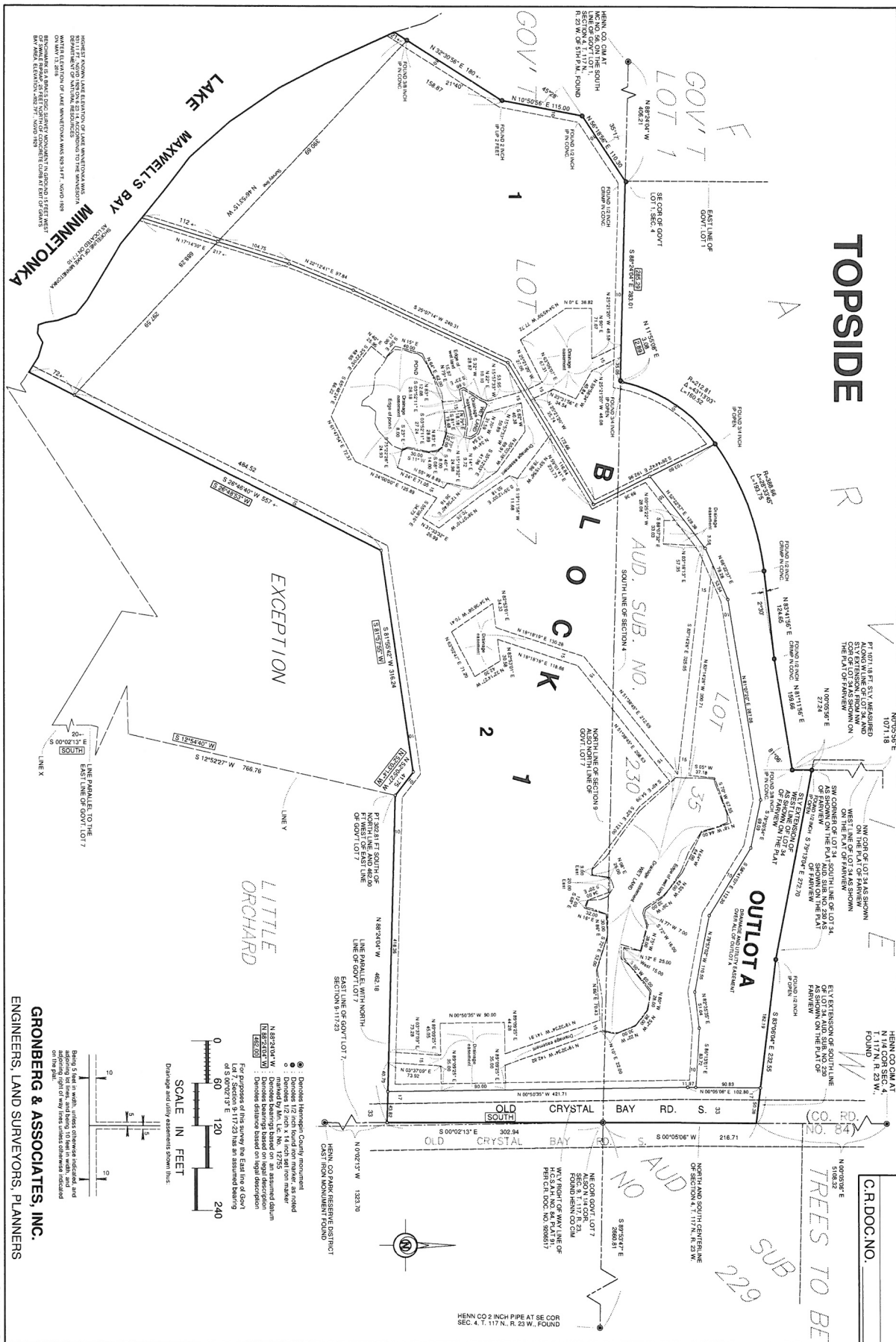
DRAWN  
CHECKED

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.  
*Mark A. Hering*  
DATE: 8-27-18 MINN. LICENSE NUMBER 12226

DATE  
5-7-18  
BY  
1"=50' H  
1"=10' V  
AKW  
18-096



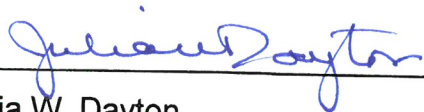
**GRONBERG & ASSOCIATES, INC.**  
CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS  
445 N. WILLOW DRIVE LONG LAKE, MN 55356  
PHONE: 952-473-4141 FAX: 952-473-4435





MORTGAGEE'S CONSENT  
TO THE DECLARATION

Julia W. Dayton, who holds a mortgage on the Property described in the foregoing Declaration, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby consents to the Declaration, and consents to the Easements defined and described therein and the tree preservation provisions thereof. Said mortgage shall be subordinate to the Easements.

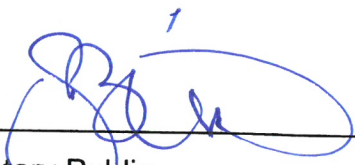
  
\_\_\_\_\_  
Julia W. Dayton

STATE OF MINNESOTA)

) ss

COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on  
July 30 2018, by Julia W. Dayton, a single person.

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

