

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

DIRT INC.

Dated as of _____, 2021

DEVELOPMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("City"), and DIRT, INC., a corporation created and existing under the laws of the State of Minnesota ("Developer"); as used herein, the term, "Developer", shall include Dirt, Inc. and all heirs, successor in interest, and assigns of Dirt, Inc..

RECITALS

WHEREAS, Developer proposes to develop a 4.24-acre parcel of land located on the west side of Decker Road between Anderson Rd. and Mall Dr. in Duluth, Minnesota, with the complete legal description attached hereto as Exhibit A (the "Property"); and

WHEREAS, Developer desires to conduct site development activities and develop the Property for Fourteen (14) residential homes with a private driveway accessed from Decker Road, private storm water management facilities, public utilities, and certain other site improvements, with boundaries around and between the residential homes established through recordation of a Common Interest Community (C.I.C.) Plat, (the "Project"); and

WHEREAS, in furtherance of development of the Project, Developer has applied to City Planning Commission for approval of a Special Use Permit for a Cottage Home Park designation to allow clustered development designed around a centralized community space, the site plan of which is attached hereto as Exhibit B (the "Plan"); and

WHEREAS, Developer has agreed , upon future request by the City to dedicate to the public an easement of 60 feet in width along the southern property line more particularly described on Exhibit C, attached hereto and made a part hereof (the "Easement"); and

WHEREAS, Developer has committed to include in the Declaration for the C.I.C. (the "Declaration") a commitment on the part of the home owner's association to be created pursuant to the Declaration (the "HOA") to join in the dedication of the Easement, if and when it occurs, and to agree to the assessment of the cost of the hereinafter-

described road to be constructed within the Easement (the "Road"), if and when assessed; and

WHEREAS, Developer has agreed that the cost of the Road shall be assessed against the Property as hereinafter provided for.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

AGREEMENT

1. Developer's Duty and Compliance. Development of the lots and homes created as part of Project must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer shall be responsible for obtaining all approvals and permits of any kind required to implement the Project from any governmental agency having jurisdictions with regard thereto, including but not limited to roadway access permits, wetland permits, storm water management permits, utility construction permits, fill and grading permits, erosion and sediment control permits, and building permits.

2. Pre-conditions to Issuance of Building Permits: Developer agrees that prior to the issuance of any building permits for the construction of any structure on the Property, the following shall have been completed:

A. Recording of Agreement: Developer shall have caused this Agreement to have been recorded against the Property in the Office of the County Recorder for St. Louis County, Minnesota and shall have caused evidence of such recording to have been presented to the City Director of Planning and Economic Development, or his or her designee in writing ("Director").

B. Declaration Developer agrees that the Declaration shall be subject to the approval of the Director and that, upon such approval, Developer shall cause the Declaration to be recorded against the Property in the Office of the County

Recorder for St. Louis County, Minnesota and shall have caused evidence of such recording to have been provided to the Director. The Declaration shall include provisions committing the HOA to commit to join in the dedication of the Easement, to limit the use of the portion of the Property included in the Easement in conformance with the limitations contained in Paragraph 4 below and to agree to the assessment of the cost of Road to be constructed within the Easement against the Property. The Declaration shall further provide that the foregoing provisions of the Declaration cannot be amended without the prior approval of the Director.

3. Easement Conveyance. As a condition of the grant by City of the Special Use Permit referred to above, upon Sixty (60) days advance notice, to Developer, Developer agrees to convey and dedicate to the City in trust for the general public the Easement for road and utility purposes over the portion of the Property legally described on Exhibit C at no cost to City. Developer warrants and represents to City that it has marketable fee title to the Property free and clear of all mortgages, liens and other encumbrances except for any mortgages existing at the time of the execution of this Agreement with regard to which Developer warrants that the Mortgagee holder thereof consents to this agreement and agrees to subordinate its mortgage to this Agreement; any such Mortgagee's consent shall be evidenced by its execution of consent at the end of this Agreement. Developer further warrants that it has the right to convey said easement and to dedicate the easement to the City free and clear of any encumbrances or shall have established to the satisfaction of the Director, in the exercise of his or her sole discretion, that Developer has the right to so convey and dedicate such interests.

4. Limitation of Easement Use. Developer and City agree that prior to the conveyance of the Easement to the City, Developer shall have use of the Easement area only for residential driveway purposes and for no other purpose. In particular, Developer shall not allow to be constructed any improvements or subsurface utilities, except for public utilities, within the Easement.

5. Assessment

A. Benefits of and Payment for the Road

In the event that at any time, City determines it to cause the Road to be constructed in the Easement, Developer agrees that the construction of the Road constitutes public improvements which confer special benefits accruing to each of the Property which equals or exceeds the amount of the cost of constructing the Road (the "Cost"). It is hereby stipulated and agreed that value of the benefits conferred upon the Property are equal to or exceed the amounts to be assess against Property, without reference to any benefits conferred upon other benefitted properties.

B. Developer Agrees to Assessment

Because the Developer agrees that the value of the benefits to the Property arising out of the construction of Road equals or exceeds the anticipated Cost thereof, Developer agrees to accept and to pay an Assessment in the amount of Cost against the Property by City to defray the costs of said improvements. Said Assessment shall be levied against the various parcels of the Property which shall run for a term of fifteen (15) years at the City's standardized rate for special assessments then in effect.

C. Waiver of Defenses

Developer, for itself and its successors and assigns and for any other affected party, specifically waives, without limitation, all defenses of any kind whatsoever, including, but not limited to, procedural defenses to the Assessments to be levied pursuant to this Article and agrees that Developer and its successors and assigns, if any, shall be bound thereby.

.6. Runs with the Land This Agreement shall be deemed to run with the land and to be binding on Developer, its successors, heirs and assigns if any.

7. Developer's Default. In the event Developer fails to comply with or perform any

terms, conditions, undertakings, or obligations under this Agreement, the parties hereto agree that no award of damages to City could constitute an adequate remedy for such default. Therefore, City may, in addition to and not in lieu of any other remedies or rights available to it by law or equity:

A. Institute an action for specific enforcement to compel Developer to perform of any or all of its obligations under this Agreement. Developer acknowledges that the rights of City to performance of the obligations of Developer pursuant to this Agreement are special and unique, and that, in the event Developer violates, fails or refuses to perform any condition, agreement or provision herein, City may be without an adequate remedy at law.

. Exercise any other remedy available to the City in law or in equity. No remedy conferred in this Development Agreement is intended to be exclusive. The election of any one or more remedies shall not constitute a waiver of any other remedy. City may, but is not obligated to, exercise any of the remedies referred to in this paragraph.

8. Notices. Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City: City of Duluth
Attn: Director of Planning and Economic Development
411 West First Street, Room 160
Duluth, MN 55802

In the case of Developer: Dirt Inc.
Attn: Rob Irving
5963 W. Arrowhead Rd.
Duluth, MN 55810

9. Binding Effect. This Agreement shall be deemed to run with the land and shall

inure to the benefit of the parties hereto and to their successors and assigns.

10. Term. The term of this Agreement shall commence upon the date of attestation by the City Clerk and shall continue in perpetuity or until such time as the Easement has been legally dedicated.

11. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts sitting in St. Louis County, Minnesota, and waive any objections to such location based on jurisdiction, venue or inconvenient forum.

12. Construction of Agreement. Developer and City have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13. Severability. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

14. Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH,
a Minnesota Municipal Corporation

DIRT, INC.,
a Minnesota Corporation

By _____
Emily Larson
Its Mayor

By _____

Attest:

By _____
Its City Clerk

(date)

Countersigned:

Its Auditor

Approved:

Its Assistant City Attorney

STATE OF MINNESOTA)
) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of Dirt Inc., a Minnesota Corporation, on behalf of the company.

Notary Public

STATE OF MINNESOTA)
) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Emily Larson the Mayor of the City of Duluth, a Minnesota Municipal corporation, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Chelsea Helmer, the City Clerk of the City of Duluth, a Minnesota Municipal corporation, on behalf of the City.

Notary Public

EXHIBIT A

Existing Legal Description

S1/2 OF NE1/4 OF NE1/4 OF SW1/4 EX PART BEG
AT NE COR THEREOF THENCE SOODEGO1 ' 08"W ALONG
E LINE 109.77 FT THENCE S89DEG30 ' 20W 300 FT
THENCE NOODEGO1 ' 08"E 109.77 FT TO N LINE OF
SAID S1/2 OF NE1/4 OF NE1/4 OF SW1/4 THENCE
N89DEG30 ' 20"E ALONG SAID N LINE 300 FT TO PT
OF BEG

EXHIBIT B – SITE PLAN

EXHIBIT B

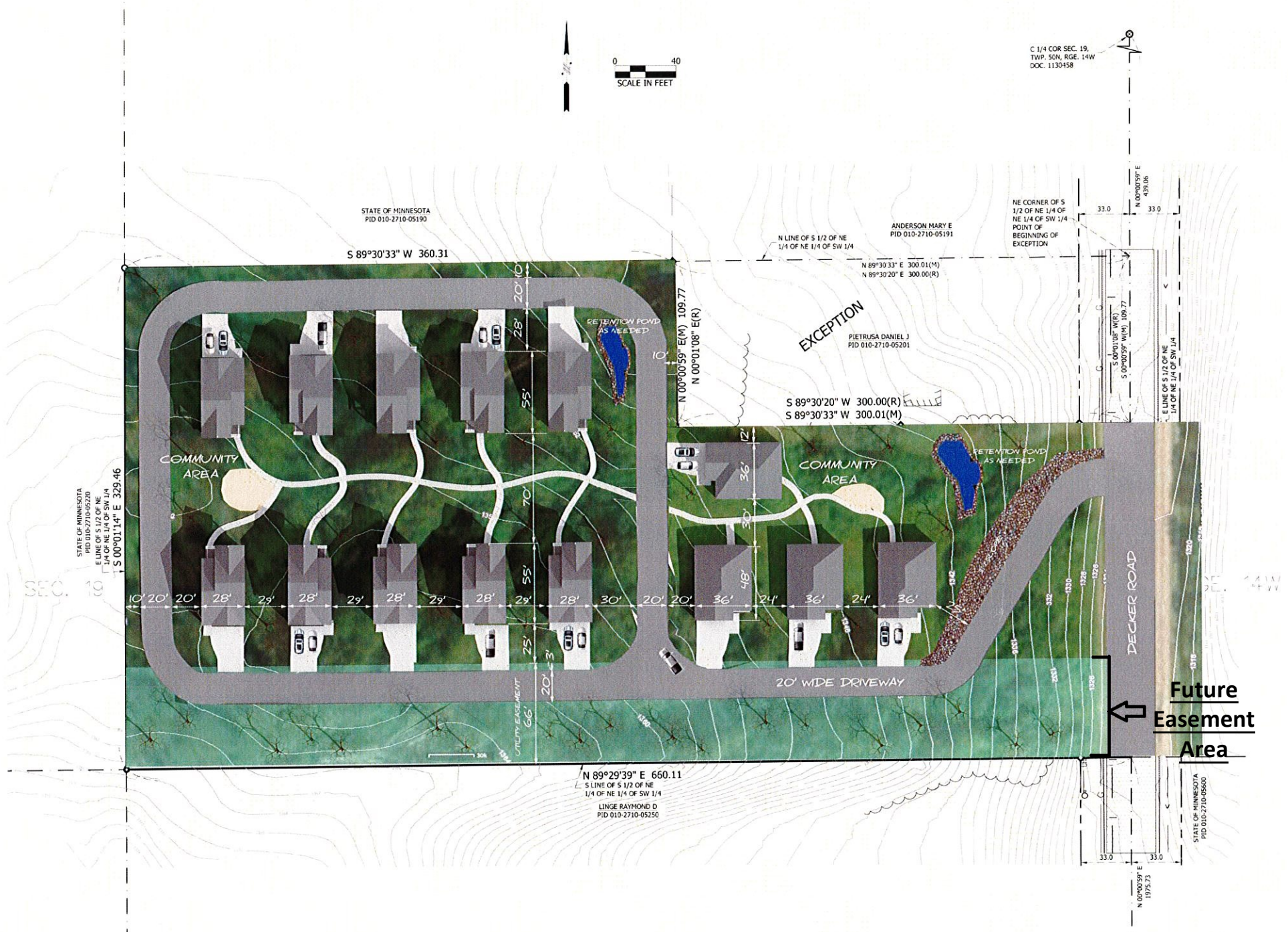
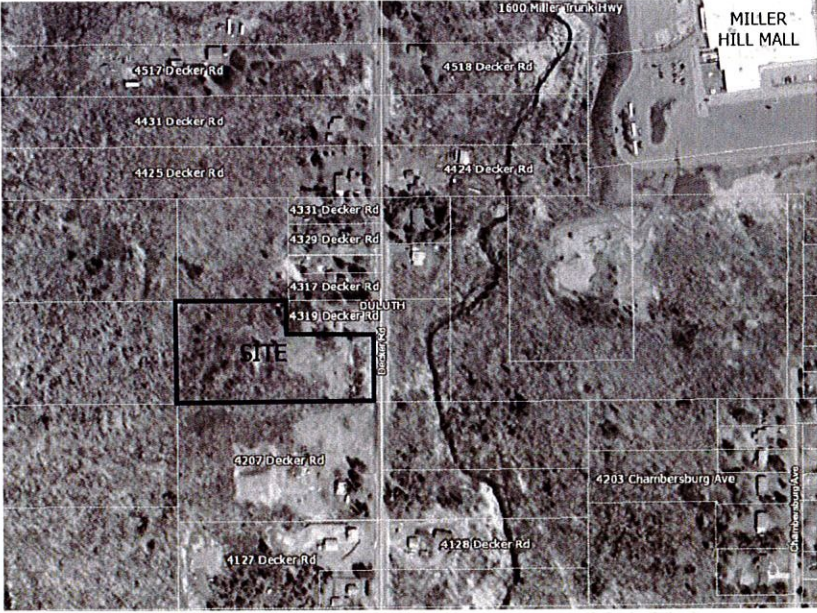
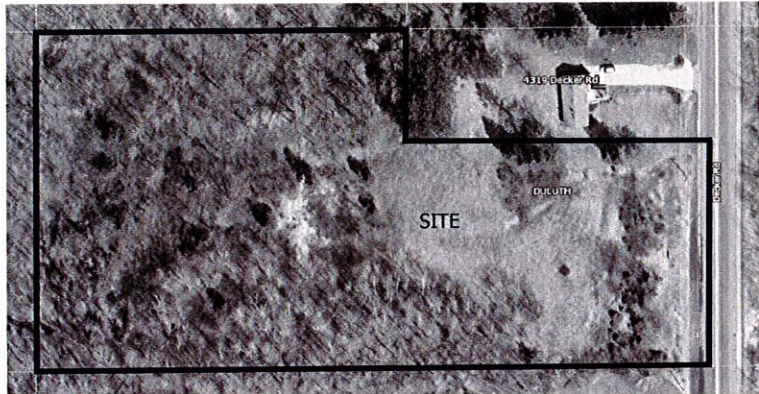
PRELIMINARY LAYOUT

LOCATED IN PART OF SOUTH ONE HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER SEC. 19, TWP. 50 NORTH, RGE. 14 WEST OF THE FOURTH PRINCIPAL MERIDIAN
ST. LOUIS COUNTY MINNESOTA

AREA SUMMARY	
Total Acreage	4.24 AC
Total Lot Acreage - R/W	4.07 AC

TABLE 50-16.5-1 R-1 DISTRICT DIMENSIONAL STANDARDS	
Lot Standards	Lot Standards
Minimum lot area per family (One-family): 1/2 acre	The number of 4,000 sq. ft. or coverage of developed 1/2 acre lot on the block face.
Minimum lot area per family (Two-family): 1/2 acre	The number of 3,000 sq. ft. or coverage of developed 1/2 acre lot on the block face.
Maximum lot area per family (Two-family): 1/2 acre	3,000 sq. ft.
Minimum lot frontage (One-family): 33.0 ft.	The number of 45 ft. or coverage of developed lot on the block face.
Minimum lot frontage (Two-family): 33.0 ft.	The average of developed lots with double lots on the block face, but not less than 40 ft.
Minimum lot frontage (Three-family and four-family): 33.0 ft.	The average of 23 ft. or coverage of developed lot facing the same street.
Structure Standards	Structure Standards
Maximum depth of front yard: 8 ft.	8 ft.
Minimum width of side yard: 5 ft.	Combined width of side yards must be at least 12 ft.
Minimum width of side yard: 5 ft.	12 ft. if adjacent to another lot.
Minimum width of side yard: 5 ft.	25 ft. if adjacent to planned street.
Minimum depth of rear yard: 25 ft.	25 ft.
Maximum height of building: 32 ft.	32 ft.
Minimum height of building: 8 ft.	8 ft.
Minimum height of building: 8 ft.	8 ft.
Minimum height of building: 8 ft.	8 ft.

UTILITY PROVIDERS LIST PER TICKET NO. 173122283
CHARTER COMMUNICATIONS 800-778-9140
CITY OF DULUTH ENGINEERING 218-730-5200
CITY OF DULUTH TRAFFIC 218-730-4420
DULUTH ENERGY SYSTEMS TEAM 218-723-3601
MINNESOTA POWER 608-223-2014



LEGEND	
(M)	FIELD MEASURED DIMENSION
(R)	RECORD DIMENSION
	BITUMINOUS SURFACE
	PROPOSED DRIVEWAY
	EXISTING BUILDINGS
	TREE/BRUSH LINE
	UNDERGROUND GAS
	OVERHEAD UTILITIES
	SANITARY SEWER
	STORM SEWER
	WATER MAIN
	SETBACK LINE
	SECTION SUBDIVISION LINE
	RIGHT OF WAY LINE
	ADJACENT BUILDING LINE
	BOUNDARY LINE AS SURVEYED
	FOUND 1/2 IN IRON PIPE
	FOUND 1 IN IRON PIPE
	FOUND CAPPED REBAR RLS. NO. 10725
	FOUND CAPPED REBAR RLS. NO. 49505
	GUY ANCHOR
	UTILITY POLE
	STORM MANHOLE
	SQUARE GRATE CATCH BASIN

LEGAL DESCRIPTION FOR PRELIMINARY PLAT ONLY
The South one-half of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter (S 1/2 of NE 1/4 of NE 1/4 of SW 1/4, Section Nineteen (19), Township 50 North, Range Fourteen (14), West of the Fourth Principal Meridian, according to the United States Government Survey thereof.
Except that part of the South Half of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter, Section 19, Township 50 North, Range 14 West, St. Louis County, Minnesota, described as follows:
Beginning at the Northeast corner of said S 1/2 NE 1/4 SW 1/4; thence South 89 degrees 01 minute 08 seconds West, along the East line of said S 1/2 NE 1/4 SW 1/4 a distance of 109.77 feet; thence South 89 degrees 30 minutes 20 seconds West a distance of 300 feet; thence North 89 degrees 01 minutes 08 seconds East a distance of 109.77 feet to the North line of said S 1/2 NE 1/4 SW 1/4; thence North 89 degrees 30 minutes 20 seconds East, along said North line a distance of 300.00 feet to the point of beginning.

S 1/4 COR. SEC. 19, TWP. 50N, RGE. 14W, DOC. 973552