RESOLUTION 2014-30

RICE CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

FINDINGS AND ORDER REALIGNING A PORTION OF ANOKA COUNTY DITCH 55 AND ABANDONING REMNANT PORTIONS OF THE DRAINAGE SYSTEM OF NO SUBSTANTIAL PUBLIC PURPOSE

Manager [signature] offered the following Resolution and moved its adoption, seconded by Manager [signature]:

FINDINGS

1. The Rice Creek Watershed District (RCWD) is the Drainage Authority for Anoka County Ditch (ACD) 55.

2. The Board of Managers has reviewed a historical and technical analysis of the system which is contained in engineer’s historical review dated August 7, 2012. Said analysis is incorporated by reference into this resolution.

3. On December 12, 2012, the Board adopted Resolution 2012-42 correcting the drainage system record to reflect the functional alignment contained in the engineer’s historical review memorandum.

4. Resolution 2012-42 acknowledged several unauthorized modifications of the drainage system which impact drainage system function.

5. One such unauthorized modification was the alignment of the drainage system through an “L” shaped pond located on a portion of Tract A, Registered Land Survey No. 195, Anoka County, Minnesota, owned by R & R Leasing, Inc.

6. The “L” shaped pond is part of the stormwater and wetland mitigation features of an adjacent development.

7. R & R has requested that the functional alignment of ACD 55 through the “L” shaped pond be realigned and placed into a buried tile adjacent to the pond. This realignment would be similar to the original alignment and drainage efficiency of ACD 55 through Tract A of Registered Land Survey No. 195.

8. The realignment will facilitate the continued function of ACD 55 and the continued function of the stormwater and wetland mitigation features of the adjacent development.

9. Upon completion of the realignment, the functional, but unauthorized alignment of ACD 55 through the “L” shaped pond will no longer be of public benefit.
10. R & R has executed an easement for the purpose of the realignment. (Attachment A).

11. Statutes Section 103D.335, subd. 8, allows the Board to "construct, clean, repair, alter, abandon, consolidate, reclaim or change the course or terminus of any public ditch...within the watershed district."

12. Statute section 103E.227, authorizes the Board, as drainage authority for ACD 55, to reroute the drainage system for beneficial purpose.

13. Statute section 103E.701, authorized the Board, as drainage authority for ACD 55, to reroute the drainage system for the purpose of wetland avoidance.

14. Statutes section 103E.806, authorizes the Board, as drainage authority for ACD 55, to abandon a portion of the drainage system that does not serve a substantial useful purpose as part of the drainage system to any property remaining in the system and is not of a substantial public benefit and utility.

15. The Board noticed and held a hearing on this action on September 24, 2014 to inform the public of the action and take public comment.

16. Two members of the public appeared and provided comment as follows (the Board’s response is indicated in italics following the individual comment):

Lynette Aubin, 15135 Elmcrest Avenue N., Hugo, MN, provided the Board comments pertaining to a local road ditch drainage issue with the cities of Lino Lakes and/or Hugo.

_The Board finds that the local road ditch drainage issues are not caused by the current ACD 55 alignment and are not appropriately resolved by the alignment re-route subject to these proceedings._

Lee Perrault, representing Bernier Family Farm, residents address 20362 Fenston Avenue N., Forest Lake, MN, provided comments to the Board pertaining to the lack of function of the existing tile on ACD 55. Mr. Perrault also provided comments to the Board regarding tile removed from Branch No. 8 and requested that the Board Order fencing to be installed on his property and for trees and scrub to be removed.

_The Board finds that although the perceived lack of tile function may be partially relieved by the reroute, the main limitation on the ACD 55 tile system is the limited outlet of Branch No. 8 under Interstate-35E. The Board finds that the comments relating to tile on Branch No. 8, installation of fencing, and tree and scrub removal are not at issue or related to these proceedings to re-route and partially abandon a portion of ACD 55._

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17. The proposed realignment and partial abandonment of ACD 55 is beneficial and serves the public interest by ensuring efficient function of ACD 55 and avoiding interference with established wetland mitigation and stormwater management facilities.

18. The portion of the functional alignment of ACD 55 to be abandoned, once the realignment occurs, will not serve a substantial useful purpose as part of the drainage system to any property remaining in the system and is not of a substantial public benefit and utility.

Therefore, the RCWD Board of Managers makes the following:

ORDER

A. The Board of Managers hereby grants the request of R & R Leasing, Inc., to realign a portion of ACD 55 as reflected in the easement (Attachment A).

B. The Board of Managers hereby vacates and abandoning that portion of the functional alignment of ACD 55 running through the "L" shaped pond effective upon completion of the realignment ordered herein.

C. The Board of Managers directs its engineer to modify the official profile of ACD 55 to reflect the changes ordered herein and to file the modified official profile in the drainage system record along with this Order.

D. The Board of Managers directs its staff to record the easement (Attachment A) with the Anoka County Recorder and to provide a copy of the recorded easement to R & R Leasing, Inc.

E. The Board of Managers directed staff to add the public comments into the recitals and have the president sign the resolution.

The question was on the adoption of the Resolution and there were 5 yeas and 0 nays as follows:

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Upon vote, the Chair declared the Resolution **passed**.

Patricia Preiner, President

Dated: September 24, 2014

* * * * * * * * *
I, Patricia Preiner, President of the Rice Creek Watershed District, do hereby certify that I have compared the above resolution with the original thereof as the same appears of record and on file with the District and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 24th day of September 2014.

Patricia Preiner, President
EASEMENT FOR PUBLIC DRAINAGE SYSTEM REALIGNMENT

1. **R & R Leasing, Inc. (R & R),** a Minnesota corporation, of 7625 24th Avenue, P.O. Box 368, Lino Lakes, Minnesota is the owner of real property in Lino Lakes, Anoka County, Minnesota, legally described as follows:

   Tract A, Registered Land Survey No. 195, Anoka County, Minnesota; subject to an easement for County Ditch No. 55 as shown by the map of county ditch No. 55 on file in the office of the Anoka County Surveyor (Burdened Property).

2. **Rice Creek Watershed District (Rice Creek),** of 4325 Pheasant Ridge Drive, Suite 611, Blaine, Minnesota is the Drainage Authority for Anoka County Ditch 55 pursuant to Minnesota Statutes Chapters 103D and 103E.

3. The burdened property is currently traversed by a portion of Ditch 55 which R & R would like to re-align for the convenience of future use of its property.

4. Rice Creek intends to permanently realign a portion of Ditch 55 on the burdened property as part of a repair of the ditch and in order to restore the originally constructed hydraulic efficiency of the Ditch.

5. Upon realignment, the original alignment and easement of Ditch 55, as shown by the map of county ditch No. 55 on file in the office of the Anoka County Surveyor, shall, by separate action of the Rice Creek, be abandoned and replaced by the easement granted herein.

6. To facilitate the realignment, R & R, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, conveys to Rice Creek an easement for the benefit of Ditch 55 across and through the Burdened Property as legally described on Exhibit A attached hereto (Easement Property). A depiction of the Easement Property is shown on Exhibit B attached hereto. The easement shall be for the limited purpose of construction,
operation, inspection and maintenance of a public drainage system designated as Anoka County Ditch 55.

7. This conveyance is subject to only: (A) Building and zoning laws, ordinances, state and federal regulations; (B) Reservation of any mineral rights by the State of Minnesota; and (C) Utility and drainage easements of record.

8. Rice Creek shall pay all state deed taxes.

9. This easement shall run with the Burdened Property and bind R & R, its successors and assigns. It shall benefit Rice Creek, its successors and assigns.

Dated: ____________________________

R & R Leasing, Inc.

By ____________________________
Gerald Rehbein
Its Chief Executive Officer

STATE OF ________________ )
COUNTY OF ________________ ) SS

On this _______ day of _____________, 2014, before me, a Notary Public for this County, personally appeared Gerald Rehbein, to me personally known, who, being by me duly sworn did say that he is the Chief Executive Officer of R & R Leasing, Inc., a Minnesota corporation, and that said instrument was signed on behalf of said entity and acknowledged said instrument to be its free act and deed.

Notary Public

THIS INSTRUMENT DRAFTED BY:
RINKE-NOONAN (JCK)
1015 West St. Germain Street, Suite 300
P.O. Box 1497
St. Cloud, MN 56302-1497
(320) 251-6700
(16266-0023)
EXHIBIT A
LEGAL DESCRIPTION

DITCH EASEMENT

H.B. 3671 S.
950.02

I hereby certify that this survey, plan 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.

Michael E. Connors
Lic No 40035
Date 8-5-14

Houston Engineering Inc.
EXHIBIT B
DRAWING OF EASEMENT LOCATION
CONSENT TO EASEMENT

The undersigned Mortgagee (Document No. 307860 filed with the Anoka County, Minnesota, Recorder) hereby consents to the foregoing Easement for Public Drainage System Realignment on and across the following real property:

Tract A, Registered Land Survey No. 195, Anoka County, Minnesota.

Dated:__________________________

By________________________________

Gordon W. Rehbein

STATE OF ______________________ )
COUNTY OF ____________________) SS

On this _____ day of __________________, 2014, before me, a Notary Public for this County, personally appeared Gordon W. Rehbein, to me personally known, who, being by me duly sworn did say that said instrument was signed on his behalf and acknowledged said instrument to be his free act and deed.

________________________________
Notary Public

THIS INSTRUMENT DRAFTED BY:
RINKE-NOONAN (JCK)
1015 West St. Germain Street, Suite 300
P.O. Box 1497
St. Cloud, MN 56302-1497
(320) 251-6700
CONSENT TO EASEMENT

The undersigned Mortgagee (Document No. 504684.007 filed with the Anoka County, Minnesota, Recorder) hereby consents to the foregoing Easement for Public Drainage System Realignment on and across the following real property:

Tract A, Registered Land Survey No. 195, Anoka County, Minnesota.

Dated: ________________

Central Bank

By ______________________

Its ______________________

STATE OF ___________ )

COUNTY OF ___________ ) SS

On this _____ day of ________________, 2014, before me, a Notary Public for this County, personally appeared ______________________, to me personally known, who, being by me duly sworn did say that he/she is the _______________ of Central Bank, a Minnesota corporation, and that said instrument was signed on behalf of said entity and acknowledged said instrument to be its free act and deed.

__________________________
Notary Public

THIS INSTRUMENT DRAFTED BY:
RINKE-NOONAN (JCK)
1015 West St. Germain Street, Suite 300
P.O. Box 1497
St. Cloud, MN 56302-1497
(320) 251-6700

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