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REC'D BY  
MMB

OCT 05 2004

RESOLUTION

BE IT RESOLVED by the Common Council of the City of Rochester that the City enter into an amendment to the October 8, 2002; Joint Resolution Between the Town of Marion and the City of Rochester Designating an Area for Orderly Annexation to add additional property to the orderly annexation area, the additional property to that described in the attached Exhibit A.

BE IT FURTHER RESOLVED that the City enter into an amendment to the October 22, 2002, Chester Heights Subordinate Service District and Sanitary Sewer Connection Agreement with Olmsted County adding that same property to the agreement.

The Mayor and the City Clerk are authorized and directed to execute the joint resolution and amendment on behalf of the City.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF  
ROCHESTER, MINNESOTA, THIS 19TH DAY OF APRIL, 2004.

John Hunziker  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST:

Mindy Kay Smith  
CITY CLERK

APPROVED THIS 20TH DAY OF APRIL, 2004.

Russell F. Breda  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)

## EXHIBIT A

That part of the Northeast Quarter of Section 11, Township 106 North, Range 13 West, Olmsted County, Minnesota described as follows:

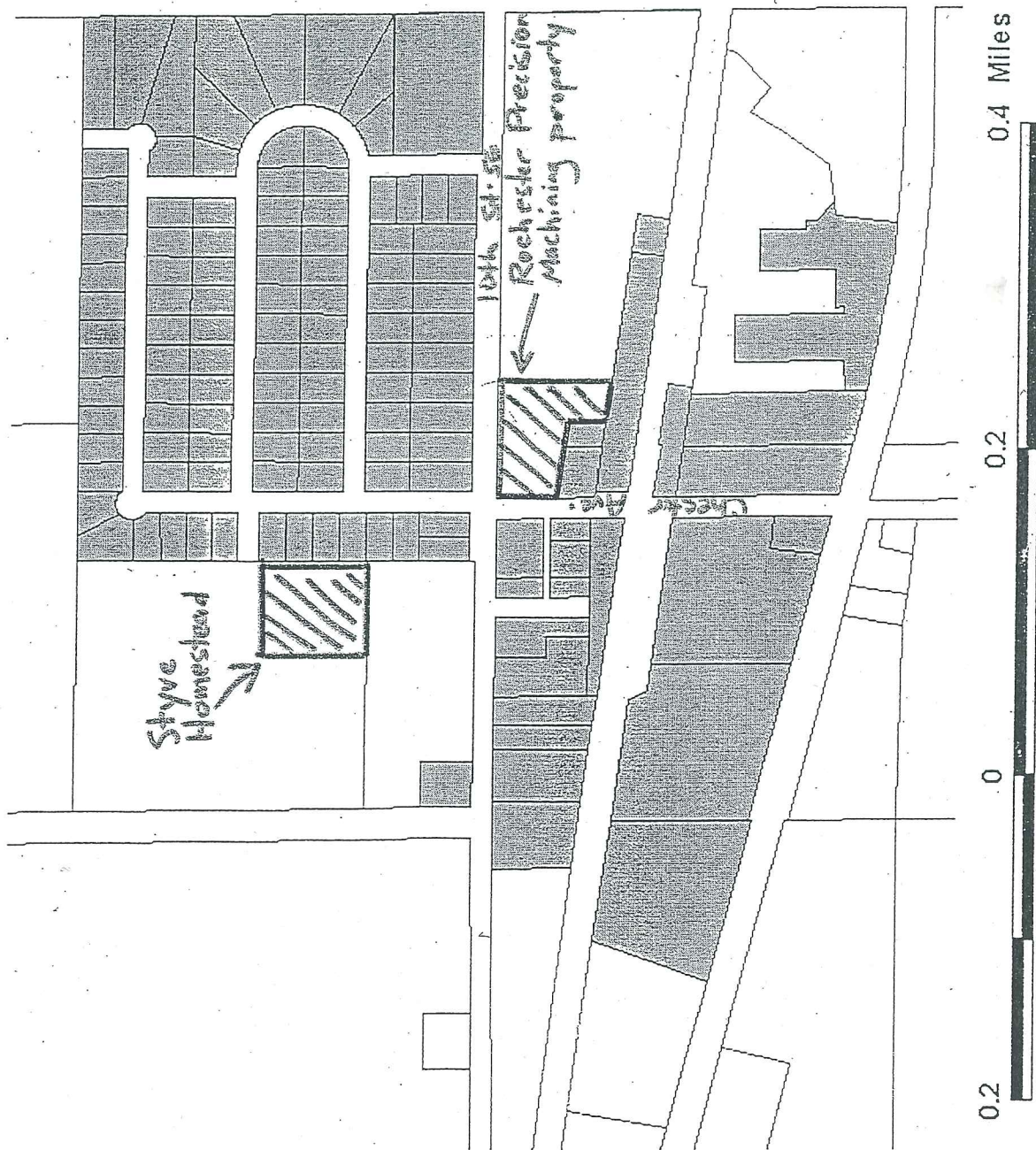
Commencing at the Northeast corner of said Northeast Quarter; thence North  $90^{\circ}00'00''$  West, along the North line of said Northeast Quarter; 1198.16 feet to the point of beginning; thence South  $00^{\circ}00'00''$  (for purposes of this description bearings are assumed and based on the North line of said Northeast Quarter being  $90^{\circ}00'00''$  West), 391.09 feet to the northerly right of way line of the Station grounds of the Chicago and Northwestern Railroad; thence North  $82^{\circ}57'04''$  West, along said right of way, 101.62 feet; thence North  $00^{\circ}00'00''$ , parallel with Marion Road in the Village of Chester, 132.00 feet; thence North  $82^{\circ}57'04''$  West, 296.75 feet to the centerline of said Marion Road; thence North  $00^{\circ}00'00''$ , along said centerline, 210.20 feet to the North line of said Northeast Quarter; thence North  $90^{\circ}00'00''$  East, along said North line, 395.36 feet to the point of beginning; subject to rights of way for County Road 119 over the westerly 33.00 feet and 10<sup>th</sup> Street SE over the northerly 33.00 feet thereof; containing 2.44 acres, more or less, including said rights of way and containing 2.00 acres, more or less excluding said rights of way;

And also;

That part of the southwest quarter (SW  $\frac{1}{4}$ ) southeast quarter (SE  $\frac{1}{4}$ ) of section two (2), township one hundred six (106), range thirteen (13), in Olmsted County, described as the south 300 feet of the east 280 feet of the following described tract: Commencing at the southwest (SW) corner of the southeast quarter (SE  $\frac{1}{4}$ ) of section two (2), and running thence north (N) along the west (W) line of said southeast quarter (SE  $\frac{1}{4}$ ) a distance of 381.22 feet for a place of beginning; running thence north (n) along said west (W) line a distance of 929.18 feet to the northwest (NW) corner of the southwest quarter (SW  $\frac{1}{4}$ ) of the southeast quarter (SE  $\frac{1}{4}$ ) of said section; thence deflect to the right 91 degrees 09 minutes a distance of 864.2 feet to the northwest corner of Chester Heights; thence deflect to the right 89 degrees 34 minutes along the west (W) line of Chester Heights a distance of 931.38 feet; thence west (W) parallel with the south (S) line of said section two (2) a distance of 851.5 feet to the place of beginning; containing 1.93 acres more or less.

# Chester Heights

## Subordinate Service District Boundaries



REC'D BY  
MMB

OCT 05 2004

IN THE MATTER OF THE AMENDMENT TO THE JOINT RESOLUTION  
FOR ORDERLY ANNEXATION BETWEEN THE TOWN OF MARION  
AND THE CITY OF ROCHESTER, MINNESOTA  
PURSUANT TO MINNESOTA STATUTES 414.0325, SUBD. 1

TO: Minnesota Planning Agency  
165 Metro Square Building  
St. Paul, Minnesota 55101

The Town of Marion and the City of Rochester hereby jointly agree that the Joint Resolution Between the Town of Marion and the City of Rochester Designating an Area for Orderly Annexation approved October 8, 2002 be amended to include the property described in the attached Exhibit 1:

WHEREAS, the Owner has petitioned for connection to the City of Rochester sanitary sewer system upon its availability, of that property described in the attached Exhibit 1 situated in the Town of Marion, County of Olmsted, State of Minnesota; and

WHEREAS, the City of Rochester and the Town of Marion, for the purpose of avoiding a dispute over the annexation of the property described in said petition, desire to enter into a joint resolution for orderly annexation and the provision of municipal sanitary sewer service of said property.

NOW, THEREFORE, BE IT RESOLVED by the City of Rochester and the Town of Marion:

1. Exhibit A to the Orderly Annexation Agreement between the Town of Marion and City of Rochester, which agreement was approved October 8, 2002, is amended by adding the property which is situated in the Town of Marion, County of Olmsted, State of Minnesota and which is described on the attached Exhibit 1.

REC'D BY  
MJB

OCT 05 2004

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF  
ROCHESTER, MINNESOTA, THIS 19th DAY OF April, 2004.

John Hinzler  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: Cindy Kay Shew  
CITY CLERK

APPROVED THIS 20th DAY OF April, 2004.

David F. Biade  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)

PASSED AND ADOPTED BY THE TOWN OF MARION, MINNESOTA, THIS 11th  
DAY OF May, 2004.

Roy Byle  
CHAIRMAN OF TOWN BOARD

ATTEST: Janet Hoffmann  
TOWN CLERK

annex\jtres.marion.amd

EXHIBIT 1

REC'D BY  
MMB

OCT 05 2004

That part of the Northeast Quarter of Section 11, Township 106 North, Range 13 West, Olmsted County, Minnesota described as follows:

Commencing at the Northeast corner of said Northeast Quarter; thence North 90°00'00" West, along the North line of said Northeast Quarter; 1198.16 feet to the point of beginning; thence South 00°00'00" (for purposes of this description bearings are assumed and based on the North line of said Northeast Quarter being 90°00'00" West), 391.09 feet to the northerly right of way line of the Station grounds of the Chicago and Northwestern Railroad; thence North 82°57'04" West, along said right of way, 101.62 feet; thence North 00°00'00", parallel with Marion Road in the Village of Chester, 132.00 feet; thence North 82°57'04" West, 296.75 feet to the centerline of said Marion Road; thence North 00°00'00", along said centerline, 210.20 feet to the North line of said Northeast Quarter; thence North 90°00'00" East, along said North line, 395.36 feet to the point of beginning; subject to rights of way for County Road 119 over the westerly 33.00 feet and 10<sup>th</sup> Street SE over the northerly 33.00 feet thereof; containing 2.44 acres, more or less, including said rights of way and containing 2.00 acres, more or less excluding said rights of way;

And also;

That part of the southwest quarter (SW ¼) southeast quarter (SE ¼) of section two (2), township one hundred six (106), range thirteen (13), in Olmsted County, described as the south 300 feet of the east 280 feet of the following described tract: Commencing at the southwest (SW) corner of the southeast quarter (SE ¼) of section two (2), and running thence north (N) along the west (W) line of said southeast quarter (SE ¼) a distance of 381.22 feet for a place of beginning; running thence north (n) along said west (W) line a distance of 929.18 feet to the northwest (NW) corner of the southwest quarter (SW ¼) of the southeast quarter (SE ¼) of said section; thence deflect to the right 91 degrees 09 minutes a distance of 864.2 feet to the northwest corner of Chester Heights; thence deflect to the right 89 degrees 34 minutes along the west (W) line of Chester Heights a distance of 931.38 feet; thence west (W) parallel with the south (S) line of said section two (2) a distance of 851.5 feet to the place of beginning; containing 1.93 acres more or less.

## MINNESOTA MUNICIPAL BOARD OR ITS SUCCESSOR

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IN THE MATTER OF THE DESCRIPTION OF	)	
AN UNINCORPORATED AREA IN MARION	)	
TOWNSHIP AS IN NEED OF ORDERLY	)	JOINT RESOLUTION FOR
ANNEXATION AND CONFERRING JURISDICTION	)	ORDERLY ANNEXATION
OVER SAID AREA IN THE MINNESOTA	)	(CHESTER HEIGHTS SANITARY
MUNICIPAL BOARD OR ITS SUCCESSOR	)	SEWER DISTRICT AREA -
PURSUANT TO MINNESOTA	)	MARION TOWNSHIP)
STATUTES §414.0325, Subd. 1	)	

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WHEREAS, the City of Rochester (hereinafter "City") and Town of Marion (hereinafter "Town") agree that given the potential health threat from individual sewage treatment systems within the area designated in Exhibit A, there is a need for municipal sanitary sewer service; and

WHEREAS, the City and Town agree that orderly annexation and the provision of municipal sanitary sewer service to areas needing such service would benefit the public health, safety and welfare of the entire community; and

WHEREAS, the City and Town agree that there is a public need for the provision of City sewer in accordance with existing and future needs to promote the public health and safety by protecting the region's ground water supply and surface waters; and

WHEREAS, the property described in the attached Exhibit A is presently urban or suburban in nature or about to become so, and the City is capable of providing public sanitary sewer facilities within a reasonable time; and

WHEREAS, the provision of public sanitary sewer by the City can be provided if the process and timing of annexation is clearly identified and jointly agreed upon; and

WHEREAS, the establishment of a process of orderly annexation of said lands will be of benefit to the residents and owners of said lands, and permit the City to make provision for a connection to the municipal sewer facilities in a planned and efficient manner; and

WHEREAS, for the area designated in Exhibit A, the City and the Town desire to accomplish the orderly annexation of said area and the provision of municipal services in a mutually acceptable and beneficial manner without the need for a hearing before the Minnesota Municipal Board and, with the purpose of avoiding a dispute over the annexation of the property described in said Exhibit A, enter into this joint resolution for orderly annexation pursuant to Minnesota Statutes §414.0325, Subd. 1.

NOW, THEREFORE, BE IT RESOLVED by the City of Rochester and the Town of Marion as follows:

1. The City and Town hereby designate that property situated in the Town of Marion, County of Olmsted, State of Minnesota, which is legally described on the attached Exhibit A, which is incorporated herein by reference, as in need of orderly annexation pursuant to Minnesota Statutes §414.0325. For ease of reference, the area legally described in Exhibit A is shown on the attached map, Exhibit B.

2. The Town of Marion hereby withdraws any objections filed and agrees to not file any objections with the Minnesota Office of Strategic and Long-Range Planning ("State Planning"), concerning the City's desire or request to annex any of the property described on the attached Exhibit A, provided that the boundary of the corporate limits of the City has become contiguous with the entire western boundary of the Chester Heights Subordinate Sewer District (including the western boundary of Chester Heights as platted) described in Exhibit A. The Town of Marion further agrees that if it has filed any objections with the Minnesota Municipal Board or State Planning, to the annexation to the City of any of the property described in attached Exhibit A, the filing of this Joint Resolution with State Planning shall constitute sufficient notice of the withdrawal of the objections.

3. The lands designated in Exhibit A attached hereto shall be subject to future annexation to the City pursuant to the terms and conditions of this joint resolution and shall constitute the "orderly annexation area" otherwise described in this joint resolution. The City and Town agree that the area legally described in Exhibit A is designated as in need of orderly annexation and contains approximately 87.60 acres.

4. Annexation under this joint resolution shall be initiated by the adoption of a resolution by the City upon the occurrence of the triggering event described in paragraph 2 above. No review by or recommendation from the City of Rochester Planning and Zoning Commission regarding the adoption of a specific annexation resolution is necessary, except as is hereinafter provided. The City may initiate annexation of any area designated in Exhibit A by submitting a resolution so providing, along with a copy of this Joint Resolution, to State Planning, the Town of Marion, and the Olmsted County Auditor/Treasurer. The resolution for annexation shall contain the boundary description of the area to be annexed and, pursuant to Minnesota Statutes Section 414.01, subd. 14 and Section 414.0325, subd. 1a, shall contain the City's estimates of the population and number of households contained in the area to be annexed and the estimate of electrical service cost differences at the time of annexation.

The City and Town agree that no alteration of the stated boundaries is appropriate, that no consideration by State Planning is necessary, and that all terms and conditions for annexation of the area legally described in Exhibit A, or any portion thereof, are provided for in this Joint Resolution. Pursuant to Minnesota Statutes Section 414.0325, upon receipt of the City's resolution for annexation of the area described in Exhibit A, or any portion thereof, State Planning may review and comment, but shall, within thirty (30) days of receipt of said resolution, order the annexation of the area described in the resolution in accordance with the terms and conditions of this Joint Resolution.

5. Lands ordered annexed pursuant to this joint resolution shall not be subject to differential taxation as referenced in Minnesota Statutes §414.035. Property taxes payable on annexed land shall continue to be paid to the Town for the entire year in which the annexation becomes effective. If an annexation becomes effective on or before August 1 of a levy year, based on the date specified in the order from State Planning, the City may levy on the annexed area beginning with that same levy year. If the annexation becomes effective after August 1 of a levy year, the Town may continue to levy on the annexed area for that levy year. Thereafter property taxes on the annexed land shall be paid to the City.

6. The City shall, in appropriate circumstances, provide notification that the cost of electric utility service to the customers on the property subject to this joint resolution may change when the land is annexed to the City if and when the provider of electrical service is transferred from People's Cooperative Power Association to Rochester Public Utilities. As of the date of this joint resolution, the estimate of the difference in overall electrical service costs between the two providers is minimal. A resolution of the City to annex certain property subject to this joint resolution, as referenced in paragraph 4, shall contain a cost estimate of any change in electric utility services, including rate changes and assessments resulting from the annexation.

7. Nothing in this joint resolution shall relieve the Town of its responsibilities for the regular and normal maintenance of the existing infrastructure of roads, drainage facilities, and street signs until the property described in the attached Exhibit A has been annexed into the City.

8. Disputes and Remedies. The City and Township agree as follows:

- a. Negotiation. When a disagreement over interpretation of any provision of this Joint Resolution shall arise, the respective City and Township will direct staff members as they deem appropriate to meet at least one time at a mutually convenient time and place to attempt to resolve the dispute through negotiation.
- b. Mediation. When the parties to this Joint Resolution are unable to resolve disputes, claims or counterclaims, or are unable to negotiate an interpretation of any provision of this Joint Resolution, the parties may mutually agree in writing to seek relief by submitting their respective grievances to non-binding mediation.
- c. Adjudication. When the parties to this Joint Resolution are unable to resolve disputes, claims or counterclaims, are unable to negotiate an interpretation of any provision of this Joint Resolution or are unable to agree to submit their respective grievances to non-binding mediation, either party may seek relief through initiation of an action in a court of competent jurisdiction. In addition to the remedies provided for in this Joint Resolution and any other available remedies at law or equity, in the case of a violation, default or breach of any provision of this Joint Resolution, the non-violating, non-defaulting, or non-breaching party may bring an action for specific performance to compel the performance of this Joint Resolution in accordance with its terms.

9. Modification/Amendment. This Joint Resolution shall not be modified, amended, or altered except upon the written joint resolution of the City and the Township duly executed and adopted by the City Council and Township Board of Supervisors and filed with State Planning.

10. Governing Law; Severability. This Joint Resolution for Orderly Annexation is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota. In the event any provision of this Joint Resolution is determined and adjudged to be unconstitutional, invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Joint Resolution shall remain in full force and effect, and the parties hereto shall negotiate in good faith and agree to such amendments or modifications of or to this Joint Resolution or other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties hereto.

11. Entire Agreement. The terms, covenant, conditions, and provisions of this Joint Resolution, including the present and all future attachments, shall constitute the entire agreement between the parties, superseding all prior agreement and negotiations, regarding the annexation area. This Joint Resolution shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Town.

12. Effective Date; Termination. This resolution shall be effective immediately upon its adoption by the parties and its filing by the City and Town with State Planning. The obligations of the parties to one another according to the terms of this resolution shall terminate at such time that the entire area designated in Exhibit A has been annexed to the City, or at such time that the City and Town mutually agree in writing that this joint resolution shall be terminated.

13. Notices. Any notices required to be sent under the terms of this agreement shall be considered sufficient notice if mailed by first class U.S. mail to the City of Rochester, City Administrator's Office, 201 4<sup>th</sup> Street SE, Rochester, MN 55904, and to the Town of Marion, Marion Town Clerk, 2850 Oakview Court SE, Rochester, MN 55904.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER, MINNESOTA THIS 5th DAY OF NOVEMBER, 2001

John Hinzler  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: Judy Kay Sheen  
CITY CLERK

APPROVED THIS 6th DAY OF NOVEMBER, 2001

Arnell F. Brede  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)

PASSED AND ADOPTED BY THE TOWN OF MARION, MINNESOTA, THIS 8th DAY OF OCTOBER, 2002

Gerald L. Campbell  
CHAIRMAN OF TOWN BOARD

ATTEST: Janet Haggmann  
TOWN CLERK

All of Chester Heights according to the plat thereof on file at the County Recorder's Office, Olmsted County, Minnesota, together with that part of the Southeast Quarter of Section 2, Township 106 North, Range 13 West, Olmsted County, Minnesota, lying south and east of said Chester Heights.

Together with

The South 198 feet of the West 198 feet of the Southeast Quarter of Section 2, Township 106 North, Range 13 West, Olmsted County, Minnesota.

Together with

That part of the Northeast Quarter and the Northwest Quarter of Section 11, Township 106 North, Range 13 West lying northerly of the right of way of the Dakota, Minnesota and Eastern Railroad, westerly of the right of way of County Road No. 119 (Chester Ave. S.E.) and easterly of a line 9 rods and 4 feet west of the east line of said Northwest Quarter.

Together with

That part of the Northeast Quarter of Section 11, Township 106 North, Range 13 West, Olmsted County lying northerly of the Right of Way of Dakota, Minnesota and Eastern Railroad, easterly of the Right of Way of County Road No. 119 (Chester Ave. S.E.) and southerly and westerly of a line described as; BEGINNING at a point on the centerline of County Road No 119 (Chester Ave. S.E.) and 210.42 feet south of the north line of said Northeast Quarter; thence South 82 degrees 56 minutes East 296.75 feet; thence Due South 132 feet to a point 150 feet north of and parallel to the centerline of the Dakota, Minnesota and Eastern Railroad; thence South 82 degrees 56 minutes East along said line 673.25 feet; thence South 11 degrees 24 minutes West 100 feet to the north line of said Dakota, Minnesota and Eastern Railroad.

Together with

That part of the Northeast Quarter of Section 11, Township 106 North, Range 13 West, Olmsted County, Minnesota, described as follows:

BEGINNING at a point 30 feet southerly measured at right angles to the centerline of the Dakota, Minnesota and Eastern Railroad on the easterly Right of Way of County Road No. 119 (Chester Ave. S.E.) thence easterly parallel with said centerline of the Railroad for a distance of 171.02 feet; thence North 10.12 feet to a point 20.00 feet measured at right angles to said centerline; thence southeasterly parallel with said centerline for a distance of 201.52 feet; thence Southerly perpendicular to said centerline for a distance of 80.00 feet to the southerly Right of Way of said Railroad; thence westerly parallel with said centerline 25 feet more or less to the northwest corner of Menard's Subdivision; thence southerly along the west line of said Menard's Subdivision for a distance of 490 feet; thence easterly 100 feet to the southwest corner of the Menard Cashway Lumber Building; thence northerly 344 feet along said building; thence easterly 150 feet along said building; thence southerly 344 feet along said building; thence east 20 feet; thence north 24 feet; thence east 120 feet more or less to a point on the west building line of Key Warehouse Building; thence northerly 234 feet along said building; thence easterly 136 feet along said building; thence southerly 140 feet; thence east 24 feet; thence south 34 feet; thence Southeasterly with a deflection angle of 134 degrees from Due North 160 feet more or less to the west edge of creek; thence southwesterly along west edge said creek to a point in the northerly Right of Way of Trunk Highway 14, which is also the southeast corner of the Menard's Subdivision; thence westerly along said northerly Right of Way to a point on the easterly Right of Way of said County Road No. 119 (Chester Ave. S.E.); thence Northerly along said Right of Way to the Point of Beginning.

Together with

That part of the Northeast Quarter and the Northwest Quarter of Section 11, Township 106 North, Range 13 West, Olmsted County, Minnesota, lying southerly of Right of Way of the Dakota, Minnesota and Eastern Railroad, northerly of the Right of Way of Trunk Highway No. 14 westerly of the Right of Way of County Road No. 119 (Chester Ave. S.E.) and easterly of line described as commencing at the intersection of the east line of said Northwest Quarter and the southerly Right of Way of the Dakota, Minnesota and Eastern Railroad; thence westerly along said Right of Way for a distance of 390 feet; thence southwesterly with a deflection angle of 202 degrees from Due North to a point on the centerline of Trunk Highway No. 14 being 565 feet westerly of said east line of the Northwest Quarter as measured along the centerline of said Trunk Highway No. 14.