

**TEMPORARY LIMITED EASEMENT FOR
STREAM CHANNEL SEDIMENT REMOVAL AND
UPLAND ACCESS**

Yahara Materials, Inc. (“Grantor”), a registered Wisconsin corporation, being the owner of property located in the Town of Westport, legally described below (the “Grantor Property”), for the sum of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does grant, set over and convey to the **County of Dane** (“County”), a Wisconsin municipal corporation, its agents and contractors, a temporary limited easement for stream corridor sediment removal and upland access purposes (“TLE”) upon and across that portion of the Grantor Property described in Exhibit A and depicted in Exhibit B (“Easement Area”), said Exhibit A and Exhibit B attached and made a part of this TLE.

WITNESSETH:

WHEREAS, the Grantor is the owner of privately held real property, located in part of the West ½ of the Northwest Quarter of Section 29 Township 08 North, Range 09 East, Town of Westport, Dane County, Wisconsin, said Grantor property being north of Lake Mendota; and

WHEREAS, Dorn Creek, a Wisconsin navigable waterway as defined in Chapter 30 of the Wisconsin Statutes, runs through the Grantor property; and

WHEREAS, Dorn Creek is a stream within the County’s North Mendota Natural Resources Area, which flows into Lake Mendota and the Yahara River chain of lakes; and

WHEREAS, a study conducted by the County and the Wisconsin Department of Natural Resources shows that legacy stream sediments deposited in Dane County area waterways, including Dorn Creek, contains abundant amounts of phosphorus that leaches into adjacent waters thereby contributing to poor water quality in the Yahara River and its chain of lakes; and

WHEREAS, the County, under the direction of its Land & Water Resources Department, is undertaking removal of historic stream sediments along a 2.3 mile stretch of Dorn Creek between Highway M and Highway Q intended to promote improved water quality for the Yahara lakes and river system; and

WHEREAS, said Dorn Creek stream sediment removal project area passes through lands owned by the State of Wisconsin, Dane County, in addition to approximately 550 linear feet of stream on Grantor lands of the total 2.3 miles in the Dorn Creek stream corridor sediment removal project area; and

RETURN TO: Real Estate Coordinator
Dane County Land & Water
Resources Department
5201 Fen Oak Drive, Room 208
Madison WI 53718

Tax Parcel Nos: 066/0809-292-9090-8

WHEREAS, the County is willing to have this work done at the County's expense to benefit lands owned by the Grantor as well as the water quality of Dorn Creek and the Yahara River and chain of lakes; and

WHEREAS, Dane County approved funds in its 2017 Budget for said Dorn Creek stream sediment removal project, and authorized an engineering and design services contract with Strand Associates at its meeting on August 17, 2017 to undertake the project as 2017 RES-144 SUB 1.

WHEREAS, the Grantor is willing to convey to the County a non-exclusive Temporary Limited Easement ("TLE") for stream sediment removal and upland access over Grantor property within the TLE Area.

NOW, THEREFORE, the Grantor hereby grants to the County a non-exclusive Temporary Limited Easement for stream sediment removal and upland access, including planning and implementation of sediment removal subject to the following conditions:

1. Construction and Restoration

- a. The purpose of this TLE is to allow the County, its agents and contractors access to the property for stream sediment removal and limited upland access.
- b. The County shall receive prior permission from Grantor if the work deviates from the project plan as described in 1(c) below.
- c. The County's use of the TLE Area shall be for stream project implementation, including utilizing hydraulic dredging equipment to vacuum phosphorus-laden sludge from the stream bottom for deposit to nearby publicly-owned upland acres. Said sediment-laden sludge will be piped across Grantor lands to be deposited and contained on said publicly-owned lands. No sediment removed from the stream bed will be deposited on Grantor lands. No additional disturbance of the waterway, stream banks or grade changes to adjacent uplands on Grantor property is part of this project plan. County may utilize small mechanical vehicles on lands adjacent to the waterway for the purpose of placing or removing the temporary piping that conveys phosphorus-laden sludge to nearby publicly-owned lands.
- d. Construction shall be performed and completed in a good and workmanlike manner and shall not interfere with or endanger the use of the abutting land owned by the Grantor.
- e. County shall maintain the TLE Area in a decent, sanitary and safe condition. County shall make every effort to accommodate public waterway users or Grantor authorized users of the property and protect them from any hazards during the stream sediment removal process.
- f. The County will promptly restore the TLE Area after completion of the sediment removal process in the TLE Area (or as soon thereafter as weather reasonably permits) and in a manner satisfactory to the Grantor.
- g. No structures of any kind shall be placed or erected upon the premises without the prior written approval of the Grantor.

2. Compliance. In all cases, the County, its agents and contractors shall be responsible for following all applicable ordinances, codes, statutes regulations, and laws and obtaining all permits and filing all plans required by any regulatory agency associated with any stream sediment removal or restoration activities. Grantor agrees to cooperate in signing any permits required for the project as landowner.
3. Reservation of Use. The Grantor reserves the right to use and occupy the TLE area in a manner consistent with the rights conveyed herein, provided that such use and occupancy shall not interfere with or disturb the County's stream sediment removal activities in the stream channel TLE Area.
4. Liability. Each party shall be responsible its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of this agreement.
5. Amendment. This TLE may not be amended, modified, terminated, or released without the written consent of the parties hereto.
6. Assignment. The County shall neither assign nor transfer any interest or obligation in this TLE without the prior written consent of the Grantor.
7. Applicable Law. This TLE shall be construed in accordance with the laws of the State of Wisconsin.
8. Severability. If any term or provision of the TLE is held to be invalid or unenforceable, then such holding shall not affect any of the remaining terms and provisions of the TLE and the same shall continue to be effective to the fullest extent permitted by law.
9. Waiver. No waiver of any provision of this TLE shall be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this TLE signed by the parties, nor shall the waiver of any default under this TLE be deemed a waiver of any subsequent default or defaults of the same type. Any party's failure to exercise any right under this TLE shall not constitute the approval or acceptance of any wrongful act by the other party.
10. Term. This TLE shall terminate upon completion of the stream sediment and removal activities described above or July 31, 2018, whichever occurs first.
11. Public Record. This TLE conveyance shall be recorded at the office of the Dane County Register of Deeds.

IN WITNESS WHEREOF, the parties have entered into this Temporary Limited Easement Agreement for Stream Channel Sediment Removal and Upland Access as of the date first set forth above.

COUNTY OF DANE

By: _____
Scott McDonell, County Clerk

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2017, the above named Scott McDonell, County Clerk of the County of Dane, acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

(print or type name of notary)
My Commission: _____

SIGNATURES CONTINUE ON FOLLOWING PAGE

YAHARA MATERIALS, INC.

By: _____
Signature

Type Name

Title

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2016, the above named _____, _____ of Yahara Materials, Inc., acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

Print or Type Name
My Commission: _____

EXHIBIT A

Easement Area

Legal Description

That portion of the Grantor's property described below that is south of the northern bank of Dorn Creek:

Part of the W 1/2 of the NW 1/4 of Section 29, T8N, R9E Township of Westport, described as follows: Commencing at the NW corner of said Section 29; thence S along the W line of said section 360 feet to an iron stake which is the point of beginning of this description; thence continue S along said W line 2,312.6 feet to the SW corner of the said NW 1/4; thence E along the S line of said NW 1/4 435.65 feet to an iron stake; thence N along a line parallel with the said W line 2,312.6 feet to an iron stake; thence W parallel with the N line of said section 435.65 feet to the point of beginning.

Said TLE is depicted on the attached Exhibit B

EXHIBIT B
Easement Area Depicted
Part of Tax ID 0809-2929090-8

