

## CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is entered into this [ ] day of [ ], 20[ ], by and between, [ ] ("Grantor"), and the STATE OF MINNESOTA, a sovereign body ("Grantee").

### 1. BACKGROUND

1.1. Grantor is the sole owner of the real property located in [ ] County, Minnesota, and more specifically identified on **Exhibit A** which is attached hereto and incorporated herein by this reference.

1.2. Portions of the Protected Property are currently utilized as agricultural fields, however, there are also important ecological and aesthetic values associated with this property, including wetlands and forested areas, which provide wildlife habitat.

1.3. The natural, scenic, and ecological qualities and forested, open space character ("Conservation Values") of the Protected Property are set forth in the Property Report dated [ ], which the parties acknowledge accurately represents the present condition of the Protected Property. Each of the parties has a copy of the Property Report. Grantee intends to use the Property Report as the basis for monitoring subsequent uses of the Protected Property and enforcing the terms of this Conservation Easement. Notwithstanding this, the parties may use all other relevant evidence to establish the present condition of the Protected Property in the event of a disagreement as to whether a subsequent activity or use is consistent with the terms of this Conservation Easement.

1.4. The State of Minnesota is qualified to acquire and hold conservation easements under Section 170(h)(3) of the Internal Revenue Code of 1986, any amendments and any regulations promulgated there under and under Minnesota Statutes chapter 84C and Section 84.64.

1.5. The Legislature of the State of Minnesota (hereinafter "Legislature") authorizes the State of Minnesota and counties thereof, as well as nonprofit organizations, to preserve, acquire or hold lands for open-space uses, which specifically include farmland, wetlands, native or restored prairie, or lands deemed critical to protecting soil, water quality, and enhancing fish and wildlife habitat; and that actions pursuant to these purposes are for the public health, safety, and general welfare of the citizens of the State of Minnesota and for the promotion of sound land development by preserving suitable open spaces.

1.6. The Legislature has declared that public open-space benefits result from the protection and conservation of natural areas including the protection of scenic areas for public visual enjoyment from public rights-of-way; that the conservation and protection of restored natural areas as valued natural and ecological resources provide needed open spaces for clean air as well as for aesthetic purposes; and that public benefit will result from the conservation, protection, development and improvement of restored natural areas.

**Comment [m1]:** Populate from system--use same date as other closing documents.

**Comment [m2]:** Populate from system--Grantor name(s).

**Comment [m3]:** If there is more than one Grantor, will the system be able to automatically change singular to plural throughout the document?

**Comment [m4]:** Populate from system--County name(s).

**Comment [m5]:** Populate from system--legal description on Exhibit A.

**Comment [m6]:** The drafter will need to review and replace as necessary the highlighted portions of text in this document.

**Comment [m7]:** Populate from system--use same date as other closing documents.

1.7. Grantee, through its Department of Natural Resources, shall protect in perpetuity, natural areas and ecologically significant land for aesthetic, scientific, and educational purposes and pursuant to the terms of this Conservation Easement.

1.8. Grantee has declared that the preservation of open space is vital to the public interest of the State of Minnesota through its economic, environmental, cultural and scenic benefits.

1.9. Grantee agrees by acquiring this grant of easement to honor and defend the intentions of Grantor stated herein and to preserve and protect in perpetuity the open-space values of the Protected Property for the benefit of this generation and the generations to come.

1.10. Grantor desires and intends that the open-space character of the Protected Property be preserved, protected and maintained in perpetuity.

1.11. Grantor desires and intends to place restrictions upon the use of the Protected Property and by executing this Conservation Easement, Grantor creates a conservation easement on, over and across the Protected Property and grants affirmative rights to ensure the preservation of the natural elements and values of the Protected Property and to protect and maintain its native plant communities and native animal populations.

1.12. Grantor intends to convey to Grantee the right to protect the ecological values of the Protected Property in perpetuity and to prevent or to remedy activities or uses that are inconsistent with the terms of the Conservation Easement.

## 2. CONVEYANCE

NOW, THEREFORE, Grantor, in consideration of the sum of [REDACTED] dollars and NO/DOLLARS (\$ .00), paid to Grantor by Grantee, the receipt whereof is hereby acknowledged, and pursuant to Minnesota Statutes chapter 84C and Section 84.64, and other applicable Minnesota laws, does hereby convey and grant to Grantee, its successors and assigns, forever, a conservation easement in perpetuity over the Protected Property, subject to the following rights and restrictions:

**Comment [m8]:** Use the sum that is in the closing documents.

## 3. AFFIRMATIVE RIGHTS

Grantor conveys the following rights to Grantee:

- 3.1. The right to enforce by proceedings, at law or in equity, the covenants contained in this Conservation Easement. The right shall include, but shall not be limited to, the right to bring an action in any court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the Protected Property to its prior or more natural condition; to enjoin such non-compliance by temporary or permanent injunction; and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by Grantee, in its discretion, to corrective action on the Protected Property, if necessary. If such court determines that Grantor has failed to comply with this Conservation

Easement or the Natural Resource Management Plan, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, and reasonable attorney's fees, in addition to any other payments ordered by such court.

- 3.2. If Grantee becomes aware of an event or circumstances of non-compliance with the terms and conditions set forth in this Conservation Easement, Grantee shall give written notice to Grantor, Grantor's successors or assigns, at the address set forth below, of such event or circumstance of non-compliance and restore the Protected Property to its previous condition. Failure by Grantor, Grantor's successors or assigns, to cause discontinuance, abatement or such other corrective action as may be requested by Grantee within thirty (30) days after receipt of notice, shall entitle Grantee to bring an action as authorized in this Conservation Easement.
- 3.3. Grantee does not waive or forfeit the right to take action as may be necessary to ensure compliance with the covenants and purposes of this Conservation Easement on the Protected Property by any failure to act. Grantor waives any defense of laches with respect to any delay by Grantee in acting to enforce any of the provisions or exercise any rights under this Conservation Easement.
- 3.4. Nothing in this Conservation Easement shall be construed to entitle Grantee to institute any enforcement proceeding against Grantor for any changes to the Protected Property due to causes beyond Grantor's control, such as changes caused by fire, flood, storm, civil authorities undertaking emergency action or third parties not under the control or supervision of, or not acting with the consent of, Grantor.
- 3.5. The right of designated representatives of Grantee to enter the Protected Property in a reasonable manner to conduct monitoring, management evaluations and activities and determine easement compliance is recognized. Grantee shall give reasonable prior notice to Grantor of all such entries and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property. Each party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Each party therefore agrees that it will assume all risk and liability for itself, its agents or employees for any injury to persons or property resulting in any manner from the conduct of its own operations and operations of its agents or employees under this agreement, and for any loss, cost, damage, or expense resulting at any time from failure to exercise proper precautions, of or by itself or its own agents or its own employees. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. § 3.736, and other applicable law. The liability of Grantor shall be governed by the provisions of the Minnesota Municipal Liability Tort Act, Minn. Stat. § 466.04, and other applicable law.

**Comment [m9]:** This clause does not make sense as drafted and will need to be revised. Mark Hauck of the ACUB Program is consulting with the AG's Office about this and will provide revised language to me at a later date. It appears that this same language has been repeated in a number of our conservation easements.

**Comment [m10]:** This sentence will only be applicable when the grantor is a "municipality" as defined in Minn. Stat. ch. 466.

- 3.6. Grantee, in addition to other remedies, shall have the right to report any environmental concerns or conditions or any actual or potential violations of any environmental or other laws to appropriate regulatory or law enforcement agencies. Grantee shall notify Grantor at the same time it notifies any appropriate authority notified pursuant to this section.

#### 4. RESERVED RIGHTS

- 4.1. Grantor reserves for Grantor and Grantor's successors and assigns, all rights as owner of the Protected Property, except the right to undertake any activities which are expressly and specifically prohibited by this Conservation Easement or which are inconsistent with or detrimental to the protective purposes of this Conservation Easement.
- 4.2. Grantor agrees to notify Grantee, in writing, before exercising any reserved right which may have an adverse impact on the natural characteristics or ecological and aesthetic features of the Protected Property protected by this Conservation Easement.

#### 5. COVENANTS

IN FURTHERANCE of the foregoing affirmative rights, Grantor intends that rights under this Easement conveyed to Grantee on behalf of the public shall continue to exist in perpetuity. Grantor makes the following covenants on behalf of Grantor, Grantor's successors and assigns, which covenants shall run with and bind the Protected Property in perpetuity:

##### Management Plan

- 5.1. All natural resource management practices on the Protected Property including implementation shall be in accordance with the Natural Resource Management Plan dated \_\_\_\_\_. The Management Plan may only be revised or modified by written agreement of Grantor and Grantee. Grantor and Grantee will retain a copy of the Management Plan.

**Comment [m11]:** I don't think there will be any entries in the system of data pertaining to the management plan.

##### Residential, Commercial and Industrial Uses

- 5.2. Grantor shall not subdivide other than as provided for in this Conservation Easement, either legally or physically, the Protected Property for any reason without the prior written approval of Grantee.
- 5.3. No development rights in or to the Protected Property, or any part thereof which have been encumbered or extinguished by this Easement shall be transferred to any location outside the Protected Property, whether pursuant to a cluster development plan or any other agreement or plan for transferable development rights.
- 5.4. There shall be no residential, industrial, or commercial activity undertaken or allowed.

- 5.5. No portion of the protected property shall be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage, or Conservation under otherwise applicable laws, regulations, or ordinances controlling land use.

**Construction**

- 5.6. There shall be no construction or placing of any house, garage, barn, mobile home, or other buildings on the Protected Property except [REDACTED]. There shall be no construction or installation of poles, antenna, lights, towers, water tower, utility lines, piping, and any other temporary or permanent structures on the Protected Property except for those structures required for storm water management [REDACTED]. There shall be no construction or installation of permanent roads or parking lots of asphalt, bituminous, gravel, concrete or other materials on the Protected Property. There shall be no permanent or temporary fencing except as specifically allowed in the Management Plan.

**Recreational Use**

- 5.7. There shall be no trails established or maintained on the Protected Property except for those specifically allowed in the Management Plan.
- 5.8. There shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles on the Protected Property except for administrative, emergency, and management purposes.
- 5.9. The Protected Property may be used for hiking, cross country skiing, nature observation and other similar, low-impact, educational and recreational programs or activities.

**Surface Alteration**

- 5.10. There shall be no change to the topography of the Protected Property in any manner except as reasonably required in the course of activities or uses in accordance with the Management Plan.

**Waste Removal**

- 5.11. Use of the Protected Property for dumping, storage, processing or landfill of solid or hazardous wastes generated is prohibited, including, without limitation, municipal sewage sludge and/or bio-solids application.

### **Signs**

- 5.12 Commercial signs, billboards, and outdoor advertising structures may not be displayed on the Protected Property. However, information signage is permitted, subject to the following conditions: The combined area of any signs may not exceed fifty (50) square feet, and the signage is limited to the following purposes:
- a. Displaying the name of the Protected Property;
  - b. Announcing the existence of this Conservation Easement;
  - c. Providing interpretive and directional information;
  - d. Providing the name and address of the Grantor and Grantee;
  - e. Delineating the boundaries of the Protected Property in order to prohibit trespass or non-permitted activities;
  - f. Providing information with regard to on-site uses and activities permitted by this easement which approval will not be unreasonably withheld, conditioned or delayed.

For all signs permitted by this paragraph, the location, number, size and design must not significantly diminish the natural and scenic qualities of the Protected Property.

### **Trees, Shrubs and Vegetation**

- 5.13. There shall be no removal, destroying, burning, cutting, mowing or altering of trees, shrubs, and other vegetation except that fuelwood from dead and down trees may be harvested and activities to prevent or control insects, noxious weeds, invasive species, diseases, personal injury, or property damage are allowed. Activities that enhance wildlife habitat or restore native biological communities must be in accordance with the Management Plan.

### **Pesticides and Herbicides**

- 5.14. There shall be no application of pesticides or herbicides on the Protected Property except those that are necessary as part of approved agricultural use and management practices specified within the Management Plan.

### **Animals**

- 5.15. There shall be no livestock, feedlots, domestic or non-native animals permitted on the Protected Property except as allowed in the Management Plan.

### **Exotic Species Introduction**

- 5.16 There shall be no plant or animal species introduced on the Protected Property except those native species that are consistent with the protective purposes of this Conservation Easement and consistent with the Management Plan.

## **6. GENERAL PROVISIONS**

- 6.1. This Conservation Easement shall run with and burden the Protected Property in perpetuity and shall bind and inure to the benefit of Grantor, Grantor's successors and assigns, and any and all other successors to them in interest and Grantee, its successors and assigns.

6.2. Grantor shall pay all taxes and assessments levied against the Protected Property, including any taxes or assessments levied against the interest of Grantee established by this Conservation Easement. Grantee may, but is not obligated to, make any payment of taxes or assessments levied against the Protected Property or the interest established by this Conservation Easement and shall have a right of reimbursement against Grantor for such amounts.

6.3. Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement will be referenced by Grantor in any subsequent deed or other legal instrument by which Grantor transfers or divests himself of all or any part of their interest in the Protected Property, and that Grantor will give Grantee written notice of any such transfer within fifteen (15) days after closing.

6.4. Any notice required in this Conservation Easement shall be sent by certified mail, return receipt requested, to the following addresses or such address as may be subsequently specified by notice in writing, and the Party of Record at the address of record in the \_\_\_\_\_ County Recorder's Office.

**Comment [m12]:** Populate from system—county or counties where easement is located.

Grantee

Grantor

**Comment [m13]:** Populate from system—name(s) and address(es) of Grantor(s).

State of Minnesota  
Department of Natural Resources  
Metro Regional Administration  
1200 Warner Road  
St. Paul, MN 55104

6.5. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall be affected thereby.

6.6. This Conservation Easement shall be governed by the laws of the State of Minnesota.

6.7. The terms "Grantor" and "Grantee" as used in this Conservation Easement shall be deemed to include with respect to Grantor, Grantor's successors and assigns; and with respect to Grantee, its successors and assigns.

6.8. Grantee may assign or transfer this Conservation Easement and the rights conveyed herein, provided that (1) Grantee requires, as a condition of such transfer, that the original conservation purposes of this Conservation Easement continue to be carried out in perpetuity; and (2) any assignment is made only to an organization qualified to acquire or hold an Conservation easement at the time of the transfer under the provisions of Section 170(h)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, and any regulations promulgated there under. This Conservation Easement is fully valid and enforceable by any assignee or successor of Grantee, whether assigned in whole or in part.

6.9. Grantor's and Grantee's rights and obligations under this Conservation Easement terminate upon transfer or termination of their respective interest in the easement or the Protected Property provided that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination. Nothing in this paragraph is deemed to alter or amend the remaining terms of the Conservation Easement in the event of a transfer of interest.

6.10. This Conservation Easement may be amended only in the event of unanticipated circumstances not specifically addressed by this Conservation Easement and only in the sole and exclusive judgment of Grantee that such an amendment: (i) furthers the purpose of this Conservation Easement, (ii) is not inconsistent with and will not adversely impact the Conservation Values protected by this Conservation Easement, (iii) does not affect the perpetual duration of the Conservation Easement, or (iv) does not affect the validity of the Conservation Easement under Minnesota Law.

6.11. If circumstances arise in the future such as to render the purposes of this easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction or by agreement executed by the parties, their successors or assigns.

6.12. Each party agrees that it will be responsible for its own acts and the results thereof and will not be responsible for the acts of the other party and the result thereof. Each party therefore agrees that it will assume all risk and liability for itself, its agents or employees for an injury to persons or property resulting in any manner from the conduct of its own operations and operations of its agents or employees under this agreement, and for any loss, costs, damage, or expense resulting at any time from failure to exercise proper precautions, of or by itself, or their agents or their own employees. The State's liability will be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statute § 3.736 and other applicable law.

6.13. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation and maintenance of the Protected Property.

6.14. Grantor agrees that the conveyance of the perpetual Conservation Easement gives rise to a property right, immediately vested in Grantee, with the fair market value that is at least equal to the proportionate value that the Conservation Easement, at the time of the conveyance, bears to the value of the Protected Property as a whole at that time. The proportionate value of Grantee's property rights will remain constant.

6.15. This Conservation Easement may be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction or by written agreement executed by both parties, their successors or assigns. If a subsequent unexpected change in the conditions of or surrounding the Protected Property make it impossible or impractical for the continued use of the Protected Property for conservation purposes described herein, and if the restrictions of this Conservation Easement are extinguished, in whole or in part, by judicial proceedings, upon the sale, exchange or involuntary conversion of the Protected Property, Grantee will be entitled to a portion of the proceeds at least equal to the proportionate



value of the Conservation Easement cited in the preceding provision. The proportionate value of Grantee's property rights will remain constant.

6.16. On Grantor's own behalf and as attorney-in-fact for Grantee, Grantor may execute, acknowledge, and record or file any instruments necessary to assure perpetual enforceability of this Conservation Easement.

6.17. This document sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions or understandings.

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

**Comment [m14]:** Populate from system—  
Grantor name underneath the line

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, Grantor.

**Comment [m15]:** This could be populated from the system. However, the closing where the Grantor signs the easement may not take place in the county where the Protected Property is located. It's probably better to leave this blank.

**Comment [m16]:** Populate from system with closing date.

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

My Commission expires \_\_\_\_\_



**Exhibit A**

