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**NATIVE PRAIRIE BANK CONSERVATION EASEMENT
STATE OF MINNESOTA, DEPARTMENT OF NATURAL RESOURCES**

This Native Prairie Bank Conservation Easement, hereinafter referred to as “**Easement**”, is made this _____ day of _____, 20____, between _____ hereinafter referred to as the “**Landowner**” and the State of Minnesota, a sovereign body, by and through the Commissioner of Natural Resources, hereinafter referred to as the “**Commissioner**”.

1. BACKGROUND

1.1 Protected Property Legal Description. The Landowner warrants that they are the sole owners in fee simple of certain real property located in _____ County, Minnesota, and legally described on **Exhibit A (“Protected Property”)**.

1.2 Qualifications of Commissioner. The Commissioner is qualified to hold conservation easements under Minn. Stat. §§ 84C.01-84C.05 and is authorized to hold this Easement under Minn. Stat. § 84.96 in order to preserve the native prairie of the state.

1.3 Protected Property General Description. The Protected Property, in its present state, has significant ecological, scientific, educational, and natural values. These values are of great importance to the Landowner, the Commissioner, and the people of Minnesota. The Protected Property is located within the prairie area of Minnesota, in the Prairie Parkland ecological province. The Protected Property is primarily a tract of original, unplowed native prairie that is threatened by drainage, plowing, over grazing and other incompatible non-prairie uses. The Protected Property also includes XX acres of agricultural crop land that will be planted to prairie to act as a buffer to the native prairie. The Protected Property will provide for the preservation and conservation of approximately XX acres of [southern dry hill, mesic, etc] native prairie and associated wetland habitats, rare plants, rare animals and other natural features. Their protection in accordance with this conservation easement will yield a significant public benefit and is intended to fulfill one or more of the conservation purposes defined in Section 170(h)(4)(A) of the Internal Revenue Code, as amended.

1.4 Baseline Property Report. The Commissioner has prepared written materials, maps and photographs that set forth the Conservation Values, as defined below, of the Protected Property in more detail (collectively referred to as the “**Baseline Property Report**”). The Landowner acknowledges that the Baseline Property

Report reflects the present condition of the Protected Property and the parties incorporate the Baseline Property Report into the Easement by this reference. Both the Commissioner and the Landowner have a copy of the Baseline Property Report.

1.5 Prairie Stewardship Plan. The Commissioner may provide sustainable management options that protect the ecological values of the native prairie, and identifies the Landowner's goals through a **"Prairie Stewardship Plan"**. Specific 'practice plans' such as a **"Prescribed Burn Plan"**, a **"Prescribed Haying Plan"**, a **"Prairie Reconstruction Plan"**, a **"Seed Harvest Plan"** or a **"Grazing Plan"**, may be included in a comprehensive site level Prairie Stewardship Plan. A Grazing Plan may describe approved watering systems and other livestock related facilities, and limit or forbid other supplemental feedstock from being brought onto the prairie. Strategies and techniques for monitoring management objectives and overall site conditions can also be included in a Prairie Stewardship Plan.

2. CONSERVATION VALUES AND PURPOSE

2.1 Definition of Conservation Values. For the purpose of this Easement, the term **"Conservation Values"** means the scientific and educational opportunities, native prairie lands, native plants and animals (including without limitation rare species and communities), the ecological processes that support them, the water and soil quality, wetlands, riparian and aquatic habitats and the geologic features specifically identified in the Baseline Property Report.

2.2 Purpose. The Landowner and Commissioner agree that the purpose of this Easement is to provide a significant public benefit by:

- 2.2.1 Preserving and protecting in perpetuity the Conservation Values of the Protected Property,
- 2.2.2 Confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values,
- 2.2.3 Prohibiting activities that significantly impair or interfere with these Conservation Values,
- 2.2.4 Providing for remedies in the event of any violation of this Easement,
- 2.2.5 Providing opportunities for research and education,
- 2.2.6 Encouraging the long-term sustainable management of the native prairie,
- 2.2.7 Confining all subsequent management and use of the Protected Property to such activities as are consistent with the purpose and terms of this Easement.

3. CONVEYANCE

NOW, THEREFORE, in consideration of the sum of _____
_____ DOLLARS (\$ _____), and pursuant to Minn. Stat. § 84.96, the Landowner grants, conveys and warrants to the State of Minnesota, a sovereign body, its successors and assigns, a perpetual conservation easement in and to the Protected Property, according to the covenants, terms, conditions, and restrictions contained herein, including the right to protect the Protected Property in accordance with the terms set forth in this Easement, which shall run with and bind the land in perpetuity.

4. RESERVED RIGHTS

The Landowner reserves for itself and its successors and assigns, all rights accruing from the Landowner's ownership of the Protected Property including, without limitation, the right to engage in or allow others to engage in all activities or uses of the Protected Property that are not restricted or limited by the terms and conditions of this Easement, and to sell or transfer the Protected Property subject to this Easement. **The Landowner's reserved rights include the right to hunt, fish and trap and to conduct prairie management activities to the extent permitted by the Easement. The Landowner may not exercise this or any other reserved**

right in a manner that would significantly impair or interfere with the Conservation Values of the Protected Property.

5. LANDOWNER COVENANTS AND RESTRICTIONS

5.1 Vegetation Management. Any management of the Protected Property carried out by the Landowner must be approved by the Commissioner.

5.1.1 Prairie Stewardship Plan. Prior to conducting any management, the Landowner must submit a written Prairie Stewardship Plan for the Protected Property to the Commissioner, and the Commissioner must review and approve such a Plan in writing. The Landowner will not destroy, cut, trim, mow, plant, or remove trees, shrubs, bushes or plants, allow livestock to graze the prairie, or apply pesticides unless a Prairie Stewardship Plan has been approved by the Commissioner. The Commissioner may also approve a single management activity in writing without a Prairie Stewardship Plan existing for the protected property.

5.1.2 Noxious Weed Control. The Landowner will remain responsible for noxious weed control, will control noxious weeds whether or not a Prairie Stewardship Plan has been submitted or approved, and will perform such control in a way that minimizes damage to the Conservation Values of the Protected Property.

5.1.3 Invasive Species. The Landowner is responsible for assuring that their actions will not introduce or spread invasive species.

5.2 Land Use. Any activity on or use of the Protected Property that is inconsistent with the Conservation Values of this Easement is prohibited unless authorized in writing by the Commissioner. The Landowner agrees that there shall be:

5.2.1 No use made of the Protected Property expressed or implied in violation of the protective covenants contained herein.

5.2.2 No topographic changes or alteration of the natural landscape within or upon the Protected Property by excavation, cultivation, drainage, filling, or any other means without a written authorization from the Commissioner. No mining or exploration for minerals is permitted.

5.2.3 No dumping of ashes, trash, junk, rubbish, sawdust, garbage, or offal upon the Protected Property.

5.2.4 No use of the area by motorized vehicles, except ATV's can be used by the Landowner, or others under the Landowner's control, for retrieval of a downed big game animal, emergency purposes, or property management purposes. ATV use for property management is limited to weed control, prairie restoration, fence maintenance, garbage and trash removal, or other activities as specifically provided in the Prairie Stewardship Plan. The landowner may also drive motorized vehicles on the field road as identified on Exhibit A. This field road may not be improved or widened without written authorization of the Commissioner. Any motorized use will be done in a manner that does not damage the vegetation and soil in the area. Motorized vehicles will not be used when and where rutting is likely due to moist or wet soil conditions, in areas where soil erosion is likely to result, or in areas that may lead to the spread of invasive species as identified in the Prairie Stewardship Plan.

5.2.5 No drawing of water from the Protected Property as a source for irrigation.

5.2.6 No camping or fires permitted except that prescribed fires for prairie management purposes may be used with written authorization from the Commissioner.

5.2.7 No residential, commercial or industrial use of the Protected Property, and no agricultural use of the Protected Property except for those uses expressly permitted by Section 5.1 of this Easement.

5.3 Structures. No structures or improvements, equipment or other items, whether permanent or temporary, can hereafter be constructed or placed on the Protected Property without written authorization from the Commissioner other than:

- 5.3.1 Current Structures. [A sentence that explains the size, shape and location of the current structure and refers to Exhibit A and/or Baseline Property Report.] [Another sentence that states whether that structure can be expanded or repaired].
- 5.3.2 Fences. Currently there are fences [i.e. surrounding the protected property]. [This/These] fence(s) are [explain fence type, height] and are further described in the Baseline Property Report. Currently existing fences may be maintained, improved or replaced. Fences may be removed or additional fences may be installed if authorized in writing by the Commissioner.
- 5.3.3 Temporary Structures. The Landowner reserves the right to have portable, temporary structures for the purpose of hunting wild animals during all legal hunting seasons and for nature observation, provided the structures are nontoxic, and those left overnight are nonflammable. Portable is defined here as a structure that can be carried in by one or two people, in one trip, on foot, in order to have as little impact to the Protected Property as possible. Portable structures must not restrict prairie management activities on the Protected Property and the Commissioner shall not be responsible for damages to stands resulting from prairie management activities as described in Section 6.2.

5.4 Subdivision. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels for property tax or other purposes.

5.5 Density. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property.

6. AFFIRMATIVE RIGHTS OF THE COMMISSIONER

6.1 Posting. The Commissioner has the right to designate and post the Protected Property as a Native Prairie Bank Easement and as a State Scientific and Natural Area consistent with the conditions contained in the Easement. Rights held by the Landowner under the terms and conditions of this easement are not altered by posting the Protected Property as a Scientific and Natural Area.

6.2 Right to Enter. The Commissioner has the right to enter the Protected Property in a reasonable manner and at reasonable times. The Commissioner will attempt to give prior notice to the Landowner, or their representative, of entries and shall not unreasonably interfere with the Landowner's use of the Protected Property, except in cases of suspected intended violations.

- 6.2.1 Right to Manage Prairie. The Commissioner has the right to enter the Protected Property to undertake prairie management activities including but not limited to: prescribed burning, periodic mowing, cutting, removing or destroying of trees, shrubs and fencing (other than fences permitted by Section 5.3) in order to maintain and restore the Conservation Values protected by the Easement.
- 6.2.2 Right to Harvest. The Commissioner has the right to enter the Protected Property to harvest seed to use for conservation purposes. If the landowner retains seed harvest rights but chooses not to harvest seed the Commissioner can harvest seed for conservation purposes under a Seed Harvest Plan.

6.2.3 **Right to Monitor and Inspect.** The Commissioner has the right to enter the Protected Property for inspection and monitoring purposes to determine compliance with the terms of this Easement and for enforcement of this Easement.

6.3 **Right of Enforcement.** The Commissioner has the right to enforce by proceedings, at law or in equity, the covenants contained in this Easement, including, but not limited to, the right to bring an action in any court of competent jurisdiction to enforce the terms of this Easement.

6.3.1 **Notice.** If the Commissioner becomes aware of an event or circumstance of non-compliance with the terms and conditions set forth in this Easement, the Commissioner will give written notice to the Landowner or its successor, at the address set forth below, of such event or circumstance of non-compliance. Failure by the Landowner to take corrective action as may be requested by the Commissioner within thirty (30) days after receipt of notice, shall entitle Commissioner to bring an action as authorized above.

6.3.2 **Remedies.** Remedies available to the Commissioner in enforcing this Easement include 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 the Commissioner, in his discretion, to corrective action on the Protected Property, if necessary.

6.3.3 **Cost of Enforcement.** If a court of competent jurisdiction determines that the Landowner has failed to comply with this Easement, Landowners must reimburse the Commissioner 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.

6.3.4 **Discretionary Enforcement.** The failure of the Commissioner to enforce any provision of this Easement will not result in a waiver of the subsequent violation of that provision or any other provision of the Easement.

6.3.5 **Acts Beyond Landowner's Control.** The Commissioner may not bring any action against the Landowner for any change to the Protected Property resulting from causes beyond the Landowner's control, such as caused by flood, storm, natural deterioration or global warming or actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

7. GENERAL PROVISIONS

7.2 **Easement Conveyance.** The conveyance of any other easement for any purpose, including but not limited to road or utility purposes, upon or within the Protected Property is prohibited without a written authorization from the Commissioner.

7.3 **Liability.** Each party will be responsible for its own acts. The Commissioner's liability is governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. § 3.736, successor statutes, and other applicable law.

7.4 **Taxes.** The Landowner agrees to pay all taxes or assessments that may be levied against the Protected Property.

7.5 **Sale or Transfer of Protected Property.** The Landowner shall notify the Commissioner in writing at least 30 days prior to the sale or transfer of the Protected Property in order to update ownership records at the Department of Natural Resources.

7.6 Amendments. This Easement may be amended by written agreement of the parties hereto, provided that no amendment shall be allowed that will affect the qualification of this Easement under any applicable laws. Any amendment (i) shall be consistent with the Purposes of this Easement, (ii) shall either enhance or shall not impair any significant Conservation Value of the Protected Property, and (iii) so long as the State of Minnesota holds the rights of Grantee hereunder, shall be in compliance with the State of Minnesota's policies and procedures. The Commissioner may, in the Commissioner's sole discretion, withhold its agreement to an amendment of this Easement. Any amendment shall be in writing, shall refer to this Easement by reference to its recording data, shall be signed by Landowner and the Commissioner, shall include the written consent of others as required by law or contract, and shall be recorded in the land records of the county in which the Protected Property is located.

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

7.7 Termination. This Easement may be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction and only if an unexpected change in the conditions of or surrounding the Protected Property makes it impossible or impractical to continue to protect the Conservation Values of the Protected Property. If the restrictions of this Easement are extinguished, in whole or in part, by judicial proceedings, when the Protected Property is sold, exchanged or involuntarily transferred, the Commissioner will be entitled to a portion of the proceeds at least equal to the proportionate value of the Easement cited in the preceding provision.

7.8 Notice. Any notice, demand, request, approval, or other communication that either party wishes to or must give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the following addresses or such other address as either party shall designate by written notice to the other:

Landowner:	State of Minnesota
<u>Landowner Name</u>	<u>Department of Natural Resources</u>
<u>Address</u>	<u>Scientific and Natural Areas Program</u>
<u>City, State ZIP</u>	<u>500 Lafayette Road</u>
	<u>St. Paul, MN 55155</u>

IN WITNESS WHEREOF, the parties have executed this Conservation Easement on this ____day of _____, 20__

LANDOWNER:

*NAME

*NAME

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by
_____ and _____, husband and wife, Landowner.

Notary Public
My commission expires: _____

ACCEPTANCE BY GRANTEE

The foregoing Conservation Easement is hereby duly accepted by the State of Minnesota, Department of Natural Resources on this ____ day of _____, 20__.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

JESS RICHARDS, Director
Division of Lands and Minerals

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by JESS RICHARDS, Director of the Division of Lands and Minerals, Department of Natural Resources, on behalf of the State of Minnesota.

EXHIBIT A - Protected Property