



June 19, 2015

Ms. Susan Thornton
Director
Legislative-Citizens Commission on Minnesota Resources
Room B-65, State Office Building
100 Rev. Martin Luther King Jr. Blvd.
St. Paul MN 55155

Re: Water quality and MLT conservation easement template

Dear Ms. Thornton:

This letter is in response to the Commission's recent request to have the Minnesota Land Trust describe how its conservation easements funded by the Environment and Natural Resources Trust Fund comply with ML2015, chapter 76 easement requirements related to water quality. As you and I have discussed, I will be out of town and unfortunately unavailable to present to the Commission on June 25th. However, I would like to offer the Land Trust's response to the Commission's question in writing and provide you with our easement template highlighted to show where and how we comply with the requirements related to water quality/quantity.

The requirements related to water resources are highlighted below:

- (g) All conservation easements acquired with
- 35.7 money appropriated under this section must:
- 35.8 (1) be permanent;
- 35.9 (2) specify the parties to an easement in the
- 35.10 easement;
- 35.11 (3) specify all of the provisions of an
- 35.12 agreement that are permanent;
- 35.13 (4) be sent to the Legislative-Citizen
- 35.14 Commission on Minnesota Resources in an
- 35.15 electronic format at least ten business days
- 35.16 prior to closing;
- 35.17 (5) include a long-term monitoring and
- 35.18 enforcement plan and funding for monitoring
- 35.19 and enforcing the easement agreement; and
- 35.20 **(6) include requirements in the easement**
- 35.21 document to address specific groundwater**
- 35.22 and surface water quality protection activities**

**35.23 such as keeping water on the landscape,
35.24 reducing nutrient and contaminant loading,
35.25 protecting groundwater, and not permitting
35.26 artificial hydrological modifications**

The enclosed conservation easement template contains our most recent language regarding ENRTF-funded projects. We have highlighted the sections that address surface and ground water protection. In all, there are more than fifteen (15) different provisions that address water and water quality, including the over-arching conservation purposes of the easement.

In addition to the provisions within the easement document, we should note that the Minnesota Land Trust strategically incorporates water quality issues in its project selection. The Land Trust's ENRTF funded programs (Metro Conservation Corridors and Avon Hills) are targeted to projects with high-quality natural habitats. Those projects that rank the highest include riparian habitat on wetlands lakes, rivers, wetlands and streams. Moreover, we assess how any given project contributes to the goals of local comprehensive plans, water plans, State conservation strategies, or other documented public policies which have identified water quality objectives related to the property. Therefore, we are selecting projects which are contributing positively to the health of surface and ground waters and including these features as part of the project's stated public benefits.

Once we select a project and begin working on it, the easement is individually drafted to meet the unique features of the property including its contributions to water quality. As you know, we significantly limit any uses of the landowner which may impact water quality, including residential, agricultural, industrial or commercial uses. On any typical easement which will be funded by the ENRTF, at least 90% or more of the property will be in natural land cover, which will be required to remain in a natural state by the easement, thereby providing its wildlife habitat and water quality benefits long into the future. Any uses on a property such as residential or agricultural use will either be excluded from the easement area or will be severely limited by the terms of the easement, depending on the best conservation outcome, landowner's circumstances and property's configuration.

In addition to the easement template, I have also included a description of the Minnesota Land Trust's easement stewardship program. We believe that the language in the easement is only the first step towards effective perpetual conservation. Our easement program includes annual monitoring of the property, working with landowners to understand and comply with the terms of the easement, effective record keeping, and swift enforcement when necessary. These efforts have contributed to our accreditation by the Land Trust Accreditation Commission.

We look forward to a future discussion regarding the Minnesota Land Trust's easement template and how we address water quality. Please keep me informed of the next steps to advance this conversation.

With best regards,



Kris Larson
Executive Director

Conservation Easement Stewardship Overview

MINNESOTA LAND TRUST

Stewardship: Working in partnership with landowners and the communities in which their lands are located to preserve the conservation values of those lands protected by Minnesota Land Trust conservation easements.

Conservation easements are forever. With each easement it accepts, the Minnesota Land Trust simultaneously accepts responsibility to protect that land and its conservation values into the future. The following generally describes our plan for meeting our stewardship obligations.

Goals:

The ultimate responsibility of the Minnesota Land Trust's conservation easement stewardship program is to preserve the conservation values associated with each property protected by an easement. To meet our obligations effectively, the goals of the Minnesota Land Trust's stewardship program are to:

- Encourage voluntary compliance with the terms of our conservation easements.
- Establish and maintain good relationships with our landowners.
- Establish and maintain good relationships with the communities in which our easements are located.
- Provide professional, timely responses and service to our landowners.
- Document the condition of lands protected by each easement at the time the easement is completed and monitor that condition over time.
- Maintain accurate records.
- Be efficient and effective with the use of our funds in supporting our stewardship activities.
- Swiftly address any potential violations and legally defend our easements as needed.

Components of a Stewardship Program:

Stewardship in the Minnesota Land Trust starts with a well-drafted conservation easement. Many future problems can be eliminated if the easement itself is drafted with long-term stewardship issues in mind.

That being said, there are a number of specific components to the Minnesota Land Trust's stewardship program. These include:

- creating the baseline property report
- easement administration
- monitoring
- landowner relations
- community relations and finally

- easement enforcement and defense

Major aspects of each area are discussed below.

Baseline Property Reports:

A baseline property report documents the physical and biological condition of a parcel of land subject to an easement at the time the easement is granted. It is the background information against which the property is monitored and evaluated over time to determine if there has been a violation of the terms of the easement.

A baseline property report will be created for every conservation easement held by the Minnesota Land Trust. All property reports will contain:

- A descriptive overview of the property covering vegetation and improvements.
- Maps.
- Photographs.

Each property report will be signed by the landowner conveying the easement and the Minnesota Land Trust attesting to the fact that the report reflects the condition of the property at the time the easement was completed. Property reports will be updated as necessary to reflect changes to the property from the exercise of reserved rights, any amendments to the easement or other factors which reflect major changes to the condition of the property.

Easement Administration:

Administrative tasks associated with conservation easements include routine requests for information or interpretation about a particular easement, formal requests for approval from the Minnesota Land Trust for certain activities specified in the easement as requiring Land Trust approval (e.g. building locations, forestry management plans, etc.) and, in very rare circumstances, amendments to the easement itself.

Requests for information:

The Conservation Stewardship Director routinely handles requests for information about an easement or about monitoring or similar matters. Interpretations of ambiguous or confusing language require review by legal staff. All interpretations are set out in writing to avoid later misunderstandings.

Formal approvals:

Easements often allow certain activities to take place only with the written approval of the Land Trust. Formal approvals require an initial written request with appropriate supporting information from the landowner. All requests are initially reviewed by the Conservation Stewardship Director to make sure that any approvals are consistent with the conservation purpose of the easement and will not adversely impact the conservation values of the land.

Requests for approvals are also reviewed by legal staff to make sure any approval is in technical compliance with the terms of the easement. All approvals will be given to a landowner in writing, generally signed by the Executive Director.

Amendments:

Amendments to conservation easements are very uncommon and are seriously addressed, but may be appropriate in certain of situations, such as technical corrections, clarifications of ambiguous language, adding additional land, or removing reserved rights to strengthen the easement. The Minnesota Land Trust's amendment policy states that any amendment must result in an improvement in conservation benefits. Amendment requests require thorough review by the Stewardship Director, appropriate legal review, approval by the Executive Director for minor technical amendments and approval by the Board of Directors for any substantive requests.

Monitoring:

Monitoring is the core component of any conservation easement stewardship program. It helps build relationships with landowners, allows the Land Trust to discover any problems, and provides an opportunity to document changes in the property or its ownership.

Monitoring plans:

The Land Trust will create a monitoring plan for each property on which it holds a conservation easement. These plans will be based on terms of the conservation easement itself and on the property report created to document the condition of the property at the time the easement was completed. The monitoring plan will suggest how and when the property should be monitored and identify those areas of particular concern or requiring special attention. A monitoring plan will generally include a monitoring map to assist in monitoring. Conditions on the property may change over time and monitoring plans will need to be updated to reflect these changes.

Monitoring workbooks:

A monitoring workbook will be maintained on each protected property. Unlike a property report that is intended to capture a "moment in time," the monitoring workbook will be a dynamic tool tracking changes in the condition and ownership of the property. The monitoring workbook will include:

- Current ownership, contact information and directions to the property.
- Copy of the property report including maps and photographs.
- Monitoring plan for the property, with monitoring map.
- Past monitoring reports.
- Copy of the conservation easement.
- Copies of any amendments, approvals or interpretations of the easement.
- Summary of Land Trust monitoring procedures.
- Current monitoring report form.

Timing of monitoring visits:

It is the practice of the Minnesota Land Trust to monitor each property annually or more often if needed such as at time of construction, amendment of the easement, or approval of the exercise of a reserved right.

Monitors:

The Land Trust uses both staff and volunteers to monitor protected property. All volunteers will be asked to complete a certification program.

Landowner Relations:

The Minnesota Land Trust will be most successful if landowners voluntarily comply with the terms of the easements protecting their lands. Therefore, the Land Trust views its relationship with landowners as a partnership. To support this partnership, the Land Trust will:

- Send each landowner a completed easement packet that will include a copy of the recorded easement and information on monitoring and other matters of concern to most landowners regarding their conservation easement.
- Provide each landowner with signs that note the protected status of their property.
- Provide each landowner with an honorary life membership.
- Hold an annual landowner appreciation event.
- Distribute an annual landowner newsletter.
- Following the transfer of ownership, make sure that all new landowners receive a personal visit from staff, a copy of the property report, a complimentary membership and an easement packet.

Community Relations:

Conservation of private lands will be successful if the communities in which these lands are located recognize and value the role of private land conservation in creating a livable community. The Minnesota Land Trust will work with local communities by:

- Hosting appropriate events to educate a community about conservation easements and activities in the area.
- Working with local media.
- Identifying and working with selected audiences such as realtors, local government officials, neighbors, or homeowners associations.

Violations and Easement Defense:

In the end, the Minnesota Land Trust must be prepared to correct violations of easement terms. Each suspected violation requires an individualized approach. Whenever possible, the Land Trust will work with the landowner to have the landowner voluntarily correct the situation. However, it is the Land Trust's intent and obligation to legally enforce the easement as necessary. Any judicial action taken by the Minnesota Land Trust requires approval by the Board of Directors.



**Conservation Easement Language
Related to Water Quality
For ENRTF Funded Conservation Easements
June, 2015**

This document was created to illustrate how the Minnesota Land Trust complies with the statutory requirements regarding water quality and quantity for conservation easements funded through the Environment and Natural Resources Trust Fund (ENRTF). Each easement still will be individually drafted to meet the unique conservation values of the property, the landowner's individual circumstances and other variables. However, the language **highlighted in yellow** are those areas w/in the easement which address water issues and the requirements outlined below. The **areas in blue text** are instructions to the easement drafter found in the Minnesota Land Trust's template easement. They remain here for descriptive purposes only and will be eliminated when drafting an actual easement.

*(g) All conservation easements acquired with
35.7 money appropriated under this section must:
35.8 (1) be permanent;
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35.10 easement;
35.11 (3) specify all of the provisions of an
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CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by _____
[Insert name and marital status, ownership status, or other information needed to identify the specific title owner/s. Be sure to conform the exact name to the owner's name/s established by title work.]

(the "Owner") to the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the "Land Trust".)

BACKGROUND

[NOTE: This section of the easement provides an opportunity to create the context for understanding the public benefits achieved by protecting the property and interpreting the specific land use restrictions and reserved rights set out in the easement. Provide sufficient information for a reader unfamiliar with the property to understand why protection of the land through a conservation easement is appropriate.]

A. OWNER. The Owner is the current owner of approximately _____ acres of real property located in _____ County, Minnesota. That real property is more fully described below as the "Protected Property."

[Acreage inserted here should come from GIS analysis in most situations, rounded down to the next whole number. Be sure to reconfirm acreage before the easement is finalized.]

[If applicable and appropriate add the following:] The Protected Property is part of a larger tract of land owned by the Owner.

B. MINNESOTA LAND TRUST. The Minnesota Land Trust is a non-profit corporation organized and operated exclusively for charitable and educational purposes including the preservation and protection of land in its natural, scenic or other open space condition. The Land Trust is a public charity as defined in Sections 501(c)(3) and 509(a) of the Internal Revenue Code and an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations, possessing the commitment to protect the conservation purpose of this conservation easement (the "Conservation Purpose") and the resources to enforce the restrictions.

C. PROTECTED PROPERTY. The Protected Property is that real property legally described in Exhibit A and generally depicted on the "Property Map" in Exhibit B. Both exhibits are attached to this conservation easement (the "Easement") and incorporated by this reference.

The purpose of this section is to give the reader a sense of the property being protected. It provides the context for understanding and interpreting the restrictions and reserved rights.

This section should also describe in detail the “conservation values” of the property. Conservation values are those inherent physical and ecological attributes of the property that provide the reason for protecting the property, as not all attributes are appropriate for protection. The conservation values associated with the property exist whether or not they are fully described in the easement, but describing the values in the easement provides the reader with a context in which to better understand the terms of the easement.

This section of the easement should also describe the characteristics and features of the property and its surroundings that support the reasons for protecting the property and the *public benefits* achieved through protection. This might include a description of threats to the property or the economic importance of preserving the property.

Track language from the IRS regulations and ENRTF or other State requirements where appropriate. Use sufficient detail to allow a reader to conclude that the easement meets state law and federal tax law criteria, as applicable, for conservation easements.

The following suggested topics should all typically be addressed but information should be arranged in whatever order best “tells the story” and demonstrates why this particular parcel is worth protecting:

- General location of the property.
- General description of the land cover, water bodies and improvements.
- General description of current, historic or anticipated land use as appropriate.
- Detail on the *ecological* or *physical* attributes that establish the property’s conservation values, including language that describes how the protection of the property fits the strategic goals of the Land Trust’s program, state funding requirements and IRS deductibility as “a relatively natural habitat of wildlife, fish or plants or similar ecosystems.”
- Public access, if appropriate.
- Context of the property, including relationship to other protected lands or as a component of a larger ecologically important area. This includes the hydrologic context of the property, including the particular watershed in which the property sits as well as the contributions of the property to local or regional water-related conservation goals.
- Threats or circumstances affecting the property if it is not protected, including to the related water resources.
- Economic or social value of protecting the property, as appropriate.
- Uniqueness of the protection opportunity.

The Protected Property is located _____.

[Include the general location and overall geographic, social and/or economic context of property as appropriate.]

The Protected Property consists of _____.
[Briefly describe the overall physical or ecological condition or appearance of the property. Describe land cover—such as woodlands, restored prairie, open fields. Include GIS calculated acreages—rounded to whole numbers—if appropriate. Identify water bodies and amount of shoreline. **Include the total acreage of any lake that touches the property.]**

Existing improvements on the Protected Property include _____.
These improvements are more specifically described in the baseline documentation report referred to in section 6 of this Easement.
[List and generally describe all structures and improvements OR refer to an attached map OR identify on another exhibit if buildings and improvements are extensive. Do not include specific details on building sizes, etc., particularly if those will change over time. Include that data in the baseline documentation report.]

The Protected Property is currently used for _____.
[Identify current uses such as farming, woodland management, single family or seasonal residential use, low impact outdoor recreational use, nature observation, etc. Add historic or anticipated future uses if appropriate.] For Avon Hills, mention if the property is currently used for timber harvesting or providing sustainable forest products.

The natural attributes of the Protected Property include _____.
[Describe the natural communities—terrestrial **or aquatic—as well as any threatened, rare, or endangered species or other species of conservation concern that exist on the property in detail. Note if the property contains areas that provide food, shelter, breeding ground, for identified wildlife species. Identify any plans or evaluations by others (such as DNR, USFWS, TNC, Local Government, etc.) that note the property’s importance. Include all physical or ecological attributes that demonstrate how this property fits public policies identified below. Emphasize any uniqueness of the property—ecological, **hydrological**, scenic, etc.]**

The Protected Property is a component of/consistent with _____.
[Reference any adjacent or related protected land—including other Land Trust protected land—or other context issues that support its ecological importance. **Include reference to watershed plans and/or other water-related public goals. Note any importance as part of a larger plan, complex, migration route or habitat corridor—such as an Audubon IBA, part of a migratory corridor identified by USFWS, etc.]**

The scenic attributes of the Protected Property include _____, which are visible to the public from _____.
[If appropriate to the project, describe scenic attributes in detail. Use IRS language: compatibility of land use with other land in the vicinity, degree of contrast and variety]

provided, openness and relief in urban settings, harmonious variety of shapes and textures, consistency with scenic plans, etc. Although ENRTF funding is for wildlife habitat-oriented projects, if there are scenic attributes of public value, cite those values.]

[Identify location(s) from which the public can view property. Note extent or degree to which location of visibility is used by the public—e.g. near a large population area, along a well-traveled highway, prominent shoreline of popular recreation lake, etc.]

The public has access to the Protected Property _____.
[Include discussion of physical public access if appropriate—nature trails, access for fishing or boating, etc.]

The Protected Property is located in an area experiencing _____.
[Identify threats or circumstances affecting the current status of the property as appropriate, including the intensity of existing development/land conversion or foreseeable trends and the likelihood that such development/conversion would lead to or contribute to the degradation of the natural or scenic character of the area. Include any known threats to the water resources located on or adjacent to the property]

The Protected Property is also important for _____.
[Identify any public benefits achieved by in protection of the property that have not yet been discussed, such as importance of the property in preserving a local/regional landscape or resource that attracts tourism or commerce to the area. Reference here any forestry economy attributes, clean water or recreational opportunities not listed elsewhere which are of public importance and relevant to the particular program]

Preservation of the Protected Property provides a unique opportunity _____.
[Identify any particularly unique aspects of the transaction, such unusual size, last tract available, etc.]

D. CONSERVATION VALUES. Collectively and individually, the following natural, scenic and open space qualities of the Protected Property that are outlined above comprise its “Conservation Values:”

EXAMPLES—amend as appropriate but be brief. Do not duplicate description above. Prioritize identified conservation values if appropriate. Not all of these values will be present. Because the goals of ENRTF-funded projects relate to wildlife habitat and the quality of the natural resources of a particular property, all ENRTF projects will have a conservation value of relatively natural habitat. The other values will be described only if/when present on the property.

- **[For relatively natural habitat:]** The undeveloped and relatively natural character of the Protected Property provides significant habitat for a variety of fish, wildlife and plants, including _____.

- **[For shorelands, providing habitat and furthering public policy:]** The undeveloped riparian area and shoreline along _____ Lake or _____ River or the Property's wetland areas helps maintain the water quality of the Lake/River and provides near-shore habitat for a variety of aquatic plants, animals and natural communities.
- **[For open lands providing scenic enjoyment:]** The open and natural character of the Protected Property provides scenic views enjoyed by the general public from _____. **[Identify the publicly accessible waterway, road, park, trail, nature preserve, etc.]**
- **[For outdoor recreation:]** Access to the Protected Property will provide the general public with opportunities for outdoor recreation and/or education.

These Conservation Values have not been and are not likely to be significantly impaired by the continued use of the Protected Property as described above or as authorized in this Easement **[add if structures exist or are allowed]** or by the use, maintenance, or construction of any structures and improvements that presently exist on the Protected Property or that are authorized below.

The preservation and protection of these Conservation Values will provide significant benefit to the public.

- E. CONSERVATION POLICY. Protection of the Conservation Values of the Protected Property is consistent with, and will further, delineated governmental policies including those established by the following:

[List those federal, state and local statutes, regulations, or policy statements that identify the clearly delineated public conservation policies supporting this easement, including those supporting water quality and quantity. Commonly used references are listed below.]

- Minnesota Statutes Chapter 116P, which governs the Environment and Natural Resources Trust Fund and **[For ENRTF funded projects, use appropriate citations for each appropriation such as: Minnesota Laws 2013, Regular Session, Chapter 52, Section 2, Subdivision 4(j), which provides funding from that Fund to secure permanent conservation easements on high quality habitat in Stearns County.]**
- Minnesota Statewide Conservation and Preservation Plan, 2008, which promotes the protection of priority land habitats, critical shorelands and private shorelands via economic incentives and other tools, including conservation easements.
- **[For shorelands:]** Minnesota Statutes Chapter 103A, which promotes protection of Minnesota's waters and their adjacent lands, and Minnesota Statutes Section 103A.206 in particular, which recognizes the economic and environmental importance of maintaining

and enhancing the soil and water resources of this state and the role of private lands in these conservation efforts to, among other things, preserve natural resources, protect water quality, preserve wildlife, and protect public lands and waters.

- **[For wetlands:]** Minnesota Statutes Section 103A.201, which specifically promotes the protection of wetlands, and Minnesota Statutes Section 103A.202, which specifically declares that it is in the public interest to preserve the wetlands of this state to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, and enhance the natural beauty of the landscape.
- **[For sustainably managed forested areas:]** Minnesota Statutes Section 89A.02, which specifically states that it is the policy of the State to pursue the sustainable management, use, and protection of the state's forest resources to achieve the state's economic, environmental, and social goals and to encourage cooperation and collaboration between public and private sectors in the management of the state's forest resources.
- Minnesota Statutes Chapter 84C, which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality.
- **[Add other policy references as appropriate. See the Minnesota Land Trust policy reference guide for suggestions. Local references are particularly important. Check zoning codes and ordinances.]**

F. CONSERVATION INTENT. The Owner and the Land Trust are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current Owner and all future owners of the Protected Property and that conveys to the Land Trust the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

G. FUNDING. Funding for the acquisition of this conservation easement has been provided by the Minnesota Environment and Natural Resources Trust Fund as recommended by the Legislative-Citizen Commission on Minnesota Resources (LCCMR). Specifically, this Easement was funded through the _____ program under grant number _____. The purpose of this grant is to _____. **[Insert appropriate program, grant number and purpose]**

Due to this funding, this Easement is subject to Minnesota Statutes Section 116P.15. Specific requirements of Section 116P.15 are detailed in a separate Notice of Funding Restrictions required under the statute and recorded against the Protected Property.

This Notice of Funding Restrictions contains the following statement as required by Section 116P.15: “This interest in real property shall be administered in accordance with the terms, conditions, and purposes of the grant agreement controlling the acquisition of the property. The interest in real property, or any portion of the interest in real property, shall not be sold, transferred, pledged, or otherwise disposed of or further encumbered without obtaining the prior written approval of the Legislative-Citizen Commission on Minnesota Resources or its successor. The ownership of the interest in real property transfers to the state if: (1) the holder of the interest in real property fails to comply with the terms and conditions of the grant agreement or work plan; or (2) restrictions are placed on the land that preclude its use for the intended purpose as specified in the appropriation.”

CONVEYANCE OF CONSERVATION EASEMENT

Pursuant to the laws of the State of Minnesota, and in particular Minnesota Statutes Chapter 84C, and in consideration of the facts recited above and the mutual covenants contained herein, **[SELECT AS APPROPRIATE, OR CHOSE NEITHER IF NOT APPLICABLE: FOR A GIFT]** and as an absolute and unconditional gift, for which no goods or services have been provided, **[OR FOR A PURCHASE, INCLUDING A BARGAIN A PURCHASE]** and for the further consideration of **[include purchase price if appropriate]**, the Owner hereby conveys and warrants to the Land Trust and its successors and assigns a perpetual conservation easement over the Protected Property. This Easement creates a property right immediately vested in the Land Trust and consists of the rights, terms, and restrictions set out below.

[If an access easement across other land owned by the Owner is needed include:]

The Owner also conveys to the Land Trust an easement **OR** right of way **[select as appropriate to the circumstances]** for access to the Protected Property. The terms of that access easement are described in more detail in section 4 of this Easement.

1. **CONSERVATION PURPOSE.** The Conservation Purpose of this Easement is to provide significant public benefit by preserving and protecting in perpetuity the Conservation Values of the Protected Property identified above as those values exist at the time of this conveyance and as they may evolve in the future.

This Conservation Purpose is accomplished by confining the development, management and use of the Protected Property to activities and improvements that are consistent with the preservation of these Conservation Values, by prohibiting activities and improvements that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

[If there are prioritized conservation values consider prioritizing conservation purposes as well in relationship to prioritized conservation values.]

2. **RESTRICTIONS.** **Any activity or improvement on or use of the Protected Property in a manner that may significantly impair or interfere with the Conservation Values of the**

Protected Property or that is inconsistent with the terms or the Conservation Purpose of this Easement is prohibited.

[Add the following sentence for easements with scenic conservation values in addition to water conservation values and/ or the wildlife habitat values as required by the IRS:]

This specifically prohibits any future development that would interfere with or intrude upon the essential scenic quality of the Protected Property or the visual enjoyment of the open and natural character of the Protected Property by the general public.

Except as specifically permitted in section 3 of this Easement and without limiting the general prohibition above, restrictions imposed upon the Protected Property expressly include the following:

- 2.1. Industrial Activity. No industrial use of the Protected Property is allowed.
- 2.2. Commercial Activity. No commercial use of the Protected Property is allowed except for that agricultural use, forest management, minimal commercial recreational use, home business use or other use specifically permitted in section 3 of this Easement or except as incidental to other uses or activities specifically permitted in this Easement. **[Amend the listed exceptions as appropriate if some of these uses are NOT allowed.]**
- 2.3. Agricultural Use. No agricultural use of the Protected Property is allowed **[OR if appropriate add]** except as specifically permitted in section 3 of this Easement or with prior approval of the Land Trust under provisions of section 7.6 of this Easement. **[If NO agricultural use is allowed include the following:]** This includes and prohibits tilling, plowing, new **agricultural wells**, commercially cultivating row crops, keeping or grazing livestock, haying, feedlots, short rotation woody crops, orchards or nurseries. This does not include or prohibit keeping personal pets, beekeeping, maple syrup collection, or vegetation management activities allowed in section 2.13 of this Easement. **[Amend and add other minor uses—such as creation and maintenance of small wildlife food plots if allowed as habit management—if appropriate.]**
- 2.4. Residential Use and Development. No residential use or development of the Protected Property is allowed except as specifically permitted in section 3 of this Easement. **[Amend as appropriate if no residential use is allowed.]**
- 2.5. Division of the Protected Property. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel under single ownership (joint or undivided) regardless of whether it now consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes.

The general prohibition set out above does not prohibit the following:

- a. The division of the Protected Property when a portion of the Protected Property is being conveyed to a conservation entity defined in section 7.1 of this Easement.
- b. The legal division of the Protected Property into separate parcels to accommodate either the construction of residential dwellings permitted under section 3 of this Easement or to accommodate other uses and activities specifically permitted by this Easement. Any division of the Protected Property under this section requires that the Protected Property remains in single ownership and requires the prior approval of the Land Trust under the provisions of section 7.6 of this Easement. **[Add this paragraph if legal division of the property without ownership change is potentially necessary to build permitted residences.]**
- c. The correction or adjustment of boundary lines to resolve an ownership dispute.

OR

[If division of the property into separate parcels is allowed, choose and amend the following language as appropriate.]

Division of the Protected Property. The Protected Property may not be divided, subdivided, or partitioned regardless of whether it now consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes except as specifically set out below.

- a. As set out in section 3.2 of this Easement.
- b. To convey a portion of the Protected Property to a conservation entity defined in section 7.1 of this Easement.
- c. To correct or adjust a boundary line to resolve an ownership dispute.

2.6. Development Rights. 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, open space, or natural resource use or extraction under otherwise applicable laws, regulations, or ordinances controlling land use. The development rights that have been encumbered or extinguished by this Easement may not be transferred to any other property or used to obtain any regulatory mitigation credits.

2.7. Rights of Way. No new right of way shall be granted across the Protected Property by the Owner in conjunction with any industrial, commercial, or residential use or development of other land not protected by this Easement without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement. This provision does not affect any rights of way existing at the time of this conveyance.

2.8. Structures and Improvements. No temporary or permanent buildings, structures, utilities, roads or other improvements of any kind may be placed or constructed on

the Protected Property except as specifically permitted in section 3 of this Easement or as set forth below:

[NOTE: This section below will be individually tailored to each property. If there are no existing structures or related uses, this section would be significantly altered to not allow any future use. However, for illustration purposes, the section below is drafted presuming some limited uses of the property exist. In many cases, no structures or related uses at all exist on the property or will be allowed. In that case, this section should be reviewed in its entirety and redrafted. Approximately one-half of Minnesota Land Trust easements do not permit any residential, commercial, industrial or agricultural uses. In the other easements, some continued uses are existing or contemplated and appropriately restricted to ensure they do not interfere with the conservation values of the property]

- a. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended, and replaced to serve only uses and activities specifically permitted by this Easement.

Permitted utility systems and facilities include, without limitation, all systems and facilities necessary to provide on-site power, fuel, water, waste disposal, and communication. Permitted utility systems and facilities do not include communication towers, new **agricultural wells**, wind turbines, or similar structures.

- b. Signs. No billboards or other signs may be placed or erected on the Protected Property except for small, unlighted signs for informational or interpretive purposes that do not impair or interfere with the natural habitat or scenic qualities of the Protected Property. The Land Trust may place signs on the Protected Property identifying the land as protected and the source of funding.
- c. Roads. Existing roads, driveways and parking areas may be maintained or improved but may not be widened or relocated without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement.

[If appropriate, allow for driveways or parking areas for residential or other uses or cross-reference section 3.]

No other roads, driveways or parking areas may be established or constructed on the Protected Property without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement, except those forest trails or landing areas important to habitat management that are identified in a habitat management plan approved by the Land Trust according to the provisions of section 7.6 of this Easement.

- d. Trails. Unpaved paths or trails may be established and maintained for **[select: non-motorized OR non-motorized and limited motorized]** recreational or land

management uses. Trails may be established, maintained and used only in a manner that does not result in significant erosion or impair or interfere with the natural habitat, **water quality** or scenic quality of the Protected Property, **[add as necessary]** including _____. **[If important or of concern to the particular site, replace or add to the general reference to conservation values with a reference to the particular conservation value to be aware of—a specific natural habitat, **water quality** or scenic feature.]**

[NOTE: Remember to address any existing or needed boardwalks, bridges, culverts or docks here, in a new sub-section or cross-reference section 3.

If the property is or will be publicly owned or if trails will be open to the public, consider addressing ADA accessibility issues, partial paving, trail barriers, etc.

Be sure that trail and vehicle provisions of 2.14 are consistent.]

- e. Fences. Fences may be constructed, maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by this Easement.

Fences may not be located or constructed in a manner that impairs or interferes with the natural habitat or scenic quality of the Protected Property or interferes with established wildlife corridors **[add as necessary]** including _____. **[Amend as necessary. If important or of concern to the particular site, replace or add to the general reference to conservation values with a reference to the particular conservation value to be aware of—a specific natural habitat, water quality or scenic feature.]**

- f. Outdoor Lighting. No permanent outdoor lighting is allowed except _____. **[Add allowed uses as appropriate or eliminate if not appropriate.]**

[OR add this paragraph if downcast lighting is required:] In order to minimize sky glow or light pollution originating from the Protected Property, any new outdoor light fixtures must minimize light emitted above the plane of the horizon of the fixture through the use of earthward directed or full cut-off fixtures or lamps with single or minimal-color light sources, or other equally effective fixtures designed to minimize light pollution.

- 2.9. Dumping. **No trash, non-compostable garbage, debris, unserviceable vehicles or equipment, junk, other unsightly material or hazardous or toxic substances may be dumped or accumulated on the Protected Property.** **[Add if appropriate:]** This does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted by this Easement. **[Also add if appropriate:]** This does

not prohibit temporary placement of building materials, debris or refuge containers if incidental to activities and construction permitted by this Easement.

[NOTE: Consider limiting size of any brush pile and treatment of soil and other landscaping material.]

- 2.10. **Mining and Extraction.** No mining, drilling, exploring for, or removing any minerals, sand, gravel, rock, or fossil fuels from the Protected Property is allowed.

[NOTE: Federal tax code provisions require prohibiting surface mining at a minimum. Amend if limited, localized impact is allowed. If the landowner does not own the minerals, include—amending as necessary—the following:]

No mining, drilling, exploring for or removing any sand, gravel, rock or fossil fuels from the Protected Property is allowed except for de minimus removal of sand or gravel in a limited and localized manner exclusively for personal use on the Protected Property for such uses as road or trail maintenance. The location of this extraction shall require the prior approval of the Land Trust under the provisions of section 7.6 of this Easement.

The minerals and mineral rights in the Protected Property have been severed in whole or in part from fee title and are not under the current control or ownership of the Owner. The Owner believes that, as of the time of the conveyance of this Easement, the probability of surface mining on the Protected Property is so remote as to be negligible. If the currently severed minerals and mineral rights and the fee title are merged or reassembled in the future, the Owner agrees that no mining, drilling, exploring for or removing of any minerals from the Protected Property is allowed.

If the Owner is approached by or in contact with the owner of the minerals or mineral rights for the purpose of entering into any agreement or contract regarding the minerals or mineral rights, including a surface use agreement, the Owner shall obtain the prior approval of the Land Trust under the provisions of section 7.6 of this Easement before executing any such agreement or contract. In the unlikely event that the exercise of the mineral interest results in the termination of this Easement, such termination shall be subject to the provisions of section 7.3 of this Easement.

- 2.11. **Topography and Surface Alteration.** No alteration or change in the topography or the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil or other material.

This does not, however, include or prohibit surface alterations incidental to any construction, road or trail maintenance, agricultural uses or land management activity or other activities or uses otherwise specifically permitted by this Easement. Any alteration resulting from an otherwise permitted activity or use shall be undertaken with minimal disturbance to soils, topography and vegetation and with proper erosion control practices. At the conclusion of the activity, the surface shall be restored in a timely manner to a condition consistent with the Conservation Purpose of this Easement.

This provision does not include or prohibit creation, maintenance, restoration or enhancement of wildlife habitat or native biological communities otherwise permitted under section 3 of this Easement.

2.12. Water. No alteration, manipulation or diversion of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water or creation of new wetlands or water bodies is allowed except to restore or enhance wildlife habitat or native biological communities, to improve or enhance the function and quality of existing wetlands, groundwater or water bodies or as specifically permitted in section 3 of this Easement.

This does not prohibit the installation of domestic wells under the provisions of section 2.8 required for any residential uses permitted in section 3 of this Easement; however, new agricultural wells are specifically prohibited.

Any alteration or creation of wetlands or water bodies must be undertaken in accordance with a land management plan approved by the Land Trust under section 3 of this Easement or otherwise approved by the Land Trust under section 7.6 of this Easement.

No activities on or uses of the Protected Property that cause significant erosion or that significantly impair water quality are allowed. Activities permitted in this Easement are specifically designed to ensure surface and subsurface water quality and quantity by keeping water on the landscape, reducing nutrient and contaminant loading, protecting groundwater and preventing artificial hydrological modifications.

2.13. Vegetation Management. No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:

- a. In conjunction with **[include or eliminate as appropriate:]** agricultural activities, forest management or habitat management as specifically permitted in section 3 of this Easement.
- b. As reasonably required to construct and maintain buildings, structures, roads, trails and other improvements specifically permitted under this Easement and provided that following any construction vegetation shall be restored in a timely manner to a condition consistent with the Conservation Purpose of this Easement.
- c. **[Include if appropriate:]** As minimally required to create the filtered view permitted in section 3 of this Easement.
- d. **[Include if appropriate:]** Landscaping or personal gardening in areas immediately adjacent to permitted buildings or as specifically authorized in section 3 of this Easement.

OR

Landscaping or personal gardening within the building envelope described in section 3 of this Easement and identified on the Property Map.

[May need to modify or cross-reference if a “filtered view” is required.]

- e. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury, or property damage.
- f. To remove downed or dead timber for firewood or other personal use. **[Amend if more or less extensive use is allowed.]**
- g. Harvesting naturally occurring plant products (i.e. mushrooms, berries, nuts, herbs, prairie seed, flowers, etc.) in a manner that maintains a sustainable growth and reproduction cycle for the harvested plant populations and the surrounding vegetation. **[Amend if more or less extensive use is allowed.]**

Nothing in this section allows the intentional introduction of recognized invasive vegetation on the Protected Property.

- 2.14. Vehicles. Limited off-road use of motorized vehicles is allowed only in conjunction with habitat management, agricultural use, limited recreational use, forest management, restoration or enhancement as permitted in section 3 below. However, motorized vehicles may be used only in a manner that does not result in significant erosion or that impairs or interferes with the natural habitat, **water quality** or scenic quality of the Protected Property.

This provision is not intended to otherwise limit the use of motorized vehicles on roads or driveways permitted under this Easement or in conjunction with construction and maintenance of permitted buildings, structures, roads, trails and other improvements.

3. **RESERVED RIGHTS**. The Owner retains all rights associated with ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. The Owner may not, however, exercise these rights in a manner that impairs or interferes with the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Land Trust before exercising any reserved right that might impair or interfere with the Conservation Values of the Protected Property.
[NOTE: The above language restricting the landowner’s exercise of reserved rights is required by the tax code and provides a safeguard against unanticipated activities not specifically prohibited by nevertheless potentially ecologically damaging.]

Without limiting the generality of the above, the following rights are expressly reserved and the Owner may use and allow others to use the Protected Property as follows:

- 3.1. Right to Convey. The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property. This right to convey the Protected Property is subject to the following provisions.
- a. Covered Transactions. Any lease, deed or other conveyance or any encumbrance of the Protected Property is subject to this Easement.
 - b. Notice to New Owner. The Owner will reference or insert the terms of this Easement in any deed or other document by which the Owner conveys title to or any interest in the Protected Property. The Owner will also specify to what extent rights reserved under this Easement have been exercised, if at all, and are no longer available for use by a new owner and which reserved rights are specifically allocated to the property being conveyed.
 - c. Notice to Land Trust. The Owner will notify the Land Trust of any proposed conveyance of title to the Protected Property at least fifteen (15) days before closing. The Owner will also provide the Land Trust with the name and address of the new owner of the Protected Property and a copy of the deed transferring title within fifteen (15) days after closing. Notice and documents shall be sent to the Land Trust in accordance with section 7.6 of this Easement.
 - d. Designated Representative. If the Protected Property is owned by a trust, business entity or any common or jointly held ownership, the Owner shall designate a representative authorized to receive notice on behalf of the Owner and provide the Land Trust with the name and address of the designated representative. The Owner shall notify the Land Trust of any change in the designated representative and provide the Land Trust with the new name, address and other contact information within fifteen (15) days after the change.
 - e. Notice of Action Affecting Easement. The Owner will also notify the Land Trust of any proposed condemnation or any claim, legal proceeding, foreclosure or other legal action that might affect title to the Protected Property or the validity or enforceability of this Easement.

The enforceability or validity of this Easement will not be impaired or limited by any failure of the Owner to comply with this section 3.1.

- 3.2. Division of the Protected Property. **[Eliminate, amend or include as appropriate:]** The Protected Property may be divided into no more than _____ separately owned parcels or lots **[the majority of MLT easements do not permit additional division in which case this paragraph will be eliminated; however, amend as appropriate given the context of the project]**. Before conveying any lot or parcel, the Owner will allocate reserved rights, such as building rights, to specific parcels as needed. Each parcel or lot will otherwise remain subject to the terms and conditions of this Easement. The Owner will provide the Land Trust with a copy of any survey or map

created documenting the new parcels or lots or other documentation of the allocation of reserved rights.

This right to divide the Protected Property does not include the right to construct any buildings, structures or improvements in addition to those otherwise permitted by this Easement.

- 3.3. Agricultural Use. The Protected Property may be used and developed for agricultural purposes only as follows or as specifically allowed:

[Eliminate or amend as appropriate. Minnesota Land Trust easements either prohibit agricultural use entirely or restrict agricultural use to very limited existing areas or types. (Properties often include existing agricultural areas as part of its landcover mosaic). For ENRTF projects, agricultural use is restricted to 10% or less of the property. Easements should first try to eliminate or avoid agricultural activities, then carve them out of the easement as appropriate – especially if row-cropping is permitted. If minimal agricultural activities must be permitted, the issues to address if any agricultural use is allowed are set out below.]

- a. Type of Use. The Protected Property may be used to raise or produce crops, livestock, and livestock products and for all related agricultural activities. This includes the right to establish, reestablish, maintain, and use cultivated fields, orchards, nurseries, woodlots, short rotation woody crops and pastures.
[Amend to reflect specific restrictions or limitations on types of crops or livestock allowed. Consider if an approved farm management plan is needed or appropriate.]
- b. Government Programs. **[Address enrollment of the Protected Property if needed or eliminate. Consider incentive programs such as WRP, CRP etc. Be sure requirements of any allowed program are consistent with other easement terms.]**
- c. Feed Lots. **In no event is a feedlot permitted anywhere on the Protected Property.** A feedlot is defined as open ground or buildings or a combination of open ground and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which manure may accumulate or where the concentration of animals is such that a vegetative cover cannot be maintained. Open lots used for feeding and rearing poultry are considered feedlots. Areas immediately adjacent to supplemental feeding and watering areas are not considered feedlots. **[Amend only in rare circumstances to allow limited confinement facilities.]**
- d. Location. Agricultural use is confined to those areas depicted as _____ on the Property Map. **[For ENRTF projects, this will be limited to 10% or less of the property. Be sure to address all areas of use, including barns and other buildings not in a cultivated area identified on the map.]**

- e. Riparian Buffers. A minimum _____ foot permanently vegetated buffer of trees, shrubs or low ground cover consisting of deep-rooted perennial grasses, forbs or similar vegetation must be maintained between the cultivated fields **OR** _____ **[identify other feature]** of the Protected Property and the ordinary high-water mark of _____ **[identify lake or river or other water body]** **OR** the edge of the identified wetlands. This buffer shall be maintained in a natural state in which the vegetation is left unaltered or is managed to maximize ecological benefit. All management, including any mowing, burning or other alteration of the buffer vegetation, must be undertaken in accordance with a habitat management plan approved by the Land Trust under section 3 of this Easement. **[Establish buffers to wetlands and riparian areas as needed. Width will be dependent upon existing buffers, local ordinances and other best management practices. Depict on map as appropriate. Identify specific vegetation to be planted as appropriate, including use of native vegetation. Because the majority of easement properties will be natural habitat—90% or greater—most of the property will help buffer riparian areas]**
- f. Improvements. **[Address size, use and locations of agricultural buildings and structures not addressed elsewhere and cross-reference where necessary. Consider requiring buildings and structures to be screened from public view. Consider keeping buildings out of the easement—balance monitoring concerns with potential impacts.]**
- g. Ditches. **[Address any existing drainage tiles or ditching and cross reference in topography and surface alteration paragraph above.]**
- h. Restoration and Future Use. **[Eliminate the right to re-establish agricultural use after any habitat restoration.]**
- i. Chemicals and Fertilizers. **[This should be evaluated when agriculture is allowed to continue. MLT will incorporate language to address chemical uses which are harmful to pollinator species. However, ENRTF funded projects will be either entirely or nearly-entirely covered with natural wildlife habitat, thereby eliminating or minimizing any needs or uses for chemicals or fertilizers.]**
- j. Other Uses. This section is not intended to restrict or prohibit personal pets, beekeeping, maple syrup collection, or vegetation management activities allowed in section 2.13 of this Easement.
- 3.4. Forest and Habitat Management. The Protected Property may be used to create, maintain, restore, or enhance habitat for **[specify habitat or community type if appropriate]** wildlife and native biological communities in accordance with a land management plan approved by the Land Trust under the provisions of section 7.6 of

this Easement. The Owner may plant, manage and remove trees in a sustainable manner for wood and other forest-based products and otherwise actively manage the vegetation on the Protected Property in accordance with this plan, as otherwise permitted under section 2.13 or **[add if appropriate]** section 3.3 of this Easement or as otherwise approved by the Land Trust under the provisions of section 7.6 of this Easement.

The land management plan is a written document with map(s) which meets standards established by the Land Trust; is prepared by a natural resource professional; describes the existing flora and fauna; documents the Owner's goals; establishes a long-term future desired condition which meets the Owner's goals and also fits the local ecology, landscape and Conservation Values; and describes the potential activities and timelines to meet those desired future conditions. For purposes of the preparation of the plan, a nature resources professional will be defined as an individual who has received at least four (4) years of post-high school training in a field that includes or is similar to ecology, forestry wildlife management, environmental studies, landscape architecture, hydrology, geology or biology or who has otherwise demonstrated a high level of professional expertise acceptable to the Land Trust.

Land Trust review and approval of the land management plan shall be conducted by the staff, board or contractors with expertise related to forest or habitat management. Such approval shall be based on an understanding of best management practices at the time which meet the Conservation Purpose of this Easement and takes into consideration all the goals of the Owner. The approval shall follow the provisions of section 7.6 of this Easement.

Once a land management plan has been approved by the Land Trust, the Owner may conduct day-to-day management activities which meet the specifications outlined in the plan without additional approval unless such activity negatively impacts the Conservation Values of the Protected Property or includes activities or uses which require approval under another provision of this Easement, or until the Owner submits a new land management plan for approval to the Land Trust.

- 3.5. Residential Use and Development. The Protected Property may be used and developed for single or extended family residential purposes only as follows:

[Eliminate or amend as appropriate. Because many properties considered for conservation easements are in private ownership, they often include some type of existing residential use. This section should address if/when/how any future residential use is permitted. It is a preference to exclude this residential use from the easement property when appropriate. However, if residential use exists and the residential area should be included in the easement to protect the conservation values (such as lakeshore areas), there exist multiple variations on how to address residential buildings and structures. The following suggest

typical approaches but each case must be specifically addressed with regard to the natural and scenic features of the property. Size, location and height limitations should follow Land Trust preferences. **To assist in retaining water on the landscape, keep total impervious surface from all improvements in mind when considering allowed buildings and sizes.]**

- a. Existing Structures. The existing residential dwelling and related accessory buildings and other structures may be maintained, repaired, and remodeled without the prior approval of the Land Trust, and may be expanded, replaced or relocated within the building envelope described below with the prior approval of the Land Trust under the provisions of section 7.6 of this Easement. **[amend if necessary and/or add if appropriate]** in substantially their same locations or in other locations with the prior approval of the Land Trust under the provisions of section 7.6 of this Easement. **[When structures are near the perimeter of the property and/or when there is high concentration of buildings and agricultural or other uses, consider excluding the structures or building area entirely from the easement.]**

The total cumulative footprint for all buildings and structures shall not exceed _____ square feet.

- b. **[Add and amend as appropriate:]** Additional Structures. Additional residential dwelling(s) and related accessory buildings and other structures may be constructed, maintained, repaired, remodeled, improved, expanded, and replaced on the Protected Property subject to following:
[Address number, use, size and location. Combine size limitations with existing buildings if appropriate. Use language similar to the above.]

- c. Building Envelope. All permitted buildings and structures shall be located within the building envelope identified on the Property Map (the “Building Envelope”)

[If the buildings are not excluded entirely from the easement, confine structures and improvements to a building envelope. Define and locate the building envelope on a map or require Land Trust approval as to size, location, and configuration as appropriate. Require survey and permanent boundary markings as necessary or GPS points if appropriate. Keep potential encroachment problems in mind in defining boundaries.]

- d. Additional Restrictions on Structures. All existing, new, expanded or replaced buildings are subject to the following restrictions:
[Amend and address as appropriate: size, height, function, visibility, colors or building materials, building envelopes, etc. if not dealt with elsewhere. Not all structures will necessarily be subject to the same restrictions.]

- Height: No building or structure may exceed ___ feet in height as measured from the lowest point of finished grade along the foundation to highest point of the roof excluding chimneys or antennas.
[30 feet is often a typical restriction. Determine other appropriate height for visual impact if necessary or eliminate if structures will not impact scenic qualities or easement does not have scenic conservation values. Cross reference with local building codes.]
- Visibility: **[Address “filtered view” for structures near shorelines or otherwise close to scenic views.]** Trees, shrubs and other vegetation shall be managed to maintain a “filtered view” of the Protected Property. “Filtered view” means a view through trees and lesser vegetation of sufficient and reasonable density as to maintain a continuous or near-continuous overhead canopy while concealing at least 50% of any structures from _____ **[list the lake, trail or roadway identified as the point of public view above],** assuming a leaf-on condition.

It is the intent of this provision to provide for a limited view of Lake _____ from the residence(s) permitted on the Protected Property while screening and buildings as viewed from Lake _____ and protecting the scenic and natural character of the shoreline. To this end, it is the purpose of this provision to prevent Owner from creating lawns, clearings, excessive thinning or pruning or other such unnatural openings or alteration of natural vegetation.

- Color: Siding and rooftops of all buildings and structures on the Protected Property shall be of darker, non-reflective natural colors such as greens, browns and tans to blend with natural habitat surroundings.
[Delete if easement contains no scenic conservation values, if the buildings will not be seen or if otherwise not appropriate.]
- e. Other Improvements. **[Address additional improvements such as roads, driveways, sidewalks, and utilities if not addressed elsewhere and cross-reference where necessary. Be sure to address docks for all riparian properties and boardwalks, bridges, culverts as necessary here or in a separate paragraph. Consider minor structures and landscaping features such as gazebos, trellises, retaining walls, etc.]**
- f. Buffers. **[Add language requiring buffers if necessary or if any permitted improvements might inadvertently impact or impair existing buffers. Cross reference with other buffer language or delete if this is a duplicate.]**
- g. Footprint. Footprint means the total ground area covered by a structure calculated on the basis of the exterior dimensions of any perimeter walls (whether at or above ground level) and including any balconies, carports or breezeways, patios or terraces, decks, and porches.

- h. Notice. Before beginning any construction permitted under this section, the Owner must give notice to and seek any required approval of the Land Trust under the provisions of section 7.6 of this Easement.
- 3.6. Recreational and Educational Uses. The Protected Property may be used for hiking, cross-country skiing, horseback riding, camping, hunting, fishing, nature observation or study, and other non-intensive recreational and educational programs or activities that have no more than minimal impact on the Conservation Values of the Protected Property and which are allowed by law.

The Protected Property may not be used for more than minimal commercial recreational purposes. **[NOTE: Estate tax provisions require limiting commercial use to “de minimus” use.]**

Minor rustic structures such as tents and tent platforms, trail barriers, benches, and informational kiosks that do not impair or interfere with the natural habitat or scenic qualities of the Protected Property may be placed on the Protected Property in conjunction with these activities. Such structures may not be used for continuous residential use.

[NOTE: Be sure to check for consistency with trail and structure language elsewhere in easement.]

- 3.7. Home Businesses and Limited Commercial Enterprises. Any residential dwelling or accessory building permitted on the Protected Property by this Easement may be used for professional offices, production and sale of crafts, a studio or workshop, roadside produce sales, and other similar home businesses or limited commercial enterprise conducted by a person residing on the Protected Property. No additional buildings, structures, utilities, roads, parking lots or other improvements not otherwise permitted under this Easement may be constructed or placed on the Protected Property to accommodate these activities. **[Amend and cross-reference as appropriate.]**
- 4. **LAND TRUST’S RIGHTS AND REMEDIES**. In order to accomplish the Conservation Purpose of this Easement to preserve and protect the Conservation Values of the Protected Property, the Land Trust has the following rights and remedies:
 - 4.1. Right to Enter. The Land Trust has the right to enter the Protected Property at reasonable times and in a reasonable manner for the following purposes:
 - a. To inspect the Protected Property and to monitor compliance with the terms of this Easement.
 - b. To obtain evidence for use in seeking judicial or other enforcement of this Easement.

- c. To survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Easement. Any survey completed under this provision will be at the Owner's expense.
- d. To otherwise exercise its rights under this Easement.

4.2. **[If access over other land is necessary, add and amend as appropriate one of the following:]**

Access. In order to enter the Protected Property, the Land Trust has a right of access over that other property currently owned by the Owner as described in Exhibit C attached to this Easement and incorporated by this reference and as identified on the Property Map.

OR

Access. In order to enter the Protected Property, the Land Trust may use that easement or right of way held by the Owner as described in Exhibit C attached to this Easement and incorporated by this reference or any more convenient alternate approach to the Protected Property that the Owner is entitled to use now or may be entitled to use in the future.

4.3. Affirmative Rights. **[When appropriate add affirmative rights, such as the right to restore, manage or improve habitat, to conduct ecological surveys or research, or to lead supervised field trips on the property. Affirmative rights are rarely included but may be appropriate in some situations.]**

4.4. Right of Enforcement. The Land Trust has the right to prevent or remedy violations of this Easement, including prohibiting the construction of buildings or improvements, through appropriate judicial action brought in any court of competent jurisdiction, or through other methods of dispute resolution, against the Owner or other responsible party. The Land Trust and Owner agree to attempt to resolve violations through formal or informal dispute resolution, which may include mediation or arbitration, especially in cases of technical or de minimis breaches of the terms of the easement. This provision shall not apply if in the Land Trust's sole discretion and exclusive judgment, immediate judicial action is necessary to prevent or mitigate significant impairment to or interference with the Conservation Values of the Protected Property.

- a. Notice. The Land Trust shall not initiate judicial action until the Owner has been given written notice of the violation, or threatened violation, of this Easement and a reasonable opportunity to correct the situation. This provision shall not apply if in the Land Trust's sole discretion and exclusive judgment, exercised in a professional, responsible and reasonable manner, immediate judicial action is necessary to prevent or mitigate significant impairment to or interference with the Conservation Values of the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.

b. Remedies. In enforcing this Easement, the Land Trust has the right to:

- Temporary or permanent injunctive relief for any violation or threatened violation of this Easement.
- Require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement.
- Specific performance or declaratory relief.
- Recover damages resulting from a violation of this Easement or injury to any Conservation Values associated with the Protected Property.

These remedies are cumulative and are available without requiring the Land Trust to prove actual damage to the Conservation Values of the Protected Property.

The Land Trust and the Owner agree that the damages created by a violation of this Easement may be determined by calculating the cost of acquiring a conservation easement over similar property. The Land Trust and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement.

The Land Trust is entitled to seek expedited relief, ex parte if necessary, and shall not be required to post any bond applicable to a petition for such relief.

- c. Costs of Enforcement. The Owner shall be responsible for all reasonable costs incurred by the Land Trust in enforcing this Easement, including without limitation costs of suit, attorneys' fees, and expenses related to restoration of the Protected Property. If, however, the Owner ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs and attorneys' fees.
- d. Enforcement Decisions. Enforcement of the terms of this Easement is solely at the discretion of the Land Trust. The Land Trust does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the Land Trust in discovering a violation or initiating enforcement proceedings. The Land Trust shall not be barred by any applicable statute of limitations in bringing any action to enforce the terms of this Easement.
- e. Acts Beyond Owner's Control. The Land Trust may not bring an action against the Owner for any change to the Protected Property resulting from any of the following:
- Causes beyond the Owner's control such as changes caused by fire, flood, storm, natural deterioration or the unauthorized acts of third parties.

- Reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

Actions by the Owner's lessees, agents, employees or contractors are not considered unauthorized acts of third parties.

This section does not preclude the Owner or the Land Trust from recovering damages or bringing an action against any third party for trespass or other violation of their respective rights in this Easement or in the Protected Property.

- f. Right to Report. In addition to other remedies, the Land Trust has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.
 - g. Enforcement Rights of Others. Nothing in this Easement is intended to create any right to enforce this Easement in any third party where no such right otherwise exists under this Easement or under law.
- 4.5. Limitation on Rights. Nothing in this Easement gives the Land Trust the right or responsibility to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, the Minnesota Environmental Response and Liability Act, or other similar successor federal, state or local statutes or laws regarding responsibility for environmental conditions associated with contamination.

5. PUBLIC ACCESS. Although the public benefits from this Easement through the preservation and protection of the Conservation Values of the Protected Property, nothing in this Easement gives the public a right to enter upon or use the Protected Property where no such right existed prior to the conveyance of this Easement.

The Owner retains the right to permit any public use of the Protected Property consistent with the preservation and protection of the Conservation Values of the Protected Property and the terms and restrictions of this Easement, including the restrictions on commercial recreational use set out in section 3 of this Easement.

[Add the following for scenic easements.] The public does, however, have the right to view the Protected Property from nearby publicly accessible areas including **[identify specific lake, trail, road or area if appropriate.]**

[Address any required or allowed public access, including on trails, in this section. Amend as necessary. Cross-reference trails in section 2.8 if needed.]

6. **DOCUMENTATION.** The current uses of the Protected Property, the state of any existing improvements, the current plans for habitat management and the specific Conservation Values of the Protected Property that are briefly described in this Easement are more fully described in a baseline documentation report on file at the office of the Land Trust (the “Baseline Documentation Report”). The Owner and the Land Trust acknowledge that the Baseline Documentation Report accurately represents the condition of the Protected Property at the time of this conveyance and may be used by the Land Trust in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This Baseline Documentation Report, however, is not intended to preclude the use of other information and evidence to document the present condition of the Protected Property in the event of a future controversy.

7. **GENERAL PROVISIONS.**

7.1. Assignment. Subject to the provisions of Minnesota Statutes Chapter 116P, this Easement may be assigned or transferred by the Land Trust only to a conservation entity defined as a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and as an authorized conservation easement holder under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the Land Trust by this Easement.

As a condition of any assignment or transfer, the Land Trust will require any future holder of this Easement to continue to carry out the Conservation Purpose of this Easement in perpetuity.

The Land Trust will notify the Owner of any assignment within thirty (30) days after the assignment and will provide the Owner with the name and address of the new holder.

7.2. Amendment. Subject to the provisions of Minnesota Statutes Chapter 116P and under appropriate circumstances, this Easement may be modified or amended. However, the Land Trust may in its sole discretion and exclusive judgment refuse to agree to any amendment or modification of this Easement, including any amendment in which the following apply:

- The amendment is inconsistent with the Conservation Purpose of this Easement.
- The amendment will impair or interfere with the Conservation Values of the Protected Property.
- The amendment affects the perpetual duration of this Easement.
- The amendment affects the validity of this Easement under Minnesota law or the status of the Land Trust under Sections 501(c)(3) and 170(h) of the Internal Revenue Code or successor or related law.
- The amendment creates or results in impermissible private benefit or private inurement as prohibited by 501(c)(3) of the Internal Revenue Code.
- Lienholders of existing liens and mortgages will not agree to subordinate their interests to the amended Easement.

Any amendment or modification must be in writing and recorded in the same manner as this Easement.

- 7.3. Termination. This easement may be terminated or extinguished in whole or in part only as set out in this section and subject to the provisions of Minnesota Statutes Chapter 116P.
- a. Change of Circumstances. This Easement may be terminated or extinguished if circumstances arise that make continued use of the Protected Property in a manner consistent with the Conservation Purpose of this Easement impossible or impractical. In this event, this Easement may be extinguished only through judicial proceedings.
 - b. Condemnation. This Easement may be terminated or extinguished pursuant to the proper exercise of the power of eminent domain.
 - c. Proceeds upon Termination. Following any termination or extinguishment of this Easement in whole or in part, the Land Trust shall be entitled to a portion of the proceeds from any sale, exchange or involuntary conversion of the Protected Property.

The Land Trust's share of the proceeds shall be an amount equal to the fair market value of this Easement at the time of the extinguishment but not less than an amount equal to the proportionate value that this Easement bears to the value of the Protected Property as a whole at the time of this conveyance (excluding the value of any permitted improvements made after the conveyance of this easement).

The value of this Easement at the time of termination or extinguishment shall be calculated by the method required by the Internal Revenue Service for calculating an income tax deduction for a charitable donation of a conservation easement.

The Land Trust will use the resulting share of its proceeds in a manner consistent with the Conservation Purpose of this Easement and in accordance with Minnesota Statutes Chapter 116P.

- 7.4. Warranties. The current Owner represents and warrants as follows:
- a. The current Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Easement to the Land Trust.
 - b. The Protected Property is free and clear of all rights, restrictions and encumbrances other than those subordinated to this Easement or otherwise specifically agreed to by the Land Trust.

- c. The Protected Property is not subject to any pending claim, legal proceeding, foreclosure or other legal action affecting title to the Protected Property or the validity or enforceability of this Easement.
- d. The current Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Protected Property that is in violation of a federal, state, or local environmental law and will defend, indemnify and hold the Land Trust harmless against any claims of contamination from such substances.

7.5. Ownership Responsibilities, Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the use, ownership, and maintenance of the Protected Property.

- a. Taxes. The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Land Trust created by this Easement. The Land Trust may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to immediate reimbursement from the Owner.
- b. Regulatory Compliance. All activities or construction permitted by this Easement shall be undertaken in accordance with applicable federal, state and local laws, regulations and ordinances and nothing in this Easement shall be construed to exempt the Protected Property or the Owner from otherwise applicable laws or regulations.

The Owner is solely responsible for obtaining any required governmental permits.

- c. Indemnity. The Owner shall defend, indemnify, and hold the Land Trust harmless from any and all costs or liability, including but not limited to, reasonable attorney fees and court costs, for any loss, damage, or personal injury occurring on or related to the Protected Property or the existence of this Easement, except to the extent attributable to the negligence of the Land Trust.
- d. Insurance. The Owner will name the Land Trust as an additional insured on any general liability insurance policy carried by the Owner with respect to the Protected Property.
- e. Future Environmental Condition. The Owner is solely responsible for Owner's use or release on the Protected Property of any hazardous or toxic substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, the Minnesota Environmental Response and Liability Act, or other similar successor federal, state or local law or regulation regarding responsibility for environmental conditions associated with contamination. The Owner shall take all steps necessary to assure any needed containment or remediation resulting from any release of such substance.

7.6. Notice and Approval. Any notice or request for approval required by this Easement must be in writing and is subject to the following.

a. Approval Requirements. No activity requiring the prior approval of the Land Trust may proceed without the Land Trust's written approval as set out in this section. Approval of the Land Trust must be in writing to be effective. Failure of the Owner to receive approval from the Land Trust constitutes denial of the request.

b. Delivery. Any required notice or request for approval must be delivered personally or sent by first class mail or other nationally recognized delivery service to the appropriate party at the following addresses (or other address specified in writing):

To the Owner:
[ADDRESS]

To the Land Trust:
Minnesota Land Trust
2356 University Avenue West
St. Paul, MN 55114

c. Timing. Unless otherwise specified in this Easement, any required notice or request for approval must be delivered at least 30 days prior to the date proposed for initiating the activity in question.

d. Content. The notice or request for approval must include sufficient information to allow the Land Trust to make an informed decision on whether any proposed activity is consistent with the terms and Conservation Purpose of this Easement. At a minimum, this should include:

- The location, nature, and scope of the proposed activity.
- The proposed use, design, and location of any building, structure or improvement.
- The plan for any needed restoration of the Protected Property following construction.
- Any potential impact on the Conservation Values of the Protected Property.

e. Approval Decisions. The Land Trust may withhold its approval if it determines in its sole discretion that the proposal may impair or interfere with the Conservation Values of the Protected Property or is inconsistent with the terms or Conservation Purpose of this Easement or lacks sufficient information to allow the Land Trust to reach an informed decision. The Land Trust may condition its approval on the Owner's acceptance of modifications, which would, in the Land Trust's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.

- 7.7. Binding Effect. This Easement creates a property right immediately vested in the Land Trust and its successors and assigns that cannot be terminated or extinguished except as set out herein.

This Easement shall run with and burden the Protected Property in perpetuity. The terms of this Easement are binding and enforceable against the current Owner of the Protected Property, all successors in title to the Protected Property and all other parties entitled to possess or use the Protected Property.

If at any time the Land Trust or other holder of this Easement becomes the owner of all or a portion of the fee interest in the Protected Property, this Easement shall not be deemed to merge with the underlying fee interest but shall remain in force and effect unless otherwise terminated or extinguished as set out herein.

- 7.8. Definitions. Unless the context requires otherwise, the following terms are defined as follows:

- a. "Owner" includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property.
- b. "Land Trust" includes the Minnesota Land Trust and its successors or assigns to its interest in this Easement.
- c. "Easement" includes both this instrument of conveyance and the property interest conveyed from the Owner to the Land Trust.

Other terms may be defined throughout this Easement.

- 7.9. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.

- 7.10. Recording. The Land Trust will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The Land Trust may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement.

- 7.11. Interpretation. This Easement shall be interpreted as follows:

- a. Controlling Law and Construction. This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of

validity of specific provisions in favor of giving maximum effect to its Conservation Purpose and to the policies and purposes of Minnesota Statutes Chapter 84C and Chapter 116P, and **[Insert appropriate session law.]**

- b. Severability. A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.
 - c. Captions. Captions have been inserted in this document solely for convenience of reference and shall have no effect upon interpretation or construction.
 - d. Future Economic Condition. A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible or impractical for continued use of the Property for the Conservation Purpose and shall not constitute grounds for terminating the Easement.
- 7.12. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably needed by the Land Trust to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any error or mutual mistake, legal description or title matter or to comply with any federal, state, or local law, rule or regulation.
- 7.13. Entire Agreement. This document sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions or understandings.
- 7.14. Signatures. This Easement may be completed with the signatures of the parties to this Easement executed and notarized on separate pages which when attached to this document shall constitute one complete document.

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