

Recorded 8/8/06
Doc # T 1169619

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by DCCI Investments, LLC, a Wisconsin limited liability company, (the "Owner") to the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the "Trust").

RECITALS:

- A. OWNER. The Owner is the current owner of approximately 89 acres of real property located in Washington County, Minnesota. That real property is more fully described below as the "Protected Property."
- B. 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 Easement and incorporated by this reference.

The Protected Property includes woodlands, open fields, and wetlands located on eight (8) Outlots in the proposed clustered residential development known as "*Miller Farms*", to be developed by the Owner. The plat of *Miller Farms* will include up to 82 single-family homes on approximately 78 acres of property adjacent to or near the Protected Property.

The Bayport Wildlife Management Area is adjacent to a portion of the Protected Property and the Saint Croix Savanna Scientific and Natural Area is located within one half mile of the Protected Property. Another clustered residential development with open space protected by a conservation easement is located adjacent to and west of the Protected Property.

The Protected Property is currently used for low impact recreation, nature observation and agriculture. Presently no improvements other than a driveway across Outlot V, *Miller Farms*, have been made on the Protected Property.

- C. **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 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.
- D. **CONSERVATION VALUES.** The Protected Property has the following natural, scenic and open space qualities of significant importance:
- The relatively undeveloped natural character of the Protected Property provides habitat for a variety of plants, animals, and aquatic communities common to oak savanna, woodlands, and shallow wetlands.
 - The open space of the Protected Property helps shape the character of the surrounding residential development and an adjacent residential development, and provides opportunities for low impact trail use and nature observation by nearby residents.
 - The Protected Property provides continuity with the undeveloped and relatively natural adjacent outlots on the adjacent development and also nearby state owned properties, adding protected wildlife habitat and open space in this region of rapidly developing residential communities.

Collectively, these natural, scenic and open space qualities of the Protected Property comprise its "Conservation Values."

These Conservation Values have not been and are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as described above or as authorized below or by the use, maintenance or construction of those structures and improvements that presently exist on the Protected Property or that are authorized below.

- E. **CONSERVATION POLICY.** Preservation of the Protected Property will further those governmental policies established by the following:
- 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.
 - Minnesota Laws 2003, Chapter 128, Article 1. Section 9, Subdivision 5b, which provides funding to protect important natural areas in the metropolitan region.

- Washington County 2015 Comprehensive Plan, A Policy Guide to 2015, which provides as one of its goals the preservation of the existing rural character and natural landscapes of the County for future generations. In support of this goal, the Plan recognizes and supports the use of clustered housing with common open land preserved as permanent open space by means of a conservation easement.
- Washington County Development Code, Chapter 2, Part 3,- Performance Standards, Section 4, Paragraph 4.7, which requires that open space in an Open Space Design Development shall be subject to a conservation easement restricting its use and development.
- Minnesota Statutes Chapter 103A.201 and 103A.202, which specifically promote the protection of wetlands.

F. **CONSERVATION INTENT.** The Owner and the 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 Trust the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

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, the Owner hereby conveys and warrants to the Trust and its successors and assigns a perpetual conservation easement over the Protected Property. This conservation easement consists of the following rights, terms and restrictions (the “Easement”):

1. **CONSERVATION PURPOSE.** The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property identified above by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

The terms of this Easement are specifically intended to provide a significant public benefit by:

- Protecting natural habitat for wildlife and plants, both terrestrial and aquatic, in a rapidly developing region.
- Protecting this relatively natural setting of undeveloped parcels to facilitate low-impact trail use and nature observation.

- Creating permanent open space in a clustered residential setting called *Miller Farms*.

2. LAND USE RESTRICTIONS. Any activity on or use of the Protected Property that is inconsistent with the purposes of this Easement is prohibited.

Except as specifically permitted in paragraph 3 below and without limiting the general prohibition above, restrictions imposed upon the Protected Property expressly include the following:

- 2.1. Industrial and Commercial Activity. No industrial or commercial use of the Protected Property is allowed except for that limited agricultural use specifically permitted in paragraphs 3.4 and 3.6 below.
- 2.2. Residential Development. No residential use or development of the Protected Property is allowed.
- 2.3. Right of Way. No right of way shall be granted across the Protected Property in conjunction with any industrial, commercial or residential use or development of other land not protected by this Easement, except the existing driveway which provides access from Stagecoach Trail across Outlot V, *Miller Farms*, to Outlot S, *Miller Farms*, as generally depicted on the Property Map. If this existing driveway is no longer used, DCCI Investments, LLC, shall remove it and restore the Protected Property with vegetation consistent with the surrounding area and the conservation purposes of the Easement.
- 2.4. Density. No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use other than that certain plat filed prior to the acceptance of this Easement for the development known as *Miller Farms*. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property other than the property within the plat of the development known as *Miller Farms*.
- 2.5. 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 authorized in paragraph 3 or as set forth below:
 - a. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced only to serve uses and activities specifically permitted by this Easement or to serve the overall residential development known as *Miller Farms*. This includes, without limitation, all systems and facilities necessary to provide on-site power, fuel, water, storm water drainage, community septic systems, waste disposal and communication but does not

permit communication towers, wind turbines, or similar structures, without the prior written approval of the Trust.

Adjacent residential developments may, if necessary, benefit from and use the existing drainage and utility easements established on the recorded plat of *Miller Farms*.

Utility systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation. Following installation or construction, the surface shall be restored in a timely manner to a condition consistent with the conservation purposes of this Easement.

- 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, and those signs authorized in paragraph 3.5
- c. Roads and Trails. No new roads or other rights of way may be established or constructed on the Protected Property without the prior written approval of the Trust, except for a road to access the septic system, which is generally depicted on Outlot K on the Property Map.

Paths or foot trails may be established on the Protected Property for non-motorized, recreational uses as described in the Habitat and Open Space Management Plan as required in Paragraph 3 below. Such paths or foot trails may be subject to public easements for trail use.

- d. 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.
 - e. Outdoor Lighting. With the exception for lighting on the playground as provided in paragraph 3.2 below or in connection with permitted utilities, and unless otherwise required by law, no lighting shall be permitted on the Protected Property.
- 2.6. Dumping. No trash, non-compostable garbage, hazardous or toxic substances, junk or other unsightly material may be dumped or accumulated on the Protected Property.
 - 2.7. Mining. No mining, drilling, exploring for or removing of any minerals or fossil fuels from the Protected Property is allowed.
 - 2.8. Topography and Surface Alteration. After grading of *Miller Farms* is completed, 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, sand, gravel, rock or other materials, except as incidental to the

development of *Miller Farms* or activities or uses specifically permitted by this Easement.

- 2.9. Water. With the exception of drainage easements reserved on the recorded plat of *Miller Farms*, no alteration or manipulation 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 or to improve or enhance the function and quality of existing wetlands in accordance with the Habitat and Open Space Management Plan.

No activities on or uses of the Protected Property that cause significant erosion or are seriously detrimental to water quality or purity are allowed.

- 2.10. Vegetation Management. After grading in connection with the development of *Miller Farms* is completed, 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 agricultural use permitted in paragraphs 3.4 and 3.6 below, and in conjunction with habitat management and restoration in accordance with the Habitat and Open Space Management Plan required in paragraph 3.3 below.
 - b. As reasonably required to construct and maintain trails permitted under paragraph 2.5.c above, provided that vegetation shall be restored following any such construction to a condition consistent with the conservation purposes of this Easement.
 - c. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage.
- 2.11. Vehicles. After the grading of *Miller Farms* is completed, no use of motorized vehicles on the Protected Property is allowed except in conjunction with permitted agricultural use, habitat maintenance, restoration or enhancement, or in conjunction with the creation or maintenance of trails as permitted under the Habitat and Open Space Management Plan. This provision is not intended to prohibit the use of any emergency vehicle on the Protected Property or the use of motor vehicles on any permitted driveway.
- 2.12. Subdivision. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes.

This provision does not, however, prohibit the division of the Protected Property when a portion of the Protected Property is being conveyed to a conservation organization described in paragraph 7.1 of this Easement.

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 would adversely impact the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Trust before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.

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.
- a. Any conveyance or encumbrance of the Protected Property is subject to this Easement.
 - b. The Owner will reference or insert the terms of this Easement in any deed or other document by which the Owner conveys title to the Protected Property. The Owner will also specify to what extent reserved rights have been exercised, if at all, and are no longer available for use by the new owner and which reserved rights are specifically allocated to the property being conveyed in accordance with other provisions of this Easement.
 - c. The Owner will notify the Trust of any conveyance within fifteen (15) days after closing and will provide the Trust with the name and address of the new owner and a copy of the deed transferring title.
 - d. If the Protected Property is owned by an association of homeowners, the Owner shall provide the Trust with the name and address of the contact person for the association. Additionally, the Owner shall provide the Trust, on an annual basis, a list of the current homeowners with their mailing addresses.

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

- 3.2. **Recreational and Educational Uses.** The Protected Property may be used for a playground as provided below, and for hiking, cross-country skiing, nature observation or study, and other similar low impact nonmotorized recreational and educational programs or activities.

Minor rustic structures such as trail barriers, picnic tables, one gazebo not to exceed 400 square feet, benches, and informational kiosks, as well as playground

equipment, may be placed on the Protected Property in conjunction with these activities.

Playground equipment shall be limited to structures such as swing sets, slides, jungle gyms and climbing structures. The playground may be located only on Outlot K of the Protected Property. The size of the playground may be no larger than a quarter of an acre, with no parking area on the Protected Property. In order to minimize sky glow or light pollution originating from the Protected Property, any outdoor light fixtures on the playground 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.

- 3.3. Habitat and Open Space Management. The Protected Property shall be used to create, maintain, restore or enhance habitat for wildlife and native biological communities and for the construction and maintenance of non-motorized trails in accordance with a Habitat and Open Space Management Plan approved by the Trust.
- 3.4. Agricultural Use of Outlot A and Outlot C. Outlot A and Outlot C of the Protected Property may be used to produce crops. This permitted agricultural use includes the right to establish, maintain, and use cultivated fields, orchards, and tree farms. No buildings or structures are permitted. No grazing of livestock is permitted.

In the event Outlot A or Outlot C is restored to natural habitat such as prairie, such restored property may no longer be used for agricultural purposes and shall be maintained as natural habitat.

- 3.5 Construction Signs. Owner shall have the right, during the construction and development of *Miller Farms*, to erect and maintain necessary promotional signs advertising lots and homes for sale within *Miller Farms*. Such signs shall be removed by the Owner from the Protected Property upon completion of the initial build out of *Miller Farms*.
- 3.6 Agricultural Use of Outlot V. Outlot V of the Protected Property may be used for the same limited agricultural uses permitted on Outlot A and Outlot C described above in paragraph 3.4. Additionally, Outlot V may be used for the pasture and grazing of horses or other grazing animals. No buildings or structures are permitted. In no event may a feedlot be created on Outlot V. A feedlot is defined as followed:

A lot or building or combination of lots 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

within the lot or enclosure, except around supplemental feeding and watering areas. Open Lots used for feeding and rearing poultry are considered feedlots.

4. **TRUST'S RIGHTS AND REMEDIES.** In order to accomplish the purposes of this Easement, the Trust has the following rights and remedies:

4.1. **Right to Enter.** The 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 or boundary demarcation completed under this provision will be at the Owner's expense.
- d. To otherwise exercise its rights under this Easement.

4.2. **Right of Enforcement.** The Trust has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against the Owner or other responsible party in any court of competent jurisdiction.

- a. **Notice.** The Trust may not initiate judicial action until the Owner has been given 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 sole discretion of the Trust, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.
- b. **Remedies.** Remedies available to the Trust in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to 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, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement.

These remedies are cumulative and are available without requiring the Trust to prove actual damage to the Conservation Values protected by this Easement. The Trust and the Owner also recognize that restoration,

regardless of the cost, may be the only adequate remedy for certain violations of this Easement.

The 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 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. **Discretionary Enforcement.** Enforcement of the terms of this Easement is solely at the discretion of the Trust. The 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 Trust in discovering a violation or initiating enforcement proceedings.
- e. **Acts Beyond Owner's Control.** The Trust may not bring any action against the Owner for any change to the Protected Property resulting from causes such as changes caused by fire, flood, storm, natural deterioration or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

In the event the Owner fails to reasonably enforce third party compliance with the Easement restrictions, and to restore the Protected Property to its condition before the violation occurred, the Trust may bring an action against the Owner for changes to the Protected Property resulting from causes created by third parties but Owner shall bear no liability for damages, costs or attorney fees for causes created or otherwise caused by third parties who are not within the control of Owner.

- f. **Right to Report.** In addition to other remedies, the 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.
- 4.3. **Signs.** The Trust has the right to place and keep on the Protected Property signs and markers that identify the land as protected by this Easement. The Trust may, in its discretion, place such signs or markers in locations and quantities it deems necessary to establish the boundaries of the Protected Property.
- 4.4. **Limitation on Rights.** Nothing in this Easement gives the 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, handling 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 statutes or laws whether federal, state or local in nature, regarding responsibility for environmental conditions associated with contamination.

5. PUBLIC ACCESS. Nothing in this Easement gives the general public a right to enter upon or use the Protected Property where no such right exists otherwise. However, the public has a right to use any public trails established on the Protected Property.
6. DOCUMENTATION. The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement will be more fully described in a property report on file at the office of the Trust. The Owner and the Trust acknowledge that this property report will accurately represent the condition of the Protected Property at the time of this conveyance and may be used by the Trust in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This property report, however, is not intended to preclude the use of other information and evidence to establish the present condition of the Protected Property in the event of a future controversy.
7. GENERAL PROVISIONS.
 - 7.1. Assignment. This Easement may be assigned or transferred by the Trust only to a conservation organization which is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and which is authorized to hold conservation easements under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the Trust by this Easement. As a condition of any assignment or transfer, the Trust shall require any future holder of this Easement to continue to carry out the conservation purposes of this Easement in perpetuity.

The Trust will notify the Owner of any assignment within fifteen (15) days of the assignment and will provide the Owner with the name and address of the new holder.

- 7.2. Amendment. Under appropriate circumstances, this Easement may be modified or amended. However, no amendment or modification will be allowed if, in the sole and exclusive judgment of the Trust, it: (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Minnesota law or the status of the Trust under Sections 501(c)(3) and 170(h) of the Internal Revenue Code.

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

7.3. Extinguishment. Extinguishment or termination of this Easement is subject to the following:

- a. This Easement may be extinguished only through judicial proceedings and only under the following circumstances:
 - (i) if unexpected change in the conditions of or surrounding the Protected Property makes the continued use of the Protected Property for the conservation purposes set out above impossible or impractical, or
 - (ii) pursuant to the proper exercise of the power of eminent domain.
- b. The Owner recognizes that uses of the Protected Property prohibited by this Easement may, in the future, become more economically viable than those uses permitted by the Easement. The Owner also recognizes that neighboring properties may, in the future, be put entirely to uses not permitted on the Protected Property by this Easement.

The Owner and the Trust believe that such changes will increase the public benefit provided by this Easement. Therefore, such changes are not considered unexpected changes and shall not be deemed to be circumstances justifying the extinguishment of this Easement as otherwise set forth above.

7.4. Proceeds. If this Easement is extinguished or terminated in whole or in part, the Trust is entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount that is equal to the fair market value of this Easement at the time of the extinguishment but that is 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. The Trust shall use its share of any proceeds in a manner consistent with the conservation purposes of this Easement.

7.5. Warranties. The Owner represents and warrants as follows:

- a. The Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Easement to the Trust.
- b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Easement.
- c. The 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 Trust harmless against any claims of contamination from such substances.

7.6. Real Estate Taxes. The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Trust created by this Easement. The Trust may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from the Owner.

7.7. Ownership Costs and Liabilities. The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. The Owner agrees to defend, indemnify and hold the Trust harmless from any and all costs or liability for any personal injury or property damage occurring on or related to the Protected Property or the existence of this Easement. The Owner will name the Trust as an additional insured on any general liability insurance policy carried by the Owner with respect to the Protected Property.

7.8. Notice and Approval. Any notice or request for approval required by this Easement must be written and is subject to the following:

a. 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:

DCCI Investments, LLC
1505 Highway 65
PO Box 445
New Richmond, WI 54017

To the Trust:

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

b. 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.

c. Content. The notice or request for approval must include sufficient information to allow the Trust to make an informed decision on whether any proposed activity is consistent with the terms and purposes of this Easement. At a minimum this would include (i) the location, nature and scope of the proposed activity, (ii) the proposed use, design and location of any building, structure or improvement and (iii) the potential impact on the Conservation Values of the Protected Property.

d. Approval. The Trust may withhold its approval if it determines that the proposal is inconsistent with the terms or purposes of this Easement or lacks sufficient information to allow the Trust to reach an informed decision. The Trust may condition its approval on the Owner's acceptance of modifications,

which would, in the Trust's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.

- 7.9. Binding Effect. 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.

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

If at any time the 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.

- 7.10. Definitions. Unless the context requires otherwise, the term "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. The term "Trust" includes the Minnesota Land Trust and its successors or assigns to its interest in this Easement.
- 7.11. 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.
- 7.12. Recording. The Trust will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The 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.
- 7.13. 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 purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.
- 7.14. 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.
- 7.15. Additional Documents. The Owner agrees to execute or provide any additional documents reasonably needed by the 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 legal description or title matter or to comply with any federal, state, or local law, rule or regulation.

- 7.16. Entire Agreement. This document sets forth the entire agreement of the parties with respect this Easement and supersedes all prior discussions or understandings.
- 7.17. Counterparts. This Easement may be executed in one or more counterparts, each of which shall be deemed an original. The signatures to this Easement may be executed and notarized on separate pages and when attached to this document shall constitute one complete document.

ACCEPTANCE

19th The Minnesota Land Trust hereby accepts the foregoing Conservation Easement this day of July, 2006.

MINNESOTA LAND TRUST

By: [Signature]

Title: Pres

STATE OF MINNESOTA)
COUNTY OF Hennepin) ss

The foregoing instrument was acknowledged before me this 19th day of July, 2006, by Harold Teasdale, the President of the Minnesota Land Trust, a non-profit corporation under the laws of the State of Minnesota, on behalf of said corporation.

[Signature]
Notary Public
My Commission Expires: 1-31-2010



This document drafted by:

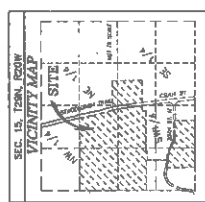
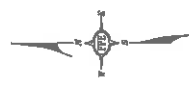
Minnesota Land Trust
2356 University Avenue West
St. Paul, MN 55114

EXHIBIT A

Legal Description of Protected Property:

Outlots A, B, C, D, F, K, R and V, *Miller Farms*, according to the plat on file and of record in the office of the County Recorder, Washington County, Minnesota

Fols, Freeman, Erickson, Inc.
 LAND PLANNING & SURVEYING & ENGINEERING
 5420 MAGNOLIA AVENUE NORTH
 STILLWATER, MINNESOTA 55082
 Phone (612) 436-8813 Fax (612) 436-9231



LEGEND

	PROPOSED PROPERTY
	EXISTING UTILITIES
	PROPOSED DRIVE/ACCESS ROAD
	PROPOSED COMMUNITY UTILITIES AREA

SITE: MILLER FARMS
 TRACT: DCC INVESTMENTS, LLC

**EXHIBIT B
 PROTECTED
 PROPERTY**

MILLER FARMS

