

## **DEED RESTRICTION AS A CONSERVATION EASEMENT**

THIS CONSERVATION EASEMENT is granted on this date \_\_\_\_\_ by the City of Stillwater, (“Buyer”), to the County of Washington, body politic and corporate, (“Seller”), subject to the terms and conditions outlined herein.

### **I. RECITALS**

#### **A. Seller**

County of Washington is the owner of 15 acres of real property, herein referred to as “Protected Property” in Washington County, Minnesota, which is particularly described in Exhibit A and generally depicted on the Property Map in Exhibit B. Both exhibits are attached to this conservation easement and incorporated herein by this reference. The County of Washington, a body politic and corporate, is qualified to acquire and hold conservation easements under Minnesota Statutes Chapter 84C and Section 170(h)(3) of the Internal Revenue Code of 1986, any amendments and any regulations promulgated thereunder.

#### **B. Protected Property**

The Protected Property (Washington County PIN 21.030.20.41.0026), formerly known as the Aiple property, has approximately 3,300 feet of a largely wooded shoreline sloping toward the St. Croix River and containing a beach. It lies within the Lower St. Croix National Scenic Riverway District as an elongated and rectangular piece of land just north of the former Minnesota Zephyr depot in downtown Stillwater. The Browns Creek Trail that opened in the fall of 2014 runs parallel with the property to connect downtown Stillwater to the Gateway Trail.

Generally, the terrain slopes steeply upward approximately 10 feet from the St. Croix River to an area of level terrain that ranges from 75 to 200 feet in width throughout the parcel. The remainder of the parcel slopes steeply upward west approximately 30 feet to the Brown’s Creek Trail in the northerly portion of the property and gradually declines in elevation to grade level in the southerly portion of the property. There is a stream located along the westerly portion of the property, which flows north along the steeply sloping area. This stream flows into a small pond which then filters into a larger pond located in the northerly portion of the property. There is a dike located along the easterly embankment of the larger pond that separates the pond from the St. Croix River. Also located within the larger pond is an outlet control structure regulating the interaction of the pond and the St. Croix River. Heavily wooded areas are concentrated in the northerly portion and along the property boundaries with the central portion of the site consisting of moderate tree cover.

The Protected Property currently has one house located on it. The site also has an entrance gate, bituminous parking and driveway improvements, a stone retaining wall along the southerly elevation of the single-family residence, and numerous drainage pipes located in the hillside of the westerly sloping area.

### **C. Conservation Values**

1. Collectively and individually the following natural, scenic and ecological qualities and the open space character of the Protected Property comprise its “Conservation Values.” There is public value in conserving the following aspects of the property with this Conservation Easement:
  - a. The protection of this property assists in returning the property to a less developed state and enhancing its natural character, contributing to a larger complex of open space along the St. Croix River, within the City of Stillwater and in the St. Croix Valley. It provides scenic and open space views that are a pleasing contrast to surrounding development and are to be enjoyed by the general public from public rights-of-way, including bike trails, and through its use as a park.
  - b. The protection of this property contributes to a larger scale effort to provide ecological connectivity and support biological diversity in the St. Croix River Watershed.
  - c. The protection of this property helps protect air quality through its preservation of tree canopy.
  - d. The protection of this property improves surface and ground water resources by limiting the physical degradation caused by soil movement and increased asphaltting typically endured as part of the development process, and by reducing the volume of runoff and potential flooding. It further enhances the ecosystem’s ability to clean water and reduce concentrations of substances produced by society by maintaining an area for infiltration and natural treatment of storm water in the watershed.
  - e. The protection of this property prevents privatization of access to this segment of the St. Croix River.
2. These Conservation Values of the Protected Property are further set forth in the Baseline Property Report dated March 21, 2017 that the parties acknowledge accurately represents the present condition of the Protected Property. Each of the parties has a copy of the Baseline Property Report. The Seller will use the Baseline Property Report as the basis for monitoring subsequent uses of the Protected Property and enforcing the terms of this Conservation Easement.
3. These Conservation Values have not been and are not likely to be significantly impaired by the continuous use of the Protected Property as described above or as authorized in this Conservation Easement.
4. The preservation and protection of these Conservation Values will provide significant benefit to the public.

### **D. Conservation Policy**

Preservation of the Protected Property will further the governmental policies established by the following:

1. The Federal Government allows the County of Washington to acquire and hold easements through Section 170(h) (3) of the Internal Revenue Code of 1986, including any amendments and regulations promulgated thereunder.

2. The State of Minnesota through Statute Chapter 84C authorizes the State and political subdivisions thereof, as well as nonprofit organizations to preserve, acquire or hold lands for open-space uses, which specifically include farmland, wetlands, native or restored prairie, or lands deemed critical to protecting soil, water quality, and enhancing fish and wildlife habitat; and that actions pursuant to these purposes are for the public health, safety, and general welfare of the citizens of the State of Minnesota and for the promotion of sound land development by preserving suitable open spaces.

3. The State of Minnesota's Environment and Natural Resources Trust Fund (ENRTF) is a permanent fund constitutionally established by the citizens of Minnesota to assist in the protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources. Currently forty percent of net Minnesota State Lottery proceeds are dedicated to building the Trust Fund and ensuring future benefits for Minnesota's environment and natural resources. This project was partially funded by the ENRTF through the Legislative-Citizen Commission on Minnesota Resources.

4. The Washington County Board of Commissioners through adoption of Ordinance 175 Acquisition of Development Rights has declared public open-space benefits result from the protection and conservation of natural areas including the protection of scenic areas for public visual enjoyment from public rights-of-way; that the conservation and protection of restored natural areas as valued natural and ecological resources provide needed open spaces for clean air and clean water as well as for aesthetic purposes; that public benefit will result from the conservation, protection, management and improvement of natural areas; and that the preservation of open-space is vital to the public interest of Washington County through its economic, environmental, cultural and scenic benefits.

5. The *Geologic Atlas of Washington County* assigns more than half of the Protected Property a rating of "highest sensitivity" of the ground water systems to pollution, meaning that pollutants in this area can reach ground water in a very short time.

6. The City of Stillwater's Comprehensive Plan has established goals to protect, enhance and improve public access to the St. Croix River as a natural open space system and recreation resource. The City's Master Trail Plan recognizes the need for support functions and sites for the Browns Creek State Trail. The Protected Property will provide opportunities for trail user rest areas and river valley views for trail users.

#### **E. Conservation Intent**

1. Buyer shall reasonably attempt to protect in perpetuity, natural areas and ecologically significant land for aesthetic, ecological, agricultural, scientific, and educational purposes pursuant to the terms of this Conservation Easement.

2. Buyer desires and intends the open-space character of the Protected Property be preserved, protected and maintained in perpetuity.

3. Buyer agrees to honor and defend the intentions of Seller stated herein and to preserve and protect in perpetuity the open-space values of the Protected Property.

4. Seller desires and intends to place restrictions upon the use of the Protected Property and by transferring to the Buyer the Seller creates a Conservation Easement, on, over and across the Protected Property affirming rights to ensure the preservation of the natural elements and values of the Protected Property. The easement shall survive transfer of the property from the Seller to the Buyer.

5. Buyer recognizes the right of the Seller to protect the ecological values of the Protected Property in perpetuity and to prevent or to remedy activities or uses that are inconsistent with the terms of this Conservation Easement.

## **II. CONVEYANCE OF CONSERVATION EASEMENT**

### **A. Conveyance**

The Buyer in consideration of the facts recited above, the mutual covenants contained herein and other good and valuable consideration and pursuant to Minnesota Statutes Chapter 84C, and other applicable Minnesota laws, does hereby recognize and agree the Seller, its successors or assigns, forever maintains a Conservation Easement in perpetuity over the Protected Property subject to the following rights, terms and restrictions.

### **B. Conservation Values and Purposes**

The Conservation Purpose of this Conservation Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property and the Public Benefit of this Conservation Easement identified in sections I.C. and II. C. 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 Conservation Easement. 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 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.

### **C. Public Benefit**

This Conservation Easement is specifically intended to provide a significant public benefit by furthering the following recreational and conservation purposes:

1. Protects and enhances a significant natural area in the City of Stillwater.
2. Provides public open space in downtown Stillwater.
3. Reduces impervious surface where possible and in no instance increases the current amount of impervious surface, and provides for infiltration and natural storm water treatment to provide protection to ground water aquifers and surface water.

## **III. AFFIRMATIVE RIGHTS**

To accomplish the Conservation Purposes of this Conservation Easement and to preserve and protect the Conservation Values of the Protected Property the Buyer agrees the Seller and its successors or assigns maintain the following rights after transfer of the property.

### **A. Right of Enforcement and Remedies**

The Seller has the right to enforce by proceedings at law or in equity the covenants contained in this Conservation Easement. This right includes, but shall not be limited to, the right to bring an action in any

court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the Protected Property to its prior or more natural condition; to enjoin such non-compliance by temporary or permanent injunction; and to recover any damages arising from such non-compliance. Such damages when recovered may be applied by the Seller in its discretion to corrective action on the Protected Property, if necessary. If such court determines the Buyer, its successors, liens, or assigns, has failed to comply with this Conservation Easement, Buyer, its successors, liens, or assigns, shall reimburse Seller for any reasonable costs of enforcement including costs of restoration, court costs, and reasonable attorney's fees in addition to any other payments ordered by such court. These remedies are cumulative and available without requiring the Seller to prove actual damage to the Conservation Values and Conservation Purposes of the Protected Property. The Seller 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.

**B. Written Notice**

If the Seller becomes aware of an event or circumstance of non-compliance with the terms and conditions set forth in this Conservation Easement, the Seller shall give written notice to the Buyer, its successors, liens or assigns, at the address set forth below of such event or circumstance of non-compliance and to restore the Protected Property to its previous condition. Failure by the Buyer, its successors, liens or assigns, to cause discontinuance, abatement or such other corrective action as may be requested by the Seller within thirty (30) days after receipt of notice shall entitle Seller to bring an action as authorized in this Conservation Easement. The written notification requirements contained in this section, III.B. shall not apply if in the sole discretion of the Seller, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Buyer, its successors, liens, or assigns, are unsuccessful.

**C. Discretionary Enforcement**

The Seller does not waive or forfeit the right to take action as may be necessary to insure compliance with the covenants and purposes of this Conservation Easement on the Protected Property by any failure to act and Buyer, its successors, liens, or assigns, waives any defense of laches with respect to any delay by the Seller in acting to enforce any of the provisions or exercise any rights under this Conservation Easement.

**D. Acts beyond Buyer's Control**

Nothing in this Conservation Easement shall be construed to entitle the Seller to institute any enforcement proceeding against the Buyer, its successors, liens, or assigns, for any changes to the Protected Property due to causes beyond the Buyer's, its successors, liens, or assigns, control, such as changes caused by fire, flood, storm, civil authorities undertaking emergency action or third parties not under the control or supervision of, or not acting with the consent of, the Buyer, its successors, liens, or assigns. This provision does not preclude the Buyer, its successors, liens, or assigns, or the Seller, its successors or assigns, from recovering damages or bringing an action against any third party for trespass or other violation of their respective rights in this Conservation Easement or in the Protected Property.

**E. Right to Enter**

The right is granted for designated representatives of and chosen by the Seller to enter the Protected Property in a reasonable manner and time to conduct monitoring and management evaluations annually and pursuant to a complaint to determine easement compliance; to obtain evidence for use in seeking judicial or other enforcement of this Conservation Easement; and to otherwise exercise its rights under this Conservation Easement. The Seller shall give reasonable prior notice to Buyer of all such entries, shall make reasonable attempts to have the Buyer present, and shall not unreasonably interfere with Buyer's, its successors, liens, or assigns, use and quiet enjoyment of the Protected Property.

**F. Right to Report**

The Seller in addition to other remedies shall have the right to report any environmental concerns or conditions or any actual or potential violations of any environmental or other laws to appropriate regulatory or law enforcement agencies.

**G. Enforcement Rights of Others**

Nothing in this Conservation Easement is intended to create any right to enforce this Conservation Easement in any third party where no such right otherwise exists under this Conservation Easement or under law.

**IV. RESERVED RIGHTS**

**A. Recreational Facilities**

Buyer has the right to implement, plant, construct and maintain the following low impact recreational and public gathering uses where appropriate and pursuant to the Concept Plan (attached as Exhibit C) for the Protected Property:

- 1) Native vegetation and trees.
- 2) Permeable connector paths or trails.
- 3) Stream bank stabilization and water quality improvement structures, including temporary access routes and staging areas.
- 4) Structures for passive recreational uses such as shore fishing, transient dockage, walk-in boat launching, permeable walking paths, nature observation and picnicking that protect the scenic and ecological values of the St. Croix River.
- 5) An area of impermeable surface sufficient to meet Americans with Disabilities requirements, but assuring no increase of overall total area of impermeable surface than existed at the time of purchase of the Protected Property.

**B. All Other Rights**

Buyer reserves for the Buyer, its successors, liens or assigns, all rights as owner of the Protected Property inclusive of rights to locate and maintain recreational facilities as noted in Section IV.A. except the right to undertake any activities that are expressly and specifically prohibited by this Conservation Easement. The Buyer, its successors or assigns, may not exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property.

**C. Notification**

Buyer, its successors, liens, or assigns, agrees to notify the Seller, its successors or assigns in writing before exercising any reserved right that may have an adverse impact on the natural characteristics or ecological and aesthetic features of the Protected Property protected by this Conservation Easement.

**V. COVENANTS**

IN FURTHERANCE of the foregoing affirmative rights, Buyer intends that rights under this Conservation Easement conveyed to the Seller on behalf of the public shall continue to exist in perpetuity. Buyer makes the following covenants on behalf of the Buyer, its successors, liens or assigns, which covenants shall run with and bind the Protected Property in perpetuity.

**A. Required Management and Master Plans**

All natural resource management, agricultural practices and recreational uses on the Protected Property shall be in accordance with the Master Plan. The Buyer will prepare a Master Plan for the property consistent with the Concept Plan and implement and conform to this plan. The Buyer may propose revisions to the Concept and Master plans and those revisions must be approved in writing by the Seller before becoming effective. As a condition of state funding, Buyer must also complete a Management Plan in order to not put its state funding of the property purchase at risk.

**B. Land Use**

1. Any activity on or use of the Protected Property that is inconsistent with the Conservation Purposes and Public Benefits identified in sections I.C. and II.C. of this Conservation Easement is prohibited.
2. No residential use or development of the Protected Property is allowed.
3. No industrial activity is allowed on the Protected Property.
4. No commercial activity may be undertaken or allowed on the Protected Property except as allowed in section V.M.4 of this Conservation Easement.
5. No agricultural use is allowed on the Protected Property.

**C. Development Rights**

1. No development rights in or to the Protected Property or any part thereof that have been encumbered or extinguished by this Conservation Easement shall be transferred to any location outside the Protected Property, whether pursuant to a cluster development plan or any other agreement or plan for transferable development rights or used to obtain any regulatory mitigation credits.
2. No portion of the property shall be used to satisfy land area requirements for other property not subject to this Conservation Easement for purposes of calculating building density, lot coverage, or open space under otherwise applicable laws, regulations or ordinances controlling land use.

**D. Division of Property**

The Buyer, its successors, liens, or assigns, shall not divide, subdivide, or partition, either legally or physically, the Protected Property for any reason without the prior written approval of the Seller except for the purpose of correcting or adjusting a boundary line to resolve a marketable title or ownership dispute. If written approval is granted, any conveyance of the Protected Property is subject to the following terms. The enforceability or validity of this Conservation Easement shall not be impaired or limited by any failure of the Buyer, its successors, liens or assigns, to comply with this section (V.D).

1. Any conveyance or encumbrance of the Protected Property is subject to this Conservation Easement.
2. The Buyer, its successors, liens or assigns, shall reference or insert the terms of this Conservation Easement in any deed or other document by which the Buyer, its successors, liens or assigns, conveys title to or any interest in the Protected Property.

3. The Buyer, its successors, liens or assigns, will notify the Seller, its successors or assigns, of any conveyance within thirty (30) days after closing and will provide the Seller, its successors or assigns, with the name and address of the new owner and any party that has acquired an interest in the property and a copy of the deed transferring title or mortgage conveying an interest.

#### **E. Right of Way**

No right of passage across or upon the Protected Property shall be allowed or granted, if used in conjunction with residential, industrial, or commercial use or development of other land not protected by this Conservation Easement without the prior written approval of the Seller, which shall be recorded.

#### **F. Structures and Improvements**

1. No house, garage, barn, mobile homes, or other structures or buildings shall be constructed or placed on the Protected Property except as needed to carry out activities permitted by this Conservation Easement and as specifically allowed for in the approved Concept Plan and Master Plan or specially permitted by Section IV of this agreement.

2. No poles, antenna, lights, towers, utility lines, piping, water towers or any other temporary or permanent structures shall be constructed or installed on the Protected Property except as needed to carry out activities permitted by this Conservation Easement or as specifically allowed for in the approved Master Plan, unless permitted by Section IV. of this agreement. Utilities existing on the property prior to November 2014 may be maintained by the Buyer.

3. New sanitary and storm sewers and electric and gas lines, not presently existing and needed to serve the Protected Property or other properties nearby may be permitted with the prior written approval of the Seller and shall be constructed underground and in a sensitive manner with minimal disturbance of vegetation and minimal grading. The surface shall be restored to a condition consistent with the Conservation Values and Conservation Purpose of the Conservation Easement and within a reasonable time frame agreed to in writing by the Seller. All utility easements shall be recorded.

4. No roads or parking lots of asphalt, bituminous, gravel, concrete or other materials shall be constructed or installed on the Protected Property except as to carry out activities permitted by this Conservation Easement and as specifically allowed for in the approved Master Plan or otherwise approved in writing by the Seller or permitted by Section IV. of this agreement.

5. Fencing may be constructed and maintained for the purposes of marking boundaries, securing the Protected Property, or carrying out activities permitted by this Conservation Easement or specifically allowed by Section IV. of this agreement or the approved Master Plan or otherwise approved in writing by the Seller.

6. Any 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.

7. Signs, billboards, and outdoor advertising structures shall not be placed or erected on the Protected Property except for small, unlighted signs for the purposes listed in section IV. For all signs permitted by this section, the location, number, size and design shall not significantly diminish the natural and scenic qualities of the Protected Property and shall be allowed in accordance with the approved Master Plan or otherwise approved in writing by the Seller. Signs may be allowed for the following purposes:

- a. Displaying the name of the Protected Property.
- b. Announcing the existence of this Conservation Easement.
- c. Providing educational information to commemorate the importance of the Protected Property.
- d. Providing the name and address of the owner.
- e. Delineating the boundaries in order to prohibit trespass and to manage the property.
- f. Advertising any on-site activities permitted herein.

#### **G. Water Bodies and Courses**

1. Reasonable manipulation or alteration of natural watercourses, lakes, shorelines, wetlands, springs or other surface or subsurface bodies of water is allowed to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands and in accordance with the approved Master Plan.
2. No activities on or uses of the Protected Property that cause significant erosion or are seriously detrimental to water quality or purity are allowed.

#### **H. Mining**

No mining, drilling, exploring for, or removing any minerals, sand, gravel, rock, or fossil fuels from the Protected Property is allowed.

#### **I. Surface Alteration**

1. The commercial extraction of minerals by surface mining and the extraction and removal of topsoil from the Protected Property is prohibited. The extraction of subsurface or deep-mined minerals from the Protected Property, including natural gas and oil, and the noncommercial extraction of minerals, including limestone, shale, gravel, sand and other minerals is prohibited.
2. The topography of the Protected Property shall not be altered or changed in any manner, including ditching, draining, filling, excavation or removal of soil, sand, gravel rock or other materials except as incidental and reasonably required in the course of activities or uses permitted by this Conservation Easement or as specifically allowed for in the approved Master Plan. Any permitted alteration shall be undertaken with minimal grading and disturbance to vegetation and with the surface restored in a timely manner to a condition consistent with the Conservation Values and Purposes of this Conservation Easement.

#### **J. Forest and Habitat Management**

1. No removal, destroying, burning, cutting, mowing or altering of vegetation is allowed except as follows:
  - a. To prevent or control insects, noxious weeds, invasive species, diseases, fire, personal injury, or property damage.
  - b. As reasonably required to construct and maintain permitted buildings, structures, roads, trails and other improvements and provided that vegetation shall be restored following any construction to a condition consistent with the Conservation Values and Purposes of this Conservation Easement.
  - c. To remove downed or dead timber.
  - d. In conjunction with activities permitted by this Conservation Easement and as specifically allowed for in the approved Master Plan.

2. Timber and other wood products may be removed and vegetation may be managed on the Protected Property in accordance with the approved Master Plan approved in writing by the Seller.
3. Habitat for wildlife and native biological communities may be created, maintained, restored, or enhanced on the Protected Property in accordance with the approved Master Plan.
4. No plant or animal species shall be introduced on the Protected Property except those native species that are consistent with the protective purposes of this Conservation Easement and consistent with the approved Concept Plan and Master Plan.

**K. Animals**

No livestock or feedlots shall be permitted on the Protected Property except for activities or uses specifically allowed for by this Conservation Easement and in the approved Master Plan. 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 for feeding and rearing poultry are considered feedlots.

**L. Waste Removal**

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

This does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted by this Conservation Easement.

**M. Recreational Use**

1. Unpaved paths or foot trails may be established and maintained on the Protected Property for recreational uses and shall be established, maintained and used in a manner that does not result in significant erosion or have an adverse impact on the Conservation Values and Conservation Purposes of the Protected Property. No other trails shall be established and maintained on the Protected Property except as specifically allowed for in the approved Master Plan.
2. Motorized vehicles may be operated with the consent of the Buyer on the Protected Property only in the following manner:
  - a. On trails designated for their use.
  - b. For city maintenance, emergency, Americans with Disabilities Act compliance and management purposes.
  - c. In conjunction with the Master Plan or Management Plan operations or for habitat restoration or enhancement as prescribed in the approved Management Plan.
  - d. In a manner that does not result in significant erosion or have an adverse impact on the Conservation Values and Purposes of the Protected Property.
3. The Protected Property may be used for hiking, cross-country skiing, picnicking, nature observation and interpretation or study, and other similar low impact recreational and educational programs or activities.

4. The Protected Property may not be used for more than minimal commercial recreation purposes. It is the intent of the parties to prevent the Protected Property from becoming the site of a commercial recreational enterprise, such as a commercial campground, a golf course, a commercial ski area, an exclusive hunting grounds or club, a commercial site for a snowmobiling, ATV motocross or other race track, a dressage field, or other similar intensive or predominantly commercial use, but this restriction shall not be construed to mean the occasional or casual use of or access to the Protected Property by individuals or groups who pay a fee to a guides, educators, outfitters or supervisors of outdoor recreation activities or who pay a fee for low-impact outdoor recreational uses.

5. Low-impact structures such as tents, trail barriers, benches, and informational kiosks may be placed on the Protected Property.

6. Structures and improvements to support the recreation uses permitted in this Conservation Easement shall be permitted as specifically described in the approved Concept Plan and Master Plan. Structures and improvements shall be placed and constructed in accordance with the following:

- a. All development shall be provided in a manner that does not compromise the Conservation Values and Purposes of the Protected Property.
- b. All development shall be in accordance with other provisions of this Conservation Easement.
- c. All development shall take advantage of the existing land forms and natural vegetation patterns.

#### **N. State Requirements**

Buyer acknowledges conducting certain activities on the Protected Property may require repayment, in accordance with Minnesota Statutes 116P.10, of the state's \$1.25 million contribution toward the purchase of the property. According to this statute if a project supported by the fund results in net income from the sale of products or assets developed or acquired by an appropriation from the fund, the appropriation must be repaid to the fund in an amount equal to the percentage of the project's total funding provided by the fund. The commission may include in its legislative bill a recommendation to relinquish the income if a plan is approved for reinvestment of the income in the project or when the amount of the original grant or loan, plus interest, has been repaid to the fund.

## **VI. GENERAL PROVISIONS**

### **A. Binding Effect**

This Conservation Easement creates a property right immediately vested in the Seller, its successors or assigns that cannot be terminated or extinguished except as set out herein. This Conservation Easement shall run with and burden the Protected Property in perpetuity and shall bind and inure to the benefit of the Seller, its successors, liens or assigns, and any and all other successors to it in interest and the Buyer, its successors or assigns.

### **B. Property Transfer**

The Buyer, its successors, liens, or assigns, agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement will be referenced by the Buyer, its successors, liens, or assigns, in any subsequent deed or other legal instrument by which the Buyer, its successors, liens, or assigns, transfers or divests the Buyer, its successors, liens, or assigns, of all or any part of the Buyer's, its successors, liens, or assigns, interest in the Protected Property, and that the Buyer, its successors, liens, or assigns, will give the Sellers written notice of any such transfer within thirty (30) days after closing.

### **C. Notice and Approval**

1. Any notice or request for approval required in this Conservation Easement shall be sent by certified mail or other courier providing reliable proof of delivery to the following addresses, such address(es) as

may be subsequently specified by notice in writing, and the party of record at the address of record in the Washington County Recorder's Office.

**Seller:**

Washington County  
June Mathiowetz, Land and Water Legacy Program  
Office of Administration  
P.O. Box 6  
14949 62<sup>nd</sup> Street North  
Stillwater, MN 55082-0006  
651-430-6000

**Buyer:**

City of Stillwater  
Bill Turnblad  
Community Development Director  
216 N. 4<sup>th</sup> Street  
Stillwater, MN 55082  
651-430-8800

2. Unless otherwise specified in this Conservation Easement any required notice or request for approval must be delivered at least thirty (30) days prior to the date proposed for initiating the subject activity.
3. The notice or request for approval must include sufficient information to allow the Seller to make an informed decision on whether any proposed activity is consistent with the terms and Conservation Values and Conservation Purposes of this Conservation 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; and the potential impact on the Conservation Values and Purposes of the Protected Property.
4. Approval of the Seller must be in writing to be effective.

**D. Severability**

If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

**E. Controlling Law**

1. This Conservation Easement shall be governed by the laws of the State of Minnesota.
2. This Conservation Easement shall be enforceable by the Seller, its successors or assigns, and/or the State of Minnesota as provided in Minnesota Statute Sec.103F.515 Subd. 9 and/or by such other relief as may be authorized by law. Any ambiguities in this Conservation Easement shall be construed in a manner that best effectuates the purposes of protecting soil, improving water quality, and enhancing fish and wildlife habitat.

**F. Assignment**

The Seller may assign or transfer this Conservation Easement and the rights conveyed herein, provided that (1) the Seller requires as a condition of such transfer that the original conservation purposes of this Conservation Easement continue to be carried out in perpetuity; and (2) any assignment shall be made only to an organization qualified to acquire or hold a conservation easement at the time of the transfer under the provisions of Section 170(h)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, and any regulations promulgated thereunder. This Conservation Easement is fully valid and enforceable by any assignee or successor of the Seller whether assigned in whole or in part. The Seller will notify in writing the Buyer, its successors, liens, or assigns, of the assignment and will provide the Buyer, its successors, liens, or assigns, with the name and address of new holder.

**G. Definition**

The terms "Buyer" and "Seller" as used in this Conservation Easement shall be deemed to include with respect to Buyer, its successors, liens or assigns; and with respect to the Seller, its successors or assigns.

**H. Amendment**

This Conservation Easement may be amended only in the event of unanticipated circumstances not specifically addressed by this Conservation Easement and only in the sole and exclusive judgment of the Seller that such amendment (i) furthers the purpose of this Conservation Easement, (ii) is not inconsistent with and will not adversely impact the conservation values protected by this Conservation Easement, (iii) does not affect the perpetual duration of the Conservation Easement or (iv) does not affect the validity of the Conservation Easement under Minnesota law or the status of Washington County under section 170(h) of the Internal Revenue Code. Any amendment or modification must be in writing and recorded in the same manner as this Conservation Easement.

**I. Ownership Responsibilities, Costs and Liabilities**

The Buyer, its successors, liens, or assigns, 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 Buyer, its successors, liens, or assigns, agrees to indemnify and hold the Seller 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 Conservation Easement.

1. Taxes: Buyer, its successors, liens, or assigns, shall pay all taxes and assessments levied against the Protected Property including any taxes or assessments levied against the interest of the Seller established by this Conservation Easement. The Seller may, but is not obligated to, make any payment of taxes or assessments levied against the Protected Property or the interest established by this Conservation Easement and shall have a right of reimbursement against Buyer, its successors, liens, or assigns, for such amounts.
2. Regulatory Compliance: All activities or construction permitted by this Conservation Easement shall be undertaken in accordance with applicable federal, state and local laws, regulations and ordinances and related agreements and nothing in this Conservation Easement shall be construed to exempt the Protected Property or the Buyer, its successors, liens, or assigns, from otherwise applicable laws or regulations. The Buyer, its successors, liens, or assigns, is solely responsible for obtaining any required governmental permits.
3. Future Environmental Condition: The Buyer, its successors, liens, or assigns, is solely responsible for the Buyer's, its successors, liens, or assigns, 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 Buyer, its successors, liens, or assigns, shall take steps necessary to assure any needed containment or remediation resulting from any release of such substance and has the legal right to pursue any person or entity responsible for any such discharge.
4. Future Economic Condition: In conveying this Conservation Easement the Buyer has considered the possibility that uses of the Protected Property prohibited by this Conservation Easement may in the future become more economically valuable than uses permitted by this Conservation Easement and that neighboring properties may be put entirely to such prohibited uses. Such changes are not deemed to be circumstances justifying the extinguishment of this Conservation Easement as otherwise set forth above.

**J. Termination**

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

**K. Proceeds**

If this easement is extinguished, terminated, transferred, or sold in whole or in part then the Seller is entitled to a portion of any proceeds in an amount equal to the fair market value of this Conservation Easement at the time of the extinguishment but no 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 Conservation Easement.

**L. State and County Fund Repayment**

If this easement is extinguished, terminated, transferred, or sold in whole or in part then the Buyer agrees to a payment to the Seller in an amount that is equal to the amount of funds (\$1,925,000) from the Washington County Land and Water Legacy program that paid for the 2014 purchase of the Protected Property to the landowner Ms. Elayne Aiple. In addition, if at any time, the State of Minnesota requires a repayment of the state funds (\$1,250,000) provided through its Environment and Natural Resources Trust Fund for the 2014 purchase of the Protected Property, the obligation for the repayment will be paid by the Buyer.

**M. Termination of Rights and Obligations**

A party's rights and obligations under this Conservation Easement terminate upon transfer or termination of that party's interest in the Conservation 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; provided further that the terms and conditions of this Conservation Easement shall continue to run with the land.

**N. Re-recording**

The Seller on behalf of the Buyer, its successors, liens, or assigns, shall execute, acknowledge and record or file any instruments necessary to assure the perpetual enforceability of this Conservation Easement. The Seller, its successors or assigns, may re-record this Conservation Easement or any other documents necessary to protect its rights under this Conservation Easement or to assure the perpetual enforceability of this Conservation Easement.

**O. Additional Documents**

The Buyer, its successors, liens or assigns, agrees to execute or provide any additional documents reasonably needed by the Seller, its successors or assigns, to carry out in perpetuity the provisions and the intent of this Conservation 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.

**P. Entire Agreement**

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

APPROVED AS TO FORM:

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Assistant County Attorney

Drafted by:  
Washington County  
Office of Administration  
14949 62<sup>nd</sup> Street N.  
Stillwater, MN 55082 – 0006

In witness whereof, the Buyer has executed this Conservation Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BUYER

\_\_\_\_\_

Mayor

\_\_\_\_\_

City Administrator

NOTARY PUBLIC

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by

\_\_\_\_\_.

Notary Public

My Commission Expires:

The foregoing Conservation Easement is hereby accepted by Washington County this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

COUNTY OF WASHINGTON

\_\_\_\_\_  
County Board Chair

\_\_\_\_\_  
County Administrator

NOTARY PUBLIC

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_, 2017 by

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT A

### CONSERVATION EASEMENT LEGAL DESCRIPTION

#### LEGAL DESCRIPTION

(Aiple Deed to Washington County)

##### Parcel A:

All that part of Reserved in Block Fifty-one (51) of Carli and Schulenberg's Addition to Stillwater, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota; all that part of Lots Seven (7) and Eight (8), Block Thirty-two (32) of said Addition and the land lying East and in front of Blocks Fifty-one (51), Thirty-two (32) and Seven (7) of said addition, and all that part of Lot One (1), Section Twenty-eight (28) Township Thirty (30) North, Range Twenty (20) West, and all that part of Tract Three (3) described in certificate of Title No. 48, issued by the Registrar of Titles of Washington County, Minnesota, on February 6, 1912, described as follows, to-wit:

BEGINNING at the intersection of the Southerly line of East Laurel Street (extended easterly with the easterly line of the right of way of the Northern Pacific Railway Company); thence Northwesterly along said Easterly line of said right-of-way Thirty-seven hundred and eighty-five (3,785) feet, more or less, to its intersection with the Northerly line of East Poplar Street (extended easterly), thence Easterly along said Northerly line of said Poplar Street (extended) Two hundred and twenty-seven (227) feet, more or less, to the Westerly shore line of the St. Croix River, thence Southwesterly along said shoreline of said river to its intersection with the Southerly line of said Laurel Street (extended easterly), thence Westerly along said Southerly line of said Laurel Street Two hundred Ninety-two (292) feet, more or less, to the point of beginning, except the following:

COMMENCING at the intersection of the southerly line of East Laurel Street (extended easterly) and the easterly right of way line of the Northern Pacific Railway Company for a point of beginning; thence Northerly along the said right of way line a distance of 540.35 feet to an iron pipe, thence Easterly at an angle of 90 degrees with the said right of way line to the shore line of Lake St. Croix thence Southerly along the shoreline of said Lake St. Croix to its intersection with the South line of Laurel Street (extended easterly), thence Westerly along the South line of Laurel Street (extended easterly) to the point of beginning; subject to all easements and rights-of-way of record. As amended by Myron Shepard's Perfected Plat of the City of Stillwater, dated May 21, 1878, Washington County, Minnesota.

##### Parcel B:

Easement for Driveway Purposes as currently laid out and traveled over and across the following described property as set forth in Easement Agreement dated November 24, 2014 filed December 22, 2014 as Document No. 4010636 in the office of the Washington County Recorder over: that portion of the BNSF Railway Company's (formerly Northern Pacific Railway Company) Stillwater Branch right of way, as now located in Section 21 and Section 28, in Township 30 North, Range 20 West, Fourth Principal Meridian.

EXHIBIT B

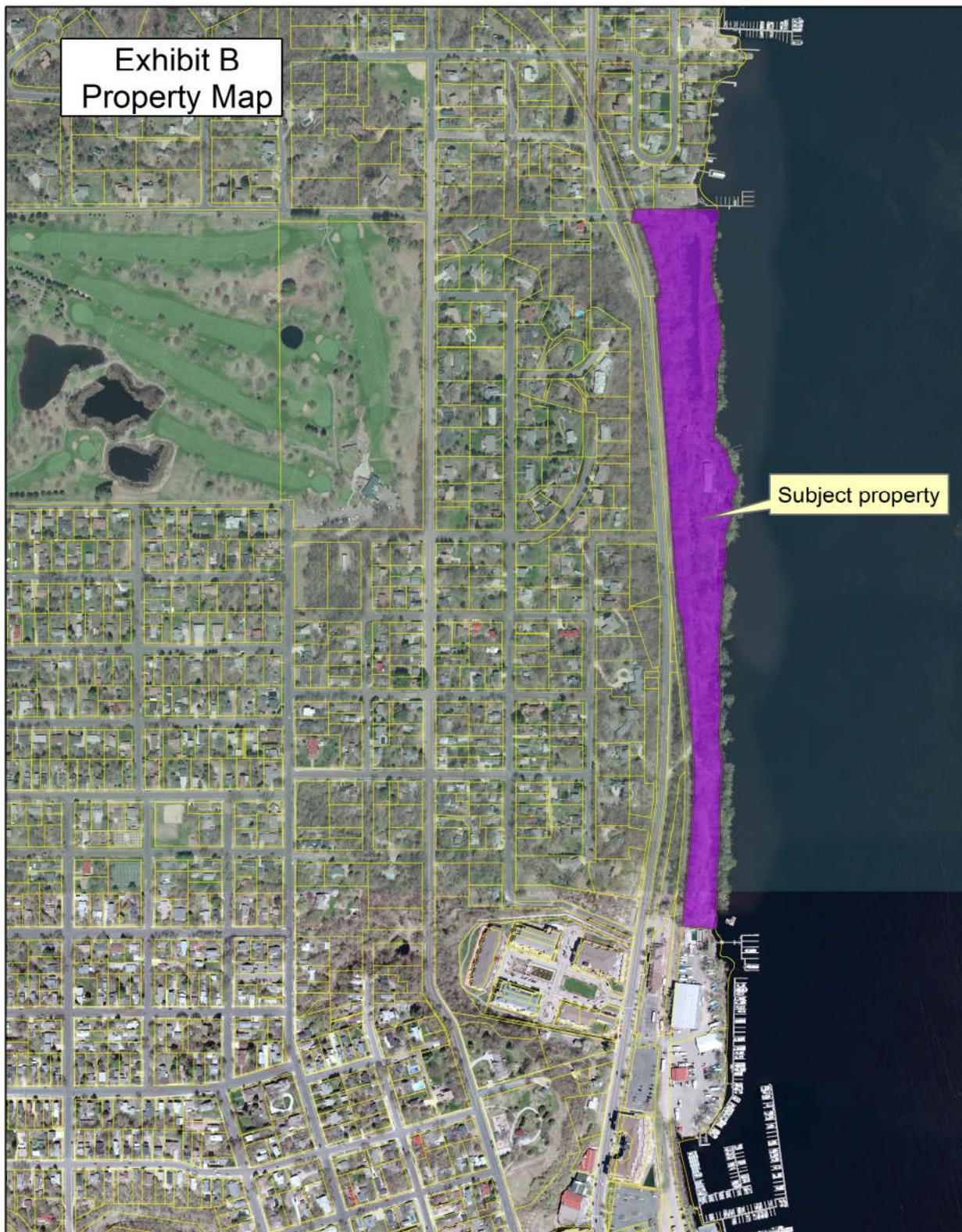
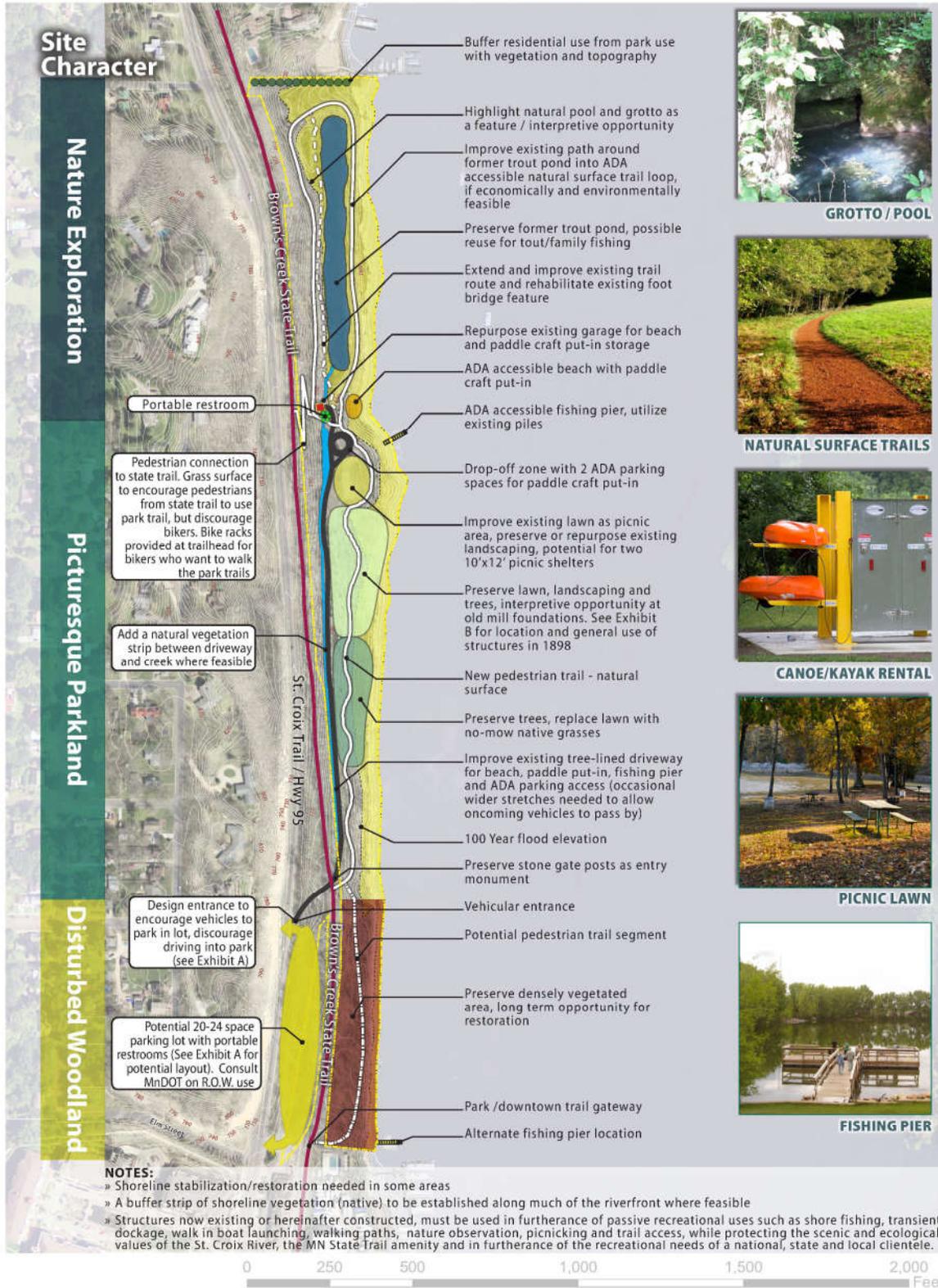


EXHIBIT C

CONCEPT PLAN



GROTTO / POOL



NATURAL SURFACE TRAILS



CANOE/KAYAK RENTAL



PICNIC LAWN



FISHING PIER

CONCEPT PLAN  
EXHIBIT A

