

**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

CONSERVATION EASEMENT

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This CONSERVATION EASEMENT is granted this 29th day of December, 2011, by the Grantor, DKR RUTLAND LLC, a Wisconsin limited liability company (hereinafter "Landowner"), to the Grantee, NATURAL HERITAGE LAND TRUST, INC., a Wisconsin non-profit corporation having its principal office in Madison, WI (hereinafter "Easement Holder").

RECITALS

A. Property. The Landowner is the sole owner of approximately 180.78 acres of real property in Dane County, Wisconsin (hereinafter the "Property"), which is legally described in Exhibit A, and depicted on a map shown in Exhibit B (hereinafter the "Property Map"). If there is any discrepancy between Exhibit A and Exhibit B, Exhibit A shall prevail. Both exhibits are attached to this Easement and incorporated by this reference.

Portions of the Property have been designated as Areas to establish certain uses and management conditions within those areas. There is a "Farmstead Area" which is delineated on the Property Map and described in Exhibit C.

B. Conservation Values. The Property, in its present state, has significant natural habitat, forestry, agricultural, and open space values (collectively, "Conservation Values") of importance to the Landowner, Easement Holder and the people of Wisconsin. In particular:

- The eastern portion of the Property is located within the project boundary of the Wisconsin Department of Natural Resources (DNR) Anthony Branch Fishery and Wildlife Area, a 1,000-acre public conservation area featuring a variety of wetlands (wet-meadow, cattail, shrub-carr, and sedge meadow) and uplands surrounding a high-quality Class II trout stream with wild brown trout. The Fishery and Wildlife Area is adjacent to the eastern boundary of the Property and is open to the public for hunting, trapping, hiking, fishing, wildlife viewing, and other nature-based recreation activities.
- The Property, in its present state, has significant natural, aesthetic, scientific, and educational values including wetlands, forest, and 1,500 feet of the main stem of Anthony Branch Creek, that are "relatively natural habitat of fish, wildlife, plants or similar ecosystems", as such terms are defined in Section 170(h)(4)(A) of the Internal Revenue Code.
- The Property, in its present state, has significant agricultural and open space values, the preservation of which would yield a "significant public benefit" pursuant to "a clearly delineated federal, state, or local governmental conservation policy," as such terms are defined in Section 170(h)(4)(A) of the Internal Revenue Code; such governmental conservation policies are enumerated in Section D of this Easement.
- The Property contains approximately 115 acres of farmland, of which approximately 89 acres are classified as "prime" or "statewide important" by the U.S. Department of Agriculture Natural Resources Conservation Service.

Recording Area

Name and Return Address:
Natural Heritage Land Trust
303 S. Paterson Street, #6
Madison, WI 53703

Parcel identification Number:

- 051018491901
- 051018496906
- 051019180405
- 051019185008
- 051019195410
- 051020285004

The Conservation Values of the Property have not been and are not likely to be adversely affected to any substantial extent by uses of the Property allowed under this Easement or by the limited structures that presently exist on the Property or which are authorized under this Easement.

C. Baseline Documentation. The condition of the Property is further documented in an inventory of relevant features, characteristics and Conservation Values, which is on file at the office of the Easement Holder and incorporated by this reference. This Baseline Report, dated December 29, 2011, consists of reports, maps, photographs, and other documentation that the Landowner and Easement Holder agree provides an accurate representation of the condition of the Property at the time of conveyance of this Easement and which is intended to serve as an objective, but not exclusive, information baseline for monitoring compliance with the terms of this Easement.

D. Public Policies. Preservation of the Conservation Values of the Property will serve the following public policies:

- Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic and open space values of real property; assure its availability for agriculture, forestry, recreation or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.
- Section 23.092 of the Wisconsin Statutes, which provides for the protection of habitat areas and fisheries in order to enhance wildlife-based recreation.
- Section 23.094 of the Wisconsin Statutes, entitled “Stream bank protection program,” which provides for the protection of water quality and fish habitat of Wisconsin streams.
- The Wisconsin Farmland Preservation Program, Chapter 91 of the Wisconsin Statutes, whose purpose is to retain the availability of high quality agricultural land for farming.
- The Dane County Farmland Preservation Plan, adopted by the Dane County Board of Supervisors on December 3, 1981, which recognized the policy of the County to preserve agricultural land, support preservation of the family farm, and maintain the rural character of Dane County Towns.
- The Dane County, Wisconsin, Code of Ordinances which designates the Property within the County’s A-1 Exclusive Agriculture District, the purposes of which include the preservation of productive agricultural land for food and fiber production and the preservation of productive farms by preventing land use conflicts between incompatible uses.
- The Town of Rutland Comprehensive Plan: 2005 to 2024, adopted March 6, 2007 which designates the Property as part of the town’s Agricultural Preservation District and sets goals, objectives, and policies relating to agricultural and natural resources, including:
 - Goal 6: Preserve agricultural land in the town
 - Objective 1: preserve existing farm operations
 - Objective 3: preserve the rural character of the town
 - Goal 7: Create a pattern of development that fosters the rural character and agricultural land preservation and that minimizes potential conflicts between incompatible land uses
 - Objective 1: maintain the agricultural land base to the greatest extent possible
 - Goal 11: Protect natural resources and environmentally sensitive land from inappropriate use and/or development
 - Policy 1: identify and protect the unique natural resources such as wetlands, woodlands, groundwater, and native prairies
 - Policy 6: support the efforts of landowners to keep natural areas from being developed by using conservation easements or other means

E. Qualified Organization. The Easement Holder is qualified to hold conservation easements under Section 700.40(1)(b) of the Wisconsin Statutes and is also a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder. The Easement Holder maintains an Easement Enforcement Fund for the purposes of monitoring and defending the conservation easements it holds.

F. Conservation Intent. The Landowner and Easement Holder share the common purpose of preserving the Conservation Values of the Property in perpetuity. The Landowner intends to place restrictions on the use of the Property to protect those Conservation Values. The Landowner further intends to convey to the Easement Holder, and the Easement Holder agrees to accept, the right to monitor and enforce these restrictions in order to preserve, enhance and protect the Property for the benefit of this generation and generations to come.

GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above and the mutual covenants contained in this Easement, as an absolute and unconditional gift, the receipt and sufficiency of which is hereby acknowledged, and pursuant to Section 700.40 of the Wisconsin Statutes, the Landowner hereby voluntarily grants and conveys to the Easement Holder a Conservation Easement in perpetuity over, in and to the Property (herein the "Easement"). This Easement consists of the following terms, rights and restrictions:

1. **Purpose.** The Purpose of this Easement is to preserve the Property in perpetuity in its predominantly natural, forested, agricultural, and open space condition, and to prevent any use of the Property that will adversely impact or interfere with its Conservation Values. The Landowner intends that this Easement will confine the use of the Property to activities that are consistent with the Purpose of the Easement.
2. **Restrictions, Prohibited Uses and Certain Reserved Rights of the Landowner.** Any activity on or use of the Property inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following provisions identify activities and uses that are expressly prohibited and some rights that are expressly reserved to the Landowner:
 - 2.1 Animals. The Property may not be used as a game farm, shooting preserve, fur farm or deer farm, licensed under Chapter 169 of the Wisconsin Statutes, as that Chapter may be amended from time to time.
 - 2.2 Buildings, Structures and Other Improvements. The placement, installation or construction of any temporary or permanent buildings, structures or other improvements on the Property is prohibited, including, without limitation, roads, signs and billboards, utility corridors, waste disposal systems, towers, and trails, except as provided below.
 - a. Fences. Existing fences may be repaired, replaced, or removed. Additional fencing may be constructed to mark boundaries and secure the Property, or as needed to carry out activities permitted in this Easement.
 - b. Signs. Signs including but not limited to boundary markers, directional signs, signs stating the name and address of the Property and the names of persons living on the Property, signs posted to control unauthorized entry or use of the Property, memorial plaques or other signs that explain the history, natural features, or protection of the Property, signs advertising the availability for sale of agricultural or timber products grown on the premises, the temporary placement of electoral campaign signs, and temporary signs indicating that the Property is for sale, for lease, or under development are permitted, subject to zoning regulations and provided that none of the signs shall be lighted and the placement, number, size and design of any such signs do not significantly diminish the scenic character of the Property. Signs advertising commercial activities not located on the Property are prohibited.
 - c. Trails. Trails up to six feet in width may be established and maintained on the Property, provided that they do not diminish the Conservation Values of the Property and are located and constructed to prevent erosion and protect sensitive areas and water quality. All trails shall have a pervious surface of natural materials.
 - d. Roads. Existing roads and bridges on the Property may be maintained but shall not be substantially widened. Road improvements that increase the amount of impervious surface must be in accordance with Paragraph 2.2.g. No new roads or bridges may be constructed or established on the Property, except for uses permitted by this Easement.
 - e. Buildings. Buildings, structures, or improvements may be placed, constructed, maintained, renovated, repaired, expanded, or replaced on the Property only as follows:
 - (i) Non-residential structures used primarily for agricultural purposes, forestry purposes, or to support other purposes that are permitted by this Easement and are consistent with the Purpose of this Easement: shall be located to the greatest extent practicable within the Farmstead Area or, if outside of the Farmstead Area, shall be located to the greatest extent practicable on soils not classified "prime" or "statewide important" by the U.S. Department of Agriculture Natural Resources Conservation Service; and, shall be in accordance with Paragraph 2.2.g. The Landowner reserves the right to erect on the Property structures such as solar panels, wind towers, or similar structures to generate energy primarily for use on the Property

by activities permitted under this Easement, but only in accordance with Paragraph 2.2.g and subject to zoning regulations.

- (ii) Residential structures: shall be limited to one (1) single-family residence located only in the Farmstead Area; related accessory structures, septic systems, utilities, driveways, underground pipes and overhead or underground wires necessary to service the permitted residence shall be located to the greatest extent practicable in the Farmstead Area; and shall be in accordance with Paragraph 2.2.g. Only one residence is permitted anywhere on the Property.
- (iii) Miscellaneous recreational, conservation, and educational structures which are nonresidential structures for recreational, conservation, research, and/or education purposes including, without limitation, nesting boxes, fire rings, blinds and deer stands, picnic tables, and scientific monitoring equipment: shall be individually limited in size to no more than 64 square feet of ground area including associated appurtenances such as stairs or ramps; may not be improved with plumbing, electricity, or other utilities; may not diminish the Conservation Values of the Property, and shall be in accordance with Paragraph 2.2.g. Surrounding disturbed areas must be replanted with native vegetation immediately after construction of such structures.
- (iv) The Landowner shall notify the Easement Holder in accordance with Paragraph 5 of this Easement prior to the construction of any new buildings or structures except those allowed under Paragraph 2.2.e(iii).

- f. Utilities. Utility systems and facilities may be installed, maintained, repaired, extended and replaced only to serve uses and activities on the Property specifically permitted by this Easement. This includes, without limitation, all systems and facilities necessary to provide power, electricity, fuel, water, waste disposal and communication for structures permitted by Paragraph 2.2.e.

Utility systems and facilities shall be installed with minimal grading and disturbance to vegetation, and shall be placed, to the greatest extent practicable, within the Farmstead Area or on soils that are not classified "prime" or "statewide important" by the U.S. Department of Agriculture Natural Resources Conservation Service. Following installation, the surface of the Property shall be restored to a condition consistent with the Conservation Purpose of this Easement.

- g. Impervious surface. The total impervious surface area of all existing or future buildings, structures, improvements, roads, and parking areas, both within and outside of the Farmstead Area, shall not exceed approximately two percent (3.62 acres or 157,687 square feet) of the Property. Of this amount, the total impervious surface area permitted outside the Farmstead Area shall not exceed one half percent (0.5%, 0.90 acres or 39,204 square feet). For purposes of this Easement, impervious surface shall be defined as permanent, non-seasonal rooftops, and concrete and asphalt surfaces. Impervious surfaces do not include conservation practices listed in the official USDA Field Office Technical Guide, areas within public rights-of-way, or growing-season-extension structures removed at least once annually (including tunnel row covers and hoop houses).

Note: Notice is hereby given that the Landowner has the obligation to comply with current state erosion control and storm water regulations pertaining to the placement, installation, construction and maintenance of buildings, structures and other improvements on the Property.

- 2.3 Commercial, Residential, and Industrial Uses. Use of the Property for commercial or industrial purposes, including use by easement or other right of access or passage across or upon the Property in conjunction with commercial activity is prohibited except as provided for below.

- a. Residential and agricultural uses are permitted when in accordance with this Easement.
- b. The Landowner may charge rent or fees for permitted uses of the Property.
- c. The processing and sale of forest or agricultural products grown or produced primarily on the Property is permitted.
- d. The Landowner or occupants of the permitted residence may carry on cottage industries within the Farmstead Area, subject to zoning regulations, provided that: (i) the cottage industries do not involve regular parking for

more than three motor vehicles, (ii) such cottage industries are in accordance with this Easement, and (iii) such cottage industries are conducted primarily within permitted buildings on the Property or any non-agricultural business activities conducted outside of buildings are incidental to the agricultural and natural resource uses of the Property and do not occupy more than 2000 square feet of space outside of buildings.

2.4 Dumping. There shall be no dumping or storage on or under the Property of any trash, garbage, construction materials, sewage, ashes, manure, trees, brush, hazardous materials, discarded or salvageable materials such as junk cars, or other unsightly or offensive material. There shall also be no dumping or stockpiling of any soil, sawdust, gravel, or sand, except as needed for agricultural operations or other activities on the Property permitted by this Easement. This is not intended to prohibit agricultural operations permitted by this Easement or the burning or composting of excess brush or other plant material generated on the Property by activities permitted in this Easement. The following activities are permitted: storage and spreading of manure, lime, or other fertilizer for agricultural purposes, pursuant to Paragraph 2.8; the composting of organic materials generated on the Property, in an area not to exceed one (1) acre; and the temporary storage of trash generated by permitted activities on the Property, in receptacles, for periodic off-site disposal, so long as such activities are done in a manner that does not impair the agricultural or conservation values of the Property.

2.5 Land Management Plan. The Property or portions of the Property may be managed to preserve, enhance, restore and maintain its natural habitat in accordance with a Land Management Plan as set forth below. Such Land Management Plan shall:

- (i) be approved in writing by the Easement Holder and Landowner prior to implementation.
- (ii) be prepared by a qualified natural resource professional who has been approved by the Easement Holder.
- (iii) identify objectives, purpose, and location of proposed management practices that will be undertaken to protect, enhance, restore and maintain the Conservation Values of the Property, its natural communities, wildlife resources, soil, water, and scenic beauty.
- (iv) include an access plan, indicating routes of ingress and egress for the areas to be managed.
- (v) not conflict with other approved Land Management Plans, or other Conservation Plans or Forest Plans prepared in accordance with Paragraph 2.8, to manage other portions of the Property.
- (vi) be in accordance with generally accepted best management practices as determined by the Easement Holder.
- (vii) allow for amendment and modification with the written approval of the Easement Holder.
- (viii) be prepared, modified, amended, and implemented at the cost of the Landowner.
- (ix) not control if there is any inconsistency between the terms of the Land Management Plan and this Easement.

2.6 Mining, Ponds, and Surface Alteration. All mining, drilling, exploring for, excavation or removal of any oil, gas, other hydrocarbons, or other minerals is prohibited. Excavation or stockpiling of soil, sand, peat, gravel, rock or any other earth materials is permitted only to support activities on the Property expressly permitted by this Easement and only in a manner consistent with the Conservation Purpose of this Easement. Such excavation must be limited in scope and impact, may not exceed one acre (43,560 square feet) in area for all such excavation on the Property, and to the maximum extent possible shall not be located on soils that are classified "prime" or "statewide important" by the U.S. Department of Agriculture Natural Resources Conservation Service.

The flooding or building of ponds and constructed water facilities is permitted only if such water areas (i) are consistent with the Conservation Purpose of this Easement, (ii) to the maximum extent practicable, are not located on soils are classified "Prime" or "Statewide Important" by the U.S. Department of Agriculture Natural Resources Conservation Service, and (iii) do not exceed one acre (43,560 square feet) in area for all such water areas on the Property, including existing impounded water areas and excluding all drainage ditches and water and sediment control basins necessary to support agricultural activities on the Property. The restoration of streambanks or wetlands or other native habitat improvement projects involving surface alteration of the Property shall be conducted in accordance with a Land Management Plan described in Paragraph 2.5; such activities shall not be counted towards the one-acre limitation in (iii) above.

There shall be no alteration of the surface of the Property, including, without limitation, ditching, draining, diking, tiling, filling, leveling, or any use or activity that causes or is likely to cause significant soil degradation or erosion except as necessary for permitted uses of the Property that are in accordance with this Easement and the Conservation Plan or Forest Plan required in Paragraph 2.8 and the Land Management Plan required in Paragraph

2.5. This provision shall not prevent the Landowner from maintaining, cleaning, replacing, installing, or rebuilding drainage ditches and tile lines needed for agricultural uses of the Property conducted in accordance with Paragraph 2.8.

2.7 Subdivision, Extinguishment of Development Rights, and Density

- a. The Property shall not be subdivided into smaller parcels, whether through legal or *de facto* subdivision, including division through the creation of condominiums, site leases or other means, except that:
 - (i) a separate parcel encompassing all or a portion of the Farmstead Area may be created only if local government land division and/or zoning ordinances or rules require such a land division in order to allow the establishment of one single-family residence within the Farmstead Area as allowed under Paragraph 2.2.e of this Easement, provided that such new parcel cannot be separately conveyed from the Property and remains subject to the terms of this Easement.
 - (ii) With prior approval of the Easement Holder, the Landowner may subdivide and convey portions of the Property for land conservation purposes only to: the Easement Holder; to another 501(c)(3) non-profit land conservation organization; to a local or municipal government body; or to the State of Wisconsin for inclusion in a state park, natural area, wildlife or fishery area; provided that such new parcel remains subject to the terms of this Easement.
- b. All rights to develop or use the Property that are prohibited by or inconsistent with this Easement are extinguished, and cannot be used to transfer development rights to other land owned by the Landowner or any other party, or to permit increased development density or increased natural resource use or extraction on other land, or to achieve other regulatory mitigation credits on land not subject to this Easement.

2.8 Vegetation. Vegetation may be managed according to the Land Management Plan pursuant to Paragraph 2.5 or for the following purposes:

- a. to control plant disease and pests.
- b. to establish and maintain existing or authorized roads, trails, fences or other improvements permitted in this Easement pursuant to Paragraph 2.2, provided that any surrounding disturbed area is restored as soon as possible to its condition prior to the disturbance.
- c. to harvest berries, nuts, mushrooms and maple sap for maple sugaring.
- d. to selectively cut hazard trees for safety reasons or to prevent property damage.
- e. to commercially harvest trees on the Property; such harvest shall be in accordance with a Forest Stewardship Management Plan ("Forest Plan"). The Forest Plan shall:
 - (i) be approved in writing by the Easement Holder prior to implementation.
 - (ii) be prepared by the Wisconsin Department of Natural Resources, a licensed professional forester, a certified Plan Writer or other qualified person approved in writing by the Easement Holder.
 - (iii) protect the Conservation Values of the Property.
 - (iv) identify objectives and actions that will be taken to protect and manage soil, water, wetlands, riparian areas, aesthetic quality, recreational opportunities, natural communities, and fish and wildlife resources.
 - (v) be in accordance with generally accepted best management practices as determined by the Easement Holder.
 - (vi) include an access plan, indicating routes of ingress and egress for the areas to be harvested.
- f. to conduct agricultural activities, including planting, harvesting, and management of agricultural crops on the Property; such activity shall be in accordance with a Conservation Plan, as described below:
 - (i) the Landowner shall conduct all agricultural operations on the Property in a manner consistent with a Conservation Plan prepared by the USDA Natural Resources Conservation Service (NRCS) and/or the Dane County Land Conservation Committee. The Conservation Plan shall be developed using

the standards and specifications of the NRCS Field Office Technical Guide and shall be approved by the local Land Conservation Committee and/or the NRCS. The Conservation Plan shall be updated periodically, as determined by the NRCS, the Easement Holder, and/or the Dane County Land Conservation Committee, or at any time that the basic type of agriculture operation on the Property changes, or upon any change of ownership of the Property.

- (ii) Permitted agricultural operations include, but are not limited to, grazing of animals, viticulture, horticulture, and ranching; conservation practices listed in the official USDA Field Office Technical Guide; and establishing, maintaining, and using cultivated fields, vineyards, orchards, and pastures in accordance with the Conservation Plan required by Paragraph 2.8.f.
- (iii) The storage and spreading of manure, lime or other fertilizer and the storage and use of pesticides necessary for permitted agricultural purposes shall be conducted in accordance with the Conservation Plan.
- (iv) non-native species may be planted in areas of the Property used for agriculture.

g. for horticultural purposes within the Farmstead Area including the planting of non-native species.

2.9 Vehicles. Operation of motorized vehicles on the Property is permitted only to carry out activities specifically permitted under this Easement including any agricultural purpose or for limited, non-commercial recreational use, such as picking up a downed animal, that does not adversely affect to any substantial extent the agricultural use or Conservation Values of the Property.

2.10 Water. There shall be no manipulation or alteration of any water body on or adjacent to the Property or its shoreline, except as needed for agricultural use conducted in accordance with the Conservation Plan required in Paragraph 2.8.f, or except as specifically authorized in Paragraphs 2.5 or 2.6, or with the prior written approval of the Easement Holder.

For the purpose of this Easement, a water body means a creek, stream, intermittent stream, drainage way, river, pond, lake, surface or subsurface spring, wetland or other body of water.

3. **Additional Reserved Rights of the Landowner.** In addition to rights reserved by the Landowner pursuant to Paragraph 2 above, the Landowner retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in a manner that is not expressly restricted or prohibited by the Easement or inconsistent with the Purpose of the Easement. The Landowner may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Property. The Landowner expressly reserves the right to sell, give, bequeath, mortgage, lease or otherwise encumber or convey the Property, provided that:

- a. Such encumbrance or conveyance is subject to the terms of this Easement.
- b. The Landowner incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which the Landowner transfers any interest in all or part of the Property.
- c. The Landowner notifies the Easement Holder of any conveyance in writing within fifteen (15) days after the conveyance, and provides the Easement Holder with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.
- d. Failure of the Landowner to perform any act required in Paragraphs 3.b and 3.c shall not impair the validity of this Easement or limit its enforceability in any way.

4. **Easement Holder's Rights and Remedies.** In order to accomplish the Purpose of this Easement, the Landowner expressly conveys to the Easement Holder the following rights and remedies:

4.1 Preserve Conservation Values. The Easement Holder has the right to preserve and protect the Conservation Values of the Property.

- 4.2 Prevent Inconsistent Uses. The Easement Holder has the right to prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and to require the restoration of areas or features of the Property that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.
- 4.3 Enter the Property. The Easement Holder has the right to enter the Property to inspect it and monitor compliance with the terms of this Easement; obtain evidence for use in seeking judicial or other enforcement of the Easement; survey or otherwise mark the boundaries of all or part of the Property if necessary to determine whether there has been or may be a violation of the Easement; and otherwise exercise its rights under the Easement. The Easement Holder shall provide prior notice to the Landowner before entering the Property, except in cases where there is an emergency or the Easement Holder reasonably determines immediate entry is necessary to prevent, terminate or mitigate a violation of the Easement. The rights of the Easement Holder to enter the Property are limited to no more than twice per calendar year, except in the case of emergency.
- 4.4 Remedy Violations. The Easement Holder has the right to enforce the terms of this Easement and prevent or remedy violations through appropriate legal proceedings.
- a. Notice of Violation and Corrective Action. If the Easement Holder determines that a violation of the terms of this Easement has occurred or is threatened, the Easement Holder may initiate judicial action after the Landowner has been given written notice of the violation or threatened violation, and at least thirty (30) days to correct the violation. This provision shall not apply if, in the discretion of the Easement Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if good faith efforts to notify the Landowner are unsuccessful.
- b. Remedies. Remedies available to the Easement Holder in enforcing this Easement include temporary or permanent injunctive relief for any violation or threatened violation of the Easement, the right to require restoration of the Property to its prior condition in accordance with a plan approved by the Easement Holder, specific performance or declaratory relief, and recovery of damages resulting from a violation of the Easement or injury to any of the Conservation Values of the Property. The restoration requirement shall not be construed to terminate any rights reserved by the Landowner under this Easement or to release the Landowner from any additional restoration obligations that may be required under the Easement. Without limiting the Landowner's liability, the Easement Holder, in its discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- These remedies are cumulative and are available without requiring the Easement Holder to prove an adverse impact to the Conservation Values protected by the Easement. The Landowner and Easement Holder recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement. The Easement Holder 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. Non-Waiver. The Easement Holder 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 Easement Holder to discover a violation or initiate enforcement proceedings.
- d. Costs of Enforcement. The Landowner shall be responsible for all costs incurred by the Easement Holder in enforcing the terms of this Easement, including, without limitation, costs and expenses of suit, reasonable attorneys' fees, and costs of restoration necessitated by violations of the terms of this Easement. If, however, the Landowner ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs.
- e. Waiver of Certain Defenses. The Landowner hereby waives any defense of laches (such as a failure by the Easement Holder to enforce any term of the Easement) or estoppel (such as a contradictory statement or action on the part of the Easement Holder).
- f. Acts Beyond Landowner's Control. The Easement Holder may not bring any action against the Landowner for any injury to or change in the Property resulting from causes beyond the Landowner's control, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the Landowner under emergency conditions to prevent or mitigate damage from such causes, provided that the Landowner notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the Purpose of the Easement, pursuant to Paragraph 5.3.

- g. **Right to Report.** In addition to other remedies, the Easement Holder has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

5. Notices and Approvals.

- 5.1 **Notice of Landowner's Intention to Undertake Reserved Rights.** Although the Landowner does not need to obtain approval from the Easement Holder to exercise reserved rights, unless specifically required to do so in this Easement, the Landowner agrees to notify the Easement Holder in writing before exercising any reserved right that may have an adverse impact on the Conservation Values of the Property.

In cases where the Landowner is specifically required to notify the Easement Holder before undertaking certain reserved rights, including, but not limited to, those reserved rights identified in Paragraphs 2.2.e (right to construct buildings) and 3.c. (right to convey the property), the Landowner shall notify the Easement Holder at least 60 days prior to the date the Landowner intends to begin the activity, unless another time period is specified in this Easement. The Notice shall comply with Paragraph 5.4 of this Easement.

The purpose of notification is give the Easement Holder an opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the Purpose of the Easement.

- 5.2 **Request for Approval.** When the Landowner is required to obtain the Easement Holder's written approval before undertaking an action, including but not limited to, those actions identified in Paragraphs 2.5 (relating to the Land Management Plan), 2.8.e (relating to the Forest Plan), 2.10 (relating to the manipulation of water bodies) the Landowner shall submit a written request for approval to the Easement Holder at least 60 days before the date the Landowner wishes to undertake the activity. The Request shall comply with Paragraph 5.4 of this Easement. No action requiring approval under this Easement is allowed unless the Landowner receives written notice of the approval from the Easement Holder. The Easement Holder may withhold its approval if it does not receive sufficient information to make a decision or if it determines that the proposed action is not consistent with the Purpose or terms of the Easement. The Easement Holder may condition its approval on the Landowner's acceptance of modifications, which would, in the Easement Holder's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.
- 5.3 **Notice of Change in the Property Beyond Landowner's Control.** Whenever notice is required pursuant to Paragraph 4.4.f of this Easement, the Landowner shall provide oral notice to the Easement Holder within five (5) days and written notice within thirty (30) days after the occurrence, or after the Landowner becomes aware of the occurrence, whichever is later.
- 5.4 **Content of the Notice or Request for Approval.** The notice or request for approval shall describe the nature, scope, design, location, size, timetable, and any other material aspect of the activity in sufficient detail to permit the Easement Holder to make an informed judgment as to its consistency with the Purpose of this Easement.
- 5.5 **Delivery.** Any required notice or request for approval shall be in writing and must be delivered personally or sent by first class mail, postage prepaid, or by another nationally recognized delivery service to the appropriate party at the following address (or other address specified in writing):

To Landowner:

DKR Rutland, LLC
5822 Windsona Circle
Fitchburg, WI 53711

With a copy to:

Michael S. Green
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
Madison, WI 53703

To Easement Holder:
Natural Heritage Land Trust
303 S. Paterson Street, #6
Madison, WI 53703

5.6 Time Period for Action. Following approval of a proposed action pursuant to Paragraph 5.2 above, the Landowner shall use their best efforts to complete the action as soon as possible or practicable. In no event should the Landowner exceed the period authorized in the written approval, or two years from the date of approval if no date is specified, to complete an approved activity. If the activity is not completed within that time period, the Landowner must receive written approval from the Easement Holder to proceed or re-submit the request for review and approval, according to the procedures described above.

6. Public Access.

No right of access by the general public to the Property is conveyed by this Easement.

7. General Provisions.

7.1 Amendment. The Landowner and Easement Holder may jointly amend this Easement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for the county in which the Property is located, provided that no amendment shall be allowed if, in the judgment of the Easement Holder it (i) diminishes the Conservation Values of the Property, (ii) is inconsistent with the Purpose of the Easement, (iii) affects the perpetual duration of the Easement, (iv) affects the validity of the Easement under Section 700.40 of the Wisconsin Statutes, or (v) affects the status of the Easement Holder under Section 170(h) of the Internal Revenue Code of 1986 or any successor provision.

7.2 Assignment. The Easement Holder may convey, assign or transfer its interests in this Easement to: (a) a unit of federal, state or local government or (b) to an organization that is (i) "qualified" within the meaning of Section 170(h)(3) of the Internal Revenue Code, and in the regulations promulgated thereunder, or any successor provisions then applicable, and (ii) qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Easement shall be required to carry out its Purpose in perpetuity. The Easement Holder agrees to notify the Landowner of any assignment at least thirty (30) days before the date of such assignment; however, failure to give such notice shall not affect the validity of such assignment or limit its enforceability in any way.

7.3 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not part of the Easement and shall have no effect on construction or interpretation.

7.4 Controlling Law and Liberal Construction. The laws of the State of Wisconsin shall govern the interpretation and performance of this Easement. Any general rules of construction to the contrary, ambiguities in this Easement shall be construed in a manner that best effectuates the Purpose of the Easement and protection of the Conservation Values of the Property.

7.5 Counterparts. The Landowner and Easement Holder may execute this Easement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

7.6 Entire Agreement. This instrument sets forth the entire agreement of the Landowner and Easement Holder with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

7.7 Extinguishment. This Easement may be terminated or extinguished, whether in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Easement may be extinguished only under the following circumstances: (i) all or part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, or (ii) the Landowner and Easement Holder agree that a subsequent, unexpected change in the condition of or surrounding the Property makes it impossible to accomplish the Purpose of the Easement.

- a. The Landowner agrees that this Easement constitutes a real property right, immediately vested in the Easement Holder, which has a fair market value that is proportionate to the fair market value of the Property as a whole. This "Proportionate Share" of the Easement is a percentage arrived at by dividing the fair market value of the Easement by the fair market value of the Property as a whole at the time of conveyance. The Proportionate Share shall remain constant over time.
- b. The Landowner and Easement Holder agree that the fair market value of the Easement, at the time of conveyance, is equal to Six Hundred Forty Thousand and no/100 Dollars (\$640,000).
- b. If this Easement is extinguished in whole or in part, then upon the subsequent sale, exchange or involuntary conversion of the Property, and after the satisfaction of prior claims and reasonable expenses incurred by the Landowner and Easement Holder as a result of the Extinguishment, the Easement Holder shall be entitled to the Proportionate Share of the proceeds attributable to the Easement.
- c. The Easement Holder will use any proceeds it receives from any sale, exchange or involuntary conversion in a manner consistent with the conservation purposes of this Easement.

7.8 Joint Obligation. The obligations imposed by this Easement upon the Landowner shall be joint and several.

7.9 Ownership Responsibilities, Costs and Liabilities. The Landowner retains all responsibilities and shall bear all costs and liabilities related to the ownership of the Property, including, but not limited to, the following:

- a. Operation, upkeep and maintenance. The Landowner is responsible for the operation, upkeep and maintenance of the Property.
- b. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Easement Holder to exercise physical or managerial control over the day-to-day operations of the Property, to become involved in the management decisions of the Landowner regarding the generation, handling or disposal of hazardous substances, or otherwise to become an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or similar laws imposing legal liability on the owner or operator of real property.
- c. Permits. The Landowner remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction, other activity, or use shall be undertaken in accordance with applicable federal, state and local laws, regulations and requirements.

If requested by the Easement Holder, the Landowner agrees to apply or co-apply with the Easement Holder for any permits, approvals, licenses or funding deemed necessary or desirable by the Easement Holder for implementing rights granted to the Easement Holder in this Easement. This shall not be construed as committing the Landowner to paying any portion of the costs of an activity undertaken by the Easement Holder, or assuming any liability with respect to the permit, approval, license or funding, unless approved in a separate agreement.

d. Hold Harmless.

- i. Landowner. The Landowner releases and agrees to hold harmless, indemnify, and defend the Easement Holder and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving or related to the Property; (3) the presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise

contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

ii. Easement Holder. The Easement Holder releases and agrees to hold harmless, indemnify, and defend the Landowner and its members, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively, "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys' fees arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any act, omission, condition, or other matter related to activities of any employee, officer, director, agents, and contractors of the Easement Holder that occur on or about the Property unless due solely to the negligence of any of the Indemnified Parties.

e. Taxes. The Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any taxes imposed upon or incurred as a result of this Easement, and shall furnish the Easement Holder with satisfactory evidence of payment upon request.

7.10 Recording. The Easement Holder shall record this Easement in the Office of the Register of Deeds for the county in which the Property is located, and may re-record it or any other document necessary to protect its rights under this Easement.

7.11 Severability. If any provision or specific application of this Easement is found to be invalid by a court of competent jurisdiction, the remaining provisions or specific applications of this Easement shall remain valid and binding.

7.12 Successors. This Easement is binding upon, and inures to the benefit of, the Landowner and Easement Holder and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

7.13 Termination of Rights and Obligations. The Landowner's and Easement Holder's rights and obligations under this Easement terminate upon transfer of the party's interests in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.

7.14 Terms. The terms "Landowner" and "Easement Holder," wherever used in this Easement, and any pronouns used in place thereof, shall mean either masculine or feminine, singular or plural, and shall include Landowner's and Easement Holder's respective personal representatives, heirs, successors, and assigns.

7.15 Warranties and Representations. The Landowner warrants and represents that:

- a. The Landowner is the sole owner of the Property in fee simple and has the right and the ability to grant and convey this Easement to the Easement Holder;
- b. As of the date of this Easement, there are no liens or mortgages outstanding against the Property, except any that are subordinated to the Easement Holder's rights under this Easement;
- c. The Landowner and Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use;
- d. There is no pending or threatened civil or criminal proceedings or investigation in any way affecting, involving, or relating to the Property, nor do there exist any facts or circumstances that the Landowner might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands or orders; and
- e. To the best of the Landowner's knowledge, there has been no contamination on or from the Property by any substance classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, soil, surface or ground water, or in any way harmful or threatening to human health or the environment; nor are there any underground storage tanks located on the Property, except those that are in compliance with all applicable laws and regulations.

[signature page follows]

· **TO HAVE AND TO HOLD** the above described Conservation Easement unto the Easement Holder, its successors and assigns forever.

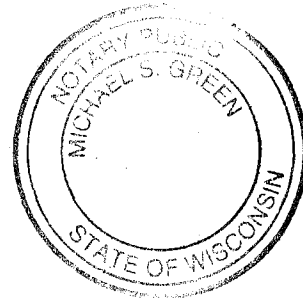
DKR RUTLAND, LLC

By: _____
David K. Reinke, Sole Member

STATE OF WISCONSIN)
) ss.
DANE COUNTY):

Personally came before me this 27th day of December, 2011, the above named David K. Reinke to me known to be the Sole Member of the DKR Rutland, LLC, who executed the foregoing instrument and acknowledged the such.

Notary Public, State of Wisconsin
My commission expires: is permanent



ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The foregoing Conservation Easement is hereby duly accepted by Natural Heritage Land Trust, Inc. this 29th day of December, 2011.

Natural Heritage Land Trust, Inc.

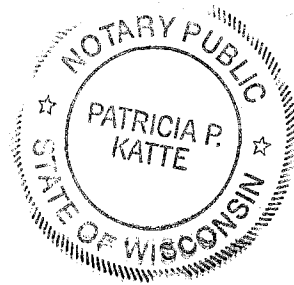
By: Carla J. Wright
Carla J. Wright, President

Attest: James F. Welsh
James F. Welsh, Executive Director

STATE OF WI)
DANE COUNTY) ss.

Personally came before me this 29 day of December, 2011, the above named Carla J. Wright to me known to be the President of the Natural Heritage Land Trust, Inc., who executed the foregoing instrument and acknowledged that such execution is with the authority of the Board of Directors of said corporation.

Patricia P. Katte
Notary Public, State of Wisconsin
My commission expires: 09/01/2013



STATE OF WI)
WI COUNTY) ss.

Personally came before me this 29 day of December, 2011, the above named James F. Welsh, to me known to be the Executive Director of the Natural Heritage Land Trust, Inc., who executed the foregoing instrument and acknowledged that such execution is with the authority of the Board of Directors of said corporation.

Patricia P. Katte
Notary Public, State of Wisconsin
My commission expires: 09/01/2013



This document was drafted by James F. Welsh, Executive Director, Natural Heritage Land Trust.

ATTACHMENTS:

- EXHIBIT A** **Legal description of the Property**
- EXHIBIT B** **Property Map**
- EXHIBIT C** **Description of Farmstead Area**

AS TO EXHIBIT B

Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by: *J. W. W.*

Exhibit "A"

The Northwest 1/4 of the Northwest 1/4 of Section 20, Township 5 North, Range 10 East, in the Town of Rutland, Dane County, Wisconsin.

Tax Roll Parcel Number: 052-0510-202-8500-4

The South 1/2 of the South 1/2 of the Southeast 1/4 of Section 18, Township 5 North, Range 10 East, in the Town of Rutland, Dane County, Wisconsin.

**Tax Roll Parcel Number: 052-0510-184-9190-1
052-0510-184-9690-6**

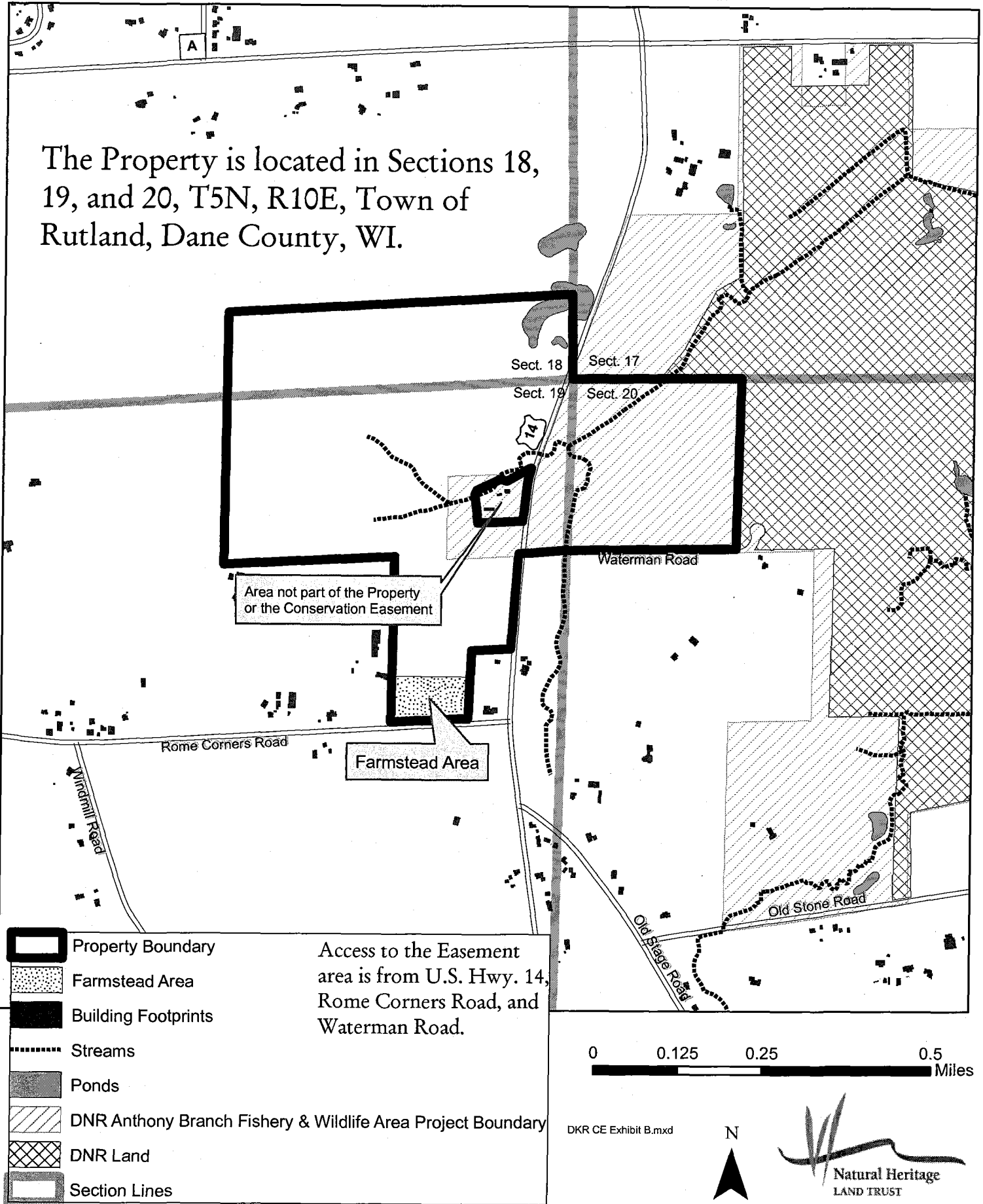
The North 1/2 of the Northeast 1/4 and the Southeast 1/4 of the Northeast 1/4 of Section 19, Township 5 North, Range 10 East, in the Town of Rutland, Dane County, Wisconsin. Excepting the following parcels: Commencing at the 1/4 post on East line of said Section 19; thence running North 50 rods; thence West 21 rods; thence South 60 rods; thence East to place of beginning. Also excepting a parcel described as: Commencing at a point on Madison Road 18 rods North of corner post between David Anthony and Robert I. Lawton running North 15 rods; thence West 16 rods; thence South 15 rods; thence East to place of beginning. Also excepting a parcel described as: Commencing 21 rods West of the East 1/4 post Section 19; thence West 16 rods; thence North 12 rods; thence East 16 rods; thence South 12 rods to place of beginning. Also excepting a parcel described as: Commencing 60 rods North of East 1/4 post of Section 19; thence West 20 rods; thence North 20 rods; thence East 20 rods; thence South 20 rods to place of beginning. Also excepting about 3 acres in said Section 19 as follows: Beginning at center of highway at South (Southeast) end of Mill pond; thence Westerly about 30 rods to end of ravine; thence Southerly about 20 rods; thence Easterly 30 rods to center of highway and place of beginning. Also excepting a parcel described as: Part conveyed to Rutland Center Cemetery Association by Warranty Deed recorded in Vol. 718 of Deeds, Page 596, as Document No. 1016370. And further excepting a parcel described as: Commencing at the East 1/4 corner of said Section 19; thence South 86°39'21" West along the E-W 1/4 line 642.25 feet to the existing Southwest corner of Rutland Center Church property and the point of beginning; thence along the West line of said parcel North 01°12'58" East 551.26 to the Northwest corner; thence South 87°51'54" West 79.25 feet; thence South 01°12'58" West 562.93 feet to a point on the E-W 1/4 line; thence North 86°39'21" East 79.37 feet to the point of beginning.

**Tax Roll Parcel Number: 052-0510-191-8500-8
052-0510-191-8040-5
052-0510-191-9541-0**

The above parcels also being described as: Part of the South 1/2 of the South 1/2 of the Southeast 1/4 of Section 18, and part of the North 1/2 of the Northeast 1/4 and the Southeast 1/4 of the Northeast 1/4 of the Section 19, and part of the Northwest 1/4 of the Northwest 1/4 of Section 20, all in Township 5 North, Range 10 East, in the Town of Rutland, Dane County, Wisconsin, described as follows: Beginning at the Northeast corner of the said Section 19; thence North 88°57'31" East 1321.75 feet to a found iron stake (F.I.S) at the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of Section 20; thence South 1°06'46" West 1326.29 feet to a F.I.S. at the Southeast corner thereof; thence South 88°52'51" West 1322.65 feet to the Southwest corner thereof; thence South 86°33'06" West along the Southerly line of the North 1/2 of the Northeast 1/4 of Section 19, 335.72 feet to the Centerline of U.S.H. 14; thence South 5°41' West 269.13 feet along said centerline; thence South 3°16' West along said centerline 517.15 feet; thence South 87°51'54" West along the North line of the Rutland Center Cemetery Association Lands at Vol. 718 of Deeds, Page 596, 265.04 feet to a F.I.S. at the Northwest corner thereof; thence South 87°51'54" West 79.25 feet; thence South 1°12'58" West 552.93 feet to the Southerly line of the Southeast 1/4 of the Northeast 1/4 of Section 19; thence South 86°39'21" West along said South line 610.14 feet to the Southeast corner of CSM No. 1653; thence North 0°52'42" East (Previously recorded as North 0°07'33" East) along the Easterly side of CSM No. 1653, and an extension thereof, 1325.46 feet to a F.I.S. at the Northwest corner of the Southeast 1/4 of the Northeast 1/4; thence South 86°33'06" West (South 85°49'27" West) 1339.54 feet to the Southwest corner of the North 1/2 of the Northeast 1/4; thence North 0°33'47" East 1322.88 feet to the North 1/4 corner of Section 19; thence North 0°28'36" West 658.29 feet to the Northwest corner of the South 1/2 of the South 1/2 of the Southeast 1/4 of Section 18; thence North 86°27'26" East 2683.25 feet to the Northeast corner thereof; thence South 1°12'33" East 658.38 feet to the point of beginning excepting therefrom that 3 acre parcel recorded in Volume 251 of Deeds, Page 175, now owned by Peter Moersch.

Exhibit B - Property Map

The Property is located in Sections 18, 19, and 20, T5N, R10E, Town of Rutland, Dane County, WI.



Access to the Easement area is from U.S. Hwy. 14, Rome Corners Road, and Waterman Road.

Exhibit C

Legal description of the Farmstead Area.

That portion of the South 360' and the West 600' of the SW1/4 of the SE1/4 of the NE1/4 of Section 19, Town 5 North, Range 10 East, in the Town of Rutland, Dane County, Wisconsin lying north of the centerline of Rome Corners Road. Containing 5 acres, more or less and as depicted on Exhibit B. Property Map.

\\Server\shareddocs\Stewardship\Projects\Anthony Branch\DKR-Rutland LLC\title\Legal description of the Farmstead Area.docx