

- c. **Costs of Enforcement.** The Owner shall be responsible for all reasonable costs incurred by the Co-Holders in enforcing this Easement, including without limitation costs of suit, attorneys' fees, and expenses related to restoration of the Protected Property. If, however, the Owner ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs and attorneys' fees.
- d. **Discretionary Enforcement.** Enforcement of the terms of this Easement is solely at the discretion of either of the Co-Holders. The Co-Holders do 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 either or both of the Co-Holders in discovering a violation or initiating enforcement proceedings.
- e. **Acts Beyond Owner's Control.** The Co-Holders may not bring any action against the Owner for any change to the Protected Property resulting from causes such as changes caused by fire, flood, storm, natural deterioration or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes.

The Co-Holders may bring an action against the Owner for changes to the Protected Property resulting from causes created by third parties.

- f. **Right to Report.** In addition to other remedies, the Co-Holders have the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.
- 4.3. **Signs.** The Co-Holders have the right to place on the Protected Property signs that identify the land as protected by this Easement.
- 4.4. **Limitation on Rights.** Nothing in this Easement gives the Co-Holders the right or responsibility to exercise physical control over day-to-day operations on the Protected Property or to become involved in management decisions involving the use, handling or disposal of hazardous substances or to otherwise become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act, the Minnesota Environmental Response and Liability Act, or other similar successor statutes or laws whether federal, state or local in nature, regarding responsibility for environmental conditions associated with contamination.
5. **PUBLIC ACCESS.** Nothing in this Easement gives the general public a right to enter upon or use the Protected Property where no such right exists otherwise. However, the public has a right to use any public trails established on the Protected Property.

6. **DOCUMENTATION.** The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property that are briefly described in this Easement will be more fully described in a property report on file at the office of the Trust. The Owner and the Co-Holders acknowledge that this property report will accurately represent the condition of the Protected Property at the time of this conveyance and may be used by the Co-Holders in monitoring future uses of the Protected Property, in documenting compliance with the terms of this Easement and in any enforcement proceeding. This property report, however, is not intended to preclude the use of other information and evidence to establish the present condition of the Protected Property in the event of a future controversy.

7. **GENERAL PROVISIONS.**

7.1. **Assignment.** This Easement or a Co-Holder's interest in this Easement may be assigned or transferred only to a conservation organization which is a qualified organization under Section 170(h) of the Internal Revenue Code and related regulations and which is authorized to hold conservation easements under Minnesota law. Any future holder of this Easement shall have all of the rights conveyed to the Co-Holders by this Easement. As a condition of any assignment or transfer, the Co-Holder assigning its interest shall require any future holder of this Easement to continue to carry out the conservation purposes of this Easement in perpetuity.

A Co-Holder assigning its interest in this easement will notify the Owner of any assignment within fifteen (15) days of the assignment and will provide the Owner with the name and address of the new holder.

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

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

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

a. This Easement may be extinguished only through judicial proceedings and only under the following circumstances:

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

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

- 7.4. Proceeds. If this Easement is extinguished or terminated in whole or in part, the Co-Holders are entitled to a portion of any proceeds of a sale, exchange or involuntary conversion in an amount that is equal to the fair market value of this Easement at the time of the extinguishment but that is not less than an amount equal to the proportionate value that this Easement bears to the value of the Protected Property as a whole at the time of this conveyance. The Co-Holders shall use their share of any proceeds in a manner consistent with the conservation purposes of this Easement.
- 7.5. Warranties. The Owner represents and warrants as follows:
- a. The Owner is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Easement to the Co-holders.
 - b. The Protected Property is free and clear of all encumbrances other than those subordinated to this Easement.
 - c. The Owner has no actual knowledge of any use or release of hazardous waste or toxic substances on the Protected Property that is in violation of a federal, state or local environmental law and will defend, indemnify and hold the Co-Holders harmless against any claims of contamination from such substances.
- 7.6. Real Estate Taxes. The Owner shall pay all real estate taxes and assessments levied against the Protected Property, including any levied against the interest of the Co-Holders created by this Easement. The Co-Holders may, at their discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement from the Owner.

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

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

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

To the Owner:
 The Sanctuary, LLC
 12415 55th Street N
 Lake Elmo, MN 55042

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

To the City:
 City Administrator
 City of Lake Elmo
 3800 Laverne Ave. N.
 Lake Elmo, MN 55042

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

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

d. **Approval.** The Co-Holders may withhold their approval if they determine that the proposal is inconsistent with the terms or purposes of this Easement or lacks sufficient information to allow the Co-Holders to reach an informed decision. The Co-Holders may condition approval on the Owner's acceptance of modifications, which would, in their judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns.

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

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

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

7.10. **Definitions.** Unless the context requires otherwise, the term "Owner" includes, jointly and severally, the current owner or owners of the Protected Property identified above and their personal representatives, heirs, successors and assigns in title to the Protected Property. The term "Trust" includes the Minnesota Land Trust and its successors or assigns to its interest in this Easement. The term "City" includes the City of Lake Elmo and its successors or assigns to its interest in this Easement.

7.11. **Co-Holders:** The rights conveyed to the Trust and the City as Co-Holders under this Easement may be exercised by either of them separately or by both of them jointly. Without limiting the rights of either party, it is nevertheless the intention of the Co-Holders to use all reasonable efforts to coordinate their activities in carrying out their rights and responsibilities under this Easement. To that end, the following outlines the general manner in which the Co-Holders intend to carry out their rights and responsibilities:

a. **Monitoring.** The Trust shall be generally responsible for periodically monitoring the Protected Property for compliance with the terms of this Easement and will provide the City with information regarding the results of such monitoring.

b. **Notice and Approval.** When providing notice or requesting approval as set out in paragraph 7.8, the Owner shall give notice to both the Trust and the City. The Trust and the City shall use all reasonable efforts to coordinate their

response to any request for approval.

- c. **Enforcement.** If either Co-Holder finds that there has been a violation of the terms of this Easement, that party shall immediately notify the other Co-Holder and both Co-Holders shall use all reasonable efforts to reach agreement on how to proceed.
- 7.12. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon the transfer or termination of that party's interest in this Easement or the Protected Property, provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination.
- 7.13. **Recording.** The Co-Holders will record this Easement in a timely manner in the official records for the county in which the Protected Property is located. The Co-Holders may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement.
- 7.14. **Controlling Law and Construction.** This Easement shall be governed by the laws of the State of Minnesota and construed to resolve any ambiguities or questions of validity of specific provisions in favor of giving maximum effect to its conservation purposes and to the policies and purposes of Minnesota Statutes Chapter 84C.
- 7.15. **Severability.** A determination that any provision or specific application of this Easement is invalid shall not affect the validity of the remaining provisions or any future application.
- 7.16. **Additional Documents.** The Owner agrees to execute or provide any additional documents reasonably needed by the Co-Holders to carry out in perpetuity the provisions and the intent of this Easement, including, but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.
- 7.17. **Entire Agreement.** This document sets forth the entire agreement of the parties with respect this Easement and supersedes all prior discussions or understandings.
- 7.18. **Counterparts.** This Easement may be executed in one or more counterparts, each of which shall be deemed an original. The signatures to this Easement may be executed and notarized on separate pages and when attached to this document shall constitute one complete document

IN WITNESS WHEREOF, the Owner has voluntarily executed this Conservation Easement the 24th day of March, 2006.

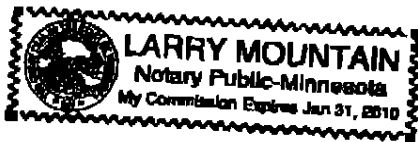
OWNER:
THE SANCTUARY, LLC

By: John Arkell

Its: Chief Manager

STATE OF MINNESOTA)
) ss
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 24th day of March, 2006, by John Arkell, the Chief Manager of THE SANCTUARY, LLC, a Minnesota limited liability company, on behalf of said company.



[Signature]
Notary Public
My Commission Expires:

ACCEPTANCE

The Minnesota Land Trust hereby accepts the foregoing Conservation Easement as of the 30th day of March, 2006

MINNESOTA LAND TRUST

By: [Signature]

Title: Pres.

STATE OF MINNESOTA)
) SS
COUNTY OR Lansing

The foregoing instrument was acknowledged before me this 17th day of February 2006 by Harold Teasdale, the President of the Minnesota Land Trust, a non-profit corporation under the laws of the State of Minnesota, on behalf of said corporation.

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

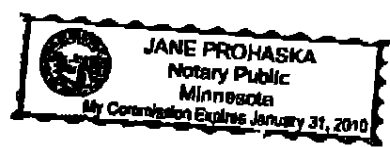


EXHIBIT A

Legal Description of Protected Property:

Outlots B, C, N and F, *St. Croix's Sanctuary*, Washington County, Minnesota.

1992

EXHIBIT B

Property Map

ST. CROIX'S SANCTUARY

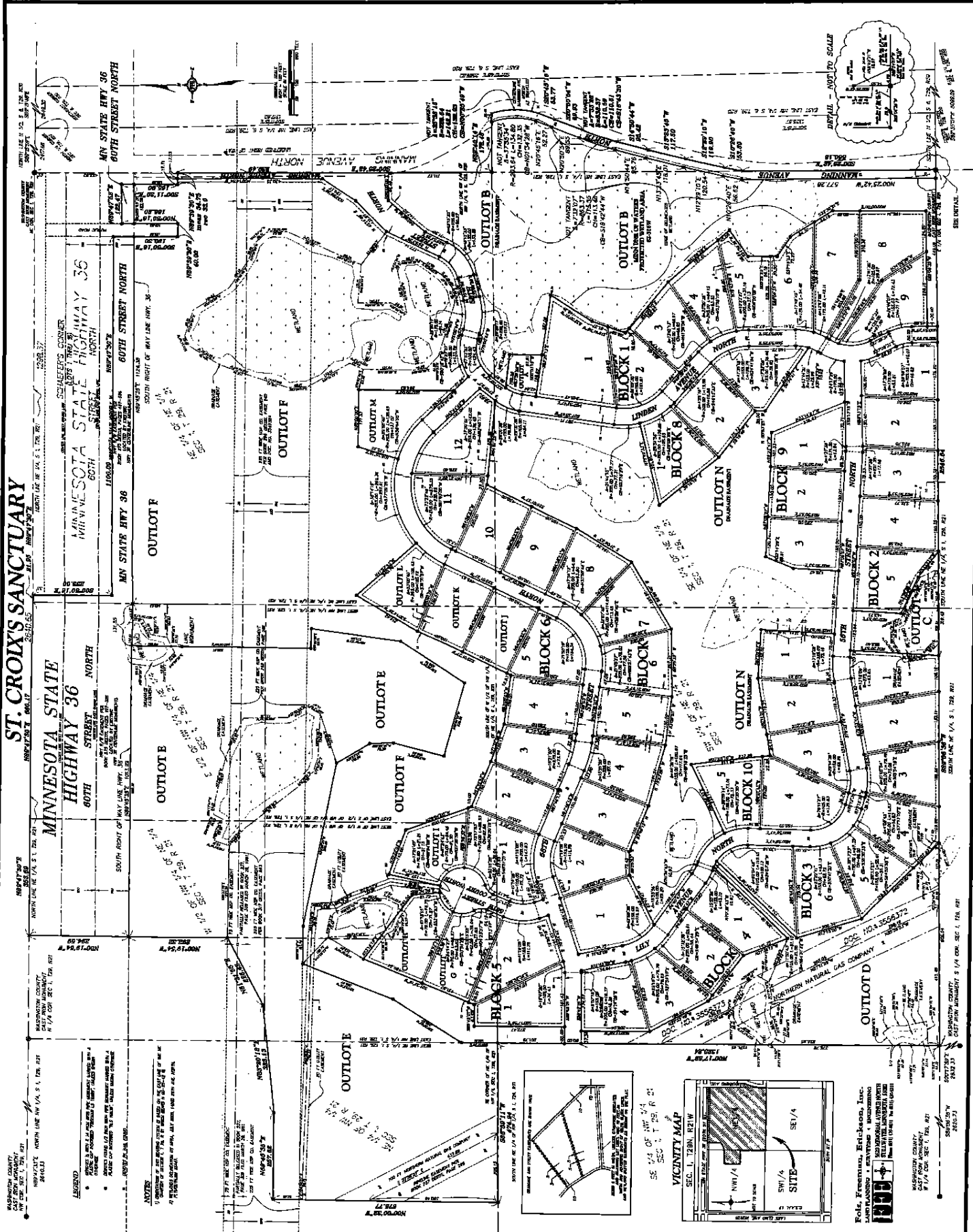
City of Lake Elmo, Minnesota

The approved tree list was created in recognition of the native species that formerly existed on site and for their ability to withstand harsh winter conditions, resist diseases and nursery availability.

“The owner of a Dwelling (or the contractor who constructed it) shall install two (2) boulevard trees, with a minimum two-inch diameter trunk at base, placed within thirty (30) feet of the road right-of-way, of a type acceptable to Declarant (Section 8.5.9, recorded Declaration).”

Approved Boulevard Tree List

- Northern Pin-Oak
- White Oak
- Red Maple
- Autumn Spire Red Maple
- Autumn Blaze Maple
- Fall Fiesta Sugar Maple
- Green Mountain Sugar Maple
- Hackberry
- Accolade Elm
- Redmond Linden



ST. CROIX'S SANCTUARY

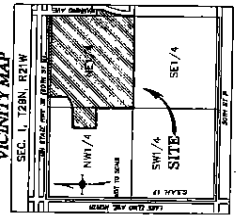
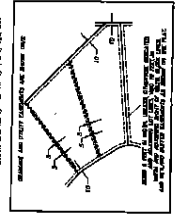
MINNESOTA STATE HIGHWAY 36 NORTH

LEGEND

- 1. LOT 3 AND 4 TO BE PLACED IN THE SANCTUARY
- 2. LOT 5 TO BE PLACED IN THE SANCTUARY
- 3. LOT 6 TO BE PLACED IN THE SANCTUARY
- 4. LOT 7 TO BE PLACED IN THE SANCTUARY
- 5. LOT 8 TO BE PLACED IN THE SANCTUARY
- 6. LOT 9 TO BE PLACED IN THE SANCTUARY
- 7. LOT 10 TO BE PLACED IN THE SANCTUARY
- 8. LOT 11 TO BE PLACED IN THE SANCTUARY
- 9. LOT 12 TO BE PLACED IN THE SANCTUARY

NOTES

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Foltz, Frederick, Erickson, Inc.
 LAND PLANNING & SURVEYING & ENGINEERING
 1000 W. WASHINGTON STREET, SUITE 100
 MINNEAPOLIS, MN 55402
 TEL: 612-338-1111
 FAX: 612-338-1112
 WWW.FOLTZ-FREDERICK-ERICKSON.COM

MINNESOTA COUNTY
 EAST PLYMOUTH
 SECTION 1, T20N, R21W
 202333
 202334