

# Michigan Model Conservation Easement Template 2010 Update

- 1) This document is not a complete conservation easement, but rather a model for drafting purposes. This document contains boilerplate provisions in a typical donated conservation easement for natural lands protection. However, each easement is different based on the land and the landowner, as well as the policies and practices of the conservancy, and should be tailored to accommodate those varied needs. This document does not address working (farm and forest) lands.
- 2) This document is advisory and no party is required to adopt its provisions in whole or in part.
- 3) This document should be used as a reference only and should not be used in place of legal review. Parties involved in negotiating conservation easement agreements should be represented by legal counsel.
- 4) This document is intended to add uniformity in Michigan to the conservation easement negotiating and drafting process, provide legal strength and clarity to each document, promote best practices amongst easement drafting, and lower the time and costs of drafting and monitoring a conservation easement.
- 5) This document is the product of the work of Michigan land conservation practitioners and attorneys who have informally collaborated together, facilitated by Heart of the Lakes Center for Land Conservation Policy. Note that the model is purposely designed to be the most restrictive as a place for drafters to start and that modifications for the specific circumstances of each easement will be needed. A separate *Practitioner's Guide* to accompany the Michigan Model Conservation Easement is under development by the Heart of the Lakes Center for Land Conservation Policy. To comment on the current document, or for more information about the collaboration process, future editing workshops, or the *Practitioner's Guide*, please contact Julie Stoneman or Meredith Johnson at 517-825-8649 or [julie@heartofthelakes.org](mailto:julie@heartofthelakes.org) or [meredith@heartofthelakes.org](mailto:meredith@heartofthelakes.org)

## **CONSERVATION EASEMENT**

**DATE:** (INSERT DATE)

**OWNER:** (INSERT DONOR'S NAME, MARITAL STATUS AND ADDRESS)

**CONSERVANCY:** (INSERT NAME AND ADDRESS)

**PROPERTY:** Legal description attached hereto as "Exhibit A"

**CONVEYANCE:** The Owner conveys and warrants to the Conservancy a perpetual Conservation Easement over the Property. The scope of this Conservation Easement is set forth in this agreement. This conveyance is a gift from the Owner to the Conservancy. Accordingly, this is exempt from Transfer Tax pursuant to MCL 207.505(a) and 207.526(a).

### **THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:**

#### **1. PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE OWNER AND THE CONSERVANCY.**

- A. This Conservation Easement (**DELETE THOSE THAT DO NOT APPLY**):
- 1) Preserves the Property for outdoor recreation by, or the education of, the general public,
  - 2) Protects a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
  - 3) Preserves open space and will yield a significant public benefit
    - a) For the scenic enjoyment of the general public, or (and)
    - b) Pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and
  - 4) Preserves a historically important land area or a certified historic structure.

These purposes will be referred to as the "Purposes" in this Conservation Easement.

- B. The Owner of the Property is committed to preserving the Conservation Values of the Property. The Owner agrees to confine use of the Property to activities

consistent with the Purposes and the preservation of the Conservation Values. Any uses of the Property which may impair or interfere with the Conservation Values are expressly prohibited.

- C. The Conservancy (i) is a qualified holder of this Conservation Easement committed to preserving the Conservation Values of the Property and upholding the terms of this Conservation Easement (ii) is a tax-exempt, nonprofit Michigan corporation qualified under Internal Revenue Code Sections 501(c)(3) and 170(h)(3); and under the Conservation and Historic Preservation Easement, Sub Part 11 of Part 21 of Natural Resources and Environmental Protection Act, MCL §§ 324.2140 et seq., (iii) has the resources to enforce this Easement, (iv) protects natural habitats of fish, wildlife, plants, and the ecosystems that support them and (v) preserves open spaces, including farms and forests, where such preservation is for the scenic enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.

2. **CONSERVATION VALUES.** The Property possesses natural, scenic, historic, open space, scientific, biological, and ecological values **(IT IS CRITICALLY IMPORTANT TO THE ENFORCEABILITY OF THE CONSERVATION EASEMENT THAT THE CONSERVANCY DELETE THOSE THAT DO NOT APPLY AND TAILOR THESE VALUES TO THE PROPERTY AS EVIDENCED BY THE BASELINE ENVIRONMENTAL ASSESSMENT, ETC.)** of prominent importance to the Owner, the Conservancy, and the public. These values are referred to as the “Conservation Values” in this Easement. Certain Conservation Values may have relevance to more than one Purpose, even though they are listed only once. The Conservation Values include the following:

- A. The Property provides open space for the scenic enjoyment of the general public and will yield a significant public benefit through:
- 1) A scenic landscape and natural character which would be impaired by modification of the Property.
  - 2) A scenic panorama visible to the public from publicly accessible sites, such as \_\_\_\_\_, which would be adversely affected by modifications of the natural habitat.
  - 3) Relief from urban closeness.
  - 4) Prominent visibility to the public from **(INSERT)**, and, which will enhance tourism if preserved in its natural state.
  - 5) Biological integrity of other land in the vicinity has been modified by intense urbanization, and the trend is expected to continue.
  - 6) There is a reasonable possibility that the Conservancy may acquire other valuable property rights on nearby or adjacent properties to expand the Conservation Values preserved by this Conservation Easement.
  - 7) The Property consists entirely of “prime farmland” and “farmland of local

importance” as classified by the U.S. Department of Agriculture and the Natural Resources Conservation Service.

- 8) The Property has a long history of productive farming and contains significant areas with soil classifications designated as **(INSERT)**.
- 9) The Property is located within **(INSERT)** Township, a community with an agriculture-based economy in an area presently experiencing rapid development, including the subdivision of prime farmland.
- 10) The Property is desirable for substantial residential development because of its size, location, and orientation and in the absence of this Conservation Easement the Property could be developed in a manner that would destroy the Conservation Values.
- 11) The Property will be open to the public and utilized for outdoor recreation and education by **(INSERT)**.

B. The Property is preserved pursuant to a clearly delineated federal, state, or local conservation policy and yields a significant public benefit. The following legislation, regulations, and policy statements establish relevant public policy: **(For a more extensive list of relevant laws, see the *Collection of Conservation, Preservation, and Environmental Laws and Summaries* compiled by the Little Traverse Conservancy in April 2000 and provided to each land conservancy in Michigan.)**

- 1) The State of Michigan has recognized the importance of protecting our natural resources as delineated in the 1963 Michigan Constitution, Article IV, Section 52, “The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety, and general welfare of the people. The legislature shall provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction.”
- 2) Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.2140 *et seq.*;
- 3) Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.35501 *et seq.*; (Legislative Findings § 324.35502);
- 4) Sand Dune Protection and Management, Part 353 of the Michigan Natural Resources and Environmental Protection Act, MCL §§ 324.35301 *et seq.*; (Legislative Findings MCL § 324.35302);
- 5) Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Act - MCL §§ 324.30301 *et seq.*; (Legislative Findings MCL § 324.30302);
- 6) Water Pollution Control Act of 1972, 33 USC §§ 1251 - 1387 (§1251 Goals & Policy; § 1344 Wetlands permitting, aka “Section 404” Clean Water Act.);
- 7) Coastal Zone Management Act, 16 USC §§ 1451 *et seq.*; (§§ 1451, 1452

- Congressional Findings and Policy.);
- 8) Shorelands Protection and Management, Part 323 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.32301 *et seq.*;
  - 9) Inland Lakes and Streams, Part 301 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.30101 *et seq.*;
  - 10) Great Lakes Submerged Lands, Part 325 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.32501 *et seq.*;
  - 11) Farmland and Open Space Preservation, Part 361 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.36101 *et seq.*;
  - 12) Soil Conservation, Erosion, and Sedimentation Control, Parts 91 & 93 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.9101 *et seq.*; 324.9301 *et seq.*; (Legislative Policy § 324.9302);
  - 13) The **(INSERT)** governmental agency has endorsed the proposed scenic view of the Property under a landscape inventory, pursuant to a review process.
  - 14) The **(INSERT)** office has recognized the importance of the Property as an ecological and scenic resource, by designating this and other land as **(INSERT)**.
  - 15) The Township / County of **(INSERT)** has designated this area as **(INSERT)** in its Comprehensive Plan dated **(INSERT)**.
  - 16) **(Insert local policy statements which apply).**
  - 17) The following public funding sources were utilized in the purchase of the Property: **(INSERT)**

C. The Property contains significant natural habitat in which fish, wildlife, plants or the ecosystems which support them, thrive in a natural state, as demonstrated by:

- 1) The Property provides vital corridor wetlands and upland wildlife habitats which serve as a connection for wildlife movement and create a natural “greenway” **(INSERT AREA)**.
- 2) The Property is noteworthy for the **(INSERT)**.
- 3) Wetlands, as described in Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Code MCL 324.30301 *et seq.*, identified as important natural resources for the people of the State of Michigan, are present on the Property.
- 4) Habitat for rare, endangered, or threatened species of animal, fish, plants, or fungi, including: **(INSERT SPECIES)**. **(INSERT if threatened or endangered and if in the State of Michigan or federal)** are supported on the Property.
- 5) The Property contains natural areas which represent high quality examples of terrestrial or aquatic communities **(INSERT)**.
- 6) The Property contains sustainable habitat for biodiverse vegetation, birds, fish, amphibians and terrestrial animals. The Owner [or Conservancy] has documented the existence of \_\_\_\_\_ on the Property.

- 7) A diversity of plant and animal life are found on the Property in an unusually broad range of habitats for a property of its size.
- 8) The Property is characteristic of **(INSERT)**. Its dominant vegetation is **(INSERT)** interspersed with **(INSERT other habitats, streams, important natural features)**. These plant communities are in a relatively natural and undisturbed condition and support the full range of wildlife species found in these habitat types.
- 9) The Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation.
- 10) Valued native forest land exists on the Property, which includes diverse native species, trees of many age classes and structural diversity, including a multi-story canopy, standing dead trees and downed logs.
- 11) The Property provides important natural land within the watershed of **(INSERT)**. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the **(INSERT)** area.
- 12) The Property includes the **(INSERT)** feet of frontage on the **(INSERT)(river, stream, lake)**.
- 13) The Property has a significant amount of undeveloped frontage on the banks/shore of **(INSERT)**, which is a State designated Natural River (designated as a Wilderness River, Wild and Scenic River, or Country-Scenic River) under the Natural Rivers Section (Part 305) of the Michigan's Natural Resources Environmental Protection Act, MCL §§ 324.30501-30515 *et seq.*, **(OR)** a State designated "Blue Ribbon Trout Stream" considered by the Department of Natural Resources to be one of the "Top Ten" trout streams in Michigan.
- 14) Sections of the property are situated on hillsides with slopes greater than 20% that are adjacent to or in close proximity to **(INSERT BODY OF WATER OR STREAM)** and the vegetated slopes would be highly susceptible to erosion damage and accelerated stormwater runoff that could adversely affect water quality if the trees or other vegetation were removed.
- 15) The Property lies in close proximity to the following conserved properties which similarly preserve the existing natural habitat: **(INSERT)**.
- 16) This Easement protects a natural area which contributes to the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or similar conservation area.
- 17) Preservation of the Property enables the Owner to integrate the Conservation values with other neighboring lands.

3. **BASELINE DOCUMENTATION.** Specific Conservation Values of the Property have been documented in a natural resource inventory signed by the Owner and the

Conservancy. This “Baseline Documentation Report”, which is incorporated herein by reference, consists of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features, and photographs. The parties acknowledge that the Baseline Documentation Report is an accurate representation of the Property at the time of this donation. The Conservancy may use the Baseline Documentation Report in enforcing the provisions of this Conservation Easement but is not limited to the use of the Baseline Documentation Report to show a change in conditions. Any characterization of the terms of this Conservation Easement contained in the Baseline Documentation Report shall not be interpreted so as to alter, amend, or otherwise modify this Conservation Easement. In any conflict or inconsistency between the terms of this Conservation Easement and the Baseline Documentation Report, the terms of this Conservation Easement shall prevail.

4. **PROHIBITED ACTIONS.** Any activity on, or use of, the Property that is inconsistent with the Purposes or that is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited (A CONSERVANCY MAY EASE THESE PROHIBITIONS, PROVIDED THE CONSERVATION EASEMENT CONTINUES TO MEET THE DEFINED PURPOSE AND PROTECT THE CONSERVATION VALUES; HOWEVER, BE CAUTIOUS THAT MODIFICATIONS TO SECTIONS 4 AND 5 DO NOT CREATE AMBIGUITY OR INCONSISTENCY IN THE ACTIVITIES PROSCRIBED BY THE CONSERVATION EASEMENT):
- A. **Subdivision.** The legal or defacto subdivision of the Property, including any subdivision, short subdivision, platting, binding site plan, testamentary division, creation of a site condominium or other submission of the Property to a condominium form of ownership, or other process by which the Property is divided into lots or in which title to different portions of Property are held by different owners is prohibited.
  - B. **Commercial Activities.** Any commercial activity on the Property is prohibited, except for de minimis commercial recreational activity as such term is referenced in Internal Revenue Code Section 2031(c)(8)(B).
  - C. **Industrial Activities.** Any industrial activity on the Property is prohibited.
  - D. **Construction.** The placement or construction of any human-made modifications, including structures, buildings, fences, roads, and parking lots is prohibited.
  - E. **Cutting Vegetation.** Any alteration of trees or vegetation, including pruning or trimming, is prohibited, except for the cutting or removal of trees or vegetation that are (i) a threat to human life or property, or (ii) generally accepted as diseased or invasive species by conservation professionals.

- F. **Alteration of Land.** The alteration of the surface of the land, including the excavation or removal of soil, sand, gravel, rock, peat, or sod is prohibited.
  - G. **Mining.** The Owner retains the right to extract oil, gas, hydrocarbons, or petroleum from the Property for commercial purposes provided that no exploration for, or extraction of, minerals shall be conducted from the surface of the Property. The Owner may enter into a non-developmental lease if said lease is part of a pool for oil, gas, hydrocarbons or petroleum which solely permits the extraction of oil, gas, hydrocarbons, or petroleum. Extraction shall not involve any surface alteration of the Property or construction or placement of any structures, including pipelines, on, over, across, or under the Property.
  - H. **Dumping.** Processing, storage, dumping, or disposal of liquid, solid, natural or man-made waste, refuse, or debris on the Property is prohibited.
  - I. **Water Courses, Ground Water.** Natural water courses, lakes, wetlands, or other bodies of water may not be altered and water from ground or surface sources may not be diverted.
  - J. **Off-Road Recreational Vehicles.** Motorized off-road vehicles such as, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles may not be operated off of designated roads on the Property.
  - K. **Livestock.** Raising or housing of livestock, poultry or horses, commercial kenneling of animals and commercial aquaculture is prohibited on the Property.
  - L. **Signs and Billboards.** Billboards and signs are prohibited.
5. **PERMITTED USES.** The Owner retains all ownership rights that are not expressly restricted by this Conservation Easement. In particular, the following rights are reserved:
- A. **Right to Convey.** The Owner retains the right to sell, mortgage, bequeath, or donate the Property. Any conveyance will remain subject to the terms of the Conservation Easement and the subsequent Owner will be bound by all obligations in this agreement.
  - B. **(Optional) Right to Maintain and Replace structure(s) existing as of the effective date of the Easement.** The Owner retains the right to maintain, renovate, and replace the structure(s) existing as of the effective date of the Easement in substantially the same location and size. Any expansion or replacement may not substantially alter the character or function of the structure. Prior to beginning renovation or replacement of the structure(s) existing as of the



effective date of the Easement, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval. Such approval may be withheld only upon a reasonable determination by the Conservancy that the action as proposed would be inconsistent with the Purpose and terms of this Easement.

C. **(Optional) Right to Add Designated Structures or Uses.** The Owner retains the right to add the following structures, modifications, or uses on the following legally described portion of the Property (**Insert legal description of building envelope**). Prior to beginning construction, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval. Such approval shall not be unreasonably withheld.

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

6. **RIGHTS OF THE CONSERVANCY.** The Owner conveys the following rights upon the Conservancy to perpetually maintain the Conservation Values of the Property:

- A. **Right to Enter.** The Conservancy has the right to enter the Property at reasonable times to monitor the Property and to enforce compliance with, or otherwise exercise its rights under, this Conservation Easement. Notwithstanding the foregoing, the Conservancy may not unreasonably interfere with the Owner's use and quiet enjoyment of the Property or permit others to enter the Property. The general public is not granted access to the Property under this Conservation Easement.
- B. **Right to Preserve.** The Conservancy has the right to prevent any activity on or use of the Property that is inconsistent with the Purposes or detrimental to the Conservation Values of the Property.
- C. **Right to Require Restoration.** The Conservancy has the right to require the Owner to restore the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.
- D. **Signs.** The Conservancy has the right to place signs on the Property which identify the land as protected by this Conservation Easement. The number and location of any signs are subject to the Owner's approval.

## 7. CONSERVANCY'S REMEDIES.

- A. **Delay in Enforcement.** A delay in enforcement shall not be construed as a waiver of the Conservancy's right to enforce the terms of this Conservation Easement.
- B. **Third Party Violations.** Notwithstanding the Owner's obligations under this Conservation Easement and the Conservancy's right to require restoration of the Property, the Conservancy shall have the following rights for acts or occurrences at the Property beyond the director or indirect control of the Owner:
- 1) The Conservancy may not bring an action against the Owner for modifications to the Property or damage to the Property or its Conservation Values resulting from natural causes beyond the Owner's control, including natural disasters, unintentional fires, floods, storms, natural earth movement or other acts of God that impair the Conservation Values.
  - 2) The Owner shall be responsible for modifications or damage to the Property that impair or damage the Conservation Values of the Property and result from the acts of third parties whose use of, or presence on, the Property is authorized by the Owner. Owner shall perform such restoration pursuant to and in accordance with a restoration plan prepared by a competent professional selected by the Owner and approved by the Conservancy. The contents of the restoration plan shall be subject to the prior written approval of the Conservancy.
  - 3) In the event of an unauthorized third-party violation of the Conservation Values on the Property, the Conservancy shall not seek restoration or exercise remedies available to it if and so long as the Owner diligently pursues all available legal remedies against the violator. In the event actions taken by unauthorized third parties impair the Conservation Values protected by this Conservation Easement, the Conservancy reserves the right, either jointly or singly, to pursue all appropriate civil and criminal penalties to compel restoration and Owner assigns any claim or right to recover against such third parties to Conservancy.
- C. **Notice and Demand.** If the Conservancy determines that the Owner is in violation of this Conservation Easement, or that a violation is threatened, the Conservancy shall provide written notice to the Owner. The written notice will identify the violation and request corrective action to cure the violation and, where the Property has been injured, to restore the Property. If at any time the Conservancy determines, in its sole and absolute discretion, that the violation

constitutes immediate and irreparable harm, no written notice is required and the Conservancy may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property. If the Conservancy determines that this Conservation Easement is, or is expected to be, violated, and the Conservancy's good-faith and reasonable efforts to notify the Owner are unsuccessful, the Conservancy may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting the Owner's opportunity to cure. The Owner agrees to reimburse all reasonable costs associated with this effort.

- D. **Failure to Act.** If, within 28 days after written notice, the Owner does not implement corrective measures requested by the Conservancy, the Conservancy may bring an action in law and/or in equity to enforce the terms of the Conservation Easement. In the case of immediate or irreparable harm, as determined in the sole discretion of the Conservancy, or if an Owner is unable to be notified, the Conservancy may invoke these same remedies without notification and/or awaiting the expiration of the 28-day period. The Conservancy is entitled to enjoin the violation through temporary or permanent injunctive relief and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Owner to restore the Property. If the court determines that the Owner has failed to comply with this Conservation Easement, the Owner shall also reimburse the Conservancy for all reasonable litigation costs and reasonable attorney's fees, and all costs of corrective action or Property restoration incurred by the Conservancy.
- E. **[Optional: Frivolous Litigation. If the Conservancy initiates litigation against the Owner to enforce this Conservation Easement, and if the court determines that the Owner is the prevailing party and also determines that (i) the litigation was initiated with the primary purpose to harass, embarrass, or injure the Owner; (ii) the Conservancy did not have a reasonable basis to believe that the facts underlying the Conservancy's legal position were in fact true; or (iii) the Conservancy's legal position was devoid of arguable legal merit; then the court may require the Conservancy to reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action."]**
- F. **Actual or Threatened Non-Compliance.** The Conservancy's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this Easement is inadequate. The Conservancy shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory. The Conservancy's claim for injunctive relief or specific performance for a violation of this Conservation Easement shall not require proof of actual damages to the Conservation Values.

- G. **Cumulative Remedies.** The preceding remedies of the Conservancy are cumulative. Any, or all, of the remedies may be invoked by the Conservancy if there is an actual or threatened violation of this Conservation Easement.
8. **NOTIFICATION PROVISION.** The Conservancy is entitled to sixty (60) days written notice whenever its approval is required under this Conservation Easement. The Conservancy may obtain an additional thirty (30) day period to provide its approval by notifying the Owner of its intent to extend the time within the original sixty (60) day period. If the Conservancy fails to respond within sixty (60) days after it receives the written request, then its approval shall be deemed given. This implied approval shall not extend to any activity contrary to this Conservation Easement or impairing a Conservation Value. The Conservancy's approval shall continue for three years. If the approved activity is not completed within three years after the approval date, then the Owner must re-submit the written application to the Conservancy.
9. **SUBORDINATION.** Owner represents and warrants that as of the date of execution and recording of this Conservation Easement, the Property is not subject to any mortgage, lien, claim or interest which has not been subordinated to this Conservation Easement. Any mortgage, lien, claim or interest in the Property arising after the date of recording this Conservation Easement shall be subject and subordinate to the terms of this Conservation Easement.
10. **CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.**
- A. This Conservation Easement is an interest in real property created pursuant to the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act (NREPA) - MCL §§ 324.2140 *et seq.*
- B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. § 1.170A-14 *et seq.*, as amended.
- C. The Conservancy is qualified to hold conservation easements pursuant to these statutes. It is a publicly funded, non-profit 501(c)(3) organization.
11. **OWNERSHIP COSTS AND LIABILITIES.** In accepting this Conservation Easement, the Conservancy shall have no liability or other obligation for costs, liabilities,

taxes, or insurance of any kind related to the Property. The Conservancy's rights do not include the right, in absence of a judicial decree, to enter the Property for the purpose of becoming an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act. The Conservancy, its members, trustees or directors, officers, employees, and agents have no liability arising from injury or death to any person or physical damage to any property on the Property. The Owner agrees to defend, indemnify and hold harmless the Conservancy against such claims arising during the term of the Owner's ownership of the Property.

12. **HAZARDOUS MATERIALS.** The Owner warrants that Owner has no knowledge of a release of hazardous substances or hazardous wastes on the Property. The Owner agrees to defend, indemnify, and hold harmless the Conservancy against any claims of hazardous materials contamination on the Property.
  
13. **CESSATION OF EXISTENCE.** If the Conservancy shall cease to exist or if it fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if the Conservancy is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity. This entity shall be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3). The Conservancy's rights and responsibilities shall be assigned to any entity having similar conservation purposes to which such right may be awarded under the *cy pres* doctrine.
  
14. **ASSIGNMENT.** The Conservancy may assign its rights and obligations under this Conservation Easement only to an organization that, at the time of the assignment, is a "qualified conservation organization" under Section 170(h) of the Code of 1986, as amended. The Conservancy shall require as a condition of assignment that the assignee assume all obligations under this Conservation Easement.
  
15. **TERMINATION.** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Purposes, or by exercise of eminent domain.
  - A. **Unexpected Change in Conditions.** If subsequent circumstances render the Purposes impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Conservancy will then be entitled to compensation in accordance with the provisions of Internal Revenue Code Treasury Regulations Section 1.170A-14(g)(6)(ii). Notwithstanding the foregoing, the Owner and Conservancy intend that this Conservation Easement not be subject to the legal doctrine of "changed conditions" that is applied to traditional servitudes. In making this grant, Grantors have considered the

possibility that uses prohibited by the terms of this easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of the Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of Owner that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

B. **Eminent Domain.** If the Property is taken, in whole or in part, by power of eminent domain, then the Conservancy will be entitled to compensation by the method as is set forth in IRC Treasury Regulations Section 1.170A-14(g)(6)(ii).

16. **LIBERAL CONSTRUCTION.** This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act MCL 324.2140 *et seq.*

17. **AMENDMENT.** Owner and Conservancy may jointly amend this Conservation Easement; provided that (i) such amendment shall be approved by the Conservancy in its sole and absolute discretion, and (ii) no amendment shall be allowed that shall affect the qualification of this Conservation Easement or the status of the Conservancy under any applicable laws, including MCL 324.2140 – 324.2144, or Section 170(h) of the Code, (iii) any amendment shall be consistent with the Purposes, and (iv) shall not affect the perpetual duration of this Conservation Easement. Any such amendment shall be in writing and recorded in the official records of \_\_\_\_\_ County, Michigan, and any other jurisdiction in which such recording is required.

18. **NOTICES.** For purposes of this Conservation Easement, notices may be provided to either party by personal delivery or by mailing a written notice to the party (at the last known address of a party) by First Class mail.

19. **SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.

20. **SUCCESSORS.** This Conservation Easement is binding upon, and inures to the benefit of, the Owner's and the Conservancy's successors in interest. All subsequent owners of

the Property are bound to all provisions of this Conservation Easement to the same extent as the Owner.

21. **TERMINATION OF RIGHTS AND OBLIGATIONS.** A party's future rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.
22. **MICHIGAN LAW.** This Conservation Easement will be construed in accordance with Michigan Law.
23. **ENTIRE AGREEMENT.** This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.
- 24.
25. **EXHIBITS.** This Conservation Easement includes, and incorporates the following Exhibits:
  - A. Legal Description

OWNER:

\_\_\_\_\_  
Printed Name:

STATE OF MICHIGAN )

)

COUNTY OF \_\_\_\_\_ )

Acknowledged before me on this \_\_\_\_ of \_\_\_\_\_, of 2001, by (Insert Owner's names), (Insert marital status).

\_\_\_\_\_  
, Notary Public  
\_\_\_\_\_, County, Michigan  
My commission expires: \_\_\_\_\_



CONSERVANCY:

\_\_\_\_\_  
Name:  
Title:

STATE OF MICHIGAN     )  
  )  
COUNTY OF \_\_\_\_\_)

Acknowledged before me on this \_\_\_\_\_ of \_\_\_\_\_, of 2001, by (Insert Executive Director or signer's name, , known to me to be the \_\_\_\_\_ of the (Insert Conservancy name).

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
My commission expires:\_\_\_\_\_

AFTER RECORDING SEND  
TO:

SEND TAX BILL TO:  
[Insert name of Owner]

PREPARED BY:

**EXHIBIT A**

**Legal Description**

[Insert Legal Description]

Tax ID No: