

Michigan Model Conservation Easement Standard Template 2021 Update

This Michigan Model Conservation Easement is not a complete conservation easement. Instead, it is a template for discussion and drafting, containing provisions typically used in conservation easements for the protection of natural lands in Michigan.

This template is intended to:

- assist land owners and conservancies in drafting conservation easements,
- reduce the time and cost of drafting an easement,
- increase uniformity in negotiations, the drafting process, and final agreements,
- provide legal strength and clarity to each document,
- promote recordable, enforceable legal agreements consistent with the parties' conservation and other goals and current laws and regulations, including those on tax deductibility, and
- promote best practices.

A conservation easement should be tailored to reflect the specific conservation values and characteristics of the land protected, current and future landowner goals and needs, and the goals, policies, and practices of the conservancy. This template includes notes and suggestions to users in bracketed text, which should be deleted from actual draft easements. Other templates may be more appropriate to adequately address working lands such as farms and working forests. This language is purposely designed to be highly protective as a place for conversations and drafters to start.

This document is advisory only and not legal advice. No party is required to adopt any of its provisions. Parties involved in negotiating conservation easement agreements should be represented by their own legal counsel.

This update of the Model is the product of Michigan land conservation practitioners and attorneys who have informally collaborated together, facilitated by the Heart of the Lakes.

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CONSERVATION EASEMENT

I. DEFINITIONS AND CONVEYANCE

- Date:** (INSERT DATE)
- Owner:** (INSERT DONOR/SELLER’S LEGAL NAME(S), MARITAL STATUS AND FULL ADDRESS)
- Conservancy:** (INSERT FULL LEGAL NAME AND FULL ADDRESS)
- Property:** The property legally described on attached Exhibit A.
- Conveyance:** Owner conveys and warrants to Conservancy a perpetual Conservation Easement over the Property. The scope of this Conservation Easement is as set forth in this agreement.
- Consideration:** This conveyance is a gift from Owner to Conservancy and the consideration is less than \$100.00; accordingly, this conveyance is exempt from county and state real estate transfer taxes pursuant to MCL 207.505(a) and 207.526(a).
- Easement:** This Conservation Easement.
- Party or Parties:** Owner and/or Conservancy as applicable.
- MCL:** Michigan Compiled Laws.
- NREPA:** The Michigan Natural Resources and Environmental Protection Act, MCL 324.101 et seq.

II. REPRESENTATIONS

- 1. OWNER.** Owner is committed to preserving the Conservation Values of the Property. Owner is committed to restricting the use of the Property to activities consistent with the Purposes and preservation of the Conservation Values.
- 2. CONSERVANCY.** Conservancy:
 - A. Is a qualified holder of this Conservation Easement committed to preserving the Conservation Values of the Property and upholding the terms of this Easement,

- B. Is a tax-exempt, nonprofit Michigan corporation qualified under Internal Revenue Code 501(c)(3) and 170(h)(3) and NREPA Part 21 Subpart 11, Conservation and Historic Preservation Easement, MCL 324.2140 et seq.,
- C. Has the resources to enforce this Easement,
- D. Protects natural habitats of fish, wildlife, plants, and the ecosystems that support them, and
- E. 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 such preservation will yield a significant public benefit.

III. OWNER AND CONSERVANCY AGREE TO THE FOLLOWING:

1. **PURPOSES.** The Purposes of this Conservation Easement are as follows:

[DELETE ALL THAT DO NOT APPLY]

- A. To protect a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- B. To preserve open space and will yield a significant public benefit
 - 1) For the scenic enjoyment of the general public, or (and)
 - 2) Pursuant to a clearly delineated Federal, State, or local governmental conservation policy,
- C. To preserve the Property for outdoor recreation by, or the education of, the general public, and
- D. To preserve a historically important land area or a certified historic structure.

These purposes are referred to as the “Purposes” of this Easement.

2. **CONSERVATION VALUES.**

The Property possesses natural, ecological, biological, scientific, scenic, open space, and historic values of prominent importance to Owner, 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 only listed once. The Conservation Values of this Easement include the following:

[IT IS CRITICALLY IMPORTANT TO THE ENFORCEABILITY OF THE CONSERVATION EASEMENT TO DELETE ALL CONSERVATION VALUES THAT DO NOT APPLY TO THE PROPERTY AND TO TAILOR THESE VALUES TO THE PROPERTY AS EVIDENCED BY THE BASELINE DOCUMENTATION REPORT, ETC.]

- 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 **(INSERT)**, which would be adversely affected by modifications of the natural habitat.
 - 3) Relief from urban closeness.
 - 4) Prominent visibility to the public from **(INSERT)**, which will enhance tourism if the Property is preserved in its natural state
 - 5) Biological integrity of other land in the vicinity of the Property has been modified by intense urbanization and that trend is expected to continue.
 - 6) There is a reasonable possibility that 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 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.
 - 8) The Property will be open to the public and utilized for outdoor recreation and education by **(if applicable, INSERT or identify group or community to be served, otherwise delete this benefit)**.
- B.** The Property is preserved pursuant to clearly delineated federal, state, and/or local conservation policies and its preservation yields a significant public benefit. The following legislation, regulations, and policy statements identify relevant public policies:
- 1) The State of Michigan has recognized the importance of protecting our natural resources as delineated in the Michigan Constitution:

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. (1963 Constitution, Article IV, Section 52.)

- 2) NREPA Part 21 Subpart 11, Conservation and Historic Preservation Easement, MCL 324.2140 et seq.;
- 3) NREPA Part 355, Biological Diversity Conservation, MCL 324.35501 et seq. (Legislative Findings MCL 324.35502);
- 4) NREPA Part 353, Sand Dune Protection and Management, MCL 324.35301 et seq. (Legislative Findings MCL 324.35302);
- 5) NREPA Part 303, Wetland Protection, 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, also known as “Section 404” of the Clean Water Act);
- 7) Coastal Zone Management Act, 16 USC 1451 et seq. (§§1451, 1452 Congressional Findings and Policy);
- 8) NREPA Part 323, Shorelands Protection and Management, MCL 324.32301 et seq.;
- 9) NREPA Part 301, Inland Lakes and Streams, MCL 324.30101 et seq.;
- 10) NREPA Part 325, Great Lakes Submerged Lands, MCL 324.32501 et seq.;
- 11) NREPA Part 361, Farmland and Open Space Preservation, MCL 324.36101 et seq.;
- 12) NREPA Parts 91 and 93, Soil Conservation, Erosion, and Sedimentation Control, MCL 324.9101 et seq.; 324.9301 et seq. (Legislative Policy MCL 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/CITE)** local policy statements which apply).
- 17) The following public funding sources were utilized in the purchase of this Conservation Easement: **(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 NREPA Part 303, Wetland Protection, 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)**.
- 5) **(INSERT)** if threatened or endangered and whether in the State of Michigan or federally listed) are supported on the Property.
- 6) The Property contains natural areas which represent high quality examples of terrestrial or aquatic communities **(INSERT)**.
- 7) The Property contains sustainable habitat for biodiverse vegetation, birds, fish, amphibians and terrestrial animals. The Owner [or Conservancy] has documented the existence of **(INSERT)** on the Property.
- 8) The Property contains a diversity of plant and animal life in an unusually broad range of habitats for a property of its size.
- 9) 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.

- 10) The Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation.
- 11) 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.
- 12) The Property provides important natural land within the watershed of **(INSERT)**.
- 13) 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.
- 14) The Property includes the **(INSERT)** feet of frontage on the **(INSERT)** name of river, stream, lake).
- 15) 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 NREPA Part 305, Natural Rivers, MCL 324.30501-30515 et seq., **[AND/OR]** is a State-designated trout stream in Michigan.
- 16) Sections of the Property are situated on hillsides with slopes greater than 20% that are adjacent to or in close proximity to **(INSERT)** name of 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.
- 17) The Property lies in close proximity to the following conserved properties which similarly preserve the existing natural habitat: **(INSERT)**.
- 18) 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.
- 19) Preservation of the Property enables Owner to integrate the Conservation Values with other neighboring lands.

D. The Property includes active agriculture and:

- 1) 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,
- 2) Has a long history of productive farming and contains significant areas with soil classifications designated as **(INSERT)**,
- 3) 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.

3. BASELINE DOCUMENTATION. Specific Conservation Values of the Property have been documented in a natural resource inventory signed by both Owner and Conservancy (hereinafter "Baseline Documentation Report" regardless of specific name(s) on inventory(ies)). The Baseline Documentation Report, incorporated herein by reference, consists of maps, a depiction of all existing human-made modifications, prominent vegetation features, identification of flora and fauna, land use history, distinct natural features, and photographs of the Property. The parties agree that the Baseline Documentation Report is an accurate representation of the Property at the time of execution of this Conservation Easement. Conservancy may use the Baseline Documentation Report to enforce this Conservation Easement but is not limited to the Baseline Documentation Report to show a change in conditions. Any characterization of this Easement in the Baseline Documentation Report shall not be interpreted so as to alter, amend, limit, or otherwise modify this Easement; the terms of this Easement shall control in the event of any alleged or actual conflict or inconsistency between the terms of this Easement and the Baseline Documentation Report.

4. PERMITTED AND PROHIBITED USES. Owner retains all ownership rights not expressly restricted by this Conservation Easement but any activity on or use of the Property that is inconsistent with the Purposes or detrimental to the Conservation Values is expressly prohibited. Explicitly retained rights and explicitly prohibited activities and uses include the following, without limitation, with respect to the Property:

A. Right to Convey and Transfer Notices. Owner retains the right to sell, mortgage, bequeath, donate, or otherwise convey the Property subject to the terms of this Conservation Easement. Each subsequent Owner will be bound by this Easement. At least 30 days prior to transfer of any of Owner's rights in the Property, Owner or Owner's representative shall give a) the proposed transferee of the Property a true, accurate, recorded and complete copy of this Easement, and b) the Conservancy written notice of the proposed transfer including the full name(s) and address(es) of the prospective transferee(s). Owner at all times shall provide Conservancy with up-to-date contact information including mailing address, telephone number, and any email address regularly checked.

- B. Subdivision.** The following are prohibited: The legal or de facto 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.
- C. Industrial, Institutional and Commercial Activities.** All industrial, institutional and commercial activity on the Property is prohibited, except as follows:
- 1) **Right to de minimis commercial recreational activity.** Owner retains the right to de minimis commercial recreational activity as such term is referenced in an Internal Revenue Code section 2031(c)(8)(B) or as otherwise authorized below.
 - 2) **Right to home occupations.** Owner retains right to home occupations that do not involve outside storage of materials, supplies, equipment or products, or require commercial licensing or zoning specific to the Property, or site improvements to accommodate regular visitors or clientele.
- D. Structures and Construction.** The placement or construction of any human-made modifications, including structures, buildings, fences, roads, and parking lots is prohibited except as follows:
- 1) **(Optional if applicable) Right to Maintain and Replace Structures Existing as of Execution of this Easement.** Owner retains the right to maintain, renovate, and replace the structure(s), buildings, fences and roads existing as of the execution of this Easement in substantially the same location and size as documented in Baseline Documentation Report. Any replacement or expansion may not substantially alter the character or function of the structure, building, fence, or road. Prior to beginning renovation or replacement of the structure(s) existing as of execution of this Easement, Owner will provide a written plan to Conservancy for Conservancy's review and approval; such approval may be withheld only upon a reasonable determination by Conservancy that the action as proposed would be inconsistent with the Purpose and terms of this Easement.
 - 2) **(Optional if applicable) Right to Add Designated Structures or Uses.** 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 authorized building envelope). Prior to beginning any

site development or construction, Owner will provide a written plan to Conservancy for Conservancy's review and approval; such a plan shall contain a description including timeline, diagram(s) and copies of permit applications; such approval shall not be unreasonably withheld.

a. _____

b. _____

E. Vegetation Management. Any alteration, including pruning, trimming, cutting down, using herbicides, or otherwise causing the destruction or removal of trees or other vegetation, whether living or dead, in whole or in part, is prohibited, except as follows:

1) **Right to Manage Dangerous, Nonnative or Diseased Trees or Vegetation.** Pruning, trimming, and removing trees or other vegetation is permitted only under the following conditions:

a. To respond to, minimize, and/or eliminate real danger to a structure or humans in frequently-used areas due to a structural or health defect of a tree as documented by a registered forester or other natural resource specialist and as approved by Conservancy.

b. To respond to, minimize, and/or eliminate a threat of infestation posed by diseased vegetation as documented by a registered forester or other natural resource specialist and as approved by Conservancy.

c. To respond to, minimize, and/or eliminate threats from invasive or non-native plant species.

2) **Right to Facilitate Maintenance and Construction.** Reasonable pruning, trimming, or removing trees or other vegetation is permitted to facilitate the maintenance, repair, replacement or construction of any structure, improvement, or trail, expressly permitted by this Easement with Conservancy's permission to correct or restore unusual storm or wildfire damage.

3) **Right to Use and Cut Downed Trees for Firewood.** Owner retains the right to cut and use trees that are downed as a result of natural occurrence for personal use as firewood without a management plan, provided that said use retains adequate woody debris on the forest floor for habitat and soil productivity purposes. This right does not include any removal of live

or standing dead trees.

- 4) **Right to Conduct Planned Forest Management.** Any removal of live or standing dead trees for purposes not addressed above is considered forest management and is subject to requirements of a mutually agreed upon forest management plan, and Owner shall provide Conservancy with 60 days prior notice of any tree removal or harvest, in accordance with Sec. 7 below.

F. Disturbance/Alteration of Land. Disturbance, alteration, and mining of the surface of the Property, including the excavation, removal, quarrying, filling, storing, or relocation of soil, sand, gravel, aggregate, rock, stone, ore, marl, limestone, gypsum, salt, coal, clay, peat, sod, or topsoil, are prohibited, except as permitted in 4F. 1) below. Treatment, processing, storage, transportation, and other handling of overburden, effluent, tailings, or other waste or byproducts created or produced during mining, the removal of surface or mineral resources, or oil and gas extraction also are prohibited.

- 1) **Right to use on site sand and gravel.** Owner retains the right to use on site sand and gravel removed from a Building Envelope defined by this Easement for onsite road construction and maintenance if that construction or maintenance is within a Building Envelope defined by this easement or otherwise is permitted by this Easement.

G. Mining and Oil and Gas Extraction. Mining is expressly prohibited, including but not limited to any activity which will disturb, consume, deplete, use, occupy, or alter the surface estate, ecosystem, hydrology, or groundwater, including but not limited to the removal of non-hydrocarbon metallic and non-metallic minerals. No circumstance, including the exercise of the retained rights below, shall be interpreted to permit any of the following: injection, mixing, use, retention, storage, transportation, or other presence of hydraulic, fracking or similar fluids, chemicals, or substances, whether new, used, reclaimed, recovered, waste, or otherwise across or on the Property; use of any surface water on the Property for oil and gas activities, including but not limited to hydraulic fracking; mining or oil or gas exploration, development, or testing for or extraction conducted on, from, or across the surface of the Property; and alteration or use of the Property surface or construction or placement of any structures, including wells and pipelines, on, over, or across the property. Notwithstanding the foregoing prohibitions, the following activities are permitted:

- 1) **Right to authorize extraction.** Owner retains the right to authorize the extraction of oil, gas, hydrocarbons, or petroleum from beneath the surface of the Property for commercial purposes provided that no

exploration, development, or testing for or extraction shall be conducted on, from, or across the surface of the Property and all such extraction is by directional or horizontal drilling from a surface location off of the Property to prevent any impairment of water or other resources protected by this Easement. Nothing otherwise prohibited herein may be allowed by the owner's authorization.

- 2) **Right to enter into a non-developmental lease.** Owner retains the right to enter into a non-developmental lease which solely permits the extraction of oil, gas, hydrocarbons, or petroleum from beneath the Property surface without any alteration or use of the Property surface or construction or placement of any structures, including wells and pipelines, on, over, or across the Property. Nothing otherwise prohibited herein may be allowed by the terms of the non-developmental lease.

H. Waste. Processing, retention, storage, transporting, dumping, disposal, or injection of liquid, solid, gaseous, natural or human-made waste, refuse, or debris on or into the Property is prohibited.

I. Water Courses, Groundwater. Natural water courses, lakes, rivers, streams, creeks, wetlands, and other bodies of surface water and groundwater or water features may not be altered or impounded. Water from ground or surface sources may not be diverted, blocked, extracted, pumped, or piped from the Property or degraded or polluted.

J. Off-Road Recreational Vehicles. Motorized off-road vehicles such as, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, dirt bikes, and motorcycles may not be operated off of designated roads and trails on the Property.

- 1) **Right to Emergency Vehicle Access and Restoration Work.**

Emergency vehicles are permitted as necessary. Vehicles used to complete Conservancy-approved restoration work are permitted as necessary.

K. Livestock. Raising or housing of livestock, poultry or horses, commercial breeding, and commercial aquaculture are prohibited on the Property.

L. Signs and Billboards. Billboards and permanent signs are prohibited except as follows:

- 1) **Right for signs for specific purposes.** Owner retains the right to display signs for the following purposes and any other purposes consistent with

Permitted Uses under Sec. 4.

- a. To disclose the name and address of the Property or the owner's name.
- b. To disclose that the Property is protected by a conservation easement (See 5 D)
- c. To state that trespassing or any unauthorized entry or use is prohibited.
- d. To advertise the Property for sale or lease.
- e. To identify and interpret trails and natural features.
- f. To warn of the presence of dogs or other animals.
- g. To warn or deal with matters of property boundaries, health, safety, and welfare.
- h. To comply with any applicable law or regulation.

M. Right to Hunt, Trap and Fish. Owner retains all rights to hunt, trap, and fish on and from the Property consistent with all applicable laws.

N. Right to Renewable Energy. Owner reserves the right to and may construct, operate, maintain, replace, and upgrade otherwise lawful non-commercial solar, wind, geothermal, and other types of renewable energy generation equipment ("Equipment") to the extent such uses are not inconsistent with this Easement provided (a) the energy generated is principally intended for non-commercial, non-industrial (e.g., residential and/or agricultural) use on the Property, (b) Owner obtains the prior written approval of Conservancy, (c) such Equipment will be and is located solely within the approved Building Envelope, and (d) installation, construction, and use of such Equipment does not adversely impact the Conservation Values protected by this Easement.

O. Right to Other Permissible Uses. Conservancy and owner acknowledge that there may be other permissible uses that may be fully consistent with the protection of the Conservation Values and Purposes but are not contemplated or expressly reserved in this Easement. Accordingly, Conservancy and Owner agree that the Owner may engage in any such permissible use only if the Owner seeks approval from Conservancy prior to implementing any such use, and the Conservancy confirms in writing, and in its sole discretion, that the proposed use does not impair or interfere with the Conservation Values and Purposes of this

Easement.

5. **CONSERVANCY RIGHTS.** Owner grants the following rights to Conservancy to perpetually maintain the Conservation Values of the Property:

- A. **Entry and Cooperation.** The public is not granted access to, right of entry onto, or use of the Property by this Easement. Conservancy including its authorized agents may enter the Property at reasonable times to monitor the Property, to enforce compliance with this Easement, and to otherwise exercise its rights under this Easement. Owner shall fully cooperate with Conservancy in Conservancy's undertaking and execution of Conservancy's responsibilities under this Easement; Conservancy will not unreasonably interfere with Owner's use and quiet enjoyment of the Property or permit others to enter the Property. Except in case of emergency or if there is imminent threat to the Conservation Values, Conservancy shall exercise reasonable efforts to notify Owner in advance of Conservancy's planned entry onto the Property. Owner agrees to fully cooperate with Conservancy regarding all matters relating to this Easement including, without limit, promptly, truthfully and accurately reporting and fully disclosing all activities and conditions on or affecting the Property regarding or affecting the Purposes and Conservation Values of this Easement and any violations of this Easement. Owner shall not directly or indirectly interfere with, restrict, place conditions upon access, or otherwise prevent Conservancy or its representatives or agents from entering the Property for purposes of monitoring, inspecting, verifying, protecting, correcting, preserving or otherwise acting to protect the Conservation Values of or otherwise enforce this Easement. If locked gates or other features restrict access to the Property, Owner shall provide Conservancy with keys and all other information or means necessary for Conservancy or its agents to be able to reasonably enter the Property by vehicular means over established access roads or trails; without liability, Conservancy may undertake reasonable self-help to access the Property for Easement-related purposes if such information or means are not provided by Owner.
- B. **Right to Preserve.** 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.** Consistent with the remedies below, Conservancy has the right to require Owner to restore to its prior condition any area or feature of the Property which is damaged by any activity inconsistent with this Conservation Easement. Owner shall conduct the restoration in accordance with a plan submitted to and approved by Conservancy.
- 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, which shall not be unreasonably withheld or restricted.

6. CONSERVANCY REMEDIES. Conservancy has the following cumulative, nonexclusive remedies:

- A. Delay in Enforcement.** Any delay in enforcement shall not be construed as a waiver of Conservancy's right to enforce the terms of this Easement.
- B. Third Person Violations.** Owner and Conservancy shall have the following rights for acts or occurrences at the Property beyond the direct or indirect control of Owner:
 - 1) Conservancy may not bring an action against Owner for modifications to the Property or damage to the Property or its Conservation Values resulting from natural causes beyond Owner's control, including natural disasters, fires, floods, storms, natural earth movement or other acts of God.
 - 2) 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 persons whose use of, or presence on, the Property was authorized by Owner. Owner shall perform such restoration pursuant to and in accordance with the restoration plan prepared by a competent professional selected by Owner and submitted to and approved by Conservancy in writing.
 - 3) In the event of an unauthorized third-person violation of the Conservation Values on the Property, Conservancy shall not seek restoration or exercise remedies available to it if and so long as Owner diligently pursues all available legal remedies against the violator. In the event actions taken by unauthorized third persons impair the Conservation Values protected by this Easement, Conservancy reserves the right, either jointly or singly, to pursue all appropriate civil and criminal penalties to compel restoration and Owner assigns all claims and rights to recover against such third persons to Conservancy.
- C. Notice and Demand.** If Conservancy determines that Owner is in violation of this Easement, or that a violation is threatened, Conservancy shall provide written notice to 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 Conservancy determines, in its sole and

absolute discretion, that the violation constitutes or threatens immediate and irreparable harm, no written notice is required and Conservancy may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property. If Conservancy believes that this Easement has been, or is expected to be, violated, and Conservancy's good-faith and reasonable efforts to notify Owner are unsuccessful, Conservancy may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting Owner's opportunity to cure.

- D. Owner Failure to Act.** If, within 28 days after written notice, Owner does not implement corrective measures requested by Conservancy, Conservancy may bring an action in law and/or in equity to enforce the terms of the Easement. In the case of immediate or irreparable harm, as determined in the sole discretion of Conservancy, or if Owner is unable to be notified, Conservancy may invoke these same remedies without notification and/or awaiting the expiration of the 28-day period. Conservancy is entitled to seek 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 Owner to restore the Property. Conservancy shall have the right of specific performance to impose or enforce any right and obtain relief by immediate temporary restraining, preliminary and/or permanent injunctive order, without the necessity of bond or other security, and without having to prove damages. Such relief shall be against Owner and/or any person or entity acting in concert with Owner and in addition to damages and other available remedies to the Conservancy and all such rights and remedies shall be cumulative. Owner agrees if a violation of this Easement is threatened or occurs the harm and injury to the Conservancy will be irreparable and such that the Conservancy will have no adequate remedy at law and could not be compensated adequately by damages.
- E. Recovery Costs and Reimbursement.** If the court determines that Owner has failed to comply with this Easement, Owner shall also reimburse Conservancy for all reasonable litigation costs and reasonable attorney's fees, and all costs of corrective action or Property restoration incurred by Conservancy.
- E. Frivolous Litigation.** If Conservancy initiates litigation against Owner to enforce this Easement, the court determines that Owner is the prevailing party, and the court determines that (i) the litigation was initiated with the primary purpose to harass, embarrass, or injure Owner; (ii) Conservancy did not have a reasonable basis to believe that the facts underlying Conservancy's legal position were in fact true; or (iii) Conservancy's legal position was devoid of arguable legal merit, then the court may require Conservancy to reimburse Owner's reasonable costs and reasonable attorney's fees in defending the action.

- F. Actual or Threatened Non-Compliance.** Conservancy's rights under this Section 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Owner agrees that Conservancy's claim for money damages for any violation of the terms of this Easement is inadequate. Conservancy shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory. 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 Conservancy are cumulative. Any or all of the remedies may be invoked by Conservancy if there is an actual or threatened violation of this Conservation Easement.

7. NOTIFICATION.

Notification. If Owner proposes to undertake any activity which requires notice to Conservancy or Conservancy's approval, Owner shall provide 60-days written notice of Owner's planned activity together with all reasonably related information, such as a written description of the planned activity, engineer/architect plans and drawings, updated contact information, permits, schedules, and the like. Notification must be written and submitted as required in Section 20. Notices.

Approval. Conservancy will give approval so long as a) the Conservancy determines the proposed use or activity does not negatively impact the Conservation Values or Purposes of this Easement, and b) notification, including any required plans and other related information, has been properly completed.

If Conservancy does not approve, deny, or request to amend and resubmit Owner's planned activity within 60 days after actual receipt of written notice and supporting materials or request, this failure to respond shall be deemed a constructive denial. Because a constructive denial is not a decision by the Conservancy, it is not a decision on the merits of the Grantor's request, therefore it is not final or binding on the Conservancy, and the Owner can resubmit the same or amended request for approval. If the Owner's request is approved by the Conservancy, the approval shall continue for three years. If Owner's approved activity has not been completed within three years after Owner's initial written approval by the Conservancy, then that approval will be deemed revoked and the Owner must reacquire an approval from the Conservancy pursuant to this Article III 7.

- 8. 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 lease, land contract, mortgage, lien, claim or interest which has not been subordinated to this Conservation Easement. Any lease, land contract, 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.

9. CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN AND FEDERAL LAW.

- A. This Conservation Easement is an immediately vested interest in real property created pursuant to NREPA Part 21 Subpart 11 Conservation and Historic Preservation Easement, MCL 324.2140 et seq. Owner agrees that this Conservation Easement has a fair market value that is at least equal to the proportional value that the Conservation Easement at the time of the gift bears to the value of the Property as a whole at that time.
- B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended, 26 U.S.C. Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. Section 1.170A-14 et seq., as amended.
- C. Conservancy is qualified to hold conservation easements pursuant to these statutes. Conservancy is a publicly funded, non-profit 501(c)(3) organization with the authority to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational, or open-space values of real property, and with the commitment to preserve the Conservation Values of the Property.

10. OWNERSHIP COSTS AND LIABILITIES. In accepting this Conservation Easement, Conservancy shall have no liability or other obligation for costs, taxes, assessments, insurance, maintenance, or other liabilities of any kind related to the Property. 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, NREPA, or any similar statute or regulation. 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. Owner agrees to defend, indemnify and hold harmless Conservancy against such claims arising during the term of Owner's ownership of the Property.

11. HAZARDOUS MATERIALS. Owner represents and warrants that Owner has no knowledge of any release, discharge, dispersal or storage of hazardous substances, or hazardous wastes on the Property. Owner agrees to defend, indemnify, and hold harmless Conservancy against all claims of hazardous materials contamination on the Property.

12. CESSATION OF CONSERVANCY EXISTENCE. If Conservancy ceases to exist or

fails to be a “qualified organization” for purposes of Internal Revenue Code Section 170(h)(3), or if Conservancy is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity which is a “qualified organization” for purposes of Internal Revenue Code Section 170(h)(3). 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.

13. **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 organization" under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended. The Conservancy shall require as a condition of assignment that the assignee assume all obligations of the Conservancy under this Conservation Easement and continue to carry out the conservation purposes of this Conservation Easement.
14. **FUTURE CONDITIONS.** No use shall be made of the Property and no activity thereon shall be permitted which is, or is likely to become, inconsistent with the Purposes of this Easement. Owner and Conservancy acknowledge that, in view of the perpetual nature of this Easement, they are unable to foresee all potential future land uses, technologies, climate changes, evolution in flora and fauna, other natural resources, and other circumstances, occurrences and conditions affecting the Property or the purposes of this Easement.
15. **TERMINATION.** This Conservation Easement may be extinguished only by a court order upon 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 but only by judicial proceedings. Conservancy will then be entitled to a share of the proceeds of any sale, exchange, or involuntary conversion of the Property, according to Conservancy's proportional interest in the Property, as determined and as required under Treasury Regulations Section 1.170A-14(g)(6)(ii) or its successor. Notwithstanding the foregoing, 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, Owner has 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. 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 Conservancy will be entitled to a share of the proceeds of any sale, exchange, or involuntary conversion of the Property, according to Conservancy's proportional interest in the Property, as determined and as required under Treasury Regulations Section 1.170A-14(g)(6)(ii) or its successor.

C. Payment & Usage. Payment shall not be later than subsequent sale, exchange, or involuntary conversion of the property, whichever occurs first. Conservancy shall use any such proceeds in a manner that is consistent with the conservation purposes as set forth in IRS 170(H)(4)(A).

- 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 NREPA Conservation and Historic Preservation Easement statutory provisions, Part 21 Subpart 11, MCL 324.2140 et seq.
- 17. AMENDMENT.** Owner and Conservancy may jointly amend this Conservation Easement, provided that (i) such amendment is in writing and approved by Conservancy in its sole and absolute discretion, (ii) no amendment shall be allowed that shall affect the qualification of this Conservation Easement or the status of Conservancy under any applicable laws, including MCL 324.2140-324.2144 or Section 170(h) of the Internal Revenue 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 property records of the County where the Property is located and in all other jurisdictions and places where such recording is required.
- 18. OWNER RESPONSIBILITY AND CONSERVANCY APPROVAL.** If the approval of, consent to or non-objection by Conservancy is required or given regarding any act, action, or activity of Owner or Owner's agents or contractors upon the land, then, notwithstanding any such approval or consent of the Conservancy, for all purposes Owner shall be solely responsible for the planning, design, necessity, implementation, means, methods, materials, execution, adequacy, timing, soundness, supervision, inspection, completion, conduct, effectiveness, impacts, results, or consequences of any such activity and any act or omission in connection therewith, occasioned thereby, or arising in connection with the same, including without limit any adverse impact the same may have upon the Conservation Values protected by this Conservation Easement. Under no circumstances shall the approval of, consent to and/or non-objection by Conservancy to any act, action, activity of Owner or Owner's agents or contractors be deemed to be, directly or indirectly, in whole or in part, participation, acceptance, ratification, release,

waiver, or a defense or other impediment to Conservancy's right to protect the Conservation Values of or otherwise to enforce the terms of this Conservation Easement against the Owner or any third person.

- 19. INDEMNIFICATION.** Owner agrees to defend, indemnify and hold harmless Conservancy, its directors/trustees, officers, employees, agents, volunteers, and representatives ("the Indemnified Parties") from and against all claims, actions, proceedings, liabilities, damages, losses, penalties, fines, costs, enforcement and restoration fees and costs, testing and engineering fees and costs, consultant and expert fees and costs, and reasonable attorney fees and costs, including those incurred in enforcing this indemnity, arising directly or indirectly from or in conjunction with:
- A. injury or death to any person, damage to or diminution in the value of any property, or damage to natural resources from any act, omission, condition or other matter related to or occurring on or about the Property regardless of cause, including any injury, harm to, or death of an Indemnified Party,
 - B. the presence, suspected presence, or threatened or actual release of any hazardous substance whether into the air, soil, surface or groundwater on, in, above, or below the Property,
 - C. any actual or alleged violation of any environmental law affecting the Property, whether occurring prior to or during Owner's ownership of the Property and whether caused or permitted by Owner or any person other than Owner,
 - D. any claim or defense by Owner or any third person that any Indemnified Party is liable as an owner or operator of the Property under any environmental law, or
 - E. any breach of Owner's representations, warranties, or retained responsibilities, obligations, or liabilities under this Conservation Easement, provided, however, this paragraph shall not apply if it is finally determined by a Michigan court that any of the foregoing was solely caused by gross negligence or material willful misconduct of Conservancy.
- 20. NOTICES.** All notices required or permitted under this Agreement shall be in writing and deemed given to a party and effective when: a) delivered in person to a party or to an officer of the party being notified, or b) sent by certified mail return receipt requested, express mail with proof of delivery, first class mail prepaid, or a recognized nationwide courier service with proof of delivery to a party at the address set forth herein or to the last known address of a party. Either party may change its address by providing written notice of the same. Refusal of a party to accept notice shall not impair the giving of notice.

21. **SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
22. **SUCCESSOR RIGHTS AND OBLIGATIONS.** This Conservation Easement is binding upon, and inures to the benefit of Owner's and 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 Owner. A party's respective future rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the Property, provided, however, liability accruing for acts or omissions prior to transfer survives transfer.
23. **MICHIGAN LAW AND FORUM.** This Conservation Easement will be construed in accordance with Michigan law. Owner and Conservancy agree and consent that all litigation with respect to or arising out of this Easement shall be filed, heard and decided by a Michigan court with jurisdiction over the Property or where Conservancy maintains its principal place of business in Michigan.
24. **ENTIRE AGREEMENT.** This Conservation Easement sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.
25. **EXHIBITS.** This Conservation Easement includes, and incorporates the following Exhibits:
- A. Exhibit A: Legal Description
- B. Exhibit B: (INSERT name of additional exhibits as applicable)

[NOTE: Some conservancies prefer to list the Baseline Documentation Report as an Exhibit and reference that Exhibit by letter, number or name in the Easement; others do not, including to avoid the cost of filing and recording the Baseline report with the Register of Deeds.]

OWNER:

Printed Name: (INSERT Owner's full name,
add further signature blocks so one for each
owner with printed name)

STATE OF MICHIGAN)

)

COUNTY OF _____)

Acknowledged before me on this _____ of _____, 201__, by (INSERT
Owner's names), (INSERT marital status).

_____, Notary Public
_____, County, Michigan
Acting in _____ County
My commission expires: _____

CONSERVANCY:

By: _____
Name: (INSERT signer's name)
Title: (INSERT signer's title with
Conservancy)
(INSERT full legal name of Conservancy)

STATE OF MICHIGAN)

)

COUNTY OF _____)

Acknowledged before me on this _____ of _____, 20__, by ____ (INSERT
Conservancy Executive Director's or other signer's name), known to me to be the of the
(INSERT signer's formal title with Conservancy) of (INSERT Conservancy's full legal
name).

_____, Notary Public
_____, County, Michigan
Acting in _____ County
My commission expires: _____

DRAFTED BY:
(INSERT principal drafter's name and address)

AFTER RECORDING PLEASE RETURN TO:
(INSERT Conservancy's full name and address)

CONTINUE TO SEND TAX BILLS TO:
(INSERT Owner's full name(s) and address)

EXHIBIT A
Legal Description

[INSERT full legal description]

Tax ID No: