

OAKLAND LAND CONSERVANCY

MODEL CONSERVATION EASEMENT



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The OLC Model Conservation Easement is adapted from the Michigan Model Conservation Easement.
The Michigan Model Easement is posted on the Little Traverse Conservancy web site at www.landtrust.org

Additional copies of the Model Conservation Easement and the companion Landowner Project Manual can be ordered from the Oakland Land Conservancy at the address below or can be downloaded from our web site at www.oaklandlandconservancy.org

INTRODUCTION TO OLC MODEL CONSERVATION EASEMENT

INTRODUCTION TO THE MODEL CONSERVATION EASEMENT:

This document is designed to help you plan for legal and permanent protection of the treasured natural resources on your property. The first part explains various sections of the Conservation Easement and summarizes implementation of the Easement. The entire Model Conservation Easement follows for you to review with your attorney. For more information please refer to the Conservancy's Landowner Project Manual, which details the steps to completing the Easement and also outlines tax benefits that may be available.

DEFINITION OF A CONSERVATION EASEMENT

A Conservation Easement is a legal and binding agreement between the landowner and the Conservancy to restrict the uses of the property and provides for monitoring and defense of those restrictions in perpetuity. The Easement is recorded with the County Register of Deeds and remains in effect even if ownership of the land changes. Each Conservation Easement is individually drafted using the attached Model Conservation Easement as a starting point.

DESCRIPTION OF SELECTED PROVISIONS IN THE CONSERVATION EASEMENT

1. **Purposes of the Conservation Easement:** The restrictions must be perpetual and for conservation purposes and the recipient must be a qualified organization.
2. **Conservation Values:** The biological, ecological, watershed, scenic, and cultural values that the Conservation Easement is designed to protect.
3. **Baseline Documentation:** A thorough inventory of the above conservation values and other features of the property, which is provided as Attachment A to the Conservation Easement. Both parties agree that this document is accurate at the time the Easement is signed.
4. **Prohibited Actions:** What the owner cannot do on or with the Property, such as subdivision of land, removal of vegetation (other than for safety purposes), industrial or commercial activities, subsurface drilling that will harm the conservation values. A destructive use will be permitted only if such use is necessary for the protection of the conservation interests that are the subject of the easement.
5. **Permitted Uses:** What the owner can do on or with the Property, such as transfer of ownership, trail construction and maintenance, operation of the property as a public nature park, creation and implementation of a management plan. Some of these uses allowed under the easement will require approval of a final plan by the Conservancy before they proceed, such as approval of a trail plan before construction begins.
6. **Rights of the Conservancy:** The Conservancy's rights to enforce the Easement, such as entering the Property, stopping any activities that harm the Conservation Values, requiring restoration if the Conservation Values are damaged, placing signs identifying the Property as being protected by a Conservation Easement.
7. **Conservancy's Remedies:** How the Conservancy can and cannot enforce and defend its Rights, such as providing written notice if a violation is suspected.
8. **Notification Provision:** Written notice to the Conservancy is required if the Conservancy's approval is needed to proceed with a permitted use.
9. **Conservation Easement Requirements under Michigan Law and United States Treasury Requirements:** State and federal provisions guiding the provisions in the Conservation Easement and under which the Conservancy is qualified to hold conservation easements.

10. **Owner's Costs and Liabilities:** Owner is still responsible for the maintenance and safety of the Property.
11. **Hazardous Materials:** Owner warrants that there are no hazardous materials present on the Property.
12. **Cessation of Existence:** If the Conservancy ceases to exist, the Conservation Easement can only be transferred to a public body or to a private organization that is qualified to hold conservation easements.
13. **Termination:** If an unexpected change in the conditions surrounding the property makes impossible or impractical the continued use of the property for conservation purposes, the conservation easement may be extinguished only by judicial proceeding. If a change in conditions gives rise to the extinguishment of the easement, the donee organization must be entitled to a portion of the proceeds. All of the donee's proceeds from a subsequent sale or exchange of the property must be used by the Conservancy in a manner consistent with the conservation purposes of the original contribution.
19. **Recordation:** The conservation easement must be legally enforceable, such as by recordation in the land records of the jurisdiction in which the property is located.
26. **Subordination:** If there is a prior mortgage or deed of trust on the property, the IRS requires existing mortgage holders to subordinate their rights to "the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity." Otherwise, foreclosure of the mortgage would extinguish the easement.

PREPARING THE DOCUMENT: DRAFTING THE CONSERVATION EASEMENT

Using this Model Conservation Easement as a starting point, Oakland Land Conservancy will prepare the first draft of the Easement that is designed with your specific property in mind. This draft will endeavor to maximize protection of the natural resources on your property and their connectivity with other natural resource areas, while keeping in consideration the current and planned uses of the property, economic benefits to the owner, and the planning regulations of the local community.

PREPARING THE DOCUMENT: SITE MAP

In addition to the Baseline Documentation required by Section 3 of the Conservation Easement, the Conservancy will create a Site Map of the property subject to the Conservation Easement. Provisions under Conservation Values, Prohibited Actions and Permitted Uses that pertain to specific areas on the site will reference the Site Map. The Site Map will be provided as Attachment B to the Conservation Easement.

PLANNING FOR IMPLEMENTATION: STEWARDSHIP FUNDING PROPOSAL

Oakland Land Conservancy policy requires money to be invested to fund future stewardship and legal defense. The landowner often provides this money (the donation of which may also be tax-deductible) or the Conservancy may secure this necessary funding from other sources. The Conservancy assesses the property for future stewardship needs and prepares a Stewardship Funding Proposal, which is submitted to the landowner with the first draft of the Conservation Easement.

IMPLEMENTATION: ANNUAL MONITORING

One Conservancy staff person, accompanied by local stewardship volunteers, will enter the property at least annually to evaluate the condition of the property, comparing it to the condition recorded in the Baseline Document and verifying that the terms of the Easement are being upheld. We will arrange for monitoring visit by appointment with the landowner and prefer that the landowner accompany us. We will take a set of photographs from the same photograph points each year for a long-term view of the property.

IMPLEMENTATION: MANAGEMENT PLAN

The Conservancy will work with the landowner to create a plan for managing the property and protecting the Conservation Values. Both parties will approve the Management Plan in writing before implementation begins. The Conservancy will offer assistance and services in implementing the Management Plan.

IMPLEMENTATION: RESPONDING TO VIOLATIONS OF THE CONSERVATION EASEMENT

The Conservancy will bring any potential or actual conditions that damage the Conservation Values of the Property to the owner's immediate attention and will offer guidance and assistance in correcting these conditions. Legal action is very rarely necessary and almost never occurs with the owner who originated the Conservation Easement. Future owners or administrators may not have the same dedication to the Conservation Values as the original owner or administrator, which is why the Conservancy maintains a Legal Defense Fund against potential violations requiring legal action.

MODEL CONSERVATION EASEMENT

PROPERTY NAME: _____

DATE: _____

DONOR/OWNER: [LEGAL NAMES OF ALL WHO HOLD AN OWNERSHIP INTEREST]

DONEE/CONSERVANCY: Oakland Land Conservancy, P.O. Box 80902, Rochester, MI 48308

For Purposes of this Conservation Easement, the Donor, who is the current Owner, and all subsequent Owners of the subject Property, will be referred to as the "Owner" throughout this Conservation Easement. The Donee will be referred to as the "Conservancy" throughout this Conservation Easement.

PROPERTY: [LEGAL DESCRIPTION]

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 transfer may be 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 assures that the Property will be perpetually preserved in its natural, scenic, cultural, agricultural, open space and forested condition. The Purposes of this Conservation Easement are to protect the Property's natural resource and watershed values; to maintain and enhance biodiversity; to retain quality habitat for native plants and animals, and to maintain and enhance the natural features of the Property. Any uses of the Property that may impair or interfere with the Conservation Values, detailed below, are expressly prohibited.

B. The Owner warrants that it is the Owner of the Property and 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 of this Conservation Easement and the preservation of the Conservation Values.

C. The Conservancy is a qualified Recipient of this Conservation Easement, is committed to preserving the Conservation Values of the Property, and is committed to upholding the terms of this Conservation Easement. The Conservancy protects natural habitats of fish, wildlife, plants, and the ecosystems that support them. The Conservancy also 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, cultural, open space, and ecological values of prominent importance to the Owner, the Conservancy, and the public. These values are referred to as the "Conservation Values" in this Conservation Easement. The Conservation Values include, but are not limited to, the following:

A. OPEN SPACE, SCENIC and CULTURAL VALUES:

- (1) A scenic landscape and natural character, which would be impaired by modification of the Property.
- (2) A scenic panorama visible to the public, which would be adversely affected by modifications of the natural habitat.
- (3) Relief from urban closeness.
- (4) Protection of the biological integrity of land, in a vicinity where other land has been modified by residential development, and the trend is expected to continue.
- (5) 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.
- (6) Preservation of open space in an area experiencing increased pressure for development.

B. PUBLIC POLICY:

- (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) 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:
 - (3) 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.*;
 - (4) Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.35501 *et seq.*; (Legislative Findings 324.35502);
 - (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, a.k.a. "Section 404" Clean Water Act.);
 - (7) Inland Lakes and Streams, Part 301 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.30101 *et seq.*;
 - (8) Farmland and Open Space Preservation, Part 361 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.36101 *et seq.*;
 - (9) Soil Conservation Erosion and Sedimentation Control Act, Parts 91 and 93 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.9101 *et seq.*; 324.9301 *et seq.*;

(2) 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.

(3) Preservation of the Property enables the Owner to integrate the Conservation values with other neighboring lands.

G. FARMLAND VALUES:

(1) The Property has a history of equestrian and agricultural use.

(2) The Property is located within [CITY, TOWN, ETC., AND COUNTY] a community with an [INSERT VALUE] tradition within an area presently experiencing rapid development, including the subdivision of farmland.

3. BASELINE DOCUMENTATION. Specific Conservation Values of the Property have been documented in a natural resource inventory signed by the Owner and the Conservancy, and incorporated herein by reference. This "Baseline Documentation Report" 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 this natural resource inventory, the Baseline Documentation Report, is an accurate representation of the Property at the time of this donation.

4. PROHIBITED ACTIONS. Any activity on, or use of, the Property which is inconsistent with the Purposes of this Conservation Easement or which 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. Division. Any division or subdivision of the Property is prohibited.

B. Commercial Activities. Any commercial activity on the Property is prohibited except as associated with permitted activities (such as timber management) as specified in Section 5 below.

C. Industrial Activities. Any industrial activity on the Property is prohibited.

D. Construction. The placement or construction of any human-made modification such as, but not limited to, buildings, roads, and parking lots is prohibited.

E. Cutting Vegetation. Any cutting of trees or vegetation, including pruning or trimming, is prohibited, except to remove hazardous trees for reasons of safety and to protect existing or authorized roads, fences, foot trails and paths, and except as specified in section 5 below.

F. Land Surface and Subsurface Alteration. Any mining or alteration of the surface of the land is prohibited, including any substance that must be quarried or removed by methods that will consume or deplete the surface estate, including, but not limited to, the removal of topsoil, sand, gravel, rock, and peat. In addition, exploring for, developing, and extracting oil, gas, hydrocarbons, or petroleum products are all prohibited activities, whether by perpendicular or directional drilling and extraction techniques and regardless of whether the surface is disturbed.

G. Dumping. Waste, rubbish, refuse, construction debris or other landscaping and yard care debris or material may not be accumulated or permitted on the Property regardless of whether placed on the

(Legislative Policy 324.9302).

C. WILDLIFE VALUES:

(1) The Property is home to many species of wildlife typical of southeast Michigan, and serves as a connection for wildlife movement, creating a natural "greenway".

(2) The Property provides wetlands, woodlands, and upland fields, which serve as wildlife habitats for migratory birds, large and small mammals, reptiles and amphibians, insects, and other forms of wildlife.

D. ECOLOGICAL / HABITAT VALUES:

(1) The Property contains significant natural habitat in which fish, wildlife, plants, or the ecosystems, which support them, thrive in a natural state.

(2) Valued Wetlands, as described in Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Code MCL 324.30301 et seq. are present on the Property.

(3) 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.

(4) The Property contains natural areas that represent high quality examples of terrestrial or aquatic communities (INSERT).

(5) The Property contains sustainable habitat for biodiverse vegetation, birds, fish, and terrestrial animals.

(6) 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.

(7) 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.

(8) The Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation.

(9) 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.

E. WATERSHED PROTECTION:

(1) The Property provides important natural land within the headwaters of the [INSERT] watershed. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the downstream area.

F. ADJACENT TO PROTECTED LANDS:

(1) The Property lies in close proximity to the following conserved properties, which similarly preserve the existing natural habitat: (INSERT).

(1) The Management Plan shall be consistent with the terms of this Conservation Easement and shall be approved by the Owner and the Conservancy. The Management Plan may be amended if approved in writing by both parties. The Management Plan will encourage long-term sustainable stewardship conducive to the propagation and retention of native plants and trees and wild populations of game and non-game species of birds and mammals.

(2) In the event that the Owner fails to implement management activities set forth in the Management Plan, and such failure continues fifteen days after written notice to the Owner, the Conservancy without further notice shall have the right, but not obligation, to implement such management activities at its expense, so long as management activities do not interfere with the Owner's use of the property.

E. Right to Construct, Maintain and Manage Trails. The Owner may manage, use and maintain the trails on the Property at the time of this Conservation Agreement, and shown on the attached trail map, to support a regional trail system, for purposes of equestrian use, walking, cross-country skiing or other non-motorized recreational use. With prior written consent from the Conservancy, the Owner may construct and locate new trails anywhere on the Property provided that they are constructed and located in a manner which is compatible with the agricultural, forested and natural condition of the Property and which minimizes erosion and adverse effects on scenic landscape quality. Trails shall be constructed and maintained to minimize erosion and shall not be paved without the prior written consent of the Conservancy upon a showing that paving is necessary to correct, control or prevent erosion. Fences necessary for the control of trail uses shall not be constructed without the prior written consent of the Conservancy. Except with the Conservancy's consent, fencing shall be sited so as not to obstruct the existing trail system on the property.

F. Hunting, Fishing, and Other Recreational Activities. Owner, its guests or lessees, reserve the right to lawfully hunt with or without dogs, shoot with or without dogs, horseback ride, fish and conduct field trials on the property, train dogs, and the right to lease all or any portion of the Property for all the above-mentioned activities not prohibited by this Conservation Easement.

G. Third Party Access. This Conservation Easement does not grant the general public or any third party any right to enter upon any part of the Property.

H. Right to Create and Follow a Forestry Management Plan. The Owner may conduct accepted forest management practices (as determined by the Michigan Department of Natural Resources), after obtaining prior written approval for the forestry management plan from the Conservancy.

I. Limited Vehicular Use. The Owner may operate a motor vehicle or other necessary equipment on the property in conducting forestry management or other management practices in accordance with an approved management plan or as necessary in any corrective or recovery action whether in an emergency or not, as permitted in this Conservation Easement.

6. RIGHTS OF THE CONSERVANCY. The Owner confers 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. Furthermore, the Conservancy has the right to enter the Property at reasonable times to enforce compliance with or otherwise exercise its rights under, this Conservation Easement. The Conservancy may not, however, unreasonably interfere with the Owner's use and quiet enjoyment of the Property.

Property by Owner or a third party.

H. Water Courses. Natural watercourses, lakes, wetlands, or other bodies of water may not be altered.

I. Vehicles. Motorized vehicles such as, but not limited to, automobiles, trucks, sport utility vehicles, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles may not be operated on the Property, except as permitted in sections 5 and 6 below.

J. Signs and Billboards. Billboards are prohibited. Signs are prohibited, except the following signs may be displayed to state:

- (1) The name and address of the Property or the owner's name.
- (2) The area is protected by a conservation easement.
- (3) Prohibition of any unauthorized entry or use.
- (4) An advertisement for the sale or rent of the Property.
- (5) Signs as permitted in section 6.E below.

5. PERMITTED USES. The Owner reserves for himself and his personal representatives, heirs, successors, and assigns all ownership rights, which are not expressly restricted by this Conservation Easement. In particular, the following rights are reserved: [EDIT AS APPROPRIATE]

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 Existing Structures. The Owner retains the right to maintain, renovate, and replace the existing structure(s) as noted in the Baseline Documentation Report 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 existing structures, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval. Such approval shall not be unreasonably withheld.

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) _____

D. Property Management Plan. The Owner and Conservancy have agreed to mutually develop a written Management Plan for the Property. The Management Plan shall detail how the property shall be managed and used in keeping with the Conservation Values and Purposes of this Conservation Agreement. The Owner agrees to manage the Property in accordance with the Management Plan.

(1) The Conservancy has no right to permit others to enter the Property. However, upon prior arrangement with the Owner, the Conservancy may invite small groups of naturalists, scientists, students, or Conservancy members to enter the Property for educational or scientific purposes under the Conservancy's supervision. The general public is not granted access to the Property under this Conservation Easement.

(2) The Conservancy shall have access to the Property under this Conservation Easement via [ROAD OR OTHER ACCESS AND DESCRIPTION OF THE ACCESS LOCATION].

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 of this Conservation Easement 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. Right of Enforcement against Trespass. In the event the terms of this Conservation Easement are violated by the acts of trespassers or other third parties that the Owner could not reasonably have anticipated or prevented, the Owner agrees, at the Conservancy's option, to join in any suit, to assign their right of action to the Conservancy, or appoint the Conservancy their attorney-in-fact, for the purposes of pursuing enforcement action against the responsible parties. Notwithstanding anything in this section to the contrary, this section shall not limit the Conservancy's ability to bring any action, wither in law or equity, against the owner for any violation of the Conservation Easement.

E. 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.

F. Limited Vehicular Use. The Conservancy may operate a motor vehicle or other necessary equipment on the property as necessary in any corrective, preservation or recovery action, whether in an emergency or not, as permitted in this Conservation Easement.

7. CONSERVANCY'S REMEDIES. This section addresses cumulative remedies of the Conservancy and limitations on these remedies.

A. Forbearance or Delay in Enforcement. A delay in enforcement or forbearance by the Conservancy to exercise its rights under this Conservation Easement in the event of any breach of any provision of this Conservation Easement by Owner shall not be deemed or construed to be a waiver by the Conservancy of such provision, or of any subsequent breach of the same or other provision of this Conservation Easement, or of any of the Conservancy's rights under this Conservation Easement. No delay or omission by the Conservancy shall impair such right or remedy or be construed as a waiver.

B. Waiver of Certain Defenses. The Owner hereby waives any defense of laches, estoppel or prescription.

C. Acts Beyond the Owner's Control. Nothing contained in this Conservation Easement shall be construed to entitle the Conservancy to bring an action against the Owner for any injury or modification to the Property resulting from causes beyond the Owners' control, including, but not limited to, unauthorized actions by third parties, natural disasters such as unintentional fires, floods, storms, natural earth movement, or even the Owner's prudent action in response to emergency

conditions resulting in changes to the Property. The Owner has no responsibility under this Conservation Easement for such unintended injury or modification, except the requirement to cooperate with the Conservancy in any legal action as detailed in section 6.D above.

D. 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.

(1) However, if at any time the Conservancy determines, at its sole discretion, that the violation constitutes an immediate threat of irreparable harm, no written notice shall be required. In such an event the Conservancy may immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property.

(2) 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.

E. 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 or in equity to enforce the terms of the Conservation Easement. In the case of immediate or irreparable harm, or if the 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.

(1) 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.

(2) If a court of competent jurisdiction determines that the Owner has failed to comply with this Conservation Easement, the Owner shall reimburse the Conservancy for all litigation costs and attorney's fees, and all costs of corrective action or property restoration incurred by the Conservancy.

F. Unreasonable Litigation. If a court of competent jurisdiction determines that litigation initiated by the Conservancy against the Owner was brought without reasonable cause or in bad faith, the Owner may ask the court to require the Conservancy to reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action.

G. Actual or Threatened Non-Compliance. The Conservancy's rights under Section 7 apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this Conservation Easement are 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.

H. Cumulative Remedies. The preceding remedies of the Conservancy are cumulative. The Conservancy may invoke any, or all, of the remedies if there is an actual or threatened violation of this Conservation Easement.

I. Cost of Enforcement. All reasonable costs incurred by the Conservancy in enforcing the terms of this Conservation Easement against the Owner, including, without limitation, costs and expenses of suit and reasonable attorney fees, and any costs of restoration necessitated by the Owner's violation of the terms of this Conservation Easement shall be borne by the Owner; provided, however, that if the Owner ultimately prevail in a judicial enforcement action, each party shall bear its own costs except for any unreasonable litigation as provided in subsection 7.F above.

8. NOTIFICATION PROVISION. The Conservancy is entitled to 60 days written notice whenever its approval is required under this Conservation Easement. If the Conservancy fails to respond within 120 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 six months. If the approved activity is not completed within six months after the approval date, then the Owner must re-submit the written application to the Conservancy.

9. CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.

A. This Conservation Easement is 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.

10. 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.

A. 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 Property, including the maintenance of adequate liability insurance coverage. The Owner remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and all such applicable federal, state, and local laws, regulations, and requirements. The Owner shall keep the Property free and clear of all liens arising out of any work performed for, materials furnished to, or obligations incurred by the Owner.

B. The Owner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authorities, including taxes imposed upon or incurred as a result of this Conservation Easement, and shall furnish the Conservancy, upon its request, satisfactory evidence of payment.

C. 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 indemnify, defend and hold harmless the Conservancy its members, trustees or directors, officers, employees, agents, successors and assigns from and against all liabilities, penalties, fines, charges, costs losses, damages, expenses, causes of actions, claims, demands, orders, judgments, or administrative actions, including attorneys fees, arising during the term of the Owner's ownership of the Property.

D. During any period in which the Owner maintains public liability insurance with respect to the Property or the activities conducted thereon, it shall (upon the Conservancy's request) cause the Conservancy to be named as an additional insured, as its interests may appear, with respect to such liability coverage.

11. HAZARDOUS MATERIALS. The Owner represents and warrants that after reasonable investigation, the Owner has no knowledge of a release of hazardous substances or hazardous wastes on the Property. The Owner agrees to protect and defend the Conservancy against any claims of hazardous material contamination on the Property; including the violation of any local, state or federal law, statute, regulation or ordinance or any administrative order.

A. The Owner represents and warrants that to the best of its knowledge, no substance defined, listed or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property.

B. The Owner represents and warrants that to the best of its knowledge, there are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and that no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state and local laws, regulations and requirements.

C. The Owner represents and warrants that the Owner and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use.

D. The Owner represents and warrants that there is no pending or threatened litigation in any way affecting, involving, or relating to the Property.

E. The Owner represents and warrants that no civil or criminal proceedings or investigations have been instigated at any time or are now pending and no notices, demands or orders have been received arising out of any violation or alleged violation of, or failure to comply with any federal, state, or local law, regulation or requirement applicable to the Property or its use, nor did there exist any facts or circumstances that the Owner might reasonably expect to form the basis of any such proceedings, investigations, notices, claims, demands or orders.

F. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement, as hazardous, toxic, pollutant, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, the Owner agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Conservancy, in which case the Conservancy shall be responsible for the same.

12. 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 will be assigned only to a public body or to a private non-profit organization which is a qualified organization as described in Paragraph 9.C of this Conservation Easement.

13. TERMINATION. This Conservation Easement may be extinguished only in the event of an unexpected change in condition, which causes it to be impossible to fulfill the Conservation Easement's Purposes, or by exercise of eminent domain.

A. Unexpected Change in Conditions. If unexpected circumstances render the Purposes of this Conservation Easement impossible to fulfill, this Conservation Easement may be partially or entirely terminated by a subsequent judicial order. In that event the Conservancy will be entitled to compensation in accordance with the provisions of IRC Treasury Regulations Section 1.170A-14(g)(6)(ii).

B. Eminent Domain. If the Property is taken, in whole or in part, by power of eminent domain, the Conservation Easement over the effected portion of the Property will cease. The Conservation Easement will remain in full force and effect for the remainder, if any, of the Property. In that event 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).

14. 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, Subpart 11 of Part 21 of the Michigan Natural Resources and Environmental Code MCL 324.2140 et seq.

15. NOTICES. For purposes of this agreement, 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.

16. SEVERABILITY. If any portion of this Conservation Easement, or the application thereof to any person or circumstance, is determined by a court of competent jurisdiction to be invalid, the remaining provisions will remain in force.

17. SUCCESSORS. This Conservation Easement is binding upon, and inures to the benefit of the Owner and the Conservancy and their personal representatives, heirs, successors in interest, and assigns and shall continue as a servitude running in perpetuity with the Property. All subsequent owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the Owner.

18. TERMINATION OF RIGHTS AND OBLIGATIONS. A party's future rights and obligations under this Conservation Easement terminate upon a valid transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.

19. RECORDATION. The Conservancy shall record this instrument in a timely fashion in the official records of [APPROPRIATE COUNTY NAME] County, Michigan, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement

20. MICHIGAN LAW. This Conservation Easement will be construed in accordance with Michigan Law.

21. ENTIRE AGREEMENT. This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings relating to the Conservation Easement, which are merged herein. No alteration or modification of this Conservation Easement shall be valid or binding unless contained in an amendment that complies with Section 22.

22. AMENDMENT. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, the Owner and the Conservancy are free to jointly amend this Conservation Easement; provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of the Conservancy under any applicable law, and any amendment shall be consistent with the Purposes of this Conservation Easement and shall not affect its perpetual duration. Any such amendment must be in writing and signed by both parties and recorded in the official records of [APPROPRIATE COUNTY NAME] County.

23. SUBSEQUENT TRANSFERS. The Owner agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The Owner further agrees to give written notice to the Conservancy of the transfer of any interest at least 20 days prior to the date of such transfer. The failure of the Owner to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

24. NO FORFEITURE. Nothing contained herein will resort in a forfeiture or reversion of the Owner's title in any respect.

25. JOINT OBLIGATION. The obligations imposed by this Conservation Easement upon the Owner shall be joint and several.

26. SUBORDINATION. At the time conveyance of this Conservation Easement, the Property is subject to a mortgage, the holder of which has agreed by separate instrument, a copy of which is attached hereto and incorporated by this reference, to subordinate its rights in the Property to the extent necessary to permit the Conservancy to enforce the purpose of this Conservation Easement in perpetuity and to prevent any modification or extinguishment of this Conservation Easement by the exercise of any rights of the mortgage holder.

Attachments

- A. Baseline Document
- B. Site Map