

**AGRICULTURAL AND CONSERVATION EASEMENT DEED DRAFT**

**OWNER:**

**CONSERVANCY:** Leelanau Conservancy

105 N. First Street

Leland, MI 49654

**PROPERTY:** The protected property consists of 134 acres, more or less, located in Section 28, Township 29N, Range 13W, Leelanau County, Michigan, as described in deeds recorded in Liber \_\_\_\_\_, Pages \_\_\_\_\_ at the Leelanau County Registry of Deeds, said parcels being more fully described in Exhibit A, attached hereto and incorporated herein (the "Protected Property").

**CONVEYANCE:** This Agricultural and Conservation Easement Deed ("Easement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 ("Effective Date"), by the Owner, as Grantor, to the Leelanau Conservancy ("Conservancy"), as Grantee, and with a right of enforcement to the United States of America ("United States") acting by and through the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") acting on behalf of the Commodity Credit Corporation, as its interest appears herein, as this Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program ("ACEP") 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values by limiting nonagricultural uses of the Protected Property. The Owner, Conservancy and United States are collectively referred to herein as the "Parties."

**THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:** Now therefore, for good and valuable consideration, the adequacy and sufficiency of which the Parties hereby acknowledge, the Owner conveys and warrants to the Conservancy a perpetual conservation easement over the Protected Property, the scope, terms and conditions of which are set forth herein. This conveyance is a grant from the Owner to the Conservancy. As consideration for such grant, payment has been made to the Owner in the amount of \$\_\_\_\_\_. Under the authority of the ACEP program, the Natural Resource Conservation Service (hereinafter referred to as "NRCS" "United States") has contributed \$\_\_\_\_\_ toward the purchase of this Easement.

**1. PURPOSES OF THIS EASEMENT AND COMMITMENTS OF THE PARTIES.**

A. The Conservation Purposes.

The purposes of this Easement, in order of priority, are to:

- i. Protect the agricultural use and related Conservation Values of the Protected Property, as further described in this Easement, by limiting nonagricultural uses of such land pursuant to the terms of this Easement;

- ii. Preserve open space.
  - a. For the scenic enjoyment of the general public, and
  - b. Pursuant to clearly delineated governmental conservation policies, as such policies are further described in this Easement, which will yield a significant public benefit; and
- iii. Protect a relatively natural habitat of wildlife and plants.
- iv. These purposes will collectively be referred to herein as the "Conservation Purpose" of this Easement. The Easement hereby conveyed is made exclusively for the Conservation Purpose for the public benefit. This Easement assures that the Protected Property will be perpetually preserved in its predominately agricultural, natural, scenic and open-space condition, and the Owner agrees that any use of the Protected Property that is inconsistent with the Conservation Purpose is expressly prohibited.

B. The Owner.

- a. The Owner is the fee simple title owner of the Protected Property and is committed to preserving the Conservation Values of the Protected Property.
- b. The Owner agrees to confine the use of the Protected Property to activities that are consistent with the Conservation Purpose and the preservation of the Conservation Values.

C. The Conservancy.

- a. The Conservancy is a qualified holder of this Easement committed to preserving the Conservation Values of the Protected Property and upholding the terms of this Easement.
- b. The Conservancy is a tax-exempt, nonprofit Michigan corporation qualified under Sections 501(c)(3) and 170(h)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); and under the Conservation and Historic Preservation Easement, Sub Part 11 of Part 21 of Natural Resources and Environmental Protection Act, MCL § 324.2140 *et seq.*
- c. The Conservancy has the resources to enforce this Easement.
- d. The Conservancy protects natural habitats of fish, wildlife, plants, and the ecosystems that support them.
- e. The Conservancy 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 Protected Property possesses agricultural, scenic, 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 Easement. Certain Conservation Values may have relevance to more than one Purpose, even though they are listed only once. The Conservation Values and relevant supportive public conservation policy include the following:

- A. The Protected Property consists primarily of productive agricultural land. Approximately 27% of the soils are classified as Prime, Unique, or Locally Important Farmland, and/or Soils of Local Importance by the Natural Resources Conservation Service, U.S. Department of Agriculture. The primary purpose of this Easement is to protect the agricultural use and future viability and related conservation values of eligible land by limiting nonagricultural uses of the Protected Property in perpetuity.
- B. The Protected Property contains significant natural habitat in which wildlife, plants or the ecosystems which support them, thrive in a natural state, as demonstrated by:
  - i. The Protected Property contributes to a vital corridor of protected land that serves to promote wildlife movement and create a natural "greenway" in Cleveland Township.
  - ii. Protection of the Protected Property in its natural and open space condition helps to ensure the quality of water resources for Glen Lake.
  - iii. The Protected Property lies in close proximity to the following conserved properties which similarly preserve existing natural habitat:
    - a. XXX Conservation Easement, Section 28, Township 29 North, Range 13 West, Recorded December 21, 2011 at Liber 1106, Page 733 at Leelanau County Register of Deeds.
    - b. Palmer Woods Forest Preserve, Sections 18-19 and 30, Township 29 North, Range 13 West.
- C. Pursuant to U.S. Treasury Regulation § 1.170A-14 for Qualified Conservation Contributions, the Protected Property provides open space for the scenic enjoyment of the general public and will yield a significant public benefit through:
  - i. A scenic landscape, open space, and agricultural character which would be impaired by modification of the Protected Property.
  - ii. A scenic panorama visible to the public from publicly accessible sites, such as Nemeskal Road, which would be adversely affected by

modifications of the land and will enhance tourism if preserved in its natural and agricultural state.

- iii. 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 Easement.
  - iv. The Protected Property lies in close proximity to the following conserved properties which similarly preserve the existing agricultural character and/or natural habitat:
    - a. XXX Conservation Easement, Section 28, Township 29 North, Range 13 West, Recorded December 21, 2011 at Liber 1106, Page 733 at Leelanau County Register of Deeds.
    - b. Palmer Woods Forest Preserve, Sections 18-19 and 30, Township 29 North, Range 13 West.
  - v. The Protected Property contains significant areas with soil classifications designated as Prime, Unique, or Locally Important Farmland.
  - vi. The Protected Property is desirable for substantial residential development because of its size, location and scenic views and in the absence of this Easement the Protected Property could be developed in a manner that would destroy the Conservation Values.
- D. The Protected 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:
- i. 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."
  - ii. Agricultural Conservation Easement Program ("ACEP") 16 U.S.C. 3865 *et seq.*
  - iii. 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.*;
  - iv. Water Pollution Control Act of 1972, 33 USC §§ 1251 - 1387 (§1251 Goals & Policy; § 1344 Wetlands permitting, aka "Section 404" Clean Water

Act.);

- v. Farmland and Open Space Preservation, Part 361 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.36101 *et seq.*;
- vi. Soil Conservation, Erosion, and Sedimentation Control, Parts 91 & 93 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.9101 *et seq.*; 324.9301 *et seq.*; (Legislative Policy § 324.9302);
- vii. Leelanau County General Plan: Farmland is a special natural resource of the peninsula. Orchards are the dominant land cover. They contribute greatly to the economic wellbeing of the peninsula as well as to its beauty and pastoral character. As important as this renewable natural resource is, there has been a decline in the number of acres devoted to farming over the past several decades. Typically, once farmland is converted to another use, it rarely reverts to agriculture. Fragmentation of farmland through the splitting of large farmland parcels for residential use resulted in farmland loss as much or more than the farmland converted to actual residences, yards, and roads. The increasingly dispersed settlement pattern across the peninsula is the reason why this irreplaceable resource is being chipped away. The future of the peninsula depends on how its people manage its abundant natural resources.
  - a. Agriculture, forest land, and open space protection should play a leading role within the planned future land use pattern of each local Township.
  - b. The implications of the continuation of current trends on the future character of the peninsula are disastrous. Unless coordinated and integrated land use planning occurs at both the county and local levels of government very soon, the landscape features of the peninsula that make it so attractive to year round and seasonal current residents and tourists will be lost or badly damaged. Once lost, it will be very difficult, if not impossible to restore.
  - c. The General Plan also includes the following specific action statements centered on preserving farmland.
    - i. The County should help educate citizens and local governments about farmland protection options and prepare model ordinances that protect farmland while permitting farmers to capture the development value of their land.
    - ii. The county should design comprehensive programs to protect farmland and open space involving the purchase and transfer of development rights along with a range of implementation options for approval by citizens and local

governments in the county.

**3. BASELINE DOCUMENTATION REPORT.** Specific Conservation Values of the Protected Property have been documented in a natural resource inventory signed by the Owner and the Conservancy. This "Baseline Documentation Report," which is incorporated herein by reference, consists of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features, and photographs. The parties acknowledge that the Baseline Documentation Report is an accurate representation of the Protected Property at the time of this Agricultural and Conservation Easement Deed. The Conservancy may use the Baseline Documentation Report in enforcing the provisions of this Easement but is not limited to the use of the Baseline Documentation Report to show a change in conditions. Any characterization of the terms of this Easement contained in the Baseline Documentation Report shall not be interpreted so as to alter, amend, or otherwise modify this Easement. In any conflict or inconsistency between the terms of this Easement and the Baseline Documentation Report, the terms of this Easement shall prevail.

**4. AGRICULTURAL LAND EASEMENT PLAN.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. Grantor agrees the use of the property will be subject to the ALE Plan on the Protected Property.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Grantee and Grantor agree to update the Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.

The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

**5. LIMITATION ON IMPERVIOUS SURFACES.** Impervious surfaces will not exceed two percent (2%) of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property; U.S. Department of Agriculture Natural Resources Conservation Service including, but not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE.

**6. PERMITTED USES.** The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the ALE

Plan and do not violate Federal laws, including Federal drug laws. No uses will be allowed that decrease the ALE's protection for the agricultural use and future viability, and related conservation values of the Protected Property. Allowed uses of the Protected Property are subject to the qualifications stated below:

- A. Intent. At the time of executing this Easement, the Protected Property includes the parcels described in Exhibit A. Except as otherwise expressly provided in this Easement, it is further the intention of the parties that all buildings and structures on the Protected Property shall be located within the Farmstead Complex as further described and delineated in the in Exhibit C which is appended to and made a part of this Easement.
- B. Right to Convey. The Owner retains the right to sell, lease, mortgage, bequeath, or donate the Protected Property. Any conveyance will remain subject to the terms of this Easement and all subsequent owners shall be bound by the terms of this Easement.
- C. Right to Develop Within Farmstead Complex. The Owner retains the right to construct, maintain, repair, replace and enlarge within the Farmstead Complex buildings, structures and/or improvements that support the agricultural uses, including, and not limited to, a residence, farm-labor housing and/or to support the sale and processing of agricultural products grown, produced, or collected predominantly on the Protected Property; provided that such construction, maintenance, repair, replacement and enlargement is limited to structures and improvements that support the agricultural use of the protected property. All structures and improvements must be located within the designated Farmstead Complex. The Farmstead Complex has been located so as to cause minimal impact to Prime, Unique, and Locally Important Farmland. Such construction shall be conducted in accordance with this Paragraph (6)(C)(i)-(iii) and the other terms of this Easement within the Farmstead Complex. The Farmstead Complex boundary and location may be adjusted with prior written consent of the Grantee and the Chief of NRCS or his or her authorized designee (Chief of NRCS). The Farmstead Complex may not increase in size and the adjusted Farmstead Complex must provide equal or greater protection of the agricultural use and future viability and related conservation values of the Protected Property. A written request must be given to the Conservancy with the new proposed location and reasoning. If approved, a survey of the new location will be required.

The total area of the Farmstead Complex shall be limited to no more than five (5) acres for the Farmstead Complex to allow for the appropriate separation of temporary housing and/or living quarters as described herein from the existing chemical storage and loading facilities. The total impervious surface area, defined in Paragraph (5), shall not collectively exceed two percent (2%) of the total surface area of the Protected Property defined at the time this Easement is recorded. Notwithstanding the foregoing, seasonal structures constructed and maintained in accordance with NRCS-approved conservation practices are exempt from the impervious surface limitation. By way of example, but not by way of limitation, a seasonal structure is a "hoop house": a floorless, framed

structure covered with plastic or other material during the colder months which is removed, exposing the soil surface, during the warmer months.

- i. Structures must be in conformance with all applicable federal, state and local laws, ordinances and regulations. At least thirty (30) days prior to any construction, including the clearing of any trees or other vegetation or the grading or other alteration of the surface of the Protected Property in preparation for such construction, the Owner shall provide notice to the Conservancy, pursuant to process set forth in Paragraph (6)(c) below, illustrating the size and location of the construction area to ensure compliance with the terms of this Easement. No notice is required for the construction, maintenance, repair, or replacement of fences and seasonal structures such as hunting blinds or a hoop house.
- ii. New structures and improvements to be used solely for agricultural purposes, including the sale and processing of agricultural products predominantly produced on the Protected Property may only be built within the Farmstead Complex. Any future farm-labor housing must be limited to the Farmstead Complex.
- iii. The placement or construction of any human-made building, structure and improvement outside the Farmstead Complex is prohibited, except as otherwise expressly provided in this Easement and as follows:
  - a. Existing fences may be repaired and replaced and new fences may be built on the Protected Property as necessary for agricultural operations on the Protected Property, including customary management of livestock and to delineate the boundary of the Protected Property, provided that such fencing shall not unnecessarily impede the movement of wildlife in non-agricultural areas of the Protected Property.
  - b. Existing roads, farmlanes and/or two-tracks, as identified in the Baseline Documentation Report, may be maintained and repaired in their current state. No new roads may be constructed, except for (i) unpaved roads, farmlanes and/or two-tracks necessary for agricultural operations on the Protected Property, provided that the impacts to Prime, Unique, and Locally Important Farmland are minimized; (ii) paved roads within the Farmstead Complex as long as the total impervious surface area limitation specified above is not exceeded in accordance with Paragraph (5) and (iii) roads related to the easement of access described in Paragraph (6)(D).

- c. Installation or placement of new utilities and related infrastructure is prohibited, except as described in Paragraph (6)(D), and utilities for agricultural and farm-labor housing buildings within the Farmstead Complex, as delineated hereinabove, including small, noncommercial wind generation and solar generation for the agricultural and residential needs of the Protected Property within the Farmstead Complex, shall be permitted as long as the total impervious surface area limitation is not exceeded in accordance with Paragraph (5). Under no circumstances may the topography be permanently altered.
  - d. All earth movement related to placement or construction of any human-made building, structure and improvement within the Farmstead Complex must occur within a specific timeframe as approved by the Conservancy. Excepting the general footprint of permanent improvements, such as new structures, foundations and improvements within the Farmstead Complex, topography must be returned to pre-existing conditions in accordance with the Baseline Documentation Report, incorporated herein by reference. The granting of easements for utilities and installation of new utilities is prohibited when the utilities will adversely impact the agricultural use and future viability and related conservation values of the Protected Property as determined by the Conservancy in consultation with the Chief of NRCS.
  - e. The Owner retains the right to physical/legal access and utilities to nearby unrestricted acreage as described in, and as limited by, Paragraph 6(D).
- D. Agricultural Operations. Owner retains the right to use the Protected Property for agricultural production, or to permit others to use the Protected Property for agricultural production, in accordance with applicable law and in accordance with the NRCS Agricultural Land Easement Plan (ALE Plan) described in Paragraph (4). As used herein, "agricultural production" shall mean undeveloped land used for the production, processing, storage or wholesale or retail marketing of horticultural, silvicultural and agricultural crops, livestock and livestock products (including breeding, boarding and grazing), and subject to the following restrictions, as applicable:
  - i. Construction of standard structures for the purpose of supporting vine or other fruit and vegetable crops or other horticultural crop, such as a trellis or a hoop house, are permitted.
  - ii. Excavation conducted in accordance with Paragraph (7)(K) for the purposes consistent with agricultural uses, such as irrigation pipes, for use on the Protected Property is permitted consistent with this Easement. Disrupted surfaces shall be restored in a manner consistent with agricultural uses, including replacement of a minimum of four (4) inches of topsoil and seeding within a reasonable period of time after disruption.

- iii. Cutting of timber and other vegetation may be permitted with prior approval of the Conservancy for the purpose of expanding orchards, vineyards or other fruit-bearing stock upon submittal of an amended ALE Plan, as defined and approved in accordance with Paragraph (4) above., In addition, cutting of timber must be conducted in accordance with Paragraph (F) below., If approved, such new orchard, vineyard, cover crop, row crops or other fruit-bearing stock must be planted in the cleared area within 18 months of timber removal. Failure to plant any such stock within this timeframe shall be considered a violation of the terms of this Easement triggering all rights and remedies available to the Conservancy.
  - iv. Construction and maintenance of farmstands, cooling pads, and temporary, seasonal or moveable structures and improvements related to agricultural uses and/or to support the sale of agricultural products grown, produced, or collected predominantly on the Protected Property, provided said buildings or structures are within the impervious surface limitation in accordance with Paragraph (5) and that any such permanent agricultural structures that are to be located outside of the Farmstead Complex described in Paragraph (6)(C) have prior written approval by the Conservancy as neither individually nor collectively having an adverse impact on the agricultural use and future viability and related conservation values of the Protected Property and are consistent with the ALE Plan described in Paragraph (4).
  - v. Grazing, haying, harvesting for hay and noncrop seed production, mowing, constructing fire breaks, conducting fire presuppression and rehabilitation activities, and conducting common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Owner must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified by Conservancy or NRCS. Determinations of nesting seasons for birds whose populations are in significant decline will be made in writing to the Owner, or set forth within the ALE Plan for the Protected Property.
- E. Forest Management and Timber Harvest. Forest management and timber harvesting is permitted, provided all forest management and timber harvesting is carried out in accordance with all applicable local, State, Federal, and other governmental laws and regulations and to the extent reasonably practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. A Forest Management Plan is required prior to any commercial forest management activities or harvesting, updated at least every twenty five (25) years and shall be provided to the Conservancy for review and approval pursuant to the terms set forth in

Paragraph (F) herein. The Forest Management Plan must be prepared by a professional resource manager, in consultation with the Grantee. and approved by the NRCS State Conservationist or his or her designee (State Conservationist). Forest Management Plans may include a forest stewardship plan, as specified in Section (5) of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a), another practice plan approved by the State Forester, or another plan determined appropriate by the State Conservationist.

A forest management plan shall not be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted roads, utilities, buildings and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

- i. Management of the forest for the growth and harvest of live trees, including, but not limited to, the production of forest products for personal use or commercial sale is permitted on the Protected Property in any non-wetland areas and in accordance with the following criteria:
  - a. Any commercial harvest is done in accordance with Forest Management Plan.
  - b. Any commercial harvest must be marked and supervised by a professional forester in order to ensure adherence to the Forest Management Plan and protection of the Conservation Values.
  - c. It is conducted under written contract(s) with the forester and a competent logging operator(s). The contract(s) shall specify relevant requirements for compliance with this Conservation Easement and the approved Forest Management Plan.
  - d. The forested character of the Protected Property is predominantly maintained for habitat and scenic values.
  - e. It is undertaken in a manner not detrimental to the Conservation Values of the Protected Property.
- ii. Pruning, cutting, or removing trees or other vegetation is permitted without a forest management plan under the following conditions:
  - a. to respond to real danger to a structure or improvement, road, or humans in frequently used areas due to a structural or health defect of the tree;
  - b. to reduce a natural threat of infestation or disease posed by infested or diseased tree(s) or vegetation or otherwise to foster forest health (as documented and recommended by a registered forester or other natural resource specialist and as approved by

the Conservancy);

- c. to control invasive non-native plant species that endanger the health of native species (as documented by a registered forester or other natural resource specialist and as approved by the Conservancy); and/or
  - d. to clear trees or vegetation to allow for construction, maintenance, repair, or replacement of any structure or improvement (such as, but not limited to, buildings, fences, and roads) that is expressly permitted by the terms of this Easement.
- iii. Trimming, clearing and removal of trees, shrubs, and other vegetation is permitted (1) for the purpose of (i) construction, maintenance, repair, replacement and enlargement of buildings, structures and improvements expressly permitted under the terms of this Easement; (ii) construction, repair and maintenance of permitted roads, farmlanes and/or two-tracks; (iii) removal or prevention of hazards to persons and/or property; and (iv) selective pruning and grounds maintenance; and (2) as otherwise reasonably necessary to conduct those uses and activities that are expressly permitted under the terms of this Easement, including but not limited to agricultural activities. Any harvesting or cutting must not denude the forest floor of dead woody debris for habitat and soil productivity purposes as determined by the Conservancy.
- iv. A Forest Management Plan must include the following:
- a. Date the plan was prepared and the date of expiration of the plan (no more than 25-year term);
  - b. Reference to this Conservation Easement, the Conservation Values of the Conservation Easement, and forest management criteria required in Paragraph (F);
  - c. Specific management goals and objectives;
  - d. Stand delineation maps with acreage of stands;
  - e. Prescription of silvicultural treatments used to achieve stand goals;
  - f. Timeline for implementation with anticipated harvest schedule; and
  - g. Signature page, including signatures of landowner, forester, and Conservancy.
- vi. The Owner shall provide the Conservancy with a written Notice of Harvest at least thirty (30) days prior to the commencement of any forest

harvesting activities proposed to be conducted pursuant to Paragraph (F). The Owner shall also notify the Conservancy of harvest completion. The Notice of Harvest shall include:

- a. The location of the harvest, explanation of harvest method, and equipment to be used;
- b. Stocking level and size class distribution information (both before and after harvest);
- c. Contemplated dates for the harvest;
- d. A plan for ingress and egress and the location of staging area(s);
- e. Required reclamation work; and
- f. Description of any other activities and practices intended to achieve compliance with the requirements of this Conservation Easement.

- F. Renewable Energy Production. Noncommercial renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within the farmstead complex and impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of this Easement.
- G. Hunting and Wildlife Blinds. The Owner retains the right to construct and place blinds on the Property for the purpose of hunting and viewing wildlife. Blinds shall not have a foundation constructed with concrete or other permanent materials. The Owner may affix permanent tree stands that are constructed from wood or fasten tree stands that are portable and non-permanent made from any material that is common or standard for these devices.
- H. Pond Construction and Wetland Restoration. The Owner is only permitted to construct ponds and restore wetlands in accordance with Paragraph (7)(K).
- I. Mineral Extraction. Mining or extraction of soil, sand, gravel, oil, natural gas, or other mineral is prohibited. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (6)(I).
- J. Recreation and Educational Activity. Undeveloped recreational and educational activities are permitted as long as such activities are consistent with the Conservation Purpose of this Easement and do not adversely impact the soils

and/or agricultural operations on the Protected Property. Except as otherwise expressly provided in this Easement, recreational and educational structures or improvements may only be built within the Farmstead Complexes; provided, that under no circumstances shall athletic fields, golf courses or driving ranges, commercial airstrips or helicopter pads, or any other improvement or activity that is inconsistent with current or future agricultural production be permitted on the Protected Property.

- K. Right to Maintain Roads and Gates. The Owner retains the right to maintain the existing farm lanes and other two-tracks in their current unpaved and pervious condition and construct and maintain gates to control access.
- L. Right to Operate Motorized Vehicles. The Owner may not use motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or other permitted uses on the Protected Property, provided that no use of motorized vehicles may create impacts that are detrimental to the productivity of the soils of the Protected Property and the Conservation Purpose of the Conservation Easement. The use of snowmobiles on snow is permitted on the Protected Property, provided that no use of snowmobiles shall create impacts that are detrimental to the productivity of the soils on the Protected Property nor be inconsistent with the Conservation Purpose of this Easement.
- M. Right to Place Signs. Signs are permitted on the Protected Property to identify the Protected Property and/or owners thereof, to advertise products or services provided by the farm, to identify the farm or ranch as a participant in RCPP and the Leelanau Conservancy's farm programs, and to advertise the sale or lease of the Protected Property. Signs shall be limited to 25 square feet. However, signs commonly used for prohibiting unauthorized access or use may be placed along the boundaries of the Protected Property. In order to maintain the scenic Conservation Values protected by this Easement, any other signs placed on the Protected Property require written Conservancy consent

**7. PROHIBITED ACTIONS.** Any activity on, or use of, the Protected Property that is inconsistent with the Conservation Purpose or that is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited except as otherwise expressly permitted in Paragraph (6) above:

- A. Subdivision: Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited, except where State or local regulations explicitly require subdivision to construct residences for employees working on the Protected Property. Grantor must provide written notice and evidence of such requirements to Grantee and the Chief of NRCS or his or her authorized designee (Chief of NRCS) prior to division of the Protected Property.
- B. Commercial Activities. Any commercial activity on the Protected Property

unrelated to the farm and its operation except for *de minimis* commercial recreational activity within the meaning of Code Section 2031(c)(8)(B) that does not harm the agricultural use, future viability, and related conservation values of the Protected Property.

- C. Industrial or Commercial Uses. The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Protected Property expressly permitted by this Easement) including, but not limited to, commercial feed lot, any retail sales or service business, restaurant, night club, campground, trailer park, motel, hotel, commercial recreation facility, gas station, retail outlet, or facility for the manufacture or distribution of any product (other than products grown or produced in connection with activities expressly permitted the Protected Property).
- D. Construction of Buildings and Other Structures and Improvements. The construction or placement of any human-made modifications including buildings, camping accommodations, mobile homes, fences, roads, parking lots or any other structure is prohibited. All structures and improvements are subject to the impervious surface limitation in Paragraph (5) herein.
- E. Cutting Vegetation. Cutting down or otherwise destroying or removing trees or other vegetation whether living or dead, unless consistent with Paragraphs (6)(E).
- F. Dumping. The dumping or accumulation of trash or refuse on the Protected Property, except the storage of agricultural products for use on the Protected Property and by-products generated on the Protected Property.
- G. Water Courses, Ground Water. The alteration of natural water courses, lakes, wetlands, or other bodies of water and the diversion of water from ground or surface sources. Grantor must retain all water rights necessary for present or future agricultural production on the Protected Property and may not transfer, encumber, lease, sell, or otherwise separate such quantity of water rights from title to the Protected Property.
- H. Utilities. The granting of easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms is prohibited.
- I. Mining. Mining or extraction of soil, sand, gravel, oil, natural gas, or other mineral is prohibited, except as provided for in Paragraph (6)(I).
- I. Signs and Billboards. The construction or placement of billboards and signs.
- J. Surface Alteration. Grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

- (i) erosion and sediment control pursuant to a plan approved by the Grantee;
- (ii) as required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or
- (iii) Agricultural activities conducted in accordance with the ALE Plan.

## **8. PROTECTION OF THE UNITED STATES' INTERESTS.**

- A. United States Right of Enforcement. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

- B. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any

representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless United States, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

- C. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law)

concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

- D. Extinguishment, Termination, and Condemnation. The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is \$ \_\_\_\_\_ or \_\_\_\_ percent (\_\_%), hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, \_\_\_\_\_ percent (\_\_%) of the Proportionate Share; and (b) to the United States \_\_\_\_\_ percent (\_\_%) of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

- 9. RIGHTS AND RESPONSIBILITIES OF THE CONSERVANCY.** The Owner conveys the following rights and responsibilities upon the Conservancy to perpetually maintain the Conservation Purpose of the Protected Property including, but not be limited to:
- A. General Rights of Conservancy. The Conservancy has the right to protect the Conservation Values of the Protected Property; monitor the Owner's compliance with the terms of this Easement on the Protected Property; and enforce the terms of the Easement, in accordance with the terms of this Easement, including, but not limited to, this Paragraph (9) and Paragraph (10) (regarding Conservancy's Remedies) below.
  - B. Right to Maintain Baseline Documentation Report. To maintaining the Baseline Documentation Report and update same upon the annual monitoring of the Protected Property in accordance with the terms of Sub-Paragraph (D) below.
  - C. Right to Ensure Consistency of Farm Operations with Plan. To ensure that active farm operations are in compliance with the Agricultural Land Easement Plan for the Protected Property (as further described in Paragraph (4)).
  - D. Right to Investigate of Violations. To investigate potential violations of this Easement, informing NRCS or successor agency of any violations, taking appropriate enforcement action, and providing an annual monitoring report to NRCS or successor agency, including any follow-up or actions needed to maintain compliance with the terms of this Easement. The Conservancy must resolve violations within 60 days of their discovery in accordance with C.F.R. 1491.30. Failure to cure the violation may result in enforcement of the terms of the Easement by the United States.
  - E. Right to Enter. To enter the Protected Property, upon at least 24 hours advanced notice via First Class U.S. mail, annually at reasonable times to monitor the Protected Property and to enforce the Owner's compliance with the Conservation Purpose of, or otherwise exercise its rights under, this Easement in accordance with the terms of this Easement and other applicable policies and guidelines, such as the Standards and Practices of the Land Trust Alliance. In addition to the right to enter annually with notice to routinely monitor this Easement, the Conservancy shall also have the right to enter at other times as follows: 1) with reasonable notice, if the Conservancy has reason to believe that a violation of the Easement has occurred or is about to occur; and 2) without notice, if the Conservancy determines, in its sole and absolute discretion, that a violation has occurred or is threatened that will cause immediate and irreparable harm to the Conservation Values. Notwithstanding the foregoing, the Conservancy may not unreasonably interfere with the Owner's use and quiet enjoyment of the Protected Property or permit others to enter the Protected Property. The general public is not granted access to the Protected Property under this Easement.
  - F. Right to Preserve. To prevent any activity on or use of the Protected Property that is inconsistent with the Conservation Purpose of this Easement or detrimental to the Conservation Values of the Protected Property.

- G. Right to Require Restoration. To require the Owner to restore the areas or features of the Protected Property which are damaged by any activity inconsistent with the terms of this Easement.
- H. Right to Review and Approve. Wherever in this Easement the Owner has reserved rights, and the exercise of such right(s) may impair the Conservation Purpose associated with the Protected Property, the Owner must notify the Conservancy, in writing, before exercising any such reserved right(s), and the Conservancy reserves the right to review and approve such exercise of the Owner's right when such approval is expressly required herein in accordance with this Paragraph (9)(H).

Wherever herein the Conservancy is granted the right to review and approve any proposed plan for the use, modification, restoration or exploitation of any portion of the Protected Property or improvements thereon, such approval shall be granted or denied by the Conservancy, in writing, within thirty (30) days of the date the Owner delivers notice of the proposed plan, unless otherwise provided herein. The Conservancy may obtain an additional thirty (30) day period to examine a proposed plan by notifying the Owner of its intent to extend the time within the original thirty (30) day period. The Owner shall not undertake any activity on the Protected Property during the initial or, if applicable, the extended period, or until it receives approval from Conservancy, whichever is sooner.

- i. The Conservancy's approval for a proposal may be withheld only upon a reasonable determination by the Conservancy that the proposed action(s) would be contrary to or inconsistent with the terms of this Easement or detrimental or adverse to the Conservation Purpose of the Protected Property. The Conservancy may request additional information in support of the request for approval, including without limit, documentation of the Owner's right to undertake the proposal, copies of permits, and other documents that the Conservancy in its sole discretion deems necessary to evaluate whether the proposal complies with this Easement.
- ii. If the Conservancy fails to provide or deny approval within thirty (30), or sixty (60) days if the Conservancy notifies Owner that it requires an additional 30 day review period, the approval shall conclusively be presumed to have been granted, and the Owner shall not be held liable for any action taken consistent with the proposed plan.
- iii. If the Owner fails to notify the Conservancy of any proposed activity that requires notice herein, then the Owner undertakes any such activities and/or incurs any related expenses at its own risk. By way of example only, if, upon discovery of the activity, the Conservancy denies approval for the construction or activity, then the Conservancy may in its sole discretion require the Owner to undo the activity or construction and restore the Protected Property at its own expense. In any action to enforce the terms of this Easement, the fact that the Owner incurred expenses related to the unapproved activity shall not prejudice or limit the Conservancy's available remedies. For purposes of this Easement,

unless the Conservancy's approval is expressly indicated herein to be in its sole and absolute discretion, the Conservancy's approval may not be unreasonably withheld, conditioned, or delayed.

- I. Signs. To place up to four (4) signs on the Protected Property which identify the land as protected by this Easement. The number of additional signs and the location and size of any signs are subject to the Owner's approval, which shall not be unreasonably withheld.

## **10. CONSERVANCY'S REMEDIES.**

- A. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of the Conservancy's right to enforce the terms of this Easement.
- B. Third-Party Violations. Notwithstanding the Owner's obligations under this Easement and the Conservancy's right to require restoration of the Protected Property, the Owner shall have the following rights and obligations for acts or occurrences at the Protected Property beyond the direct or indirect control of the Owner:
  - i. The Conservancy may not bring an action against the Owner for modifications to the Protected Property or damage to the Protected Property or its Conservation Values resulting from natural causes beyond the Owner's control, including natural disasters, unintentional fires, floods, storms, natural earth movement or other acts of God that impair the Conservation Values.
  - ii. The Owner shall be responsible for modifications or damage to the Protected Property that impair or damage the Conservation Values of the Protected Property and result from the acts of third parties whose use of, or presence on, the Protected Property is authorized by the Owner. Owner shall perform such restoration pursuant to and in accordance with a restoration plan prepared by a competent professional selected by the Owner and approved by the Conservancy. The author and contents of the restoration plan shall be subject to the prior written approval of the Conservancy.
  - iii. In the event of an unauthorized third-party violation of the Conservation Values on the Protected Property, the Conservancy shall not seek restoration or exercise remedies against the Owner so long as the Owner had taken reasonable steps to prevent any trespass on the Protected Property or diligently pursues all available legal remedies against the unauthorized third party. In the event actions taken by unauthorized third parties impair the Conservation Values protected by this Easement, the Conservancy reserves the right, either jointly or singly, to pursue all appropriate civil and criminal penalties to compel restoration and seek damages against any unauthorized third party, and, if requested by the Conservancy, the Owner agrees to assign the right to compel restoration against such third parties to the Conservancy; provided that,

notwithstanding the foregoing, the Owner reserves the right, either jointly or singly, to pursue all appropriate civil and/or criminal penalties against any unauthorized third party and an assignment to the Conservancy, if any, shall not supersede or supplant such right of the Owner.

- C. Notice and Demand. If the Conservancy determines that the Owner is in violation of this 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 Protected Property has been injured, to restore the Protected Property. If at any time the Conservancy determines, in its sole and absolute discretion, that the violation constitutes immediate and irreparable harm, no written notice is required and the Conservancy may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Protected Property. If the Conservancy determines that this 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 to comply with the notice and demand activities in this Paragraph.
- D. Failure to Act. If, within 28 days after the Owner's receipt of the Conservancy's written notice, the Owner does not implement corrective measures requested by the Conservancy, or under circumstances where the violation cannot reasonably be cured within such 28-day period, fails to begin curing such violation in good faith within such period, or fails to continue diligently to cure such violation until finally cured, the 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 the Conservancy, or if an Owner is unable to be notified, the Conservancy may invoke these same remedies without notification and/or awaiting the expiration of the 28-day period. The Conservancy is entitled to enjoin the violation through temporary or permanent injunctive relief and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Owner to restore the Protected Property. If the court determines that the Owner has failed to comply with this Easement, then the court may require the Owner to reimburse the Conservancy for all reasonable litigation costs and reasonable attorney's fees, and all costs of corrective action, including but not limited to mitigation or restoration, of the Protected Property incurred by the Conservancy.
- E. Frivolous Litigation. If the Conservancy initiates litigation against the Owner to enforce this Easement, and if the court determines that the Owner is the prevailing party and also determines that (i) the litigation was initiated with the primary purpose to harass, embarrass, or injure the Owner; (ii) the Conservancy did not have a reasonable basis to believe that the facts underlying the Conservancy's legal position were in fact true; or (iii) the Conservancy's legal position was devoid of arguable legal merit, then the court may require the

Conservancy to reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action.

- F. Actual or Threatened Non-Compliance. The Conservancy's rights under this Paragraph (9) apply equally in the event of either actual or threatened violations of the terms of this Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this Easement is inadequate. The Conservancy shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory. The Conservancy's claim for injunctive relief or specific performance for a violation of this Easement shall not require proof of actual damages to the Conservation Values.
- G. Cumulative Remedies. The preceding remedies of the Conservancy are cumulative. Any, or all, of the remedies may be invoked by the Conservancy if there is an actual or threatened violation of this Easement.
- 11. RESPONSIBILITY OF OWNER.** The Owner is responsible for payment of all taxes, upkeep and maintenance of the Protected Property, and any liability arising from personal injury or property damage occurring on the Protected Property in accordance with Paragraphs (8)(C) and (18) herein.
- 12. REGULATORY AUTHORITY.** The Owner is solely responsible for obtaining any applicable permit or authorization or otherwise ensuring that any proposed use, building, construction, design, location, or other specification related to the Protected Property meets applicable local, state, and federal zoning, requirement, regulation, rule, policy, or standard. In accepting this Easement, or in reviewing and/or approving any use, building, construction, design, location, or any other specification related to the Protected Property or the use or development of the Protected Property, the Conservancy makes no warranty that the proposed use, building, construction, design, location, or other specification meets any local, state, or federal zoning, requirement, regulation, rule, policy, or standard.
- 13. AMENDMENT.** This Easement may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this Easement and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Easement, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.
- 14. BOUNDARY LINE ADJUSTMENTS.** Boundary line adjustments may be permitted in the case of technical errors made in the survey or legal description if approved in accordance with the Amendment provisions of Paragraph (13) above.
- 15. SUBORDINATION.** Owner represents and warrants that as of the date of execution and recording of this Easement, the Protected Property is not subject to any mortgage,

lien, claim or interest, which has not been subordinated to this Easement. Any mortgage, lien, claim, lease or interest in the Protected Property arising after the date of recording this Easement shall be subject and subordinate to the terms of this Easement. Any liens, mortgages, easements, or other clouds on title existing prior to the date of this Easement must be subordinated to this Easement or otherwise appropriately dealt with prior to recording this Easement.

**16. EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.**

- A. This Easement is an interest in real property created pursuant to the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act (NREPA) - MCL § 324.2140 *et seq.*
- B. This Easement is established for conservation purposes pursuant to Code 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 and is a publicly funded, non-profit Code Section 501(c)(3) organization.

**17. TITLE WARRANTY.** Owner warrants that Owner has good title to the Protected Property, that the Owner has the right to convey this Easement, and that the Protected Property is free and clear of any encumbrances or, if applicable, that any such encumbrance will be subordinated to this Easement or otherwise appropriately dealt with prior to recording this Easement. Owner also warrants that Owner has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.

**18. OWNERSHIP COSTS AND LIABILITIES.** In accepting this Easement, the Conservancy shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Protected Property except as otherwise expressly provided herein. The Conservancy's rights do not include the right, in absence of a judicial decree, to enter the Protected Property for the purpose of becoming an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act. The Conservancy, its members, trustees or directors, officers, employees, agents and assigns (collectively, including the Conservancy, the "Conservancy's Indemnified Parties") shall have no liability arising from injury or death to any person or physical damage to any property on the Protected Property unless such personal injury or death or property damage is caused by the negligent act or willful misconduct of any of the Conservancy's Indemnified Parties.

- A. Owner shall hold harmless, indemnify, and defend the Conservancy's Indemnified Parties for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to

which Conservancy's Indemnified Parties may be subject or incur relating to the Protected Property arising from any injury to or the death of any person, or physical damage to any property or the Protected Property, which may arise from, but is not limited to, any act, omission, condition, or other matter related to or occurring on or about the Protected Property as a result of or attributable to the Owner's Indemnified Parties' negligent acts or omissions or Owner's breach of any representation, warranty, covenant, agreements contained in this Easement, or the Owner's Indemnified Parties' violations of any Federal, state, or local laws, including all Environmental Laws (as defined below), except to the extent such liability, claim, demand, loss, expense, damage, fine, fee, penalty, suit, proceeding, action, and cost of action, sanction or other liability is caused by the negligent act or willful misconduct of any of the Conservancy's Indemnified Parties and/or an agent of the United States.

- B. The Conservancy shall hold harmless, indemnify, and defend the Owner and its directors, officers, employees, agents, invitees, contractors, legal representatives, heirs, personal representatives, successors and assigns, and each of them (collectively, including the Owner, the "Owner's Indemnified Parties") for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Owner's Indemnified Parties may be subject or incur relating to the Protected Property arising from any injury to or the death of any person, or physical damage to any property or the Protected Property, which may arise from, but is not limited to, any act, omission, condition, or other matter related to or occurring on or about the Protected Property as a result of or attributable to the Conservancy's Indemnified Parties' negligent acts or omissions or the Conservancy's breach of any representation, warranty, covenant, agreements contained in this Easement, or the Conservancy's Indemnified Parties' violations of any Federal, state, or local laws, including all Environmental Laws (as defined below), except to the extent such liability, claim, demand, loss, expense, damage, fine, fee, penalty, suit, proceeding, action, and cost of action, sanction or other liability is caused by the negligent act or willful misconduct of any of the Owner's Indemnified Parties and/or an agent of the United States.

**19. CESSATION OF EXISTENCE.** If the Conservancy shall cease to exist or if it fails to be a "qualified organization" for purposes of Code Section 170(h)(3), or if the Conservancy is no longer authorized to acquire and hold conservation easements, then this Easement shall become vested in, and the Conservancy's rights and responsibilities shall be assigned to, another entity that is a "qualified organization" for purposes of Code Section 170(h)(3) and has similar conservation purposes as the Conservancy, to which such right may be awarded under the *cy pres* doctrine.

**20. TRANSFER OF THE PROTECTED PROPERTY.** Upon transfer of the Protected Property, or interest in the Protected Property, from one landowner to another, the conveyance document shall expressly refer to this Easement and be subject to its terms.

- 21. TRANSFER OF THE EASEMENT.** Upon prior written consent from the United States, the Conservancy may transfer this Easement to a public agency or non-profit organization, which, at the time of transfer, is a qualified organization under Section 170(h) or successor provision of the Code.
- 22. LIBERAL CONSTRUCTION.** This Easement shall be interpreted under the laws of the State of Michigan and the United States and shall be liberally construed in favor of maintaining the Conservation Values of the Protected Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act MCL § 324.2140 *et seq.* If any provision in said Easement is found to be ambiguous, an interpretation consistent with the Conservation Purpose of said Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 23. NOTICES.** For purposes of this Easement, notices may be provided to either party by personal delivery or by mailing a written notice to the party (at the last known address of a party) by First Class U.S. mail.

All correspondence related to this Easement shall be sent to the parties at the addresses listed below:

Owner:

Conservancy: Leelanau Conservancy  
105 N. First Street/P.O. Box 1007  
Leland, MI 49654

United States: United States: United States Dept. of Agriculture  
Natural Resources Conservation Service  
3001 Coolidge Road, Suite 250  
East Lansing, MI 48823

- 24. SEVERABILITY.** If any portion of this Easement is determined to be invalid, the remaining provisions will remain in force.
- 25. MERGER.** In the event that the Conservancy takes legal title to the Owner's interest in the Protected Property, the Conservancy shall commit the monitoring and enforcement

of the Easement to another qualified organization within the meaning of Code Section 170(h)(3), which organization has among its purposes the conservation and preservation of land and water areas.

- 26. SUCCESSORS.** The rights and obligations in this Easement run with the land and apply to all heirs, successors, and agents. This Easement is binding upon, and inures to the benefit of, the Owner's and the Conservancy's successors in interest. All subsequent owners of the Protected Property are bound to all provisions of this Easement to the same extent as the Owner.
- 27. RIGHTS AND OBLIGATIONS.** The rights and obligations in this Easement run with the land and apply to all heirs, successors, and agents.
  - A. Rights of Conservancy** – The Conservancy has the right to protect the Conservation Purpose and Conservation Values of the Protected Property; periodically monitor compliance on the Protected Property; and has the ability to enforce the terms of this Easement.
- 28. TERMINATION OF RIGHTS AND OBLIGATIONS.** A party's future rights and obligations under this Easement terminate upon transfer of that party's interest in the Protected Property and/or this Easement, as applicable. Liability for acts or omissions occurring prior to transfer will survive the transfer.
- 29. MICHIGAN LAW.** This Easement will be construed in accordance with Michigan law.
- 30. EXHIBITS.** This Easement includes and incorporates the following Exhibits:
  - A.** Legal Description of Protected Property
  - B.** Survey Base Map
  - C.** Farmstead Complex

[Signatures to Follow on Next Pages]

**GRANTOR CONVEYANCE AND APPROVAL**

Grantor hereby acknowledges, approves, and conveys the foregoing Easement and the rights conveyed therein.

By:

\_\_\_\_\_

STATE OF \_\_\_\_\_

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

I HEREBY CERTIFY that on this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared \_\_\_\_\_ and \_\_\_\_\_ known to me or satisfactorily proven to be a GRANTOR of the foregoing Easement and acknowledged that he executed the same for the purposes therein contained and in my presence signed and sealed the same.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My registration No.: \_\_\_\_\_

My Commission Expires \_\_\_\_\_

[Document Continues on Next Page]

**LEELANAU CONSERVANCY ACCEPTANCE**

Leelanau Conservancy hereby acknowledges, approves, and accepts, the foregoing Easement and the rights and obligations conveyed therein.

By:

\_\_\_\_\_

Its:

\_\_\_\_\_

STATE OF \_\_\_\_\_

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

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a Notary Public in and for the jurisdiction aforesaid, personally appeared \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained and acknowledges this Easement as \_\_\_\_\_, of \_\_\_\_\_, on behalf of said corporation.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My registration No.: \_\_\_\_\_

My Commission Expires \_\_\_\_\_

[Document Continues on Next Page]

AFTER RECORDING SEND TO:

Leelanau Conservancy

P.O. Box 1007

Leland, MI 49654

SEND TAX BILL TO:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PREPARED BY:

Sam Plotkin

Leelanau Conservancy

P.O. Box 1007

Leland, MI 49654

**EXHIBIT A**

Legal Description of Protected Property

**EXHIBIT B**

Survey Base Map

**EXHIBIT B**

Survey Base Map