**D R A F T**

**CONSERVATION EASEMENT AGREEMENT**

**(SMALL FARM)**

THIS CONSERVATION EASEMENT AGREEMENT (“Conservation Easement”) is made this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Ann Arbor, Michigan 48105 (“Grantor”), and the Charter Township of Ann Arbor, a Michigan municipal corporation whose address is 3792 Pontiac Trail, Ann Arbor, MI 48105 (“Township” or “Grantee”).

RECITALS

A. The Grantor is the owner in fee simple of approximately \_\_\_\_\_\_\_ acres of farmland located in Ann Arbor Charter Township, Washtenaw County, Michigan, described on attached Exhibit A (“Protected Property”) consisting of approximately \_\_\_\_\_ acres of farmland (“Farmland”) and approximately \_\_\_\_\_ acres of the proposed future farmstead complex (“Building Envelope”). The Farmland and Building Envelope are depicted and described on the survey attached as Exhibit B.

B. The State of Michigan has enacted the Conservation and Historic Preservation Easement Act, being subpart 11 of the Natural Resources and Environmental Protection Act, PA 451 of 1994, MCL 324.2140 et seq, (“NREPA”) which provides for the granting of perpetual conservation easements to a Governmental entity.

## C. As a Governmental entity, the Township is qualified to hold conservation easements pursuant to the Conservation and Historic Preservation Easement, Subpart 11 of Part 21 of NREPA, MCL §§ 324.2140 et seq., and under IRC Section 170(h).

## D. The Township has adopted a Purchase of Development Rights Ordinance, originally dated 8-18-03 and amended from time to time, (the “P.D.R. Ordinance” or “Ordinance”) which provides for the purchase or voluntarily relinquishment of development rights in farmland and open space lands in Ann Arbor Charter Township through the conveyance, transfer or grant of a Conservation Easement.

E. The Grantor and the Township have the common purpose of protecting the conservation values of the Protected Property by a conveyance to the Township of the Property’s Development Rights as defined in the P.D.R. Ordinance and this Conservation Easement, including voluntary restrictions upon the use of the Protected Property and transfer of affirmative rights for protection of the Protected Property all as described in this Conservation Easement. Grantor acknowledges that Township does not have the right to acquire the Development Rights through eminent domain proceedings.

## This Conservation Easement is being entered into 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:

### Conservation and Historic Preservation Easement, Subpart 11 of Part 21 of NREPA, MCL §§ 324.2140 et seq.;

### Farmland and Open Space Preservation, Part 361 of NREPA, MCL §§ 324.36101 et seq.;

### Soil Conservation, Erosion, and Sedimentation Control, Parts 91 & 93 of NREPA, MCL §§ 324.9101 et seq; 324.9301 et seq; (Legislative Policy § 324.9302);

### Biological Diversity Conservation, Part 355 of NREPA, MCL §§ 324.35501 et seq.; (Legislative Findings MCL § 324.35502);

### Wetland Protection, Part 303 of NREPA, MCL §§ 324.30301 et seq.; (Legislative Findings MCL § 324.30302).

AGREEMENT

NOW, THEREFORE, for and in consideration of the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DOLLARS ($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) the receipt and sufficiency of which is acknowledged ; and the mutual covenants recited below, and other good and valuable consideration Grantor hereby grants and conveys to the Township a perpetual Conservation Easement over, under, upon, and across the Protected Property pursuant to the NREPA, subject to, and upon, the following terms and conditions.

# **GRANT OF CONSERVATION EASEMENT.** Grantor grants, conveys, warrants and transfers to the Township, its successors and assigns, all Development Rights with respect to the Protected Property, except for those specifically reserved, and a perpetual Conservation Easement over, upon and with respect to the Protected Property of the nature and character and to the extent described herein as well as the right to enforce the terms of this Conservation Easement.

**2.** **PURPOSE.** The purpose (“Purpose”) of this Conservation Easement is to do all of the following: (a) to assure that the Protected Property will be perpetually preserved predominantly in its agricultural and farmland condition, and (b) to protect, maintain and promote the Conservation Values described in Article 3 below; (c) to assure that the Protected Property shall be used perpetually for Agricultural Uses as defined in Section 6.3(a) and (d) in all other respects to prevent any use of the Protected Property that would significantly impair or interfere with the Conservation Values. The Grantor intends and agrees that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the Purpose of this Conservation Easement. As a Governmental entity, the Township is a qualified holder of this Conservation Easement under NREPA and is committed to preserving the Conservation Values of the Protected Property, and ensuring compliance with the terms of this Conservation Easement. Any use of the Protected Property that may impair or interfere with the Conservation Values is prohibited by the terms of this Conservation Easement.

**3**. **CONSERVATION VALUES.** The Protected Property possesses various natural, agricultural and farmland, scientific, biological, and ecological values, together referred to as Conservation Values, as outlined in the Baseline Documentation Report described in Paragraph 4, which are of prominent importance to the Grantor, the Township, and the public generally. The Conservation Values specifically include, but are not limited to, the following:

**[NEED TO ADJUST TO PROPERTY]**

### Agricultural Values. The Protected Property contains the following agricultural values:

### a. The Protected Property has a long history of productive farming, and contains soils suitable for continued agricultural activity including significant areas with soil classifications designated as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

### b. The Protected Property consists primarily of “prime farmland” and “farmland of local importance.”

### c. The Protected Property is located within the Township--a community with a sound agriculture economy in an area presently experiencing rapid development including the subdivision of prime farmland and has been designated by the Township as Eligible Land under the P.D.R. Ordinance with the characteristics for farmland permitted to be designated as such under the P.D.R. Ordinance.

### It is likely that the Township will acquire conservation easements or other valuable property rights on nearby or adjacent properties to expand the farmland conservation values preserved by this Conservation Easement.

## 3.2 Open Space and Scenic Values.The Protected Property contains the following values with respect to open space and scenic views:

### a. The biological integrity of other land in the vicinity has been modified by intense urbanization, and the trend is expected to continue. The scenic landscape and natural character would be impaired by modification of the Protected Property.

b. The Protected Property offers a scenic panorama visible to the public from publicly accessible sites, such as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which would be adversely affected by modifications of the natural habitat.

c. The Township has designated this area as Agricultural Production/Agricultural Preservation in its 2008 Master Plan.

## Watershed Protection Values. The Protected Property contains the following values for watershed protection:

### **[ADJUST TO PROPERTY]**

### The Protected Property provides important natural land within the watershed of Fleming Creek, the Huron River and Lake Erie. Protection of the Protected Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the Ann Arbor-Ypsilanti area.

## Ecological/Habitat Values. The Protected Property contains the following values relating to the ecology of the area and as habitat:

### The Protected Property contains significant natural habitat in which wildlife, plants or the ecosystems that support them thrive in a natural state.

### The Protected Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians and aquatic and/or emergent vegetation and/or other 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 Protected Property.

### The Protected Property contains sustainable habitat for bio-diverse vegetation, birds, fish and terrestrial animals.

### The Protected Property provides vital corridor wetlands and upland wildlife habitats that serve as a connection for wildlife movement and create a natural “greenway” to neighboring lands.

## Woodlands and Other Conservation Values. The Protected Property contains the following values relating to its forests and plant life:

### The Protected Property is characteristic of Dry-Mesic Southern Forest. Its dominant vegetation is Oak-Hickory forest. These plant communities are in a relatively natural and undisturbed condition and support the full range of wildlife species found in these habitat types.

### The Protected Property includes valued native forest land, which includes diverse native species, trees of many age classes and structural diversity, including a multi-story canopy, standing dead trees and downed logs.

# **BASELINE DOCUMENTATION REPORT.** The Grantor and the Township agree that the natural characteristics, ecological features, physical and human-made conditions of the Protected Property as of the date of this Conservation Easement are documented in a natural resource inventory signed by the Grantor and the Township, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ and attached to this Agreement as Exhibit “C” (“Baseline Documentation Report”). The Baseline Documentation Report includes an ALTA Survey of the Protected Property, Farmland and Building Envelope. The Baseline Documentation Report also 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 as of the date of this Conservation Easement, including current buildings, structures and improvements. The Baseline Documentation Report also defines the Building Envelope discussed below. The Township may use the Baseline Documentation Report in enforcing the provisions of this Agreement but is not limited to the use of the Baseline Documentation Report to show a change in conditions.

# **RESTRICTIONS.** Any activity on or use of the Protected Property which is inconsistent with Agricultural Use or the Purposes of this Conservation Easement or which is detrimental to the Conservation Values is expressly prohibited. The following activities and uses are explicitly prohibited:

## Commercial Activities. Commercial or industrial activity, including commercial recreational activity or use, on the Protected Property is prohibited, except for agricultural commercial activity as specifically permitted in Section 6 below.

## 5.2 Structures. The placement or construction on the Protected Property of any human-made modification, such as buildings, roads and parking lots, recreational fields or mobile homes is prohibited, except as specifically permitted in Section 6 of this Conservation Easement*.*

## Land Surface Alteration; Commercial Water Wells. Any mining, oil and natural gas exploration or extraction, filling, excavating, dredging or non-farming related alteration of the surface of the land is prohibited, including any removal of any substance that must be quarried or removed by methods that will consume or deplete the surface of the land, including, but not limited to, the removal of topsoil, sand, gravel, rock, minerals, peat or other materials, building of roads or changes in the topography of the Protected Property in any manner. Provided, however, oil and natural gas may be extracted remotely by directional drilling from adjacent properties. In addition, Grantor may use topsoil, sand, gravel and rock to maintain existing farm lanes on the Protected Property or make landscape alterations consistent with existing Agricultural Uses on the Protected Property, such as reshaping of the land to improve “air drainage” for fruit production or the removal of a sand ridge to accommodate agricultural equipment on the Protected Property. Any surface mining for on-farm use shall be limited to the lesser of five percent (5%) of the Protected Property or 1 acre in size and shall be returned to its original topographic condition within 1 year from the date of disturbance. Any land surface alteration will be conducted in accordance with a Conservation Plan approved by the Townshiop as described in Section 11 below, will require the written approval of the Township prior to implementation, and will be consistent with the purpose of this Conservation Easement*.* Development or installation of commercial water wells on the Protected Property is prohibited unless an exception is granted in writing by the Township Board, and such permission may only be granted for the purposes of providing municipal water supply.

## 5.4 Dumping. Processing, storage, dumping, or disposal of liquid or solid waste, refuse, or debris on the Protected Property is prohibited, except for properly designed and approved on site septic systems serving the human occupants of the Protected Property. This provision shall not be construed to preclude the disposal, composting, or use of plant and animal waste, provided such disposal and use is done in accordance with applicable Federal, State, and local laws and regulations.

## 5.5 Water Course Alteration. Natural water courses, lakes, wetlands, or other bodies of water may not be altered, except as specified in Section 6 of this Conservation Easement.

## 5.6 Signs and Billboards. Billboards are prohibited. Signs are only permitted as specified in Sections 6 and 7 of this Conservation Easement.

## 5.7 Land Divisions. Grantor shall not divide or subdivide the Protected Property.

### 5.8 New Utilities; Easements. Installation of new utilities is prohibited, except that the Grantor may install utilities necessary for uses of the Protected Property permitted under this Conservation Easement as long as such installation is consistent with the purposes of this Conservation Easement and the work is performed in a manner that minimizes to the greatest extent possible the adverse effect on prime, unique, and important soils. Under no circumstance may the topography be altered permanently. All earth movement must occur within a timeframe of less than 6 months, and the topography must be returned to pre-existing conditions in accordance with the Baseline Documentation Report within 6 months after commencement of such activity. Future utility or other easements shall be subordinate to this Conservation Easement. Prior to granting any easement, Grantor shall notify the Township of the proposed easement via registered mail and obtain the Township’s approval, which shall not be unreasonably withheld so long as such easement complies with the intent and Purposes of this Agreement.

### 5.9 Motorized Vehicle Use. Use of motorized vehicles is prohibited except as set forth in Section 6.8 below.

# **6. RESERVED RIGHTS; CONTINUOUS AVAILABILITY FOR FARMING.** The Grantor reserves and retains all ownership and possession rights that are not expressly restricted by this Conservation Easement and that are consistent with the Agricultural Uses in Section 6.3 below. In particular, the following rights are reserved:

## 6.1 Quiet Enjoyment. The Grantor retains the right of quiet enjoyment and use of the Protected Property as well as the right to restrict public access.

## 6.2 Transfer. The Grantor retains the right to sell, transfer, convey, lease, mortgage, bequeath, or donate the Protected Property, subject to the restrictions set forth in this Conservation Easement. Any such sale, transfer, lease, mortgage, bequest, donation or conveyance will remain subject to the terms of the Conservation Easement and all subsequent owners, mortgagees, tenants, occupants and any party holding any interest in the Protected Property are subject to and bound by all restrictions and obligations of this Conservation Easement. Grantor shall comply with the requirements of Section 13.7 below in the event of any transfer.

## 6.3 Agricultural Use.

## (a)The Grantor retains the right to and shall have the obligation of Agricultural Use of the Protected Property. The term “Agricultural Use” refers to agricultural activity for wholesale and retail sale and means the use of the Protected Property in a manner so that it remains substantially undeveloped and is primarily devoted to the production of plants and animals useful to humans, including fruits, nuts, vegetables, greenhouse plants, berries, herbs, flowers, seeds, grasses, tree farm, apiary, forages, grains, field crops, feed crops, dairy and dairy products, livestock (including breeding and grazing),poultry and poultry products and other similar uses and activities.

(b) To ensure that adjacent residents and natural features are not adversely affected by odors or pollutants, livestock or poultry facilities or operations must conform to Michigan Department of Agriculture Generally Accepted Management Practices (“GAAMP”).

(c) The Grantor and any transferee, successor or assignee of Grantor shall make a reasonable and good faith effort to continuously conduct Agricultural Use on the tillable portions of the Protected Property or make the Protected Property available for Agricultural Use by Grantor or others in accordance with GAAMP taking into consideration time necessary for establishment of new crops and alternative farm operations, fallow years for soil replenishment, changes in market conditions and availability of farm tenants, farm workers and other market conditions.

(d) Grantor has submitted and the Township has approved Grantor’s Agricultural Production and Stewardship Plan for continuous Agricultural Use at the Protected Property. Grantor agrees to provide the Township at the Township’s request a report on Agricultural Use of the Protected Property for the preceeding twelve (12) month period should the Township reasonably determine that the Grantor may not be in compliance with the requirements of this Agreement for Agricultural Use of the Protected Property.

## Agricultural Related Uses. Grantor may engage in the following agriculturally related uses within the Building Envelope only and in accordance with all applicable laws and ordinances.

a. Permitted uses: grain dryer; storage for agricultural products used or produced on the Protected Property, storage for agricultural equipment used on the Protected Property; sale of agricultural products primarily produced on the Protected Property, and farm structures such as hoop houses, worker rest areas, sale and assembly areas and germination chambers.

## 6.5 Residential Use Restricted; Construction Within Building Envelope. Residential uses are permitted on the Protected Property only to the extent specifically authorized by this Conservation Easement and only within the Building Envelope. The Grantor retains the right to use, maintain and construct farm buildings within the Building Envelope in accordance with applicable laws and ordinances and the Permitted Uses described above.

## 6.6 Forestry. Grantor retains the right to conduct forestry activities for domestic and commercial purposes. Domestic forestry includes the cutting of firewood (only for heating structures on the Building Envelope), blowdowns, dead and diseased trees, the removal of trees and hedge rows to improve the farming operation and trees that pose threats to persons or property. Commercial forestry activities shall be in accordance with a Forest Management Plan prepared by or in consultation with a registered professional forester. The goals of such commercial timbering practices or plans shall include the preservation of the conservation and scenic characteristics of the woodlands and wetlands and the maintenance of a healthy forest, and shall assure sustainable forest productivity in a manner not inconsistent with the Purpose of this Conservation Easement. No practice or plan shall include provisions allowing clear cutting or even-aged management. For the purposes of this subparagraph, “commercial timbering” shall mean any cutting of trees for sale or use off the Protected Property other than by Grantor for Grantor’s personal, non-commercial use. Such activities shall not materially impair the Conservation Values of the Protected Property*.*

## 6.7 Ecological Restoration. The Grantor retains the right to conduct ecological restoration on the Protected Property. Ecological Restoration includes, but is not limited to, planting native species, removing non-native or invasive species, installing erosion control structures, or installing fencing necessary for the re-establishment of native vegetation.

## 6.8 Motorized Vehicles. The Grantor retains the right to operate agricultural motorized vehicles on the Protected Property in order to carry-out agricultural operations on the Protected Property and other motorized vehicles in order to carry-out the other uses permitted herein, as long as the use does not adversely affect the Conservation Values identified in Section 3 above.

## 6.9 Signs. The Grantor retains the right to place signs on the Protected Property relating to permitted activities as described in this Section, or stating one or more of the following items, namely: (a) the name and address of the Protected Property; (b) the Grantor's name; (c) that the Protected Property is protected by this Conservation Easement; (d) that any unauthorized entry or use is prohibited; (e) that the Protected Property is for sale or rent; and (f) the sale of agricultural products grown on the Protected Property and items made on the Protected Property as permitted under 6.3 above. Such signs shall be subject to the Township sign ordinance. To maintain the scenic qualities protected by this Conservation Easement, any other signs placed on the Protected Property require prior written approval of the Township.

## 6.10 Maintain and Replace Existing Structures; Fencing. In accordance with applicable laws and ordinances, the Grantor retains the right to construction and maintenance of farm buildings within the Building Envelope only as described in Section 6.4 and Section 6.5 above, subject to the 2 percent impervious surface limitation set forth below and applicable laws and ordinances. In addition, the Grantor retains the right to maintain existing fencing and erect new fencing necessary and customary for the permitted agricultural operations on the Protected Property.

## 6.11 Temporary Agricultural Improvements. The Grantor retains the right to build, maintain, renovate or replace non-permanent buildings and improvements related to Agricultual Use of the Protected Propety that do not substantially disturb the soil surface such as hoop houses or other temporary buildings without a floor, and to install related gravel or concrete pathways serving such temporary buildings and improvements (“Temporary Agricultual Improvements”).

## 6.12 Impervious surface. Impervious surfaces, resulting from other than Temporary Agricultural Improvements, including any surface that prevents direct percolation of water into the soil such as structures and buildings (with and without flooring), paved areas and rooftops on the Protected Property both within and outside the Building Envelope shall not exceed 2 percent of the total acreage of the Protected Property*.*

6.13 Recreational Activities and Improvements. Consistent with Agricultural Use of the Protected Property, de minimus and undeveloped recreational and educational activities, such as farm tours, work experiences, field trips, corn mazes and hay rides are permitted so long as such activity is consistent with the purposes of this Conservation Easement and does not adversely affect the soils and/or agricultural operations on the Protected Property. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips, motorcross biking, or any other improvement or activity inconsistent with current or future agricultural production be permitted on the Protected Property. In addition, de minimis, seasonal structures may be placed or constructed on the Protected Property so long as they are consistent with the purposes of this Conservation Easement.

6.14 Ponds; Drain Tiles; Wetland Restoration. Ponds and drain tiles may be maintained within their current scope and effect. Any dredged material from the pond which is applied to the Protected Property must be applied in a manner which does not adversely affect the Conservation Values. New drain tiles may be installed to improve drainage of the farmland for agricultural purposes in accordance with the Conservation Plan and only to the extent that such drain tiles do not adversely affect any wetland area. Wetland restoration may be permitted on the Protected Property upon prior written approval of the location, scope and nature of the restoration by the Township.

# **RIGHTS OF THE TOWNSHIP.** The Grantor conveys the following rights to the Township in order to protect the Conservation Values of the Protected Property in perpetuity:

## Right to Enter. The Township has the right to send a representative at reasonable times not less than annually to monitor the Protected Property and to enforce the terms of or otherwise exercise its rights under this Conservation Easement. So long as Grantor’s use of the Protected Property is in compliance with this Conservation Easement, the Township shall not interfere with the Grantor’s use and quiet enjoyment of the Protected Property. The Township is not conveyed the right to permit the general public access to the Protected Property.

## Right to Preserve. The Township has the right to prevent any activity on or use of the Protected Property that is inconsistent with the Purposes of this Conservation Easement or detrimental to the Conservation Values of the Protected Property.

## Right to Require Restoration. The Township has the right to require restoration of the areas or features of the Protected Property which are damaged by any activity inconsistent with this Conservation Easement.

## Right to Ensure Continuous Farming Operations. The Township shall have the right to require that the Grantor make a reasonable and good faith effort to continuously conduct Agricultural Use on the Protected Property or make the Protected Property available for Agricultural Use by others in accordance with Section 6.3 above. In the event Grantor fails to comply with Section 6.3 above, the Township shall have all of the rights and remedies set forth in Section 7.6 and Section 8 below.

## Signs. The Township has the right to place signs on the Protected Property which identify the land as protected by this Conservation Easement. The number and location of any signs are subject to the reasonable approval of Grantor.

## Right to Enforce. The Township has the right to enforce the terms of this Conservation Easement and its covenants and conditions by proceedings at law or in equity, including but not limited to, the right to require restoration of the Protected Property to the condition as of the date of this Conservation Easement.

# **8. TOWNSHIP REMEDIES.** This section addresses cumulative remedies of the Township and limitations on these remedies.

## Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of the Township’s right to enforce the terms of this Conservation Easement at any other or later time or times.

## Acts Beyond Grantor’s Control. The Grantor shall not be held responsible for modifications to the Protected Property resulting from causes beyond the Grantor’s control, including, but not limited to, unauthorized wrongful actions by third parties, natural disasters such as unintentional fires, floods, storms, natural earth movement, or Grantor’s good faith actions in response to an immediate threat of irreparable harm.

## Notice and Demand. If the Township believes that the Grantor is in violation of this Conservation Easement, or that a violation is threatened, the Township shall provide written notice to the Grantor. The written notice will identify the violation or threatened violation and request corrective action to cure the violation within the cure period and, where the Protected Property has been injured, the Township may act to restore the Protected Property or to compel the Grantor to do so, at the option of the Township.

If at any time, however, the Township determines, at its sole discretion, that the violation constitutes immediate and irreparable harm, no written notice is required prior to the Township pursuing its remedies to prevent or limit harm to the Conservation Values of the Protected Property. Furthermore, if the Township has sent written notification of the violation, but the Township reasonably believes that the violation is causing or will cause immediate and irreparable harm during the cure period described below, the Township may pursue its legal or equitable remedies without waiting for expiration of the 28-day cure period set out below.

Furthermore, if the Township determines that this Conservation Easement is, or is expected to be violated, and the Township’s good-faith and reasonable efforts to notify the Grantor are unsuccessful, the Township may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting the Grantor’s opportunity to cure. The Grantor agrees to reimburse all reasonable costs and attorneys fees associated with this effort.

## Failure to Act. If, within 28 days after written notice, the Grantor does not implement corrective measures requested by the Township, the Township 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 Grantor is unable to be notified, the Township may invoke these same remedies without notification and/or awaiting the expiration of the 28-day period.

The Township 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 Grantor to restore the Protected Property. In any action brought by the Township at law or in equity, if the court determines that the Grantor has failed to comply with this Conservation Easement, the Grantor shall also reimburse the Township for all reasonable litigation costs and reasonable attorney’s fees, and all costs of corrective action or Protected Property restoration incurred by the Township. Upon entry of a judgment for such costs, expenses and fees, the Township shall be entitled to record a lien against the Protected Property in the amount of the judgment plus statutory interest and costs of collection.

## Actual or Threatened Non-Compliance. The Township’s rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. The Grantor agrees that the Township’s remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Township shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which the Township may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

## Right to Propose Tenants or New Owners; Option to Purchase. In addition to the foregoing rights and remedies of the Township, the Development Rights of the Protected Property have been purchased by the Township upon the express condition that the Protected Property be made continuously available for Agricultural Use as provided in Section 6.3 above. In the event Grantor shall fail to comply with Section 6.3, after notice and opportunity to cure as provided in this Article 8, the Township shall have the following rights:

a. the right to locate and propose to Grantor a qualified tenant or new owner willing to conduct Agricultural Use on the Protected Property in accordance with this Conservation Easement at a fair market rent in the case of a lease or at a fair market purchase price in the case of a new owner, and on other reasonable terms; or

b. the right and option of the Township to purchase the Protected Property for the then current appraised agricultural value. Such option may be exercised by the Township by written notice to Grantor, and such option shall be closed in accordance with customary closing procedures as soon as possible subject to the Township conducting and approving its due diligence investigations and obtaining the appraisal of the agricultural value of the Protected Property.

## Cumulative Remedies. The preceding remedies of the Township are cumulative. Any, or all, of the remedies may be invoked by the Township if there is an actual or threatened violation of this Conservation Easement.

## **9.** **AMENDMENT**.If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Township may by mutual written agreement amend this Conservation Easement; provided that no amendment shall be made that will adversely affect the qualification of this Conservation Easement or the status of the Township under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code and the laws of the State of Michigan. Any such amendment shall be consistent with the purposes of this Conservation Easement, shall not affect its perpetual duration, shall not permit residences to be constructed on the Protected Property, and shall not permit any impairment of the significant Conservation Values of the Protected Property. Any such amendment shall be executed by the Township or by the Township’s successor in title to the benefits of this Conservation Easement, the Grantor and shall be filed in the office of the Register of Deeds for Washtenaw County, Michigan. Nothing in this Section shall require the Grantor or the Township to agree to any amendment or to consult or negotiate regarding any amendment.

# **10. SUBORDINATION.** Any lease, mortgage, lien, claim, encumbrance, or interest in the Protected Property arising after the date of recording this Conservation Easement shall be subject and subordinate to the terms of this Conservation Easement. Grantor represents that as of the date of execution and recording of this Conservation Easement, the Protected Property is not subject to any mortgage, lien, claim or interest which has not been subordinated to this Conservation Easement

## **11.** **[INTENTIONALLY OMITTED]**

**12.** **RIGHT OF ENFORCEMENT.** Under this Conservation Easement, the Township is granted the right of enforcement in order to protect the public investment. The Township or its successor may exercise this right of enforcement under any authority available under State or Federal law, as determined in the sole discretion of the Township.

## **13. GENERAL PROVISIONS**.

## 13.1 Extinguishment. This Conservation Easement may only be terminated or extinguished by a court of competent jurisdiction upon a request to terminate as mutually agreed to by the Grantor and the Township and after a finding by the court that the conditions or circumstances on or surrounding the Protected Property have changed to such a degree that it has become impossible to fulfill the purposes of this Conservation Easement.

## 13.2 Condemnation. If all or any part of the Protected Property is taken by exercise of the power of eminent domain, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, in whole of in part, Grantor and Township shall act jointly to recover the full value of the interests in the Protected Property subject to the taking and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Township in connection with the taking or in lieu purchase shall be paid out of the amount recovered. If an act of condemnation of the Protected Property on which this Conservation Easement is held is undertaken by the State of Michigan or any other local Governmental jurisdiction, immediate notification shall be provided to the Township, and the consent of the Township shall be sought before such a condemnation action proceeds.

## 13.3 Proceeds For Extinguishment Or Condemnation. If this Conservation Easement is extinguished/terminated or condemned, in whole or in part, then Township is entitled to its proportional share the gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Protected Property as these values are determined by an appraisal on the date this Conservation Easement is extinguished or condemned.

## 13.4 Liability and Indemnification. Grantor shall indemnify, defend, and hold harmless the Township from any liability resulting from Grantor’s negligent acts or omissions.

13.5 General Indemnification. Grantor shall indemnify and hold harmless the Township and its officers, trustees, contractors, 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 the Township may be subject or incur relating to the Protected Property which may arise from, but are not limited to, Grantor’s negligent acts or omissions or Grantor’s breach of any representation, warranty, covenant, agreements contained in this Conservation Easement, or violations of any Federal, State or local laws, including all Environmental Laws as defined below.

13.6 Transfer of Easement. In accordance with applicable law, including Section 2144 of NREPA, MCL 324.2144, as it may be amended, or any subsequent relevant provisions, Township may transfer this Conservation 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 Internal Revenue Code. The Development Rights acquired by the Township under this Conservation Easement are held in trust for the benefit of its citizens and may not be relinquished or reconveyed except in accordance with applicable law, including Sections 32(1)(e) of the Township Zoning Act, MCL 125.302(1)(e), now Section 125.3508 of the Zoning Enabling Act, or any relevant subsequent provision, and Section 48.29 of the P.D.R. Ordinance, as it may be amended.

## 13.7 Transfer By Grantor. Grantor agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Protected Property, including without limitation a leasehold interest for a term greater than one (1) year. Grantor further agrees to give written notice to the Township of the transfer of any such interest at least one hundred twenty (120) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

## 13.8 No Merger. Prior to the Township obtaining fee title to the Protected Property, the Township shall transfer this Conservation Easement to a qualified State or local government agency or non-profit organization, which at the time of transfer, is a qualified organization under Section 170(h) or successor provision of the Internal Revenue Code, which has among its purposes the conservation and preservation of land and water areas.

## 13.9 Effective Date. Grantor and Township intend that the restrictions arising hereunder take effect on the day and year this Conservation Easement is recorded in the office of the Register of Deeds for Washtenaw County, Michigan, after all required signatures have been affixed hereto. The Township may re-record this instrument at any time as may be required to preserve its rights in this Conservation Easement.

## 13.10 Environmental Warranty. 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 which may pose a present or potential hazard to human health or the environment.

Grantor warrants that to the best of Grantor’s knowledge Grantor is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that Grantor has received no notices by any Governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property.

Grantor warrants that Grantor has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property in excess of regulatory limits. Moreover, Grantor hereby promises to hold harmless and indemnify the United States and the Township 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. Grantor’s indemnification obligation shall not be affected by any authorizations provided by the Township to the Grantor with respect to the Protected Property or any restoration activities carried out by Township at the Protected Property; provided, however, that Township shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Township.

## 13.11Monitoring Responsibilities**.** The Grantor will cooperate in the Township’s annual monitoring of the Protected Property and maintenance of baseline information.

# 13.12 Ownership Cost and Liabilities. In accepting this Conservation Easement and executing this Conservation Easement, the Township shall have no responsibility or liability for costs, expenses, taxes, insurance or any other obligation related to the Protected Property. The rights of the Township do not include the right, in the 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. Neither the Township, nor its trustees, officials, officers, employees, and agents or any other person in his or her capacity as a citizen of the Township shall have any liability arising from injury or death to any person or physical damage to any property on the Protected Property. The Grantor or the Grantor’s successors, transferees or assigns, agree to indemnify the Township against any costs, damages or losses (including attorneys fees and expert witness fees) incurred by the Township relating to such claims. The Grantor is responsible for posting the Protected Property’s boundaries and for discouraging any forms of trespass upon the Protected Property. This Section is intended to ensure that none of the liabilities attendant on land ownership are inadvertently transferred to Township under this Conservation Easement as Township will have no management responsibilities and will exercise no direct control over any potential hazards on the Protected Property. Grantor's liabilities under this Section transfer to a new owner upon transfer of Grantor's interest in the Protected Property.

13.13 Title Warranty***.*** The Grantor warrants that (a) Grantor has good and marketable fee simple title to the Protected Property, has the right to convey this Conservation Easement and that the Protected Property is free and clear of all encumbrances and that it will defend against all challenges to title.

# 13.14 Assignment. If the Township shall cease to exist, if the Township is no longer authorized to acquire and hold conservation easements, or if the Township otherwise wishes to divest itself of its interest in this Conservation Easement, then this Conservation Easement shall be assigned to a unit of government or any entity having similar conservation purposes to which such right may be awarded under the cy pres doctrine. Such entity must be a “qualified organization” for purposes of Internal Revenue Code Section 170(h).

# 13.15 Termination. This Conservation Easement may be terminated only upon the occurrence of those events specified in the P.D.R. Ordinance or by exercise of eminent domain. To the fullest extent allowed, the Township shall then be entitled to compensation in accordance with the provisions of IRC Treasury Regulations Section 1.170A-14(g)(6)(ii). If the Protected Property is taken, in whole or in part, by power of eminent domain, then, the Township will be entitled to compensation by the same method as is set forth above.

# 13.16 Liberal Construction. This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Protected Property and in accordance with applicable State and Federal laws.

# 13.17Notices. For purposes of this Conservation Easement, notices may be provided to either party by personal delivery or by mailing a written notice to the party (at the address shown at the top of this Conservation Easement, or at last known address of a party) by first class mail. All notices shall be deemed to have been duly given when hand delivered or when deposited, properly addressed, with the US Postal Service with sufficient pre-paid postage.

# 13.18 Severability. If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.

# 13.19 Successors. This Conservation Easement is binding upon, and inures to the benefit of, the Grantor and the Township and their respective successors in interest. All subsequent owners of the Protected Property are bound to all provisions of this Conservation Easement to the same extent as the current owner. This Conservation Easement is expressly declared to be enforceable in accordance with its terms regardless of any lack of privity of estate or contract or lack of benefit running to particular land pursuant to Section 2141 of NREPA, MCL 324.2141, as the same may be amended from time to time.

# 13.20 Termination of Rights and Obligations. A party’s future rights and obligations under this Conservation Easement terminate upon transfer of that party’s interest in the Protected Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.

# 13.21 Exhibits. This Conservation Easement includes, and incorporates herewith, the following Exhibits: Exhibit A – Legal Description, Exhibit B- Survey, and Exhibit C – Baseline Documentation Report.

13.22 Entire Agreement. This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

# 13.23 Easement and Covenant Running with the Land. The provisions of this Conservation Easement shall be covenants running with the land, and shall inure to the benefit of and be binding upon the parties and their respective successors, transferees, heirs, beneficiaries, and assigns and all others having an interest in the Protected Property.

“Grantor”

Print Name

STATE OF MICHIGAN )

)ss.

COUNTY OF WASHTENAW )

Acknowledged before me on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Grantor.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

, Notary Public

Washtenaw County, Michigan

Acting in Washtenaw County, Michigan

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_

*(signatures continued on following pages)*

“Township”

CHARTER TOWNSHIP OF ANN ARBOR, a Michigan municipal corporation

By:

Michael C. Moran

Its: Supervisor

STATE OF MICHIGAN )

)ss.

COUNTY OF WASHTENAW )

Acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by Michael C. Moran, the Supervisor of the Charter Township of Ann Arbor, a Michigan municipal corporation, on behalf of said corporation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

, Notary Public

Washtenaw County, Michigan

Acting in Washtenaw County, Michigan

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_

PREPARED BY: AFTER RECORDING RETURN TO:

Sandra Sorini Elser (P36305) Supervisor

Bodman LLP Charter Township of Ann Arbor

201 S. Division, Suite 400 3792 Pontiac Trail

Ann Arbor, MI 48104 Ann Arbor, MI 48105

EXHIBIT A TO CONSERVATION EASEMENT  
LEGAL DESCRIPTION

EXHIBIT B TO CONSERVATION EASEMENT  
SURVEY

**EXHIBIT C TO CONSERVATION EASEMENT**

**BASELINE DOCUMENTATION REPORT**

**EXHIBIT D TO CONSERVATION EASEMENT**

**AGRICULTURAL PRODUCTION AND STEWARDSHIP PLAN**