

CONSERVATION EASEMENT

ACME TOWNSHIP AGRICULTURAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

DATE:

OWNER: _____ whose address is _____.

For all Purposes of this Conservation Easement, the OWNER and all subsequent owners of the subject Property, are referred to as the "Owner."

GRANTEE: **Acme Township**, a quasi-municipal corporation, of Grand Traverse County, Michigan, having an address of _____, (referred to as the "Township").

PROPERTY: See legal description attached as Exhibit "A" and survey attached as Exhibit "B" to this agreement. For purposes of this Conservation Easement, "Property" means all or any part or portion of this land.

CONVEYANCE:

This Conservation Easement is conveyed in consideration for \$_____, paid to the Owner by the Township, the receipt of which is acknowledged by the Owner.

The Owner conveys and warrants to Acme Township a perpetual Conservation Easement over the Property. The scope of the Conservation Easement is set forth in this agreement.

THE OWNER AND THE TOWNSHIP AGREE TO THE FOLLOWING:

1. PURPOSES:

This Conservation Easement is intended to assure that the Property will be perpetually preserved in its predominately agricultural, scenic, natural and open space condition. The purposes of this Conservation Easement, (referred to as the "Purposes") are to protect the Property's potential for productive farming and forestry; to provide open space; to maintain public scenic views; and to protect the Property's natural resource values. Specifically:

- A. The Township Board has made findings of fact regarding the importance of protecting the conservation values of certain lands within Acme Township and the citizens of Acme Township, through their Township Board, have established Acme Township's Purchase of Development Rights Ordinance No. __ ("Ordinance") to acquire, through voluntary participation of Grantors, an interest in the Property for the protection of conservation values.
- B. The Property has been identified as Farmland and/or Open Space Land as defined in the Ordinance.

- C. The Owner is willing to grant and convey to the Township the Development Rights in the Property as such rights are defined in the Ordinance (said rights being the interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agricultural and open space uses), on the terms and conditions and for the purposes hereinafter set forth.

2. CONSERVATION VALUES. The Property possesses agricultural, scenic, open space, and ecological values of prominent importance to the Owner, the Township, and the public. These values are referred to as the "Conservation Values" and support the Conservation Easement Purposes. Any use of the Property not provided as a "permitted use" under the terms of this Easement and which impairs or interferes with the Conservation Values are expressly prohibited. The Conservation Values include the following:

- A. The Property possesses agricultural, scenic, and open-space values (collectively, "conservation values") of great importance to Acme Township, the people of Grand Traverse County and the people of the State of Michigan.
- B. The Property is located within Acme Township, a community with an agricultural-based economy in an area presently experiencing rapid development, including the subdivision of prime farmland.
- C. Maintaining the scenic and rural beauty of the area along with preserving the agricultural industry of Acme Township is an important planning goal of Acme Township and area residents.
- D. The Property is a part of large block of protected land which contributes to the long-term sustainability of agriculture in the region by providing a buffer from residential development and other incompatible uses which could impair the ability to conduct agricultural practices over time.
- E. The Property is located in the West Michigan Fruitbelt Region, an area with a unique capacity to grow stone fruit and other fruit such as apples, grapes and berries. This Region is recognized by the American Farmland Trust as one of the 20 most threatened agricultural resources in the United States.
- F. The Property is a part of an area which has a long history of productive farming, and with good management is capable of sustaining productive farming into the future.
- G. The Property adjoins natural land that provides habitat for native plant and animal species, including habitat for rare, threatened or endangered species, and preservation of the Property provides a buffer from residential development and other incompatible uses that may otherwise impair this habitat over time.
- H. The Property adjoins land open to the public for recreational activities, including a trail system, and preservation of the Property provides a buffer from residential development and other incompatible uses that may otherwise impair or lessen the

use and enjoyment of the adjoining property by the public.

- I. The Property offers broad scenic views with minimal development in an area prominently visible to the public.
- J. The Property serves as a groundwater recharge area for the _____ Creek watershed, which flows directly into East Grand Traverse Bay.
- K. The Property offers scenic views to the public from _____.
- L. The Property includes “prime and unique” soils, as documented by _____. **[Note to Drafter: add detail of unique nature of property for farming here, if applicable.]**

3. BASELINE DOCUMENTATION. Specific Conservation Values of the Property have been documented in a natural resource inventory signed by the Owner and the Township. This “Baseline Documentation Report” consists of written text, maps, photographs and other documentation intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Easement. The parties agree that this Baseline Documentation Report provides an accurate representation of the Property at the time of this Conservation Easement conveyance.

4. REPRESENTATIONS. The Owner has good and sufficient title to convey this easement and is committed to preserving the Conservation Values as stated in this Conservation Easement. The Owner agrees to confine use of the Property to activities consistent with the Purposes of this Easement and the preservation of the Conservation Values.

The Township protects natural, scenic and farm lands where preservation will yield a significant public benefit. The Township is a qualified holder of this Conservation Easement and will preserve the Conservation Values of the Property and uphold the terms of this Conservation Easement. The Township is a Michigan municipal corporation qualified 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* to hold a conservation easement.

5. PERMITTED USES.

The Owner retains all ownership rights except those extinguished or limited by this Conservation Easement and except those which are inconsistent with the Purposes or detrimental to the Conservation Values. In particular, the Owner reserves and retains the following rights:

- A. Right to Convey. The Owner retains the right to sell, lease, mortgage, bequeath, assign or donate the Property. Any conveyance will remain subject to the terms of this Conservation Easement and all subsequent Owners are bound by all obligations in this agreement. **Owner will notify the Township by first class mail 30 days prior to any such conveyance.**
- B. Right to Divide. The Owner retains the right to make ___ land divisions, provided, however that the Property shall not be divided into parcels less than 20 acres in size unless the land is split to join another permanently protected parcel. In order

to resolve any property boundary dispute, or modify the existing property boundary, the Owner may divide or subdivide the Property if the modification, division or subdivision is minor in scope and does not adversely affect the Conservation Values of the Property. Any such boundary modification shall be reviewed and approved by the Township pursuant to Section 8 of this Easement. **[Note to Drafter: 20 acres is the default minimum size for a parcel under the ordinance. The landowner can reserve less splits or increase the parcel size if they so desire. If matching funds from another program require a larger parcel size, then the language in this paragraph should be changed to reflect that larger parcel size.]**

A property transfer between adjacent parcels within the Township's PDR program or other land that is similarly permanently protected is permitted and does not use a division, so long as it is consistent with the Michigan Land Division Act (1967 PA 288; MCL 560.101 *et seq.*) and all other applicable laws. Any such property transfer shall comply with this Paragraph 5(B) and Paragraph 6(A), and shall be reviewed and approved by the Township as a legal description amendment pursuant to Section 10 of this Conservation Easement.

- 1) the Owner shall survey the boundary lines, mark the parcel boundaries at intervisible locations, and provide a copy of the survey and new legal description to the Township within 30 days of the transfer, at the Owner's expense;
 - 2) all land subject to a property transfer shall remain subject to the terms of this Conservation Easement.
- C. Right to Construct Additional Residence. The Owner retains the right to construct one additional residence, in the area designated "building envelope" on Exhibit C, for an individual or individuals essential to the farm operation as defined in section 36110(5) of the Natural Resources and Environmental Protection Act, MCL 324.36110(5). Any structures built under this Paragraph must be in conformance with all applicable federal, state and local laws, ordinances and regulations, and the Township must be provided with notice of the Owner's intent to invoke the right to construct this structure prior to commencement of any activity pursuant to this paragraph. **[Note to drafter: this paragraph may be removed if the landowner wishes to donate this additional building right as part of a bargain sale transaction.]**
- D. Right to Agricultural Uses. The Owner retains the right to conduct agricultural uses on the Property, provided that all agricultural uses: 1) are conducted according to Generally Accepted Agricultural Management Practices (GAAMPs) standards, as defined by the Michigan Department of Agriculture, or an equivalent successor standard; 2) do not impair the Property's ability to support future agricultural uses; 3) comply with all other provisions of this Conservation Easement and all local, state or federal laws. For purposes of this Conservation Easement, "Agricultural use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar

animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and uses. Agricultural use includes use in a federal acreage set-aside program, a federal conservation reserve program, or a wetland reserve program. Agricultural use does not include the management and harvesting of a wood lot. "agriculture" means the production of plants, animals or other organisms useful to humans on substantially undeveloped land devoted to such uses. The management and harvesting of timber is not considered to be an agricultural use, but is a permitted activity under this Conservation Easement, as described in Paragraph 5(K).

Agricultural activity specifically includes, but is not limited to, the following:

- 1) planting trees or other vegetation to improve agricultural use of the Property, such as wind breaks;
- 2) removing trees or other vegetation to improve agricultural use, such as air drainage, or to make additional land available for farming, except in areas designated as Forest Areas, which are restricted as described in Paragraph 5(K);
- 3) composting plants, animal manure or other natural materials generated by agricultural uses; and
- 4) lying fallow or nonuse of the Property.
- 5) The use of a Licensed Agricultural Labor Camp or Agricultural Labor Camp including the right to build agricultural worker housing to house migrant farm laborers while they are principally employed on the Grantors' farm operation. (Buildings shall be located outside of the restricted viewshed or prime farming areas, if any, as shown in the Baseline Documentation, Exhibit "B"). Agricultural worker housing means housing owned by the farm operation that is not occupied by the Owner and is being provided rent-free to farm labor who's primary source of income is derived from that farm operation.
- 6) Storage of agricultural machinery, equipment and agricultural materials, including but not limited to chemicals and fertilizers. (Limitations on their location, if any, shall be shown in the Baseline Document, Exhibit "B").
- 7) Storage, retail or wholesale marketing or processing of agricultural products, so long as more than fifty percent (50%) of the stored, processed or merchandised products are produced on that farm operation for at least 3 of the immediately preceding 5 years;
- 8) Other Agricultural Practices that may in the future be determined by the Township Board to be a common agricultural practice in the region after the use is recommended by the Planning Commission and at least one other state or nationally recognized agricultural organization.

Agricultural activity specifically does not include the following: golf courses,

campgrounds, airfields, vehicle raceways or commercial animal raceways.

- E. Right to Construct Agricultural Infrastructure. The Owner retains the right to construct, maintain and replace buildings and other structures necessary for and consistent with agricultural uses, including new buildings such as greenhouses, roadside stands and other structures and improvements to be used solely for agricultural purposes. (Limitations on their location, if any, shall be shown in the Baseline Document, Exhibit "B").
- F. Right to Construct and Maintain Wildlife Hunting and Viewing 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.
- G. Roads. The Owner retains the right to construct, maintain and replace private access roads on the Property, such as farm lanes, logging roads or two-tracks, which relate to farming, forestry or other permitted uses. Owner may use sand, gravel or other material from the Property to construct and maintain these private roads, as described in Paragraph 5(H). Any private access road located in a designated Forest Area must be approved by the Township prior to construction, as described in Paragraph 5(I).
- H. Land Surface Alteration. The Owner retains the right to make changes to the topography or otherwise alter the land surface on the Property in order to further the agricultural use of the property. **[Note to drafter: this may need to be limited to certain areas delineated for agricultural use only. This language should be more restrictive if there is a bargain sale component to the transaction.]** Excavation of topsoil, sand, gravel, rock minerals or other materials that significantly impairs or interferes with the conservation values of the property shall not take place without prior written approval of the Township. This paragraph shall not be construed to allow any surface mining activity or other land surface alteration that would be contrary to or not allowed by section 170(h) of the Internal Revenue Code, the Treasury regulations adopted pursuant thereto, and any other successor provisions addressing the same subject.
- I. Forestry. **[Note to drafter: this may or may not be applicable. Delete this paragraph if not applicable, along with the last sentence of Paragraph G above.]** The Owner retains the right to conduct forest management to harvest timber or other forest products, for use or commercial sale, subject to the terms below.

Designated Forest Areas. Within certain areas designated as "Forest Areas," additional restrictions apply. The Property has ___ designated Forest Area, which is described in Exhibit "C."

- 1) A designated Forest Area may not be converted to non-forest land use. There shall be no agricultural or raising/grazing animals of animals within

Forest Areas.

- 2) A Forest Management Plan must be prepared prior to conducting any forest management activities within a designated Forest Area.

This Forest Management Plan must be prepared by a professional forester or other qualified natural resources specialist and must include a schedule of harvests. This Forest Management Plan shall be provided to the Township for approval, as described in Section 8, and shall be updated at least every 15 years. At least 30 days prior to any commercial harvest, the Owner shall prepare a Harvest Plan containing specific details about the proposed harvest that are consistent with the Forest Management Plan. The Harvest Plan shall include a summary of planned activities, timeline, ingress and egress routes, and restoration, and shall be provided to the Township for approval, as described in Section 8. Forest management for air drainage related to agricultural uses may be included as part of the Forest Management Plan.

- 3) The Owner may remove dangerous or diseased trees in a designated Forest Area if the trees constitute an immediate threat without a Forest Management Plan and without prior Township approval. Dangerous trees are defined as those which are reasonably considered to cause safety concerns to people or property. Diseased tree management includes removing trees in order to prevent or control infestation by diseased vegetation, insects or other pests, in accordance with recommendations by a professional forester or other natural resource specialist. Owner shall notify the Township either before or within 30 days after the Owner takes action.

J. Animals. The Owner retains the right to raise or graze animals on the Property, provided the Owner erects and maintains adequate fencing or takes other measures to prevent livestock from entering any areas designated as Forest Areas or Natural Areas on the Property.

K. Utility Lines. The Owner retains the right to install and maintain overhead utility lines within existing utility easements of record. The Owner also retains the right to grant a utility easement for the installation and maintenance of utility lines to serve the Property for agricultural purposes. The Owner shall make all reasonable efforts to locate any new utility easement along the edge of a road or field, and location and installation shall be done in such a manner as to minimize to the greatest extent possible impact on prime, unique, and important soils.

L. Right to Operate Motorized Vehicles. The Owner retains the right to operate motorized vehicles on the Property, provided such use does not adversely impact the Conservation Values.

6. **PROHIBITED ACTIONS.** Any activity on or use of the Property which is inconsistent with the Purposes of this Conservation Easement or which is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are expressly prohibited:

- A. Division. The Owner is prohibited from dividing, subdividing, partitioning or otherwise creating or permitting separate ownership on the Property, except as permitted in Section 5.
 - B. Residential Use. Residential use of the property is prohibited, except as otherwise provided for in Section 5.
 - C. Buildings or Other Construction. Construction or placement of buildings or other human-made structures on the Property is prohibited, except as expressly permitted in Section 5 of this Conservation Easement.
 - D. Mineral extraction. The exploration, production or extraction of oil, gas, hydrocarbons or petroleum are permitted on the Property. Exploration, production, extraction, quarrying, or any other removal of material which depletes the land surface or subsurface, including without limitation, the removal of topsoil, sand, gravel, rock and peat, is prohibited, except as expressly permitted under Paragraphs 5(I) or 5(J) of this Conservation Easement. **[Note to Drafter: this is not proper language for a bargain sale easement where the owner intends to take a tax deduction.]**
 - E. Dumping. Processing, storing, dumping, or disposing of liquid or solid waste, refuse, or debris on the Property, ("Dumping") is prohibited. This is not intended to prohibit the use of organic waste or other agricultural byproducts used for agricultural uses, so long as it conforms to local, state and federal law.
 - I. Signs and Billboards. Billboards are prohibited. Signs are only permitted as specified in Paragraph 5(Q).
 - J. Commercial and Industrial Activities. Commercial or industrial activities not associated with permitted agricultural and open space activities or not otherwise expressly permitted herein, are prohibited.
- 7. RIGHTS OF THE TOWNSHIP.** The Owner confers the following rights upon the Township to perpetually maintain the Conservation Values of the Property:
- A. Right to Enter. The Township has the right to enter the Property at reasonable times to monitor the Property, to enforce compliance with, or otherwise exercise its rights under, this Conservation Easement. The Township agrees that it will not unreasonably interfere with the Owner's use and enjoyment of the Property. The Township has no right to permit any persons other than its own personnel, authorized agents and contractors to enter the Property. The general public is not granted access to the Property as part of this Conservation Easement.
 - B. Right to Preserve. The Township has the right to prevent any activity on or use of the Property that is inconsistent with the Conservation Easement Purposes or detrimental to the Conservation Values, unless such activity is expressly permitted in this Conservation Easement.
 - C. Right to Require Restoration. The Township has the right to require the Owner to

restore any and all areas or features of the Property which are damaged by any activity prohibited in this Conservation Easement.

- D. Right to Place Signs. The Township has the right to place signs on the Property which identify the land as protected by this Conservation Easement, which recognize the Township's contributions to the Property's protection, and which identify the Property as part of the Township's PDR program.

8. TOWNSHIP APPROVAL. The purpose of requiring Township approval is to allow the Township opportunity to ensure that the proposed activities, and the manner in which they are designed and carried out, are consistent with the Purposes and Conservation Values of this Conservation Easement. Whenever approval is required, the Owner and the Township shall follow the following process:

- A. Owner shall submit written plans for the proposed action to the Township office prior to commencing the activity.
- B. Township shall have up to 45 days from the date of receipt of the plan to review the plan and notify Owner that the plan is: 1) approved, 2) denied, or 3) approved with conditions.
- C. If the Township does not respond within the 45 day period, then the plan is deemed to be approved, and Owner may proceed with the proposed activity in a manner substantially consistent with the written plan submitted.
- D. The Township may require reasonable modifications to the plan if, in the Township's judgment, such modifications will improve the proposed activity's impact on the Conservation Values.
- E. The Township may deny the proposed activity if, in the Township's Sole Discretion, the proposed action or plans is likely to be inconsistent with the Purposes of this Conservation Easement or detrimental to the Conservation Values.

If the Owner performs activities which require Township approval without proper approval, then the Owner is subject to remedies described in Section 12.

9. AMENDMENT. This Conservation Easement may be amended only if in the Sole Discretion of the Township such amendment is consistent with the Purposes and Conservation Values of this Conservation Easement. Any amendment must be mutually agreed upon by the Township and the Owner, signed and duly recorded by the parties and comply with all applicable laws and regulations.

10. TOWNSHIP REMEDIES. This section addresses cumulative remedies of the Township and limitations on these remedies.

- A. Delay in Enforcement. No delay in enforcement shall be construed as a waiver of the Township's right to enforce the terms of this Conservation Easement at a later date.
- B. Acts Beyond Owner's Control. The Township may not bring an action against

the Owner for modifications to the Property resulting from causes beyond the Owner's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as unintentional fires, floods, storms, natural earth movement, or an Owner's well-intentioned actions in response to an emergency resulting in changes to the Property. The Owner has no responsibility under this Conservation Easement for such unintended modifications.

- C. Notice and Demand. If the Township reasonably believes that the Owner is in violation of this Conservation Easement, or that a violation is threatened, the Township shall provide written notice to the Owner. The written notice will identify the violation and request corrective action to cure the violation and, where the Property has been injured, outline the corrective action necessary to restore the Property.

However, if 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 legal remedies to enforce this Conservation Easement or to prevent or limit harm to the Conservation Values of the Property. Furthermore, in the event the Township has sent written notification of the violation and during the 28-day cure period defined below, it becomes apparent to the Township that the continuation of the violation is likely to cause immediate and irreparable harm, the Township may pursue its legal remedies without waiting for the cure period to expire.

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 Owner 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 Owner's opportunity to cure. The Owner agrees to reimburse all reasonable costs associated with this effort.

- D. Failure to Act. If, within 28-days after written notice, the Owner does not implement corrective measures requested by the 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 an Owner 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 compel enforcement of these covenants and restrictions by court or any other action against the Owner seeking any or all of the following relief: a temporary or permanent injunction, specific performance, declaratory relief, restitution, reimbursement of expenses, an order compelling the Owner to restore the Property, and/or any other action authorized by law. If a court or other authorized entity determines that the Owner has failed to comply with this Conservation Easement, the Owner shall also reimburse the Township for all litigation costs and actual attorney's fees, and all costs of corrective action or Property restoration incurred by the Township.

- E. Unreasonable Litigation. If the Township initiates litigation against the Owner to enforce this Conservation Easement, and if the court determines that the

litigation was initiated without reasonable cause or in bad faith, then the Township shall reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action.

- F. Actual or Threatened Non-Compliance. Township shall have the rights provided under this Section 12 whether violations of the terms of this Agreement are actual or threatened. The Owner agrees that the Township's remedies at law for any violation of the terms of this 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.
- G. 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.

11. **REGULATORY AUTHORITY.** The Owner is solely responsible for obtaining all applicable permits and authorization or otherwise ensuring that any proposed use, building, construction, design, location, or other specification related to Owner's use of the Property complies with all applicable local, state, and federal regulations, rules, policies, or laws. Likewise, the Township is solely responsible for obtaining all applicable permits and authorization or otherwise ensuring that any proposed use related to the Township's use of the Property described in Section 7 complies with all applicable local, state, and federal regulations, rules, policies, or laws.

By accepting this Conservation Easement, or in reviewing and/or approving any use, building, construction, design, location, or any other specification related to the Property or the use or development of the Property, the Township makes no warranty that the proposed use, building, construction, design, location, or other specification complies with any local, state, or federal regulation, rule, policy, or law. Zoning laws and other governmental laws or regulations apply to the Property, and shall serve as the limit to use on the Property unless the limits imposed by this Conservation Easement are more restrictive.

12. **OWNERSHIP COSTS AND LIABILITIES.** In accepting this Conservation Easement, the Township shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Property except as otherwise provided in this Section 14.

- A. The Township, its members, trustees or directors, officers, employees, and agents have no liability arising from injury or death to any person or physical damage to any property on the Property except as provided in Paragraph 14(B) below. The Owner agrees to indemnify, hold harmless and defend the Township against such claims of injury, loss, cost or damage during the tenure of the Owner's ownership of the Property. The Township's rights do not include the right, in absence of a judicial decree, to enter or control the Property to the degree that would cause the Township to be deemed an owner or operator of the Property within the meaning of the Comprehensive Environmental Response,

Compensation, and Liability Act, or any other federal or state law or regulation.

- B. The Township agrees to pay the cost, and indemnify the Owner against third party claims during the tenure of the Township's use and exercise of its rights under this Section 7 of the Conservation Easement. Except as otherwise provided in this Easement, the Owner shall have no cost or liability for the Township's actions associated with the exercise of these rights. The foregoing provisions of this Paragraph 14(B) shall not apply to loss, injury, death or damage arising by reason of the negligence or willful misconduct of the Owner, or its invitees, agents or employees; nor shall the foregoing apply to any costs or liabilities of the Owner for a violation of the terms of this Easement.
13. **NO THIRD PARTY RIGHTS.** No third party rights are created or intended to be conveyed in this Conservation Easement.
14. **AUTHORIZATION TO HOLD CONSERVATION EASEMENTS.** If the Township becomes no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in the County of Grand Traverse, Michigan. If the County is not willing or able to hold this Easement, then the Easement shall become vested in another governmental or non-profit entity selected by the Board of Directors of the Township who is willing and able to carry out the purposes of this Easement and the Acme Township Farmland and Open Space Development Rights Ordinance. If this Conservation Easement is not so disposed, the circuit court of the county in which the principal office of the Township is then located shall vest this Conservation Easement in another governmental or non-profit entity who is willing and able to carry out the purposes of this Easement and the Acme Township Farmland and Open Space Development Rights Ordinance.
15. **TERMINATION.** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's Purposes, or by exercise of eminent domain. **[Note to Drafter: this is not proper language for a bargain sale easement where the owner intends to take a tax deduction. This paragraph 15 (and subparagraphs) needs to be revised.]**
- A. Unexpected Change in Conditions. If subsequent circumstances render the Purposes of this Conservation Easement impossible to fulfill and the Property is determined to be not marketable for farm use, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings or in accordance with the Acme Township Farmland and Open Space Development Rights Ordinance. The Township will then be entitled to compensation in accordance with the provisions of the Acme Township Farmland and Open Space Development Rights Ordinance and the Grand Traverse County Farmland and Open Space Development Rights Ordinance.
- B. Eminent Domain. If the 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 in the Acme Township Farmland and Open Space Development Rights Ordinance and the Grand Traverse County Farmland and Open Space Development Rights Ordinance.

16. **LIBERAL CONSTRUCTION.** This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Code MCL 324.2140 *et seq.*
17. **NOTICES.** For purposes of this agreement, notices may be provided to either party by personal delivery or by mailing a written notice to the party (at the address shown at the top of this agreement, 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 U.S. Postal Service with sufficient pre-paid postage.
18. **SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
19. **SUCCESSORS.** This Conservation Easement is binding upon, and inures to the benefit of, the Owner's and the Township's successors in interest. All subsequent owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the current property owner.
20. **TERMINATION OF PERSONAL RIGHTS AND OBLIGATIONS.** A party's personal future rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.
21. **SUBORDINATION.** Any mortgage or lien shall be subordinated to the terms of this Conservation Easement. This Conservation Easement is subordinate to the Utility Easement conveyed concurrently, and recorded in Benzie County.
22. **SOLE DISCRETION.** For purposes of this Conservation Easement, "Sole Discretion" means in the sole and exclusive judgment of the Township. Sole Discretion further means that the Township may decide, judge, approve, approve with conditions, or deny any item or request for any reason or for no reason at all.
23. **EXHIBITS.** This Conservation Easement includes and incorporates the following Exhibits:
 - Exhibit A – Legal Description
 - Exhibit B – Survey
 - Exhibit C – Property Map showing any designated Forest Area, Farm Building Envelope or Scenic Buffer Area
24. **MICHIGAN LAW.** This Conservation Easement will be construed in accordance with Michigan Law.
25. **ENTIRE AGREEMENT.** This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

OWNER:

STATE OF MICHIGAN)
)ss
COUNTY OF)

Acknowledged before me on _____ by _____ .

, Notary Public
State of Michigan, County of _____
My commission expires:

TOWNSHIP:

By:
Its:

STATE OF MICHIGAN)
)ss
COUNTY OF GRAND TRAVERSE)

Acknowledged before me on _____ by _____,
known to me to be the _____ of the Acme Township.

, Notary Public
State of Michigan, County of _____
My commission expires:

PREPARED BY AND AFTER
RECORDING RETURN TO:
Scott Howard (P 52028)
Olson, Bzdok & Howard, P.C.
420 E. Front St.
Traverse City, MI 49686
(231) 946-0044