

Wisconsin Model Grant of Conservation Easement and Declaration of Covenants

Practitioner Guide

July 2021



Gathering Waters helps land trusts, landowners, and communities protect the places that make Wisconsin special.

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Preface

The Wisconsin Model Grant of Conservation Easement and Declaration of Covenants offers a guide for discussing and drafting conservation easements.

This model is intended to:

- reduce the time and cost of drafting a conservation easement,
- encourage uniformity and improve clarity,
- offer a legally enforceable and durable agreement that can be adapted consistent with the parties' conservation and other goals,
- conform to current laws and regulations, including those on tax deductibility, and
- promote best practices.

Each easement is unique to the conservation values and characteristics of the land, current and future landowner goals and needs, as well as policies and practices of the land trust, and must be tailored to accommodate these interests and needs. Thus, the Wisconsin model provides a reference and should not be used in lieu of legal review.

The Wisconsin model follows the general structure of the WeConservePA model for Pennsylvania and is tailored to Wisconsin law and other local considerations.

WeConservePA provides expansive commentary covering alternative and optional provisions and the reasoning behind the structure and content in the Pennsylvania model. The most recent edition of this commentary is available for free download at conservationtools.org.

Please direct questions to Gathering Waters at info@gatheringwaters.org or (608) 251-9131.

Acknowledgments

Christopher R. Gutschenritter, JD/MELP, lead writer

Meg Domroese, project manager

We are grateful to the task force that dedicated time and expertise to shaping the model.

Robert Burke, Green Lake Conservancy

Mike Carlson, Gathering Waters: Wisconsin's Alliance for Land Trusts

Abbie Church, Mississippi Valley Conservancy

Olivia Dunn, Stafford Rosenbaum

Pam Foster Felt, WI Department of Natural Resources

Linda Frank, Milwaukee Area Land Conservancy

Denise Goergen, Cedar Lakes Conservation Foundation

Steve Henkel, Ozaukee Washington Land Trust

Christopher Hughes, Stafford Rosenbaum

David James, Anderson O'Brien

Peter McKeever, Law Office of Peter E. McKeever

Trisha Moore, Northwoods Land Trust

William O'Connor, Wheeler, Van Sickle, and Anderson

Rick Remington, Landmark Conservancy

Jim Welsh, Groundswell Conservancy

Vanessa Wishart, Stafford Rosenbaum

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We also extend our thanks to Ozaukee Washington Land Trust, and especially Steve Henkel, working in consultation with Attorney Peter McKeever, for generously sharing their early experiences adapting the Pennsylvania model for use in Wisconsin.

Introduction

How to Use the Model

The Wisconsin Model Grant of Conservation Easement and Declaration of Covenants offers a guide to drafting a conservation easement. It is intended to be carefully modified to match the objectives of the landowner and the land trust in the context of the specific property being protected. Each conservation easement is unique and presents its own challenges and opportunities. It is highly unlikely that any two transactions would use identical conservation easements. It is equally unlikely that two drafters would write identical conservation easements for the same property. The model serves as a starting point. For each transaction, it can be used to guide negotiations and considerations throughout the drafting process.

The model is intended to be tailored to reflect the purposes, mission, and policies of the Easement Holder and, importantly, its capacity to monitor and enforce provisions of the conservation easement. Each transaction will call for a thoughtful risk analysis.

The model is not intended to be relied upon as legal advice or in lieu of review by competent legal counsel.

The structure of the model is intended to accommodate the myriad conservation opportunities presented by the varied Wisconsin landscape, including working lands and forest lands, and anticipates that land trusts and other qualified organizations across the state will use this model in their work. Notes and suggestions to users are included in bracketed text and should be deleted from actual draft easements.

Orientation to the Model

Background, Recitals introduces **Conservation Values** under the heading **Conservation Purpose**. The Conservation Values make up the heart of any easement and much care should be given to developing this part of the conservation easement. Prompts are included to encourage careful and thorough consideration of the characteristics of the property that may make up the Conservation Values and also tie these to covenants and servitudes intended to protect them.

Note: The prompts include property attributes beyond those considered by the Internal Revenue Code (IRC) and Treasury Regulations.

Section 1 sets forth the operative language granting a perpetual, unconditional, and irrevocable conservation easement property interest in the Protected Property. Section 1.2 describes three protection areas, called **Easement Areas**, and is intended to be modified to reflect the Conservation Values of the Protected Property. Protection areas can be added or removed as required by the transaction.

Section 2 considers future **subdivisions** of the Protected Property. Section 2.1 generally prohibits subdivision. Section 2.2 considers exceptions to that general prohibition. If any subdivision is intended to be permitted, Section 2.2 should be carefully modified to precisely reflect that intent. Section 2.3 sets forth the requirements necessary for any considered subdivision to be permitted.

Sections 3 through 5 contain the **restrictions on use and development** necessary to protect the Conservation Values. These three sections match the Easement Areas described in Section 1.2 and should be modified to reflect any changes made to Section 1.2. These sections are written to generally prohibit all uses, then list specific exceptions to that general prohibition. For any use or development that has the potential to adversely impact Conservation Values, consider subjecting it to a Review process, defined in Section 6.4.

Note: Numerical limits contained in these sections are intended to serve as placeholders, not recommendations, and should be adjusted in consideration of the Conservation Values and objectives of the landowner and Easement Holder.

Sections 6 through 9 address administrative matters of the easement and modification of these sections should only be done with careful consideration and consultation.

Section 6 contains the **rights and obligations of the Easement Holder**. Easement Holder should carefully review these rights and obligations considering risk tolerance, feasibility, and capacity to carry them out.

Section 6.3(d) contains an **amendment provision**. Note that this provision is written considering, but not directly mirroring, the Chief Counsel Advice Memorandum on amendment provisions.

Section 7 contains general provisions that define the process required in the event of **violations and/or termination** of the conservation easement. Section 7.3 defines the process for **mediation**. The model does not include arbitration as a dispute resolution alternative. Section 7.4(a) is written to include the “**proportionate value rule**” as it applies to extinguishment.

Section 9.5 prohibits **public access**. This provision should be modified to appropriately reflect the intentions of the landowner, funding sources, and/or policies of the Easement Holder.

Section 10 is a **glossary** of terms used in the document—indicated by capitalization. This section should be modified to reflect any changes to the conservation easement, removing terms that are not used, and adding terms to enhance clarity, prevent dispute, or establish intent for that term’s use. Carefully review the definitions of the terms included in the glossary to ensure they match the intent of the parties.

CONTENTS

BACKGROUND, RECITALS:	1
A. Protected Property.....	1
B. Conservation Purpose.....	1
C. Public Policies & Enabling Legislation.....	5
D. Baseline Documentation.....	6
E. Qualified Nonprofit Organization.....	6
F. Conservation Intent.....	6
G. Qualified Conservation Contribution.....	6
H. Defined Terms.....	6
SECTION 1. GRANT TO EASEMENT HOLDER	7
1.1 Purpose.....	7
1.2 Easement Areas.....	7
1.3 Landowner’s Reserved Rights, Notice Required Under Regulations.....	7
1.4 Mineral Interests.....	7
1.5 Beneficiaries.....	8
SECTION 2. TRANSFER - SUBDIVISION	8
2.1 Prohibitions.....	8
2.2 Permitted Changes.....	8
2.3 Requirements.....	9
SECTION 3. HIGHEST PROTECTION AREA	10
3.1 Improvements.....	10
3.2 Activities and Uses.....	11
SECTION 4. STANDARD PROTECTION AREA	12
4.1 Improvements.....	12
4.2 Activities and Uses.....	14
SECTION 5. MINIMAL PROTECTION AREA	15
5.1 Improvements.....	15
5.2 Activities and Uses.....	15
SECTION 6. RIGHTS AND DUTIES OF EASEMENT HOLDER	16
6.1 Easement Holder Covenants.....	16
6.2 Rights and Duties of Easement Holder.....	16
6.3 Other Rights of Easement Holder.....	17
6.4 Review.....	18
6.5 Costs and Expenses.....	19
SECTION 7. VIOLATION; TERMINATION, REMEDIES	19
7.1 Violation.....	19
7.2 Remedies.....	20

7.3	Open Dialogue, Alternative Dispute Resolution.	20
7.4	Modification or Termination.	21
7.5	Remedies Cumulative.	21
7.6	Waivers.	22
7.7	No Fault of Landowner, Force Majeure.	22
7.8	Multiple Landowners.	23
SECTION 8. LANDOWNER RESPONSIBILITIES, REPRESENTATIONS		23
8.1	Landowner Responsibilities, Costs, and Liabilities.	23
8.2	Landowner Representation and Warranties.	23
8.3	No Representation of Tax Benefits.	24
8.4	Indemnity, Hold Harmless.	25
SECTION 9. MISCELLANEOUS.....		25
9.1	Notices.....	25
9.2	Governing Law.	25
9.3	Burdens; Benefits.	25
9.4	Conservation Easement to Survive Merger.	26
9.5	No Public Access.....	26
9.6	Documentation Requirements.....	26
9.7	Severability.	26
9.8	Counterparts.	26
9.9	Recording, Re-recording.	26
9.10	Guides to Interpretation.....	27
9.11	Entire Agreement.....	27
9.12	Incorporation by Reference.....	27
9.13	Jurisdiction; Venue.....	27
SECTION 10. GLOSSARY, OTHER DEFINED TERMS		27

GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS

THIS GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS (this “Grant”) dated this ___ day of _____, 20___ (the “Easement Date”) is by and between *[Name of landowner]* (the “undersigned Landowner”, whether singular or plural), and *[Name of Easement Holder]*, a Wisconsin nonprofit corporation (hereinafter the “Easement Holder”). Undersigned Landowner and Easement Holder agree that the “Effective Date” of this Grant shall be the date this Grant is recorded in the Register of Deeds of *[County/Countries in which the Protected Property is located]* County.

BACKGROUND, RECITALS:

A. Protected Property.

The undersigned Landowner holds title in fee simple to certain real property, consisting of approximately *[##]* acres of real property, and located in the *[City/Village/Town]* of _____, _____ County, Wisconsin (hereinafter the “Protected Property”) and which is legally described in Exhibit A attached to this Grant and incorporated by this reference. It is the intent of the undersigned Landowner to limit the application of this Grant to that Property legally described in Exhibit A (the “Protected Property”).

[Optional – “The Protected Property is a subpart of a larger parcel with tax key... [identify tax key of larger parcel]” OR “The Protected Property comprises tax parcels [identify all tax parcels if Protected Property is made up of several tax parcels].”]

The Protected Property is depicted on the Protected Property Map attached hereto as Exhibit B and made a part hereof. In the event of discrepancy between Exhibit A and Exhibit B, Exhibit A shall prevail.

[Optional – Existing Improvements: Improvements on the Protected Property include... [Enumerate and add descriptive information, as appropriate. These improvements will be depicted on a figure in the baseline and/or the easement exhibits.]

[Optional – If Existing Restrictions limit use of the Protected Property: The Protected Property is subject to certain restrictions or protections other than those created by this Grant and are identified in Exhibit C. [Enumerate and add document recording information, as appropriate. Include copies in the baseline report – appended to the title report.]

B. Conservation Purpose.

The Protected Property, in its present state, contains significant *[outdoor recreation, education, relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, open space (including farmland and forest land) and scenic – revise as appropriate]* values of importance to the undersigned Landowner, Easement Holder, and the people of Wisconsin. The above general natural features and attributes and the more specific natural features and characteristics of the Protected Property described in Sections B(*i, ii, iii and/or iv*), and as may be further detailed in the Baseline Documentation Report referenced in Section D herein, shall be known collectively as the “Conservation Values” of the Protected Property. The Conservation Purpose (“Purpose”) of this Grant is the preservation of the Conservation Values of the Protected Property described herein and meets the criteria of a “Conservation Purpose” as the term is used under Section 170(h)(4)(A) of the Internal Revenue Code (the “Code”) and the regulations promulgated thereunder.

[Optional – If Existing Improvements are included in the above Section A, and/or activities and uses are included in the below Sections 3.2, 4.2, and/or 5.2 that are permitted to continue, or if any Additional Improvements are permitted in below Sections 3.1, 4.1, or 5.1 or any subsections thereof: The Existing Improvements, Additional Improvements, activities and uses, and any other Reserved Rights described in this Grant, when exercised pursuant to the terms of this Grant, shall not be considered to adversely impact the Conservation Purpose of this Grant.]

[NOTE: A qualified Conservation Easement MUST identify at least one of the Conservation Purposes listed in B(i), B(ii), and B(iii), but MAY include B(iv-ix) or others as appropriate to add clarification and specificity of the Conservation Values.

In the examples provided below, the headings of i, ii, and iii are from Internal Revenue Code §170(h)(4)(A), and the prompts from Treasury Regulations §1.170A-14(d)(2-4) and should be maintained, as applicable to the property, to guide the user's development of these sections.

The recitals below should provide detailed supporting information, per Treas. Regs §1.170(A)-14(d) describing the Conservation Purpose. These Regs provide useful drafting guidance, and the particular references below should be consulted (READ THEM!) when drafting:

- 1. Outdoor Recreation & Education (d)(1)(i)*
- 2. Environmental System (d)(1)(ii) Significant Habitats and Ecosystems*
- 3. Preservation of Open Space (d)(1)(iii):*
 - a. Scenic Enjoyment or*
 - b. Per C below, Governmental Conservation Policy w/ Significant Public Benefit*
- 4. Drafters of this model did NOT INCLUDE historic lands and structures d(1)(iv)*

Also note that in addition to the thorough description of the Conservation Values, the IRS expects a description of HOW protection of the property serves the identified Conservation Values. Prompts are provided to assist in drafting.

Remember – Every Conservation Value must have one or more corresponding protective covenants! When drafting, carefully consider ability to monitor and enforce.]

- i. Outdoor Recreation or Education:** *[Outdoor recreation or education is a qualified Conservation Purpose ONLY if the recreation or education is “for the substantial and regular use of the general public.” –Elaborate using the text below as a prompt – list from general to specific.]* The Protected Property provides rich and diverse outdoor recreation or education opportunities for the substantial and regular use by the general public including...*[describe boating, fishing, nature or hiking trails, or other recreation and/or education opportunities...]*. The Conservation Purpose of this Grant includes preservation of the Protected Property for outdoor recreation or education for substantial and regular use by the public. This Conservation Value is protected by covenants and servitudes contained in this Grant and the Parties’ commitment to *[describe the manner and duration of access granted to the public by this Grant]*.
- ii. Protection of Relatively Natural Habitat or Similar Ecosystem:** The Protected Property includes significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives, and fish, wildlife, or plants exist on the Protected Property in a relatively natural state. The Protected Property includes *[describe existing habitats of the Protected Property, including descriptions of landform, vegetation, hydrologic, soil resource, and fauna features from general to specific – Example: The Protected Property is located in the _____ watershed of the _____ Basin. Approximately XX miles of the _____ River, which is listed as impaired by the WDNR, runs through the Protected Property. The Protected Property consists of forested floodplain, managed prairie, Southern Mesic Forest, vernal ponds, and _____ acres of agricultural land. A portion of the floodplain of the _____ River is identified in the Wisconsin Wetland Inventory by the Wisconsin DNR as a state recognized wetland area. The Protected Property is immediately adjacent to _____ acres of contiguous Southern Mesic Forest. The Easement Holder also holds conservation easements on two nearby properties in the _____ River corridor: the _____ and _____ properties.]* The Conservation Purpose of this Grant includes the preservation of the relatively natural habitat(s) or similar ecosystem(s) present on the Protected Property. This Conservation Value is protected by covenants and servitudes contained in this Grant and the Parties’ commitment to ... *[Example: maintaining land cover and land uses that are known to be effective in reducing the likelihood of adverse impacts to the water quality and quantity of subsurface and surface waters and wetlands*

values of the Protected Property. Sustaining the natural capacity of the Protected Property and the fertility and restorative quality of its soils to support healthy and vigorous forests, wetlands, prairies, successional fallow and productive farmland, and to allow, but not require, limited agricultural use and restoration to native vegetation designed to assure a continuing, renewable, and long-term source of food and fiber, maintain land cover and land uses aimed at preserving and enhancing a healthy and biologically diverse landscape that supports a full range of native flora and fauna, and limit adverse ecological impacts.][No requirement to establish public access for this Conservation Purpose but public access may be required by certain funding sources.]

- iii. **Preservation of Open Space:** The economic health of Wisconsin is closely linked to its natural landscapes, which provide much of Wisconsin's scenic beauty, upon which the state's tourist, recreation, and agricultural industries depend. Preservation of the Protected Property is *[Choose A, B, or preferably both] A: pursuant to a clearly delineated [choose any or all: federal, state or local] governmental conservation policy and will yield significant public benefit. B: for the scenic enjoyment of the general public and will yield a significant public benefit.*

The Protected Property, in its present state, is an open space *[include "with farmland" and "forest land" as appropriate]* with scenic enjoyment value consisting of *[describe physical and aesthetic scenic values of the property including without limitation, where appropriate: compatibility of land use with other land in area; degree of contrast and variety provided by the visual scene; openness of the land; relief from urban closeness; harmonious variety of shapes and textures; degree to which land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight from surrounding area; consistency of the proposed scenic view with a methodical state scenic identification program, such as a state landscape inventory; and consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process, especially if the donation is endorsed by an appropriate state or local governmental agency]* The Protected Property provides the general public scenic enjoyment from *[name of public transportation ways]*, and/or from the _____ River/Lake. Development of the Protected Property would impair the scenic character of the local *[Choose A, B, and/or C as needed] A: rural landscape B: urban landscape C: scenic panorama that can be enjoyed from _____ Park/Nature Preserve/Road/River/Lake/Trail/Historic Structure of Land Area, which is open to or utilized by the public.*

The Conservation Purpose of this Grant includes preservation of the significant public benefits of the Protected Property including the *[describe significant public benefit including without limitation, where appropriate: uniqueness of the property to the area; intensity of land development in the vicinity of the property including foreseeable trends; consistency of Protected Property with public programs for conservation in the region; consistency of Protected Property with existing private conservation programs in the region; likelihood that development would degrade scenic, natural, or historic character of area; opportunity for public to use or appreciate Protected Property's scenic values; importance of property in preserving a local or regional landscape or resource that attracts tourism or commerce; likelihood that donee will acquire equally desirable and valuable substitute property or property rights; cost to donee of enforcing terms of restriction; surrounding population density; consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land.]* This Conservation Value is protected by covenants and servitudes contained in this Grant and the Parties' commitment to... *[maintaining for the benefit of current and future generations these essential and aesthetic rural characteristics. If agricultural or forest land, then include]*

- iv. **Fish and Wildlife Species and Habitat:** *[Elaborate using the text below as a prompt – list from general to specific.]* The Protected Property provides rich and diverse habitat and native communities including landform and vegetation features that provide significant relatively natural habitat for fish and wildlife. The diverse habitat and native communities on the Protected Property include... *[forested floodplain, prairie, and southern mesic forest. Large and small mammals, birds, insects, and amphibians use the area. The wooded areas contain... The Protected Property*

is near the western edge of the natural ranges of ... More than XX native wildflowers are reported on the property, including... More than XX species of birds have been reported on the Protected Property, including... Fish, reptiles, and amphibians have been spotted in the surface waters within the property boundaries...] The Conservation Purpose of this Grant includes the preservation of this fish and wildlife habitat. This Conservation Value is protected by covenants and servitudes contained in this Grant and the Parties' commitment to...*[maintain land cover and land uses that are known to be effective in maintaining and improving the health and wellbeing of fish and wildlife species and their habitat known to be or reasonably likely to be present on the Protected Property.]*

- v. **Water Resources:** *[Groundwater and surface water, with a focus on quality and quantity, headwaters, wetlands, flood plains, aquifer recharge, impaired waters, etc.]* The Protected Property includes landform and vegetation features that protect and facilitate natural riparian, floodplain, and wetland functions and therefore protect natural flowages and stream conditions and associated habitat. *[More particular examples: This property is located in the _____ watershed of the _____ Basin. Approximately XX miles of the _____ River, which is listed as impaired by the Wisconsin DNR, runs through the Protected Property. The Protected Property consists of forested floodplain, managed prairie, Southern Mesic Forest, and vernal ponds. A portion of the floodplain of the _____ River is identified in the Wisconsin Wetland Inventory by the Wisconsin DNR as a state recognized wetland area. The Easement Holder also holds conservation easements on two nearby properties in the _____ River corridor: the _____ and _____ properties.]* These landform and vegetation features are more specifically described in the Baseline Documentation Report. The Conservation Purpose of this Grant includes the preservation of these water resources. This Conservation Value is protected by covenants and servitudes contained in this Grant and the Parties' commitment to ... *[maintaining land cover and land uses that are known to be effective in reducing the likelihood of adverse impacts to the water quality and quantity of subsurface and surface waters and wetlands values of the Protected Property.]*
- vi. **Soil Resources:** The Protected Property includes soil types and profiles identified by NRCS as Prime, Important, and/or Highly Erodible, including ... *[include Prime and Important or Highly Erodible Soils per NRCS as related to the importance of building soil health and reducing erosion. Consider practicality of monitoring when developing covenants for soil resources.]* The Conservation Purpose of this Grant includes the preservation of these soil resources. This Conservation Value is protected by covenants and servitudes contained in this Grant and the Parties' commitment to ...*[sustaining the natural capacity of the Protected Property and the fertility and restorative quality of its soils to support healthy and vigorous forests, wetlands, prairies, successional fallow and productive farmland, and to allow, but not require, limited agricultural use and restoration to native vegetation designed to assure a continuing, renewable, and long-term source of food and fiber, maintain a healthy and biologically diverse landscape that supports a full range of native flora and fauna, and limit adverse ecological impacts.]*
- vii. **Scenic / Geologic Values:** The Protected Property provides the general public with outstanding scenic views from *[County, State, Interstate]* Highway _____, and from the _____ River. *[OR]* The Protected Property provides scenic and open space resources of significant benefit to the general public, including the farmland, forest land, stream corridor, and rolling topography that are prominently viewable by the general public from Highway _____ and/or (waterbody) _____. The Conservation Purpose of this Grant includes the preservation of these scenic/geologic values. This Conservation Value is protected by covenants and servitudes contained in this Grant and the Parties' commitment to...*[maintaining for the benefit of current and future generations these essential and aesthetic rural characteristics.]*
- viii. **Agriculture and Forestry:** *[Related to food and fiber production use, as well as cultural and scenic benefits]* The Protected Property contains productive agricultural and/or forestry values. The Conservation Purpose of this Grant includes the preservation of these agricultural and forestry values. This Conservation Value is protected by covenants and servitudes contained in this Grant and the Parties' commitment to...*[limiting the form, location, and density of Development and by*

promoting management of soil and water resources to facilitate active and economically viable agricultural use of the Protected Property now and in the future. ... Landowner's agreement to promote stewardship of the soil and water resources as described herein, including protecting the grassed waterways and related improvements installed on the Protected Property with public funding assistance, yielding a public benefit by reducing soil erosion and enhancing surface and groundwater quality of the _____ watershed and the _____ basin.]

- ix. **Ecosystem Services:** *[Describe how the preservation of this property serves the public through provision of green infrastructure and similar eco-services like stormwater and erosion control, flood mitigation, urban cooling, pollinator support, carbon sequestration. For example: "The Protected Property includes [native/restored] [wetland/forest/grassland] that represents carbon storage and sequestration potential, in addition to the benefits of filtering and protecting water supplies, increasing soil fertility and forest productivity, fostering biodiversity, and strengthening the capacity of ecosystems to withstand drought and extreme weather, reducing flooding, runoff, and erosion. [Optional for grasslands - Avoided grassland conversion, as well as grassland restoration, is especially important in Wisconsin due to the high rate of conversion that has been occurring in this state, especially along the eastern border. It has been identified as one of the key land use opportunities in Wisconsin for carbon storage and sequestration.] It is a purpose of this Conservation Easement to protect the carbon storage and reduction potential of the Protected Property and to have the conservation of the Protected Property contribute to climate mitigation and resilience as a "natural climate solution". This Conservation Value is protected by covenants and servitudes contained in this Grant and the Parties' commitment to... [managing the Protected Property for healthy ecosystems that provide, or are reasonably likely to provide, carbon benefits, as well as [Add if applicable - including prescribed fire practices, natural forest management, sustainable cropland practices, such as minimizing application of excess nitrogen fertilizer and growing cover crops, increasing carbon sequestration in cattle pasture areas with planting of windbreaks and legumes, and improved manure management.]*

C. Public Policies & Enabling Legislation.

Preservation of the Conservation Values of the Protected Property will serve the following public policies:

[The intent for this recital is to identify specific governmental policies that support preservation of this type of resource and/or landscape for this particular tract. Further detail can be included in the Baseline Documentation Report.

If Option A of Section B(iii) of this model is included as a Conservation Value, this Section MUST identify the "clearly delineated governmental conservation policy."

For example: This Grant of Conservation Easement is consistent with Wisconsin Land Legacy Report (2006), Wisconsin's State Wildlife Action Plan (2005), Wisconsin's Great Lakes Strategy (2009), the State of the Lakeshore Basin Report (2001), and with the Town of _____'s Year 2030 Comprehensive Plan, the _____ County Land & Water Resources Plan 2016-2025, and the _____ County Farmland Preservation Plan 2013, all of which include goals of protecting important natural areas, open space, and agricultural lands, including wetlands, river corridors, open spaces, wildlife habitats, woodlands, and groundwater resources. This Grant provides significant public benefits consistent with the Shoreland Ordinance, Chapter __ of the _____ County Code of Ordinances and the aforementioned clearly delineated governmental conservation policies.]

The common law of the State of Wisconsin and the Uniform Conservation Easement Act, Section 700.40 of the Wisconsin Statutes, provide for the creation and conveyance of conservation easements to retain and protect the natural, scenic, and open space values of real property; to assure its availability for agriculture, forestry, recreation or other open space uses; to protect natural resources; to maintain or enhance air or water quality; or to preserve historical, architectural, archaeological, or cultural sites.

The State of Wisconsin Natural Resources Board policies promulgated in Chapter NR 1 of the Wisconsin Administrative Code foster and promote the voluntary conservation of wildlife habitat on private lands and support, assist, and encourage private practices that enhance forests, wildlife, aesthetics, and watershed protection.

[Insert specific local public policies, or any other public policies applicable to the conservation project, here, including state and local taxation statutes, codes, and policies.]

D. Baseline Documentation.

The Baseline Documentation Report (hereinafter the “Baseline Documentation”) is incorporated herein by this reference, and a copy is kept on file at the offices of Easement Holder. The parties hereto acknowledge the Baseline Documentation, executed and dated _____, is sufficient to establish an accurate representation of the Protected Property’s condition at the time of this Grant, and is intended to serve as an objective, though not exclusive, information baseline for monitoring compliance with the provisions of this Grant. It is understood by the parties hereto that the Baseline Documentation may be used by Easement Holder to establish that a change in the use or character of the Protected Property has occurred, but the existence of the Baseline Documentation shall not preclude Easement Holder’s use of other evidence to establish the condition of the Protected Property as of the date of this Conservation Easement. If any conflict exists between the Baseline Documentation and this Grant, this Grant shall prevail. A copy of the title page and signature page(s) of the Baseline Documentation is attached to this Conservation Easement as *Exhibit XX*.

E. Qualified Nonprofit Organization.

The Easement Holder is a publicly supported, tax exempt organization described in Sections 501(c)(3) and 509(a)(1) *[or 509(a)(2)]* of the Code, and a “qualified organization” within the meaning of Section 170(h) of the Code, as those sections may be amended from time to time, and in the regulations promulgated thereunder. The Easement Holder is also eligible to hold conservation easements under Section 700.40(1)(b)(2) of the Wisconsin Statutes *[DRAFTERS SHOULD ENSURE ACCURACY OF STATUTE CITATIONS AS THESE MAY CHANGE OVER TIME]* as a Wisconsin nonstock corporation among whose purposes are the preservation, protection, and enhancement of real property in its natural, scenic, open space, historical, and/or undeveloped condition, and the preservation of the ecological integrity of the lands and waters therein. The Easement Holder maintains an Easement Stewardship Fund for the legal defense of this Grant and the protection of the Conservation Values of the Protected Property.

F. Conservation Intent.

Undersigned Landowner and Easement Holder recognize the Conservation Values of the Protected Property and share the common goal of preserving them in perpetuity. Undersigned Landowner, through this Grant, intends to restrict the use of the Protected Property to protect the Conservation Values, prevent use, fragmentation, or Development of the Protected Property for any purpose or in any manner that conflicts with the provisions of this Grant in perpetuity. Undersigned Landowner further intends to convey to Easement Holder, and Easement Holder intends to accept, the right to monitor and enforce these restrictions in order to preserve, enhance, and protect the Protected Property and its Conservation Values for the benefit of this generation and generations to come.

G. Qualified Conservation Contribution.

[OPTIONAL. REMOVE IF NO DONATION IS MADE] Conveyance of this Conservation Easement by donation, or the donation of any portion of the value of this Conservation Easement, is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code) to a Qualified Organization committed to holding this Conservation Easement exclusively for “conservation purposes” as that term is defined in §1.170A-14(d) of the Regulations.

H. Defined Terms.

Capitalized terms not defined elsewhere in this document are defined in Section 10.

SECTION 1. GRANT TO EASEMENT HOLDER

In consideration of the facts recited above, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned parties, and pursuant to the laws of the State of Wisconsin and in particular Wisconsin Statute Section 700.40, undersigned Landowner hereby voluntarily grants and conveys a perpetual, unconditional, and irrevocable conservation easement property interest, over, in, and to the Protected Property, (herein the “Conservation Easement”) and the affirmative rights to monitor and enforce the restrictive covenants and equitable servitudes, as set forth in this Grant, to Easement Holder.

1.1 Purpose.

The Purpose of this Grant is to:

- (a) **Preserve Conservation Values.** To preserve, advance, and protect, in perpetuity, the Conservation Values of the Protected Property as described herein and as they may be enhanced or evolve over time.
- (b) **Prevent Inconsistent Use.** To prevent any activity on or use of the Protected Property that is not specifically permitted herein or which would impair or interfere with the Conservation Values of the Protected Property.
- (c) **Prevent Inconsistent Development.** To prevent intrusion or Development of the Protected Property that would impair or interfere with the Conservation Values of the Protected Property, including the essential natural and scenic quality of the Protected Property and government conservation policy.

1.2 Easement Areas.

Exhibit C hereto contains a survey or other depiction of the Protected Property (hereinafter the “Easement Area Plan”) showing, among other details, the location of one or more of the following areas – the Highest Protection Area, the Standard Protection Area, and the Minimal Protection Area. *[REFINE THE DESCRIPTIONS BELOW TO SUBSTANTIATE THE PROHIBITIONS IN A MANNER THAT IS SPECIFIC TO THE PROTECTED PROPERTY’S CONSERVATION VALUES]*

- (a) **Highest Protection Area.** To protect and enhance the richness of biodiversity and natural habitat, keeping the area wild or undisturbed in character.
- (b) **Standard Protection Area.** To promote good stewardship of the land so that it will always be able to support open space activities including Agriculture or Forestry.
- (c) **Minimal Protection Area.** To accommodate, subject to moderate constraints, a wider variety of activities, uses, and Improvements, confining them to the Minimal Protection Area where they will not impair or otherwise be detrimental to the Conservation Values.

1.3 Landowner’s Reserved Rights, Notice Required Under Regulations.

Landowner reserves all rights and responsibilities pertaining to their ownership of the Protected Property, except for those rights specifically granted to Easement Holder (and Beneficiaries, if applicable) in this Grant. Landowner may not, however, exercise reserved rights in a manner that adversely affects or is likely to adversely affect the Conservation Values or is otherwise inconsistent with the provisions of this Grant.

To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Grant, Landowner agrees to notify Easement Holder before exercising reserved rights that may adversely affect the Conservation Values of the Protected Property. *[If not a donation, this does not apply]*

1.4 Mineral Interests.

The undersigned Landowner represents that no Person has retained a qualified mineral interest in the Protected Property of a nature that would disqualify the Grant for purposes of §1.170A-14(g)(4) of the Regulations. Furthermore, the surface mining or extraction of any qualified mineral interest, including all

hydrocarbons; hard rock minerals such as but not limited to gold, iron ore, and copper; and sand, gravel, aggregate, quartz sandstone, frac sand, topsoil, and limestone on or from the Protected Property is prohibited. From and after the Effective Date, the grant of such an interest is prohibited, and Easement Holder has the right to prohibit the exercise of such a right or interest if granted in violation of this provision. The provisions of this section supplement and, to the extent of an inconsistency, supersede provisions set forth elsewhere in this Grant.

1.5 Beneficiaries.

Include Section 1.5 only if a third-party holds rights under this Grant, such as an entity that provided funds to purchase an easement (Foundation, WDNR, MMSD) and/or that holds an interest through grant match obligation (NAWCA) or other Agreement (Municipality), whether recorded or not. If this section applies, in the Recitals identify the entity and provide background, identify the entity again here, and update any important Rights (review, enforcement, etc.) in Section 6 – Rights and Duties of Easement Holder.

SECTION 2. TRANSFER - SUBDIVISION

This Section serves to regulate the transfer of a portion of the Protected Property independent of the remainder of the Protected Property; to regulate the number, size, and configuration of Lots within the Protected Property; and to foreclose opportunities to use the conservation achieved by this Conservation Easement to increase the density of Development on or outside the Protected Property.

2.1 Prohibitions.

[Include, as appropriate, prohibitions applicable to division of the property here. Add exhibits as necessary and/or for clarity.]

All of the following are prohibited except as specifically set forth as permitted in Section 2.2 herein:

- (a) **Transfer of Portion of Protected Property.** Transfer of ownership, possession, or use of a portion of the Protected Property, including subsurface portions of the Protected Property, independent of the remainder of the Protected Property. The Protected Property shall only be granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in unified title as one (1) parcel. The intent of this sub-section is to prohibit the conveyance of the Protected Property except as a whole, regardless of whether or not it consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax, zoning, or other purposes.
- (b) **Subdivision.** Change in the boundary of a Lot or other Subdivision of the Protected Property. Ownership of the Protected Property as “Tenants in Common” shall not be considered a Subdivision of the Protected Property in any manner.
- (c) **Transfer of Density.** Use of open space area protected under this Grant to increase (above limits otherwise permitted under Applicable Law) allowable density or intensity of Development within other portions of the Protected Property or outside the Protected Property.
- (d) **Transfer of Development Rights.** Transfer of Development rights or other rights granted or allocated to the Protected Property in support of Development outside the Protected Property.

2.2 Permitted Changes.

[Include, as appropriate, permitted divisions etc. of the protected property. Add exhibits as necessary and/or for clarity.]

The following changes are permitted subject to the requirements of Section 2.3 herein:

- (a) **Lots within Protected Property.** If the Protected Property contains more than one Lot, Landowner may (1) merge two or more Lots into a single Lot in such a way that does not alter the perimeter of the Protected Property; or (2) subject to Review, reconfigure one or more of the boundaries of such Lots except any boundary of such Lots that is also the perimeter boundary of the Protected Property as described in Exhibit A.
- (b) **Transfer to Qualified Organization.** Subject to Review, creation and transfer of a Lot to a Qualified Organization for nature preserve, public trail, or other conservation purposes approved by Easement Holder after Review.
- (c) **Transfer of Rights of Possession or Use.** Subject to Review, transfer of possession or use (but not ownership) of one or more portions of the Protected Property, including subsurface portions of the Protected Property, for purposes permitted under, and subject to compliance with, the terms of this Grant. Examples of such rights of possession or use include farm leases and utility easements. Leases of space within Improvements are not subject to Review.
- (d) **Protected Property Boundary Adjustments.** Portions of the Protected Property may be conveyed to abutters only to the extent required by a judicial decree to resolve *bona fide* boundary disputes, or to clarify or update inaccurate legal descriptions and/or to correct survey errors.

2.3 Requirements.

[Include, as appropriate, requirements for exceptions for permitted divisions etc. of the Protected Property. Add exhibits as necessary and/or for clarity.]

The following are required for changes permitted in Section 2.2 herein:

- (a) **Establishment of Lots; Allocations.** Prior to transfer of a Lot following a Subdivision, Landowner must (1) furnish Easement Holder with the plan of Subdivision approved under Applicable Law, and legal description of each Lot created or reconfigured by the Subdivision; (2) mark on the plan the boundaries of each Lot with permanent markers; and (3) depict and/or describe in a document recorded in the Public Records those limitations applicable to more than one Lot under this Grant, and any reserved rights Landowner does not intend to transfer to prospective transferee. Any change pursuant to this provision shall become part of the Baseline Documentation.
- (b) **Amendment.** Easement Holder may require Landowner to execute an Amendment of this Grant, pursuant to Section 6.3, to reflect a change to the description of the Protected Property set forth in Exhibit *[XX]* or other changes and allocations resulting from Subdivision that are not established, as determined by the sole discretion of Easement Holder, by recordation in the Public Records of the plan of Subdivision approved under Applicable Law.
- (c) **Notice, Subsequent Landowners.**
 - (1) Not less than thirty (30) days prior to transfer of the Protected Property or a Lot, Landowner must notify Easement Holder, pursuant to Section 9.1 of this Grant, of the name(s) and address for notices of the Person(s) who is proposed to become Landowner following the transfer.
 - (2) Landowner authorizes Easement Holder to (1) contact the Person(s) to whom the Protected Property or Lot will be transferred, and other Person(s) representing Landowner or the prospective transferees, to discuss with them, without making interpretations or assertions, this Grant and, if applicable, other pertinent documents; and (2) enter the Protected Property to assess compliance with this Grant.

- (d) **Instrument to Reference Grant.** Landowner shall incorporate the terms of this Grant by reference in any subsequent deed or other legal instrument, including leases, by which the Landowner transfers any interest in all or part of the Protected Property, substantially as follows:
- “This (conveyance, lease, mortgage, easement, etc.) is subject to a Conservation Easement which runs with the land and which was granted to *[Easement Holder registered name]* by instrument dated _____ and recorded in the office of the Register of Deeds for _____ County, Wisconsin, as Document No. _____.
- (e) **Ending Continuing Liability.** If Easement Holder is not notified per the requirements of this Section 2.3, it is not the obligation of Easement Holder to determine whether a violation first occurred before or after the date of the transfer. The pre-transfer Landowner continues to be liable on a joint and several basis with the post-transfer Landowner for the correction of violations under this Grant until such time as Easement Holder is given the opportunity to inspect the Protected Property and all violations noted in Easement Holder’s resulting inspection report are cured.
- (f) **Updated Baseline Documentation.** Any change pursuant to Sections 2.2 and 2.3 herein shall be documented in an update to the Baseline Documentation signed by Landowner and Easement Holder.
- (g) **Validity of Grant Preserved.** The failure of Landowner to perform any act required by this Section 2.3 shall not impair the validity of this Grant or limit its enforceability in any way.

Review and revise the provisions in Sections 3 through 5 as appropriate to the protected property, Conservation Values and Purposes, and Landowner. Carefully consider the organizational resources required for Review, in light of the potential impact on the Conservation Values being protected. Guidance: Highest Protection Area might include relatively intact native ecosystems and habitat, and Easement Holder Review would likely be required for most if not all Improvements, Activities, and Uses. Standard Protection Area might include Agricultural or Forestry land and may include impervious access roads to facilitate permitted uses and, in some cases, renewable energy sources. Minimum Protection Area should be as limited in area as is feasible and may permit limited residential development. Easement Holder should consider cost of monitoring permitted uses and improvements and understand that additional permitted uses and improvements may have significant adverse impacts on Conservation Values, ease of monitoring, and costs of enforcement.

SECTION 3. HIGHEST PROTECTION AREA

3.1 Improvements.

Improvements within the Highest Protection Area are prohibited except as permitted below in Section 3.1.

- (a) **Existing Improvements.** Existing Improvements may be maintained, repaired, and replaced in their existing locations. Existing Improvements may be expanded or relocated if the expanded or relocated Improvement complies with requirements applicable to Additional Improvements of the same type.
- (b) **Existing Servitudes.** Improvements that Landowner is required to allow because of an Existing Servitude are permitted.
- (c) **Additional Improvements.** The following Additional Improvements are permitted:

- (1) Fences, walls, and gates around the perimeter of the Protected Property that are designed and constructed so as to minimize habitat fragmentation, impedance of the free movement of wildlife, and adverse impacts on Conservation Values. Fencing, walls, and gates within the perimeter of the Protected Property serving legitimate management purposes and objectives may be permitted upon Review. No Additional Improvement described in this provision shall exceed five (5) feet in Height without Review.
- (2) Signs other than Regulatory Signs are limited to a maximum of eight (8) square feet per sign *[optional for critical scenic considerations – “and a total of thirty-two (32) square feet for the entire Protected Property”]*. To further protect the Protected Property’s scenic and open space values, signs permitted herein shall not exceed ten (10) feet in Height and shall not be illuminated.
- (3) Habitat enhancement devices such as birdhouses, bat houses, and pollinator homes.
- (4) Trails, provided that they: (i) do not exceed six (6) feet in width; (ii) are maintained as natural vegetated surfaces or covered (if at all) by wood chips or other highly porous surfacing; and (iii) are constructed and maintained to be protective of natural habitat and water quality.
- (5) Subject to Review, boardwalks, puncheons, footbridges, stream crossing structures, and waterbody access structures.
- (6) Tree stands and blinds for hunting or nature study. Blinds to remain in place for more than a season are subject to Review. No Additional Improvement subject to Review under this provision shall be permitted that (i) diminishes the Conservation Values, (ii) is disallowed by law or by the rules of any government agency or program with a legal interest in the Protected Property, (iii) exceeds a footprint of sixty-four (64) square feet including any external access structures or components such as ladders or stairs (with the prior written approval of Easement Holder, stairs, ramps, or other facilities specifically designed to create access to such permitted outdoor recreation structures by people of all abilities may be allowed even if they cause the structure to exceed the 64 square feet size limitation), (iv) is improved with electricity, plumbing, or other utilities.
- (7) *[Optional/Not Recommended for Highest Protection Area – “Subject to Review, Access Drives and Utility Improvements to service Improvements or permitted uses within the Protected Property shall be permitted only to the extent that reasonably feasible alternative means to provide access and utility services to the Protected Property do not exist.” It is better to specifically provide for and depict up front in the easement and Baseline Documentation Report.]*

3.2 Activities and Uses.

Activities and uses within the Highest Protection Area are prohibited unless the activity or use: does not adversely affect the Conservation Values; does not introduce invasive species; and is permitted below in Section 3.2.

- (a) **Existing Servitudes.** Activities and uses that Landowner is required to allow because of an Existing Servitude are permitted.
- (b) **Resource Management and Disturbance.** The following activities and uses are permitted:
 - (1) Disturbance of resources to the extent reasonably necessary to remove, mitigate, or warn against an unreasonable risk of harm to Persons, their belongings, or health of Native Species on or about the Protected Property. Examples of such disturbance include cutting hazard trees and limbs (as defined by the USDA Forest Service) and removing Invasive Species. Landowner must take such steps as are reasonable under the circumstances to consult with Easement Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.

- (2) Planting, replanting, and maintaining Native Species or, according to a Resource Management Plan subject to Review, planting, replanting, and maintaining other vegetation to advance the Conservation Values and Purposes of the Highest Protection Area.
 - (3) Removal of Invasive Species and, subject to Review, removal of other vegetation to accommodate replanting as permitted in this Section.
 - (4) Construction of permitted Improvements with prompt restoration of soil and vegetation disturbed by such activity.
 - (5) Vehicular use in the case of emergency and in connection with activities or uses permitted under this subsection.
 - (6) Except within Wet Areas, cutting or removing trees, including dead standing and fallen, but only to the extent consistent with maintaining forest ecological integrity and diversity, and only for use within the Protected Property. [*Optional - Include aggregate inside bark diameter or other appropriate readily measurable stumpage limit to control harvest of standing timber, as appropriate.*]
 - (7) Application of manure and plant material (both well composted) and, subject to compliance with manufacturer's recommendations, substances to promote the health and growth of Native Species. These permitted substances do not include sludge, bio-solids, septic system effluent, and related substances. It is the intent of the parties that applications of biocides including chemical herbicides, pesticides, fungicides, and other toxic agents to, for example, control Invasive Species be minimized and, whenever used, be applied in strict accordance with manufacturer's recommendations.
 - (8) Piling of brush and other vegetation to the extent reasonably necessary to accommodate activities or uses permitted within the Highest Protection Area.
 - (9) Other activities that Easement Holder, without any obligation to do so, determines are consistent with maintenance or attainment of Conservation Values and Purposes and are conducted in accordance with the Resource Management Plan or other plan approved for that activity after Review.
- (c) **Recreation and Education.** Recreational, educational, and scientific research activities are permitted that do not require Improvements and do not adversely affect the Conservation Values. Such activities include: (1) using existing trails or trails described and depicted by the Resource Management Plan for walking, hiking, and cross-country skiing; (2) reasonable use of self-propelled and power-driven mobility devices by persons who have mobility impairments; (3) bird watching, nature study, fishing, and hunting; and (4) wildlife and habitat monitoring and research consistent with and in furtherance of the Conservation Values.

SECTION 4. STANDARD PROTECTION AREA

4.1 Improvements.

Improvements within the Standard Protection Area are prohibited except as permitted in Section 4.1.

- (a) **Permitted under Preceding Section.** Improvements permitted under Section 3 herein are permitted in the Standard Protection Area.
- (b) **Additional Improvements.** The following Additional Improvements are permitted:
 - (1) Subject to Review, Agricultural Improvements. If Landowner demonstrates (i) a *bona fide* need for Agricultural Improvement, and (ii) documented consideration of alternatives to limit adverse impact on Conservation Values; or that (iii) the Agricultural Improvement will enhance the preservation of Conservation Values, then Easement Holder may, without any obligation to do so, approve the Agricultural Improvement after Review.
 - (2) Site Improvements reasonably required for activities and uses permitted within the Standard Protection Area.

- (3) Subject to Review, Site Improvements servicing other areas of the Protected Property, if not reasonably feasible to install entirely within Minimal Protection Area that Easement Holder, without any obligation to do so, approves after Review.
 - (4) Site Improvements servicing activities, uses, or Improvements not within the Protected Property that Easement Holder, without any obligation to do so, approves after Review.
 - (5) Subject to Review, Improvements for generating and transmitting Renewable Energy that Easement Holder, without any obligation to do so, approves after Review.
- (c) **Impervious Surface Limitations.** Total Impervious Surface located in the Standard Protection Area, including all Existing and Additional Improvements but excluding that of Access Drives, must not exceed _____ (3000 if not noted otherwise) square feet. This limitation is subject to the following supplemental limitations and exceptions:
- (1) Impervious Surface located in the Standard Protection Area must not exceed _____ (500 if not noted otherwise) square feet per roofed Improvement. *[Promote smaller buildings to be protective of scenic and open space considerations.]*
 - (2) Subject to Review, Easement Holder may adjust Impervious Surface limits to accommodate specific Agricultural Improvements intended to improve the production of soil grown crops without damaging soils or harming water quality (for example, well-designed and situated high tunnels).
 - (3) Subject to Review, Easement Holder may adjust Impervious Surface limits to account for the lesser impact of specific Improvements designed to reduce environmental harm caused by Impervious Surface (for example, green roofs, permeable surfacing materials, or other approved conservation practices).
- (d) **Access Drive Limitations.** Unless otherwise approved by Easement Holder after Review, Access Drives are limited to the length sufficiently demonstrated to the Easement Holder's sole satisfaction to be necessary to adequately service the Existing or Additional Improvements, or as may be necessary to facilitate real and meaningful exercise of a permitted use within the Highest Protection Area while minimizing adverse impacts to the Conservation Values and a driving surface not to exceed _____ (14 if not noted otherwise) feet in width or such greater width as is required under Applicable Law.
- (e) **Height Limitations.** *[Optional - include & modify for Scenic Protection, as appropriate.]* The Height of Additional Improvements permitted under this or the following Section must not exceed 35 feet. This limitation is subject to the following supplemental limitations and exceptions:
- (1) The Height of fences, walls, and gates remains limited as in the Highest Protection Area.
 - (2) Improvements for recreational and other (non-Agricultural and non-Forestry) open space activities must not exceed _____ (nine if not noted otherwise) feet in Height.
 - (3) Subject to Review, Easement Holder may adjust Height limitations for specific Improvements requiring a greater Height to be functional (for example, Agricultural silos or Renewable Energy structures).
- (f) **Other Limitations on Additional Improvements.** Additional Improvements permitted within the Standard Protection Area are further limited as follows:
- (1) Signs remain limited as in the Highest Protection Area.
 - (2) Fencing shall, wherever reasonably feasible, be preferentially placed around the perimeter of the Protected Property to minimize habitat fragmentation within the Protected Property and be constructed to maintain scenic and open space values and promote free movement of wildlife.

- (3) Utility Improvements must be underground or, subject to Review, may be aboveground where not reasonably feasible to be installed underground.
- (4) The following Improvements are not permitted unless Easement Holder, without any obligation to do so, approves after Review: exterior storage tanks for petroleum or other hazardous or toxic substances (other than reasonable amounts of fuel for activities and uses within the Protected Property permitted under this Conservation Easement).

4.2 Activities and Uses.

Activities and uses within the Standard Protection Area are prohibited unless the activity or use: does not adversely affect the Conservation Values; does not introduce Invasive Species; and is permitted below in Section 4.2:

- (a) **Permitted under Preceding Section.** Activities and uses permitted under the preceding Section 3 are permitted within the Standard Protection Area.
- (b) **Agriculture.** Agriculture conducted in accordance with a Soil Conservation Plan furnished to Easement Holder, subject to the limitations set forth below: *[Drafters should strive to achieve maximum protection of all Conservation Values when considering the following limitations and understand that these suggested limitations may have far reaching and often competing impacts on the ecosystem and the viability of the agricultural operator.]*
 - (1) Within Wet Areas, Agriculture is prohibited unless approved after Review; within one hundred (100) feet of water's edge, Agriculture is prohibited.
 - (2) Within Steep Slope Areas, the Soil Conservation Plan is subject to Review.
 - (3) Animal operations must be conducted in conformance with a Nutrient Management Plan furnished to Easement Holder and meeting the requirements of Applicable Law; concentrated animal feeding operations, as defined by Applicable Law as of the Effective Date, are prohibited.
 - (4) Agricultural uses that involve removal of soil from the Protected Property (such as sod farming and ball-and-burlap nursery uses) are permitted only if conducted in accordance with a Resource Management Plan approved by Easement Holder after Review that provides for, among other features, a soil replenishment program. *[Consider specifically prohibiting sod farming.]*
 - (5) Woodland Areas, as depicted on the Easement Area Plan, must not be used for or converted to Agricultural uses unless Easement Holder, without any obligation to do so, approves after Review. *[Include as appropriate]*
- (c) **Forestry.** Forestry is permitted in accordance with a Resource Management Plan approved after Review. Any Forest Management Plan, Forest Management Program, Forest Tax Program shall be subject to Review and, if approved by the Easement Holder, shall be considered a part of the Resource Management Plan, but shall not be considered a replacement for the Resource Management Plan.
- (d) **Compatible Activities Related to Agriculture or Forestry.** The following activities are permitted if they are supportive of Agricultural use or Forestry use, and do not adversely affect the Conservation Values; or are identified by a Resource Management Plan approved by the Easement Holder prior to undertaking the activity:
 - (1) The storage of plant and animal products produced on the Protected Property.
 - (2) The piling or composting of the residues of plant or animal production occurring on the Protected Property for sale or subsequent Agricultural or Forestry use.
 - (3) Subject to compliance with manufacturer's recommendations, application of other substances (including by way of example fertilizers and herbicides) to promote the health and growth of vegetation.

- (4) Sale of Agricultural or Forestry products produced on the Protected Property.
- (5) Services that directly support Agricultural production or Forestry.
- (e) **Other Disturbance of Resources.** The following activities and uses are permitted:
 - (1) Subject to Review, removal or impoundment of water for activities and uses permitted within the Protected Property but not for sale or transfer outside the Protected Property.
 - (2) Removal of vegetation and other Construction reasonably required to accommodate permitted Improvements.
 - (3) Mowing, planting, and maintenance of lawn, garden, and landscaped areas.
 - (4) Generation of Renewable Energy and transmission of such energy if and to the extent Improvements for that purpose are permitted under this Section 4.
 - (5) Subject to Review, disposal of sanitary sewage effluent from Improvements permitted within the Protected Property is permitted if not reasonably feasible to confine such disposal to Minimal Protection Area.
- (f) **Other Activities.** Outdoor recreational and other open-space activities, including Agritourism, are permitted that (1) are limited in time, place, and intensity so as not to adversely affect the Conservation Values, and (2) do not require motorized vehicles except as ancillary support to the primary activity. Activities that require earth disturbance or that will result in more than a *de minimis* reduction in soil permeability are subject to Review.

SECTION 5. MINIMAL PROTECTION AREA

5.1 Improvements.

Improvements within the Minimal Protection Area are prohibited except as permitted below in Section 5.1.

- (a) **Permitted under Preceding Sections.** Improvements permitted under a preceding article are permitted.
- (b) **Additional Improvements.** The following Additional Improvements are permitted subject to limits set forth in Section 5.1(c):
 - (1) Residential Improvements.
 - (2) Site Improvements servicing activities, uses, or Improvements permitted within the Protected Property.
- (c) **Limitations on Improvements.** Improvements permitted within the Minimal Protection Area are limited as follows:
 - (1) Not more than one Improvement (whether an Existing Improvement or Additional Improvement) may contain Dwelling Units (if any) permitted under this Section.
 - (2) Limitations on Impervious Surface and Access Drives set forth for the Standard Protection Area do not apply to the Minimal Protection Area.
 - (3) Limitations on Height, signs, Utility Improvements, and storage tanks applicable to the Standard Protection Area continue to apply.

5.2 Activities and Uses.

Activities and uses within the Minimal Protection Area are prohibited unless the activity or use: does not adversely affect the Conservation Values; does not introduce Invasive Species; and are permitted below in Section 5.2:

- (a) **Permitted under Preceding Sections.** Activities and uses permitted under the preceding Sections 3 and 4 are permitted within the Minimal Protection Area.

- (b) **Disturbance of Resources.** Disturbance of resources within the Minimal Protection Area is permitted for purposes reasonably related to activities or uses permitted within the Protected Property.
- (c) **Release and Disposal.**
 - (1) Disposal of sanitary sewage effluent from Improvements within the Protected Property that complies with all local, state, and federal rules, regulations, and ordinances is permitted.
 - (2) Other piling of materials and non-containerized disposal of substances and materials are permitted but only if such disposal is permitted under Applicable Law; does not directly or indirectly create run-off or leaching outside the Minimal Protection Area; and does not otherwise adversely affect the Conservation Values and Purposes.
- (d) **Residential and Other Uses.**
 - (1) Residential use is permitted but limited to not more than one Dwelling Unit. *[Drafters should consider limits to the footprint of Dwelling Unit where necessary to protect Conservation Values and Conservation Purpose. Drafters should consider the possibility of multiple Minimal Protection Areas and any additional dwelling units associated with existing, reconfigured, or otherwise allowed lots within the Protected Property.]*
 - (2) An activity or use not otherwise addressed in this Section is permitted if, from vantage points outside the Minimal Protection Area, it is not distinguishable from a permitted Agricultural, Forestry, or residential use; or, if it is, Easement Holder determines, after Review, that the activity or use is consistent with the Conservation Values and Conservation Purpose.

SECTION 6. RIGHTS AND DUTIES OF EASEMENT HOLDER

6.1 Easement Holder Covenants.

In support of the Conservation Values and Conservation Purpose, Easement Holder declares the following covenants binding upon its easement interest in the Protected Property:

- (a) **Exercise of Powers.** Easement Holder must exercise the powers granted to it by this Grant to block activities, uses, and Improvements of the Protected Property inconsistent with the terms of this Grant.
- (b) **Must be Qualified Organization.** Easement Holder must be and remain at all times a Qualified Organization and must not transfer the Conservation Easement or otherwise assign its rights or responsibilities under this Grant to a Person other than a Qualified Organization committed to upholding the Conservation Purpose.
- (c) **Proceeds Used for Conservation Purposes.** Easement Holder must use any funds received due to the release, termination, or extinguishment of the Conservation Easement in whole or in part in furtherance of its charitable conservation purposes.
- (d) **Failure to Enforce, Remedy.** If Easement Holder fails to abide by the covenants of this section, a publicly supported, tax exempt organization described in Section 501(c)(3) of the Code, among whose purposes is the preservation of natural resources, or the State of Wisconsin may petition a court of competent jurisdiction to order the Conservation Easement transferred to a Qualified Organization ready, willing, and able to abide by such covenants.

6.2 Rights and Duties of Easement Holder.

This Grant vests the Easement Holder with the following rights and duties:

- (a) **Enforcement.** To enter the Protected Property to investigate any and all suspected, alleged, or threatened violation(s) of the covenants and, if so found, to enforce the terms of this Grant by exercising Easement Holder's remedies in this Grant.

- (b) **Inspection.** To enter and inspect the Protected Property for compliance with the requirements of this Grant upon reasonable notice, in a reasonable manner, at reasonable times and not less than once per calendar year. Reasonable notice is not required when Easement Holder determines immediate entry is necessary to prevent, terminate, or mitigate a violation of the Easement, and when Easement Holder does not have the name(s) and contact information for any or all of the legal owner(s) of the Protected Property or lessees in possession of the Protected Property. Landowner shall provide Easement Holder with any key, passcode, or other device or code that may be required by Easement Holder to gain immediate entry pursuant to this provision. Easement Holder shall secure such a key, passcode, or other device or code so as to prevent the use of said key, passcode, or other device or code by any person not authorized to gain access to the Protected Property.
- (c) **Review.** To exercise rights of Review in accordance with the requirements of this Section.
- (d) **Interpretation.** To interpret the terms of this Grant and, at the request of Landowner, furnish Easement Holder's explanation of the application of such terms to then-existing, proposed, or reasonably foreseeable conditions within the Protected Property.

6.3 Other Rights of Easement Holder.

The items set forth below are also rights vested in Easement Holder by this Grant; however, Easement Holder, in its discretion, may or may not exercise them:

- (a) **Annual Meeting.** At least annually, and upon any change in ownership, to meet with Landowner or Landowner's authorized representative at the Protected Property, if possible, to review management and/or activities and uses undertaken in the previous year(s) and proposed management activities and uses for the upcoming year(s). At a minimum, during such meeting or conference, Landowner or the Landowner's authorized representative shall report on the status of the Protected Property as it relates to the Conservation Easement including future plans for the Protected Property and any activities that might require Easement Holder's review or approval.
- (b) **Habitat & Wildlife Monitoring.** To monitor the condition of the plant and animal populations, communities, and natural habitats on the Protected Property, as they relate to the maintenance of the Conservation Values of the Protected Property.
- (c) **Habitat Management.** To manage the habitat and natural communities of the Protected Property according to an approved Resource Management Plan. This provision is not intended to create an obligation on the Easement Holder.
- (d) **Amendment.** If circumstances arise under which an amendment to or modification of this Conservation Easement is appropriate, Easement Holder may enter into an Amendment with Landowner by a written instrument recorded in the office of the Register of Deeds for _____ County, provided Easement Holder first determines, in its sole discretion, that the Amendment: (1) is consistent with the Purpose of this Grant; (2) is consistent with the mission of the Easement Holder; (3) will not affect the qualification of this Grant or the status of Easement Holder under any Applicable Law; (4) will not affect the perpetual duration of the Grant; (5) will not release any portion of the Protected Property from permanent protection under this Grant absent extinguishment or as otherwise permitted by and pursuant to the terms of this Grant; (6) will have a net neutral or net beneficial effect upon and not adversely affect the Conservation Values of the Protected Property; (7) will not impair Easement Holder's power, enforceable in perpetuity, to block activities, uses, and Improvements of the Protected Property inconsistent with the terms of this Grant; (8) will not result in a private benefit or private inurement prohibited under the Code; (9) will be consistent with Easement Holder's Amendment Policy in place at the time of Amendment, and/or any other policy of the Easement Holder that applies to such an action that is in place at the time of Amendment; (10) does not violate any requirement of any funding source of this Grant; and (11) clearly serves the public interest.

The grant of an Amendment in any instance does not imply that an Amendment will be granted in any other instance.

- (e) **Conservation Easement Assignment, Transfer.** The Easement Holder may convey, assign, or transfer its interests in this Conservation Easement to a unit of federal, state, or local government or to an organization that is (1) “qualified” within the meaning of Section 170(h)(3) of the Code, and in the regulations promulgated thereunder, or any successor provisions then applicable, and (2) qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Conservation Easement interest shall be required to carry out its Conservation Purpose in perpetuity. When feasible, Easement Holder agrees to notify and discuss with the Landowner any proposed assignment as soon as possible before the effective date of such assignment. A final decision shall be memorialized in writing and, when practicably feasible, Easement Holder will notify Landowner of the proposed assignment decision ninety (90) days before the date of such assignment. However, failure to give such notice shall not affect the validity of such assignment or limit its enforceability in any way.
- (f) **Adverse Possession.** To defend this Conservation Easement against any claim of adverse possession.
- (g) **Boundary lines.** Easement Holder may mark and maintain boundaries and corners of the Protected Property and of features or internal boundaries within the Protected Property, including, if necessary, obtaining a survey prepared and certified by a professional land surveyor licensed in the State of Wisconsin for such purposes. Easement Holder is vested with all rights necessary to carry out this provision including, with adequate notice to Landowner, the right to enter the property or cause the property to be entered by an appropriate professional to carry out the rights of this provision.
- (h) **Signs.** To install one or more signs within the Protected Property identifying the interest of Easement Holder in the Conservation Easement. Such signs do not reduce the number or size of signs permitted to Landowner under this Grant. Signs must be installed in locations readable from the public right-of-way and otherwise reasonably acceptable to Landowner.
- (i) **Proceedings.** To assert a claim, defend or intervene in, or appeal, any proceeding under Applicable Law that (1) pertains to the impairment of Conservation Values and Purposes; or (2) may result in a transfer, Improvement, or use that violates the terms of this Grant.
- (j) **Right to Report.** To report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

6.4 Review.

The following provisions are incorporated into any provision of this Grant that is subject to Review:

- (a) **Notice to Easement Holder.** At least sixty (60) days before Landowner intends to begin or allow an Improvement, activity, or use that is subject to Review, Landowner must notify Easement Holder in writing, per Section 9.1 herein, of the proposed change including with the notice such information as is reasonably sufficient to comply with Review Requirements and applicable provisions of this Grant, and otherwise describe the proposal and its potential impact on the Conservation Values and Purposes.
- (b) **Notice to Landowner.** Easement Holder agrees to use reasonable diligence to respond to Landowner’s notice within sixty (60) days of receipt to provide Easement Holder’s determination to: (1) accept Landowner’s proposal in whole or in part; (2) reject Landowner’s proposal in whole or in part; (3) accept Landowner’s proposal conditioned upon compliance with conditions articulated in writing by Easement Holder; or (4) reject Landowner’s proposal for insufficiency of information on which to base a determination. If Easement Holder gives conditional acceptance under clause 3, commencement of the proposed Improvement, activity, or use constitutes acceptance by Landowner of all conditions set forth in Easement Holder’s notice.

- (c) **Failure to Notify.** Easement Holder’s failure to notify Landowner within the sixty (60) day period shall be deemed a constructive denial, and Landowner may seek relief pursuant to Section 6.4(e), below.
- (d) **Standard of Review.** Easement Holder may only accept, approve, or permit any proposed activity or use that is subject to Review that has been sufficiently established as not reasonably likely to result in an adverse impact of the Conservation Values or Purposes of this Conservation Easement. The phrase “without any obligation to do so,” in relation to an approval or determination by Easement Holder, means that, in that particular case, Easement Holder’s approval is wholly discretionary and may be given or withheld for any or no reason.
- (e) **Dispute Notice.** Easement Holder’s decision under Section 6.4(b) is final unless, within ten (10) days after receipt of Easement Holder’s notice, Landowner delivers to Easement Holder a notice (“Landowner’s Dispute Notice”) that Landowner disputes Easement Holder’s decision under the standards set forth in Section 6.4(d) and/or the reasons given, if any, for such determination. If Landowner and Easement Holder do not otherwise resolve the dispute within thirty (30) days following Landowner’s Dispute Notice, the dispute shall be subject to Section 7.3 below.

6.5 Costs and Expenses.

Unless agreed upon in writing, Landowner must pay or reimburse, as the case may be, Easement Holder’s costs and expenses (including Losses, Litigation Expenses, allocated personnel costs, and reasonably incurred liabilities) in connection with: (a) enforcement (including exercise of remedies) under the terms of this Grant; (b) response to requests by Landowner for Review, Waiver, or Amendment; and (c) compliance with Landowner’s requests for information, interpretation, or other action pertaining to the Grant. In the event that the parties pursue alternative dispute resolution per Section 7.3(a) herein, the costs of mediation are to be borne equally (one-half each) by Landowner and Easement Holder.

If appropriate, add Section 6.6 Rights of Beneficiaries and add “and Beneficiaries” to Section 6 heading.

SECTION 7. VIOLATION; TERMINATION, REMEDIES

7.1 Violation.

If Easement Holder determines that the terms of this Grant are being or have been violated or that a violation is threatened or imminent, then the provisions of this Section 7 will apply:

- (a) **Notice.** Easement Holder must notify Landowner of the violation in writing, per Section 9.1 herein. Easement Holder’s notice may include its recommendations of measures to be taken by Landowner to cure the violation and restore features of the Protected Property damaged or altered as a result of the violation.
- (b) **Opportunity to Cure.** Landowner’s cure period expires thirty (30) days after the date of Easement Holder’s notice to Landowner subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:
 - (1) Landowner ceases the activity constituting the violation promptly upon receipt of Easement Holder’s notice;
 - (2) Landowner and Easement Holder agree, within the initial 30-day period, upon the measures Landowner will take to cure the violation;
 - (3) Landowner commences to cure within the initial 30-day period; and
 - (4) Landowner continues thereafter to use best efforts and due diligence to complete the agreed upon cure.
- (c) **Imminent Harm.** No notice or cure period is required if Easement Holder determines circumstances (1) require prompt action to prevent or mitigate significant or irreparable harm or alteration to a Conservation Value or a natural resource that is a part of a Conservation Value; or (2) are otherwise inconsistent with or may significantly impede Easement Holder’s ability to carry out the Conservation Purpose.

7.2 Remedies.

Upon expiration of the cure period (if any) described in the Section 7.1, Easement Holder may do one or more of the following:

- (a) **Injunctive Relief.** Seek injunctive relief to specifically enforce the terms of this Grant, to restrain present or future violations of the terms of this Grant, and/or to compel restoration of resources destroyed or altered as a result of the violation. The restoration requirement shall not be construed to terminate any rights reserved by the Landowner under this Grant or to release the Landowner from any additional obligations that may be required under the Grant. The Landowner and Easement Holder recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Conservation Easement. The Easement Holder is entitled to seek expedited relief, *ex parte* if necessary, and shall not be required to post any bond applicable to a petition for such relief.
- (b) **Civil Action.** Exercise Easement Holder's rights under Applicable Law to obtain a monetary judgment (together with interest thereon at the Default Rate). Without limiting the Landowner's liability, Easement Holder, in its discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.
- (c) **Intervening Action.** When Section 7.1(c) applies, enter the Protected Property and take any action deemed necessary and/or appropriate by the Easement Holder to prevent or mitigate further damage to or alteration of Conservation Values or natural resources that are part of the Conservation Values of the Protected Property identified in this Grant.

7.3 Open Dialogue, Alternative Dispute Resolution.

[Drafters should carefully consider whether to include Section 7.3. This section may serve to limit Easement Holder's ability to enforce the Grant to its original intent. If drafter chooses to exclude this provision, carefully excise all references to Section 7.3 from the entirety of the Grant.] Landowner and Easement Holder, in any question arising concerning compliance with the terms of this Grant, including any required notice or approval, shall demonstrate a good-faith effort to resolve any such question through open communication and dialogue or mediation rather than unnecessarily formal or adversarial action. To this end, if a party develops concerns about an actual or possible noncompliance with the terms of this Grant, wherever reasonably possible, the concerned party will notify the other party of the potential problem and explore the possibility of reaching an agreeable resolution prior to invoking the more formal steps herein.

- (a) **Mediation.** If Landowner and Easement Holder do not resolve the matter by informal methods, and after Easement Holder has provided formal notice to Landowner as provided in either Section 6.4 or Section 7.1, as applicable, the dispute shall be referred to a mediator mutually agreeable to Landowner and Easement Holder. The mediator shall be an attorney licensed to practice law in Wisconsin who has experience with conservation easements, including applicable tax law, and training and experience in mediation. Mediation shall be conducted in the county in which the Protected Property is located, or at another mutually acceptable location. The mediator may engage a conservation, natural resource, or other appropriate professional to assist in finding a resolution of issues that meets the requirements for approval of a proposal subject to Review and is acceptable to Landowner and Easement Holder. Both the mediator and any professional engaged by the mediator must be independent and unaffiliated with either Landowner or Easement Holder. The costs of mediation are to be borne equally (one-half each) by Landowner and Easement Holder. If a mutually binding resolution of the dispute has not been achieved within sixty (60) days after the first substantive meeting, or if the parties are unable to agree to a mediator within sixty (60) days of formal notice to Landowner, neither Landowner nor Easement Holder is obliged to continue mediation. A party's refusal to agree to the selection of a mediator that can otherwise be established as independent and unaffiliated shall be considered bad faith.
- (b) At any point during the above proceedings, per Section 7.5 herein, Easement Holder may take appropriate legal action including an injunction to stop an alleged violation.

7.4 Modification or Termination.

If the Conservation Easement is or is about to be modified or terminated (extinguished) by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction, the following provisions apply:

- (a) **Extinguishment.** In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Landowner and each successor Landowner agrees that (1) the grant of the Conservation Easement gives rise to a real estate interest, immediately vested in Easement Holder, that entitles Easement Holder to compensation upon any subsequent sale, exchange, or involuntary conversion of the Protected Property resulting in partial or complete extinguishment of the easement; and (2) extinguishment for unexpected changes that make impossible or impractical the continued use of the Protected Property for conservation purposes (as defined in the Regulations) can only be accomplished by judicial proceedings. The fair market value of the real estate interest is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that the Conservation Easement as of the Effective Date bears to the value of the Protected Property as a whole as of the Effective Date (the “Proportionate Value”). If the Proportionate Value exceeds the compensation otherwise payable to Easement Holder under this Conservation Easement or Applicable Law, Easement Holder is entitled to payment of the Proportionate Value. Easement Holder must use funds received on account of the Proportionate Value for conservation purposes (as defined in the Regulations).
- (b) **Compensatory Damages.** Easement Holder is entitled to collect, from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Protected Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred. In the event of an extinguishment of this Conservation Easement, Easement Holder is entitled to the greater of the compensation provided under this section or the compensation provided under any other provision of this Grant.
- (c) **Restitution.** Easement Holder is entitled to recover from the Person seeking the modification or termination: (1) restitution of amounts paid for this Grant (if any) and any other sums invested in the Protected Property for the benefit of the public as a result of rights vested by this Grant, plus (2) reimbursement of Litigation Expenses as if a violation had occurred.
- (d) **Change in Economic Condition.** The undersigned Landowner, and by acquiring any interest in the Protected Property, each successor Landowner, shall be deemed to have considered the fact that any use of the Protected Property that is expressly prohibited by the terms of this Conservation Easement may become more economically valuable than uses permitted by the terms of this Conservation Easement, or that neighboring properties may, in the future, be put entirely to uses that are inconsistent with this Conservation Easement. The Landowner and Easement Holder intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement pursuant to Section 7.3. In addition, the inability of the Landowner or its successors or assigns, to conduct or implement any or all of the uses permitted under the terms of this Conservation Easement, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment.
- (e) **Adverse Possession.** In the event a court having competent jurisdiction enters a judgment in favor of an adverse possessor and against the Landowner, the legal description of the real estate described in this Conservation Easement shall be automatically amended to comply with said court order. Such amendment shall be documented in an updated Baseline Documentation and reference said judgment.

7.5 Remedies Cumulative.

The description of Easement Holder’s remedies in this Section does not preclude Easement Holder from exercising any other right or remedy that may at any time be available to Easement Holder under this

Section or Applicable Law. If Easement Holder chooses to exercise one remedy, Easement Holder may nevertheless choose to exercise one or more of the other rights or remedies available to Easement Holder at the same time or at any other time.

7.6 Waivers.

- (a) **No Waiver.** If Easement Holder does not exercise a right or remedy when it is available to Easement Holder, that is not to be interpreted as a waiver of any non-compliance with the terms of this Grant or a waiver of Easement Holder's rights to exercise its rights or remedies at another time.
- (b) **No Material Effect.** Easement Holder in its discretion may provide a Waiver if Easement Holder determines that the accommodation is for a limited time and limited purpose and will have no material effect on the Conservation Values and Purposes.
- (c) **Waiver of Certain Defenses.** Landowner hereby waives any equitable defense based on laches, balance of harms, estoppel, prescription, and the good faith purchaser defense under Section 706.09, Wis. Stat., or any successor provision against any action brought by Easement Holder with respect to this easement.

7.7 No Fault of Landowner, Force Majeure.

- (a) Landowner shall provide oral or written notice to Easement Holder within ten (10) days of Landowner becoming aware of any injury to or change in the Protected Property or the Conservation Values thereof resulting from causes beyond the Landowner's reasonable control.
- (b) Easement Holder will not bring any action against the Landowner for any injury to or change in the Protected Property resulting from causes beyond the Landowner's reasonable control, including, but not limited to: (1) natural disasters such as fire, flood, storm, natural earth movement, natural deterioration; (2) actions by neighbors or other third parties not under the control of the Landowner; or (3) prudent actions taken by the Landowner under emergency conditions to prevent or mitigate damage from such causes.
- (c) Easement Holder will forego its right to reimbursement under this Section as to Landowner (but not other Persons who may be responsible for the violation) if Easement Holder is reasonably satisfied that the violation was not the fault of Landowner and could not have been anticipated or prevented by Landowner by reasonable means.
- (d) In the event the terms of this Conservation Easement are violated by acts of third parties beyond the control of Landowner, including trespassers, or that Landowner could not reasonably have prevented, Landowner agrees, at Easement Holder's option, to (1) join in any suit against the third party or parties; (2) assign to Easement Holder a right of action against the third party or parties; and (3) take any action necessary to facilitate Easement Holder's pursuit of the third party for the purposes of enforcing, through judicial action or other dispute resolution means, the terms of this Conservation Easement against the third party or parties.
- (e) All costs and attorney's fees incurred by Easement Holder in any such enforcement action to address any damage or injury caused by any third party, and which are not caused by or aggravated by any act or omission of Landowner, shall be borne by Easement Holder. Landowner hereby relinquishes any right or claim to any and all reimbursement of costs and fees, including but not limited to attorney fees, and any and all monetary damages or remedies provided, assigned, or directed to Easement Holder as a result of its pursuit of the third party and its pursuit of the restoration of the Protected Property, or both.
- (f) Landowner agrees to make commercially reasonable efforts and take actions reasonably practicable to restore the Protected Property to its condition prior to the violation regardless of the outcome of any legal or other action against the third-party violator.

7.8 Multiple Landowners.

- (a) **Multiple Lots.** If different Landowners own Lots within the Protected Property, only Landowner of the Lot in violation will be held responsible for the violation.
- (b) **Single Lot.** If more than one Landowner owns the Lot in violation of the terms of this Conservation Easement, the Landowners of the Lot in violation are jointly and severally liable for the violation regardless of the form of ownership.

SECTION 8. LANDOWNER RESPONSIBILITIES, REPRESENTATIONS

8.1 Landowner Responsibilities, Costs, and Liabilities.

In general, the Landowner shall bear all responsibility, cost, and liability related to the ownership of the Protected Property, including, but not limited to, the following:

- (a) **Operation, Upkeep, and Maintenance.** The Landowner is responsible for the operation, upkeep, and maintenance of the Protected Property.
- (b) **Control.** Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Easement Holder to exercise physical or managerial control over the day-to-day operations of the Protected Property; to become involved in the management decisions of the Landowner regarding the generation, handling, or disposal of hazardous substances; or otherwise to become an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) of 1980, as amended, or similar laws imposing legal liability on the owner or operator of real property.
- (c) **Permits.** The Landowner remains solely responsible for obtaining applicable government permits and approvals for any Construction or other activity or use permitted by this Conservation Easement, and all such Construction, other activity, or use shall be undertaken in accordance with applicable federal, state, and local laws, regulations, and requirements. If requested by Easement Holder, the Landowner agrees to apply or co-apply with Easement Holder for any permits, approvals, licenses, or funding deemed necessary or desirable by Easement Holder for implementing rights granted to Easement Holder by the Conservation Easement. This shall not be construed as committing the Landowner to paying any portion of the cost of an activity undertaken by Easement Holder, or assuming any liability with respect to the permit, approval, license, or funding, unless approved in a separate agreement.
- (d) **Taxes.** Landowner shall pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively “Taxes”) including any taxes imposed upon or incurred as a result of this Conservation Easement and shall furnish Easement Holder with satisfactory evidence of payment upon request.
- (e) **Boundary lines.** Landowner may mark and maintain boundaries and corners of the Protected Property and of the Minimal Protection Area, including, if necessary, obtaining a survey prepared and certified by a professional land surveyor licensed in the State of Wisconsin for such purposes.

8.2 Landowner Representation and Warranties.

The undersigned Landowner represents, warrants, and covenants to Easement Holder that:

- (a) **Right to Convey.** The undersigned Landowner is the sole owner of the Protected Property in fee simple and has the right and ability to grant and convey this Conservation Easement to Easement Holder.
- (b) **No Unrecorded Liens.** As of the Effective Date of this Grant, there are no unrecorded liens or mortgages outstanding against the Protected Property.

- (c) **Liens Subordinated.** As of the date of this Conservation Easement, there are no liens or mortgages outstanding against the Protected Property, except any that are subordinated to Easement Holder's rights under this Conservation Easement [*include "as required under §1.170A-14 of the Regulations" if this is a donation.*]. The Landowner has the right to use the Protected Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Easement Holder's rights under this Conservation Easement. Under no circumstances may Easement Holder's rights be extinguished or otherwise affected by the recording, foreclosure, or any other action taken concerning any subsequent lien or other interest in the Protected Property.
- (d) **Compliance with Law.** The undersigned Landowner and Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use.
- (e) **No Litigation.** There is no pending or threatened civil or criminal proceedings or investigation in any way affecting, involving, or relating to the Protected Property, nor do there exist any facts or circumstances that the Landowner might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands, or orders.
- (f) **No Hazardous Materials.** After reasonable investigation and to the best of the undersigned Landowner's knowledge, there has been no contamination on or from the Protected Property by any substance classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, soil, surface, or groundwater, or in any way harmful or threatening to human health or the environment.
- (g) **Storage Tanks.** There are not now, and to the best of the undersigned Landowner's knowledge, have not been, any underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
- (h) **Condition of Protected Property.** The Baseline Documentation referenced in the recitals hereto that established the present condition of the Protected Property provides a true and correct representation of the Protected Property as the date hereof.
- (i) **Knowing and Voluntary.** The undersigned Landowner has been represented by legal counsel of their selection (or had the opportunity to be so represented) and understand that they are permanently imposing restrictions on the future use and Development of the Protected Property that constrain the full use and Development of the Protected Property otherwise available under Applicable Law.

8.3 No Representation of Tax Benefits.

The undersigned Landowner represents, warrants, and covenants to Easement Holder that:

- (a) The undersigned Landowner has not relied upon information or analyses furnished by Easement Holder with respect to either the availability, amount, or effect of a deduction, credit, or other benefit to the undersigned Landowner under Applicable Law; or the value of the Conservation Easement or the Protected Property.
- (b) The undersigned Landowner has relied solely upon their own judgment and/or professional advice furnished by the appraiser and legal, financial, and accounting professionals engaged by the undersigned Landowner. If a Person providing services in connection with this Conservation Easement or the Protected Property was recommended by Easement Holder, the undersigned Landowner acknowledges that Easement Holder is not responsible in any way for the performance of services by these Persons.
- (c) This Conservation Easement is not conditioned upon the availability or amount of a deduction, credit, or other benefit under Applicable Law.

8.4 Indemnity, Hold Harmless.

Landowner must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to: (a) a breach or violation of this Conservation Easement or Applicable Law; (b) personal injury (including death) and damage to personal belongings occurring on or about the Protected Property if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party; (c) the violation or alleged violation of, or other failure to comply with, any federal, state, or local law or regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving, or related to the Protected Property; and (d) the presence or release in, on, from, or about the Protected Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

SECTION 9. MISCELLANEOUS

9.1 Notices.

- (a) **Requirements.** Each Person giving notice pursuant to this Grant must do so in writing and must use one of the following methods of delivery: (1) personal delivery; (2) certified mail, return receipt requested and postage prepaid; (3) electronic mail; or (4) nationally recognized overnight courier, with all fees prepaid.
- (b) **Address for Notices.** Each Person giving a notice must address the notice to the appropriate Person of the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Landowner: Notice to Landowner shall be sufficient if sent to the name and address shown on the current _____ County real property estate tax records.

If to Easement Holder: *Name of Land Trust
xxx Land Trust Street
Land Trust, WI 53xxx
Attn: Executive Director*

- (c) **Electronic Mail.** An electronic mailing address shall be considered to be established as an appropriate address for delivery of notice if that electronic mailing address (1) has previously been used to transmit communications and the receiving party has acknowledged receipt thereof; (2) is clearly identified by the receiving party as an appropriate address for receiving notice in a non-electronically delivered notice given pursuant to Sections 9.1(a) and (b); or, (3) in the case where the receiving party is the Easement Holder, is an electronic mailing address listed on a publicly available source of information including, but not limited to, the Easement Holder's website.

9.2 Governing Law.

The laws of the State of Wisconsin shall govern the interpretation and performance of this Grant. Any general rules of construction to the contrary, ambiguities in this Grant shall be construed in a manner that best effectuates the Purpose of the Conservation Easement and protection of the Conservation Values of the Protected Property.

9.3 Burdens; Benefits.

This Grant binds and benefits Landowner and Easement Holder and their respective personal representatives, successors, and assigns.

- (a) **Binding on All Landowners.** This Grant vests a servitude running with the land binding upon the undersigned Landowner and, upon recordation in the Public Records, all Landowners of the Protected Property or any portion of the Protected Property are bound by its terms whether or not the Landowner had actual notice of this Grant and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Grant.
- (b) **Rights Exclusive to Easement Holder.** Except for rights of Beneficiaries (if any) under this Grant, only Easement Holder has the right to enforce the terms of this Grant and exercise other rights of Easement Holder. Landowners of Lots within the Protected Property do not have the right to enforce the terms of this Grant against Landowners of other Lots within the Protected Property. Only Landowners of the Lot that is the subject of a request for Review, Waiver, Amendment, interpretation, or other decision by Easement Holder have a right to notice of, or other participation in, such decision.

9.4 Conservation Easement to Survive Merger.

Landowner and Easement Holder agree and intend that the terms of this Grant shall survive any merger of the fee title and conservation easement interest in the Protected Property or any portion thereof.

9.5 No Public Access.

Nothing contained in this Grant shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed immediately prior to the execution of this Conservation Easement. *[If a Purpose is to ALLOW PUBLIC ACCESS, delete "No" from section heading and describe public access permitted.]*

9.6 Documentation Requirements.

- (a) **Between Easement Holder and Landowner.** No Amendment, Waiver, approval after Review, interpretation, or other decision by Easement Holder is valid or effective unless it is in writing and signed by an authorized signatory for Easement Holder. The grant of an Amendment or Waiver in any instance or with respect to any Lot does not imply that an Amendment or Waiver will be granted in any other instance.
- (b) **Between Easement Holder and Assignee.** Any assignment of Easement Holder's rights under this Grant, if otherwise permitted under this Grant, must be in a document signed by both the assigning Easement Holder and the assignee Easement Holder. The assignment document must include a covenant by which the assignee Easement Holder assumes the covenants and other obligations of Easement Holder under this Grant. The assigning Easement Holder must deliver the Baseline Documentation and such other documentation in Easement Holder's possession reasonably needed to uphold the Conservation Values and Purposes.

9.7 Severability.

If any provision of this Grant is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Conservation Easement remain valid, binding, and enforceable. To the extent permitted by Applicable Law, the parties waive application of any provision of Applicable Law that renders any provision of this Grant invalid, illegal, or unenforceable in any respect.

9.8 Counterparts.

This Grant may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one document. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

9.9 Recording, Re-recording.

The Easement Holder shall record this Grant in the Office of the Register of Deeds of the county in which the Protected Property is located. Further, in order to ensure the perpetual enforceability of this Grant, Easement Holder is authorized to re-record this instrument, or record or file any appropriate notices or instruments for such purpose. Landowner hereby appoints Easement Holder its attorney-in-fact to

execute, acknowledge, and deliver any necessary instrument on Landowner's behalf. Without limiting the foregoing, the Landowner agrees to execute any such instrument upon request.

9.10 Guides to Interpretation.

- (a) **Captions.** The descriptive headings of the sections, and subsections of this Grant are for convenience only and do not constitute a part of this Conservation Easement.
- (b) **Glossary.** If a term defined in Section 10 is not used in this Grant, the defined term is to be disregarded.
- (c) **Other Terms.**
 - (1) The word "including" means "including but not limited to."
 - (2) The words "shall" and "must" are obligatory; the word "may" is permissive and does not imply an obligation.
 - (3) The words "Landowner" and "Easement Holder", and any pronouns used in place thereof, shall mean either masculine or feminine, singular or plural, and shall include Landowner's and/or Easement Holder's respective personal representatives, heirs, successors, and assigns.
- (d) **Uniform Conservation Easement Act.** This Grant is intended to be interpreted so as to convey to Easement Holder all of the rights and privileges of a holder of a conservation easement under Wisconsin Statute Section 700.40.
- (e) **Restatement (Third) of the Law of Property: Servitudes.** This Grant is intended to be interpreted so as to convey to Easement Holder all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of the Law of Protected Property: Servitudes.

9.11 Entire Agreement.

This is the entire agreement of Landowner, Easement Holder, and Beneficiaries (if any) pertaining to the subject matter of this Grant. The terms of this Grant supersede in full all statements and writings between Landowner, Easement Holder, and Beneficiaries (if any) pertaining to the transaction set forth in this Grant.

9.12 Incorporation by Reference.

Each Recital in this Grant and each exhibit attached to this Grant is incorporated into this Grant by this reference and constitutes integral terms and conditions of this Grant. The Baseline Documentation (whether or not attached to this Grant) is incorporated into this Grant by this reference.

9.13 Jurisdiction; Venue.

Easement Holder and Landowner submit to the exclusive jurisdiction of the courts of the State of Wisconsin located in the county in which the Protected Property is situated and agree that any legal action or proceeding relating to this Grant or the Conservation Easement interest may be brought only in those courts located in that county.

SECTION 10. GLOSSARY, OTHER DEFINED TERMS

[DELETE UNUSED TERMS IN THE FINAL DOCUMENT.]

"Access Drive" means a road, drive, or lane providing vehicular access.

"Additional Improvement" means an Improvement other than an Existing Improvement.

"Agricultural Improvement" means an Improvement used or usable in furtherance of Agricultural uses such as barn, stable, silo, spring house, green house, hoop house, high tunnel, riding arena (whether indoor or outdoor), horse walker, manure storage pit, storage building, farm stand, feeding and irrigation facilities.

"Agricultural or Agriculture" means one or more of the following:

- a. Production for sale of grains, vegetables, fruits, seeds, nuts, and other plant products; mushrooms; aquatic produce including fish and shellfish; livestock and their products; bees and their products; and poultry and their products.
- b. Production of field crops and forage.
- c. Production of nursery stock to be removed and planted elsewhere.
- d. Boarding, stabling, raising, feeding, grazing, exercising, riding, and training horses and instructing riders.

“Amendment” means an amendment, modification, or supplement to this Grant signed by Landowner and Easement Holder and recorded in the Public Records. The term “Amendment” includes an amendment and restatement of this Grant.

“Animal Lot” means a feedlot, pasture, barnyard, or other outdoor facility where livestock are concentrated for feeding or other purposes.

“Applicable Law” means federal, state, or local laws, statutes, codes, ordinances, standards, and regulations applicable to the Protected Property, the Conservation Easement, or this Grant as amended through the applicable date of reference. If this Grant is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations are also included in the defined term.

“Beneficiary” means a Person given rights under the terms of this Grant (other than Landowner or Easement Holder) over all or a portion of the Protected Property. A Beneficiary may include, for example, a partner land trust or a public agency that has been granted specific rights such as Review or other enforcement of the easement terms. Beneficiaries named by this Grant are identified in Section 1.5.

“Best Management Practices” mean a series of guidelines or minimum standards (sometimes referred to as BMP’s) recommended or required by federal, state, and/or county resource management agencies or other natural resource organizations that certify best practices for farming and forestry operations; for preventing and reducing pollution of water resources and other disturbances of soil, water, and vegetative resources; and for protecting wildlife habitats. *[Cite sources as appropriate for uses and activities that do not require Review or a Resource Management Plan.]*

“Buffer Area / Buffer Strip” means a type of conservation buffer consisting of small areas or strips of land in permanent vegetation designed to produce the following outcomes: (a) to protect water quality by filtering and removing sediment, organic matter, pesticides, sediment-borne phosphorus, and other pollutants from sheet flow runoff and subsurface flow through deposition, absorption, plant uptake, denitrification, or other processes; (b) to eliminate row crop production and associated pollutants adjacent to environmentally sensitive areas; and (c) to protect and stabilize the riparian zone and reduce flood water velocity.

“Building” means a permanent or temporary Structure having a roof supported by columns or walls that may be used as a shelter or an enclosure for persons, animals, or tangible personal property.

“Code” means the Internal Revenue Code of 1986, as amended through the applicable date of reference.

“Construction” means demolition, construction, reconstruction, maintenance, expansion, exterior alteration, installation, or erection of temporary or permanent Improvements; and, only when in connection with any of the foregoing and to the minimal extent necessary, excavation, filling, and/or removal of soil and underlying surficial materials. Unless otherwise provided for in this Grant, this definition is not intended to allow activities pertaining to mining or other resource extraction that disturb, consume, deplete, use, occupy, or alter the surface or surface estate, ecosystem, hydrology, or groundwater, including, but not limited to, exploration, extraction, collection, containment, transport, removal, processing, or refining of topsoil, metallic and non-metallic aggregate, or minerals, and fossil fuels such as oil and natural gas from the surface or substrata of the Protected Property.

“Default Rate” means an annual rate of interest equal at all times to two percent (2%) above the prime rate announced from time to time by the *Wall Street Journal* or, if that index is no longer available,

another widely disseminated and generally accepted index of short-term interest rate charged by lending institutions to qualified borrowers that is adopted by Easement Holder by notice to Landowner.

“Development” means the process of constructing or placing, and thereafter modifying or altering, Improvements on or to land or water, including conversion of landforms or terrain from a natural or semi-natural state, and Subdivision.

“Dwelling Unit” means the use or intended use of an Improvement or portion of an Improvement for human habitation by one or more Persons (whether or not related). Existence of a separate kitchen accompanied by sleeping quarters is considered to constitute a separate Dwelling Unit.

“Environmental Corridor” means a generally linear area in the landscape that contains and connects natural areas, open spaces, and scenic or other resources. Environmental Corridors often lie along streams, rivers, or other natural landscape features, providing linkages in the natural landscape, avenues for fish and wildlife movement, and serving as buffers between natural and/or human communities.

“Existing Improvement” means an Improvement existing as of the Effective Date as identified in the Baseline Documentation.

“Existing Servitude” means an easement or other matter affecting title to the Protected Property (other than a Lien) accorded priority to the Conservation Easement by notice in the Public Records or other prior notice recognized under Applicable Law. Existing Servitudes may include, by way of example, utility and access easements.

“Forestry” means planting, growing, nurturing, managing, and harvesting trees whether for timber and other useful products, or for enhancing water quality, wildlife habitat, and other Conservation Values and Purposes.

“Height” means the vertical elevation of an Improvement measured from the average exterior ground elevation of the Improvement to a point, if the Improvement is roofed, midway between the highest and lowest points of the roof excluding chimneys, cupolas, ventilation shafts, weathervanes, and similar protrusions or, if the Improvement is unroofed, the top of the Improvement.

“Impervious Surface” means the footprints (including roofs, decks, stairs, and other extensions) of Improvements; paved or artificially covered surfaces such as crushed stone, gravel, concrete, and asphalt; impounded water (such as a man-made pond); and compacted earth (such as an unpaved roadbed). Also included in Impervious Surface are green roofs and porous pavement surfaces. Excluded from Impervious Surface are running or non-impounded standing water (such as a naturally occurring lake), bedrock and naturally occurring stone and gravel, and earth (whether covered with vegetation or not) so long as it has not been compacted by non-naturally occurring forces.

“Improvement” means a Building, Structure, or other infrastructure-type site enhancement, whether temporary or permanent, located on, above, or under the Protected Property. See also in this Section the related terms Agricultural Improvement, Residential Improvement, Site Improvement, and Utility Improvement.

“Indemnified Parties” mean Easement Holder, each Beneficiary (if any), and their respective members, directors, officers, employees, and agents, and the heirs, personal representatives, successors, and assigns of each of them.

“Invasive Species” means a plant species that is non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications such as “Invasive Plants of the Upper Midwest: An Illustrated Guide to Their Identification and Control” (Czarapata, E.J., 2005. University of Wisconsin Press) or other guides published by the Invasive Plant Association of Wisconsin, the National Park Service and U.S. Fish and Wildlife Service, are to be used to identify Invasive Species.

“Landowner” means the undersigned landowner or landowners making this Grant, and all Persons after them who hold an interest in the Protected Property.

“Lien” means a mortgage, lien, or other encumbrance securing the payment of money.

“Litigation Expense” means any court filing fee, court cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or claim for indemnification under this Grant including, in each case, attorneys’ fees, other professionals’ fees, and disbursements.

“Losses” mean any liability, loss, claim, settlement payment, cost, expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, penalties, or other charge other than a Litigation Expense.

“Lot” means a unit, lot, or parcel of real estate separated or transferable for separate ownership or lease under Applicable Law.

“Market Value” means the fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell, as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.

“Native Species” mean a plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases, particularly the on-line resource “Flora of Wisconsin: Consortium of Wisconsin Herbaria” are to be used to establish whether a species is native. In determining whether a species is native, consideration shall be made to account for the effects of climate change.

“Nutrient Management Plan” means a Best Management Practice plan prepared in accordance with Wisconsin Administrative Codes of the Department of Agriculture, Trade and Consumer Protection’s *Soil and Water Resource Management Program* promulgated under ATCP 50, and the Department of Natural Resources’ *Runoff Management Program* promulgated under NR 151, and any successor publications and regulations.

“Person” means an individual, organization, trust, government, or other legal entity.

“Public Records” mean the public records of the office for the recording of deeds in and for the county in which the Protected Property is located.

“Qualified Organization” means a governmental or charitable entity that (a) meets the criteria of a qualified organization under §1.170A-14(c)(1) of the Regulations and (b) is duly authorized to acquire and hold conservation easements under the Wisconsin’s Uniform Conservation Easement Act.

“Regulations” mean the provisions of C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

“Regulatory Signs” mean signs (not exceeding one square foot each) to control access to the Protected Property or for informational, directional, or interpretive purposes.

“Renewable Energy” means energy that can be used without depleting its source such as solar, wind, geothermal, and movement of water (hydroelectric and tidal).

“Residential Improvements” mean dwellings and Improvements accessory to residential uses such as garage, swimming pool, pool house, tennis court, and children’s play facilities.

“Resource Management Plan” means a record of the decisions and intentions of Landowner prepared by a qualified resource management professional for the purpose of protecting natural resources that the Conservation Values and Purposes aim to protect during certain operations potentially affecting those resources. It includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate), and projects a multi-year description of planned activities for operations to be conducted in accordance with the plan. *[The definition includes any Agricultural Management Plan or Forestry Management Plan as those terms may be defined in this article.]*

“Review” means review and approval by Easement Holder under the procedure described in Section 6.

“Review Requirements” mean, collectively, any plans, specifications, or other information required for approval of the Subdivision, activity, use, or Improvement under Applicable Law (if any) plus the

information required under (a) this Grant, (b) an exhibit incorporated into this Grant, (c) the Baseline Documentation, or (d) if the information described in items (a), (b) and (c) is inapplicable, unavailable, or insufficient under the circumstances, the guidelines for Review of submissions set by Easement Holder to provide sufficient information to conduct its Review.

“Site Improvement” means an unenclosed Improvement such as an Access Drive, Utility Improvement, walkway, boardwalk, retention/detention basin or other stormwater management facility, well, septic system, bridge, parking area or other pavement, lighting fixture, sign, mailbox, fence, wall, gate, man-made pond, berm, and landscaping treatment.

“Soil Conservation Plan” means a plan for soil conservation that meets the requirements of the Natural Resources Conservation Service as of the applicable date of reference and for erosion and sedimentation control under Applicable Law.

“Steep Slope Area” means an area greater than one acre having a slope greater than 15%.

“Structure” means a combination of materials, other than natural terrain or unaltered plant growth, erected or constructed to form a surface, container, tower, base, wall, sign, decoration, or any similar construct, either temporary or permanent. Examples include a driveway, a parking lot, a boat ramp or pier, a kiosk, an unenclosed storage lean-to, and an observation platform. Trailers shall not be considered a Structure under this definition unless it is explicitly included. *[Example language relating to trailers: Trailers shall be considered a Structure under this definition if used as a dwelling on the Protected Property for ___ calendar days of any calendar year or for more than ___ calendar days consecutively, or if it is located on the Protected Property anywhere other than the Minimal Protection Area for longer than ___ calendar days in any calendar year.]*

“Subdivision” means any division of the Protected Property or any Lot within the Protected Property; and any creation of a unit, lot, or parcel of real estate, including subsurface portions of the Protected Property, for separate use or ownership by any means including by lease or by implementing the condominium form of ownership. Examples of Subdivision include, but are not limited to, legal or “de facto” division or subdivision, short subdivision into remainder tracts, platting, testamentary division, or other process by which property is divided in ownership or in which legal or equitable title to different portions of property are held by different owners. Subdivision also includes indirect division through, by way of example: the allocation of property rights among partners, shareholders, or membership of any legal entity; the creation of a horizontal property regime, interval, or time-share ownership; partitioning among tenants in common; or judicial partition.

[Example definition of Sustainable: “Sustainable” means land management practices that provide goods and services from an ecosystem without degrading the biotic, soil, or water resources and without a decline in the yield of those goods and services over time.]

“Sustainable Agriculture” means an integrated system of plant and animal production practices having a site-specific application that will, over the long-term, (a) satisfy human food and fiber needs; (b) enhance environmental quality and the natural resource base upon which the agriculture economy depends; (c) make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls; (d) sustain the economic viability of farm operations; and (e) enhance the quality of life for farmers and society as a whole. [7 US Code §3103(19)] Such production practices include, by way of example, implementing Best Management Practices through programs of the Natural Resource Conservation Service of the U.S. Department of Agriculture that minimize chemical inputs, minimize soil erosion, manage nutrient applications, reduce or eliminate soil tillage and use of fossil fuels, build soil health, maintain perennial vegetative cover through cover crops and rotational grazing, and protect water quality through buffer strips.

“Sustainable Forestry” means an integrated system of management that conserves biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintains the ecological functions and the integrity of the forest. Examples of Best Management Practice approaches for Sustainable Forestry include implementing the principles and

criteria promoted by the Forest Stewardship Council and the management standards and practices promoted by the Sustainable Forestry Initiative.

“Uniform Conservation Easement Act” means the Wisconsin act published April 26, 1982, (Chapter 261, Laws of 1981) as amended.

“Utility Improvement” means an Improvement for the reception, storage, or transmission of potable water, stormwater, sewage, electricity, gas, telecommunications, or other sources of power.

“Waiver” means a written commitment by which Easement Holder, without any obligation to do so, agrees to refrain from exercising one or more of its rights and remedies for a specific period of time with respect to a specific set of circumstances.

“Wet Area” means a watercourse, spring, wetland (including vernal pools), or non-impounded standing water, and the area within 100 feet of its edge.

“Woodland Area” means an area within the Protected Property described as “wooded” or “forested” in the Baseline Documentation or identified as such on the Easement Area Plan, or if not wooded or forested as of the Effective Date, is designated as successional woodland area on the Easement Area Plan.