

The Conservation Law Center provides legal counsel without charge to conservation organizations, works to improve conservation law and policy, and offers law students clinical experience in the practice of law and the profession's public service tradition.

**Conservation Law Center Template for Indiana Land Protection Alliance:
Conservation Easement For *Relatively Natural Habitat*
Intended to Meet Federal Standards for Deductibility
June 2012**

*NOTE: A template is a guide; by necessity it includes provisions that may not be appropriate for any particular conservation easement, and similarly, it may not address issues that need to be addressed in a particular transaction. **This template is updated occasionally as conservation easement law develops.** Updates will be posted under ILPA in the "Work" tab of www.conservationlawcenter.org. While this template includes some annotation, this template incorporates many judgments that are not (for reasons of economy) explained herein, and with which reasonable informed attorneys could differ. It reflects review of many versions of conservation easements. A special acknowledgment is due Guy Loftman, Attorney at Law, 532 N. Walnut Street, Bloomington, IN, 47404. Many useful provisions are adapted from the easements he has drafted for Sycamore Land Trust. Another very good source of information on Easement drafting is the "Databank" at www.bbklaw.com/?t=40&an=3775&format=xml. This template, however, is the sole responsibility of the Conservation Law Center. Land trusts may contact the Conservation Law Center at (812) 855-1828 or admin@conservationlawcenter.org for counsel regarding a conservation easement or any matter.*

DEED OF CONSERVATION EASEMENT

THIS DEED OF PERPETUAL CONSERVATION EASEMENT ("Easement"), granted this _____ day of _____, 20__, by _____ ("Grantor"), sole owner in fee simple of the property described in paragraph 1, conveys a real property interest, immediately vested upon acceptance and recording, to _____, an Indiana nonprofit corporation, with a principal place of business at _____, Indiana ("Holder").

WITNESSETH:

1. Grantor is the sole owner in fee simple of certain real property (the "Property") in _____ County, Indiana, described in Exhibit A, Legal Description, attached hereto. The Property consists of approximately _____ acres of land identified as [part of] Assessors Parcel Number[s] _____ (Parcel Total is _____ acres). **For purposes of Cross Referencing:** The most recent deed[s] of record for the Property in the _____ County Recorder's Office is [are] [*here insert plat or recording information. This is to help be certain that the Recorder's Office will file or index the conservation easement in a way that will ensure that it is found in future title searches.*] A map of the Property is attached as Exhibit B.

2. “Grantor” means the current owner(s) as described above. “Owner,” means Grantor while Grantor holds title to all or part of the property described in paragraph 1, and because the real interest conveyed herein is intended to be perpetual, also means subsequent owners with reference to the period of time in which each subsequent owner, in turn, owns all or part of such property, however such subsequent interest is acquired. Grantor and Owner have the rights and responsibilities specified by the terms of the Easement.

3. The purpose of this conveyance is the conservation of the Property’s relatively natural habitat, as that phrase is used in 26 U.S.C. §170(h)(4)(A)(ii).

4. The conservation of relatively natural habitat is a conservation easement purpose that is consistent with Ind. Code §32-23-5-1 et seq.

5. Holder is an organization described in 26 U.S.C. §501(c)(3), meets the requirements of 26 U.S.C. §170(b)(1)(A)(vi), and is described in 26 U.S.C. §509(a)(2). Holder is operated substantially for one or more of the conservation purposes of 26 U.S.C. §170(h)(4)(A). Holder is an organization qualified to hold conservation easements under U.S.C, §170(h)(3) and under Ind. Code 32-23-5-3.

6. The primary conservation values of the Property are _____ [*Here, our advice is to include the most important conservation objectives, and only those. Remember that applicable Treasury Regs use the word “significant” as a modifier of “relatively natural habitat.” The regulations don’t make clear exactly what significant means, but the examples given include habitat for rare, threatened or endangered species, high quality examples of terrestrial or aquatic communities, and areas the conservation of which will enhance the ecological viability of other conserved areas. Listing many elements of conservation interest increases the likelihood that there will be conflicts among them with respect to the implications of the exercise of reserved rights, or the implementation of management actions. Further, the Easement is structured so as to direct enforcement attention to these values. Don’t list values that you are not or should not be willing to fight about. Other attributes of the Property can be listed elsewhere, and an inventory of natural features can be attached for stewardship reference. On the other hand, this is the place to think about whether important values may be vulnerable to climate change or blight, and to think about whether there are values that would survive such events that are protected by the Easement but that you do not now consider primary. Document those as secondary values. Some secondary values may better fit the federal qualifying purposes of preservation of open space or scenic land, or outdoor recreation or education. In order to keep this template manageable, it does not include provisions that should be included in an easement meant to qualify for deductibility under those federal purposes.*] These values qualify the Property as relatively natural habitat under relevant federal law. A more complete documentation of the natural features of the Property as of the date of this conveyance is attached as Exhibit C, Baseline Report. [*Option: Secondary conservation values are _____.* Grantor and Holder agree that these secondary conservation values are documented as evidence of the broader conservation and charitable intent of Grantor and Holder with respect to this conveyance. It is expected that actions consistent with the terms of this Easement and most management choices consistent with the objective of protecting the primary conservation values will sustain both primary and secondary conservation values. Should a conflict arise with respect an action that may enhance some conservation values while negatively affecting others, Owner and Holder agree to follow the course of action that is best designed to sustain the primary values.] The primary [*and secondary*] conservation values are collectively referred to herein as “Conservation Values.”

7. The Conservation Values of the Property, the improvements, and other features of interest as of the time of this conveyance are documented in Exhibit B, Map, and Exhibit C, Baseline Report. Grantor and Holder acknowledge that these Exhibits accurately though non-exhaustively describe the Property as of the date of this Easement. The Exhibits may be used by Holder to establish that a change in the use or

character of the Property has occurred, but that shall not preclude the Holder from presenting other evidence to establish the condition of the Property as of the date of this Easement.

8. Grantor intends that the Conservation Values of the Property be preserved and maintained, and by this conveyance intends to pre-empt uses of the Property that are inconsistent with that primary goal. Grantor acknowledges that now and in the future, the conveyance of this restricted charitable gift will foreclose uses of the Property that may be more economically remunerative than upholding the Conservation Values. Grantor intends to convey to Holder the right to preserve and protect the Conservation Values of the Property in perpetuity, and as Owner, is similarly committed to that objective.

9. Unless otherwise specified below, nothing in this Easement shall require Owner to take any action to restore the condition of the Property after any event legally qualifying as an “act of God” or other event over which Owner had no reasonable control.

10. Nothing in this Easement relieves Owner of any obligation with respect to the Property or restriction on the use of the Property imposed by law.

11. The extinguishment or termination of some or all of the rights vested in Holder by this perpetual Easement gives rise to rights of compensation pursuant to the terms of paragraphs 18 and 30 hereof. An amendment properly adopted under the terms of paragraph 29 will not result in a partial extinguishment of the Easement.

GRANT OF EASEMENT

12. Grant of Interest. In consideration of the above and the good, sufficient and valuable consideration represented by the mutual covenants, terms, conditions, and restrictions contained herein, pursuant to the law of Indiana and in particular the Indiana Uniform Conservation Easement Act, Indiana Code §32-23-5-1 et seq., Grantor hereby grants and conveys to Holder, and Holder hereby accepts as a restricted gift, a perpetual conservation easement over the Property. This interest is defined herein and by Indiana Code § 32-23-5-2 and is immediately vested upon recording. The interest is in real property described in Exhibit A. Owner will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the objective of maintaining the Conservation Values, or with covenants made in this Easement. Owner authorizes Holder to enforce these covenants in the manner described below.

PROHIBITIONS

13. General. Specific prohibitions dealing with limitations on the exercise of reserved rights are set forth in separate sections of this Easement. More generally, any activity on or use of the Property that is inconsistent with the objective of maintaining the Conservation Values is prohibited. Without limiting the generality of the foregoing, the following uses and activities are expressly prohibited: *[Here, list specific prohibitions that are distinctive and important enough to document and which do not relate to reserved rights. Be thoughtful about avoiding unqualified prohibitions of management tools that may be needed over time; easements that prohibited use of herbicides, for example, create difficulties now in managing unanticipated invasive species issues that now threaten the conservation values of some eased lands. Some frequent prohibitions: “A. The removal, destruction, cutting, mowing, or other disturbance of any trees or other vegetation, living or dead, except as specifically permitted herein or (1) to control invasive plants or animals that are not native to this ecological region; or (2) to control grapevines; or (3) the non-commercial gathering of foods growing naturally on the Property; or (4) to maintain existing fences*

or trails. B. Introducing plants or animals that are not native to the ecological region or adjacent regions. C. Tilling, plowing, tiling, draining, ditching removing topsoil, or otherwise changing the topography of the Property. D. Placement or construction of any structure not specifically permitted herein. E. Operation of motorized vehicles on the Property except where specifically permitted. F. Horseback riding or the keeping of livestock, except as specifically permitted herein. G. Camping. H. Fire, unless approved by Holder as a management tool designed to help maintain the Conservation Values. I. The use of amplified sound systems audible outside the Building Envelope that may harass or harm wildlife; further, outdoor lighting shall not result in any light visible off of the Property that is inconsistent with the rural character of the Property and the surrounding landscape. H. Placement or storage of trash, debris, or hazardous materials except as specifically permitted. [In this template, trash, sub-division and some other common prohibitions are dealt with in the section called Other Reserved Rights and Limitations Thereon.] [If you or the Grantor wish to prohibit hunting, besides considering enforceability, you may wish to make an exception for the removal of animals that present a threat to the maintenance of the conservation values by the use of controlled hunting according to an ecological management plan prepared either by Owner or Holder and approved either in accordance with the notice and approval provision of the Easement, or in the case of a plan prepared by Holder, approved by a process you negotiate with the Grantor, and add to this Easement. Such an approval process may also be appropriate for the exercise of affirmative rights of management by Holder.]

RESERVED RIGHTS

14. Reserved Rights.

14.1. Reserved Rights, General. The exercise of any right reserved by Grantor is conditioned upon Owner's obligation to prevent or to minimize damage to the Conservation Values identified above [Option] and water quality, air quality, land/soil stability and productivity, wildlife habitat, scenic and cultural values, and the natural topographic and open space character of the Property. Activities not prohibited by this Easement are subject to a similarly general restriction. Otherwise, Grantor reserves all rights not specifically prohibited or limited by this Easement. [This last phrase should cover all of the acceptable activities not otherwise specifically reserved that Grantors want to retain rights to engage in. Nonetheless, Grantors will often want provisions specifically permitting named activities. The issue for land trusts here is whether the activities may impact the Conservation Values. If so, federal tax regulations require notice to Holder before many such rights are exercised. Forestry and agricultural activity on a relatively natural habitat clearly could affect conservation values, and if the right to pursue them is reserved they should be dealt with specifically, as they are in this template.]

14.2. [Option:] Specific Reserved Rights: Forestry. Grantor and Holder agree that the following forest management activities may be conducted in a manner that is consistent with the objective of maintaining the Conservation Values, and therefore may be pursued on [define the portion of] the Property [as a specific exception to the prohibition of disturbance of vegetation] in a manner which (1) complies with the provisions and purposes of this Easement, and (2) is consistent with the standards, customs and practices that are current and generally accepted by professional forest resource managers, and (3) meets the standard of best timber management practices, and (4) is consistent with a management and conservation plan for the Property, developed in accordance with the requirements of paragraph 15, and presented to the Holder for review, and if appropriate, approval under the terms of paragraph 25 herein. Forest management means timber stand improvement practices such as thinning and culling trees and grapevine deadening; timber harvesting and regeneration of forest stands; firewood harvesting; wildlife habitat management that is consistent with generally accepted practice among professional wildlife

managers and which, in addition specifically includes invasive species management as a goal; planting trees of species native to this ecological region; pruning; maple syruping, and sugaring; and construction and maintenance of necessary log landings, skid trails and haul/access roads. Structures such as culverts, bridges or waterbars constructed on trails and roads shall be removed or maintained by the Owner as needed to protect the Conservation Values of the Property. Grantor and Holder agree that “clear cut” logging [of more than [two?] acre patches] and similar practices are not consistent with the objective of maintaining the Conservation Values. Such practices are prohibited.

14.3. [Option.] Right to Use the Property for Agricultural Purposes. *Grantor and Holder agree that certain agricultural activities that conform to the requirements of sub-paragraph 14.3 may be conducted in a manner that is consistent with the objective of maintaining the Conservation Values. Grantor therefore reserves the right to use [here, define the portion of] the Property for certain agricultural activities, or to permit others to use [here, too, define the portion of] the Property for agricultural activity, consistent with applicable law, the conservation purposes of this Easement, the specific prohibitions set forth in this Easement, and the Management and Conservation Plan required by paragraph 15.*

14.3.1. Definitions. “Agricultural Activities” shall mean the commercial production, processing, storage or retail marketing of crops, livestock, and livestock products. Crops, livestock and livestock products are (i) crops commonly found in the community surrounding the Property; (ii) field crops, hay, soybeans, or legumes; (iii) fruits or nuts; (iv) vegetables and root vegetables; (v) non-invasive horticultural specimens; (vi) livestock and livestock products, poultry and eggs, milk and other dairy products raised with due attention not to exceed the carrying capacity of the [portion] of the Property devoted to that use; (vii) timber, wood, and other wood products derived from trees; (viii) breeding and raising of bees; and (ix) boarding, stabling, raising, feeding, grazing, exercising, riding and training horses and instructing riders. Other agricultural uses including other crops, livestock, and livestock products may be permitted with prior approval of Holder, which shall only be given if such uses are compatible with the preservation of the Conservation Purposes. Permitting the property to undergo ecological succession with due attention to the management of invasive species is also an acceptable Agricultural Activity. Use of this land for a concentrated animal feeding operation, as defined in Indiana Code 13-11-2-38.3, or confined feeding operation, as defined in Indiana Code 13-11-2-40, or successor statutes is hereby deemed inconsistent with the objective of maintaining the Conservation Values and is prohibited.

14.3.2. Standards and Practices. All Agricultural Activities shall be conducted in accordance with the then-current scientifically-based practices recommended by the U.S. Cooperative Extension Service, U.S. Natural Resources Conservation Service, or other government or private natural resource conservation and management agencies then active.

14.3.3. Processing of Agricultural Residues. Owner may engage in the burning, chipping, grinding, mixing or composting of agricultural residues of plant or animal origin that result from the production of farm, ranch, horticultural, floricultural or agricultural products, processed for the purpose of returning a similar amount of processed material to the Property. Such residues may include manures, orchard or vineyard prunings or other crop residues derived from the Property. The addition of

amendments to stabilize or cure the processed residues to improve attributes such as bulk, nutrient value, pH, moisture or texture shall be permitted, so long as such addition does not cause the resulting volume of processed material to exceed substantially the amount of agricultural residues initially collected. All processing of agricultural residues shall be conducted in accordance with applicable federal, state, and local laws, regulations and requirements.

14.3.4. Uses and Activities Related to Agriculture. The following agriculturally related activities and uses are permitted: farm machine repair shop or seed and mineral shop (utilizing buildings permitted under the terms of sub-paragraph 19.1); seasonal or occasional outdoor commercial activities that are accessory to the Agricultural Activities permitted on the Property, for example: hay rides, corn maze, farm animal petting zoo, pick your own produce, sale of agricultural products produced off of the Property but associated with such seasonal or occasional activities (for example: the sale of apple cider on a hayride; production/processing (within a permitted structure) of agricultural products, a majority of which are produced on the property or another property owned by Owner, into derivatives thereof; the commercial retail and/or non-retail sale of (i) agricultural products, a majority of which are produced on the Property or another property owned by Owner, or (ii) derivatives thereof; equestrian sports, events, and shows, boarding, the training of horses/ponies and riders, and the provision of recreational or therapeutic riding opportunities; and recreational uses offered and operated by a resident of a permitted Dwelling Unit on the Property, or by Owner that do not compromise the Conservation Values of this Easement. Agriculture-related activities not described in this sub-paragraph that are not analogous to those described (or more minimal) in impact on the Conservation Values of the Easement are prohibited, unless approved by Holder as set forth in paragraph 25.

14.3.5. Visual Screening. In order to maintain the scenic view of the Property from public roadways and waterways [if the easement must ever qualify as a scenic easement], Owner shall not erect, construct, assemble, or plant visual screening, including but not limited to stockade fences, tall berms, and dense hedges, that would, in Holder's sole discretion, substantially block views of the Property from such public roadways or waterways.

14.3.6. In the event that agricultural use of the land ceases, the portion of the Property previously used for agriculture may, in whole or in part: (1) be planted to native trees and/or managed wildlife habitat or other uses approved in advance by the Holder; (2) be allowed to revert to wild land through the process of natural succession with appropriate attention to the management of invasive species, unless and until returned to agricultural uses.

MANAGEMENT PLAN

15. [Option.]Management and Conservation Plan. *[We recommend that rather than try to imagine all of the issues that may arise with permitting agricultural or forestry operations, land trusts require Grantor or Owner to prepare and submit an agriculture or forestry plan, and require that the plan be periodically updated. Some land trusts have indicated that the process of reviewing and perhaps negotiating the provisions of such plans is burdensome. Our view is that it is an unavoidable cost of permitting those kinds of reserved rights. Practices and economics in agriculture and forestry will change over the perpetual time period of the Easement. Also, we think that the stewardship and public relations issues associated with these activities are potentially serious enough that if they are to be permitted, a*

plan is advisable; moreover, a plan can address issues that are not central to the conservation values, but important to the general reputation of the conservation and land trust communities, e.g. good general conservation practices .] All [forestry] [agricultural] operations on the Property shall be conducted in a manner consistent with a management and conservation plan prepared by qualified [forestry][agricultural] and conservation professionals. The plan shall include as an objective the maintenance of the Conservation Values. The plan shall be submitted to the Holder in accordance with the notice and approval process described in paragraph 25 below. The plan shall be updated and re-submitted to Holder in accordance with the notice and approval provisions of paragraph 25 herein periodically, and at least every ten years, as well as any time the Owner desires to change the basic type of agricultural operation on the Property. Further, before a successor Owner of the Property may conduct such operations on the Property, the plan shall be updated and submitted to Holder in accordance with the notice and approval provisions of paragraph 25 herein. This plan shall provide for management of the Property in a manner consistent with generally accepted "Best Management Practices," as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. The plan shall also specify that all [forestry][agricultural] operations shall be conducted in accordance with applicable federal, state, and local laws, regulations and requirements.

OTHER RESERVED RIGHTS AND LIMITATIONS THEREON

16. Other Reserved Rights. Grantor reserves certain other rights and acknowledges other limitations:

16.1. Recreational Uses. Owner retains the right to use and to permit others to use the Property for lawful noncommercial and non-motorized recreational uses, including, but not limited to, hiking, cross-country skiing, birding, observing and photographing nature, walking, picnicking, [hunting], and other activities that are consistent with the maintenance of the Conservation Values. All commercial recreational uses of, or commercial recreational activities on, the Property that are not specifically permitted herein, [or approved in advance by Holder under the terms of paragraph 25] are prohibited. The terms "commercial recreational uses" and "commercial recreational activities" shall mean uses or activities that are typically recreational in nature for which users are charged a fee (including a membership fee) in excess of the Owner's costs for the privilege of engaging in the uses or activities.

16.2. Signs and Animal Houses. Owner may place and remove a reasonable number of small identifying signs, bird houses, bat houses, butterfly houses and the like on the Property.

16.3 Invasive Species. Upon following the notice and approval provisions of paragraph 25 herein, Owner may control invasive species by means designed to best serve the Conservation Values and purposes of the easement.

16.4. Ecological/Scientific Research. Owner may engage in and permit others to engage in ecological research on the Property that is not inconsistent with the Conservation Values of this Easement.

16.5. Educational Activities. Owner may carry out educational activities, including but not limited to educational activities addressing environmental conservation, and ecology. These activities must be planned and carried out so as to be consistent with the objective of maintaining the Conservation Values of the Property.

RIGHT TO EXCLUDE; [OBLIGATION TO DEFEND]

17. Right to Exclude [and Obligation to Defend]. No right of access by the general public to any portion of the Property is conveyed by this Easement; Owner retains the right exclude the public from the Property. *[Option (use if Scenic values may sustain the deductibility of Easement): except that visual access to the Property's scenic attributes shall be preserved.]**[Option: Owner shall undertake reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property.]*

STATUS OF RIGHTS CONVEYED TO HOLDER

18. Rights Dormant. The parties recognize that despite their efforts to defend the Easement and Conservation Values, there remains a risk of condemnation of some or all of the Property by governmental or other authorized entities. In order to clarify their respective rights in the event of a condemnation, and to make clear their intentions, the parties agree that the development and other rights conveyed to Holder by this Easement are hereby rendered not extinguished, but dormant, and will remain dormant as long as this Easement or an amended version of this Easement, is held by the Holder or a successor Holder. The parties further agree that so long as such rights transferred by Grantor to Holder remain dormant, they may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for calculating permissible lot yield of the Property or any other property. Extinguishment or termination of the Easement in whole or in part renders active, for purposes of compensation, the rights previously held dormant by Holder on the portion of the Property affected by the extinguishment or termination. As such, in the event of extinguishment or termination of the Easement in whole or in part, Holder's rights *[Option: must be re-appraised and proceeds associated with the extinguishment or taking distributed accordingly to Holder provided, however, that if such rights were appraised at the time of the conveyance of this Easement, such rights are valuable and]* shall be valued, for purposes of distribution of proceeds at the proportionate value by comparison with the value of the affected Property that Holder's rights had at the time of the conveyance of this Easement, *[or the current proportionate value, whichever is greater.]*

IMPROVEMENTS

19. Construction of Buildings and Other Improvements. No structures or buildings not currently in existence on the Property are permitted, except as specified herein.

19.1. Existing Structures. Existing structures within the Building Envelope as shown on Exhibit B may be repaired, or replaced within the Building Envelope. Enlargements of buildings within the envelope may not exceed fifty percent of the ground floor area occupied by the structure existing at the time of the conveyance of this Easement, and the height must not exceed thirty-five feet or the local zoning height restriction, if any, whichever is more stringent. Existing structures (other than fences) outside of the Building Envelope may be maintained and repaired, but may not be replaced or enlarged.

19.2. Fences. Existing fences may be repaired and replaced. New fences shall be permitted only *[within the Building Envelope]* *[if documented in the Management and Conservation Plan and for purposes of reasonable and customary management of livestock, wildlife, and farm produce, and the reasonable and customary security of the farm produce and the residence(s) and other improvements upon the Property. Location of new fences shall not interfere with Conservation Values intended to be protected by this Easement].*

19.3. Utilities, Energy, and Septic Systems. Existing wires, lines, pipes, cables, or other facilities providing electrical, gas, water, sewer, communications, or other utility services (“Utilities”) to the improvements permitted herein may be maintained, repaired, removed, relocated within the easement under which they have been installed, and replaced. In addition, septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired, replaced, relocated, or improved within the Building Envelope. Except as provided herein, Owner may not install or approve the installation of Utilities not now existing on the Property. However, with notice to and approval of Holder as provided in paragraph 25, and sharing of proceeds in accordance with paragraph 30 herein, Owner may consent to acquisition of such rights of way pursuant to or as an alternative to what would otherwise be proper exercise of eminent domain. After notice to and approval of Holder as provided for in paragraph 25, facilities for the generation of energy that are consistent with the objective of maintaining the Conservation Values may be installed (but only within [the Building Envelope] [*or the Energy Development Envelope*] shown on Exhibit B).

19.4. Paving, Road Construction and Trails. The maintenance, repair, and use consistent with the restrictions and prohibitions herein of access roads and trails existing as of the date of this Easement on the Property in substantially their present location and condition as shown on Exhibit B hereto is permitted. No extension or expansion of roads is permitted without prior notice to and approval of Holder as set forth in paragraph 25.

WATER MANAGEMENT

20. Water Management and Sources. [*Unless the current flow of water over the property is causing erosion that compromises the Conservation Values*] Owner may not alter the currently existing flow of water over the Property, except within the Building Envelope, wherein surface water flow may be collected or directed away from areas in which it would conflict with reasonable use. Any alteration by Owner of the currently existing flow of water over the property outside of the Building Envelope requires notice to and if appropriate, approval by Holder under the terms of paragraph 25. [*Option : (If agricultural use and if included in Plan): In accordance with applicable law, the conservation purposes of this Easement, the Plan required by paragraph 15 and the notice and approval procedure set forth in paragraph 25, Owner may maintain existing water sources and drains.*] [*In this section, you may wish to make special provision for the requirements associated with a legal drain on the Property.*]

SUBDIVISION

21. Subdivision. Recording of a plan for subdividing the Property, lot line adjustments, imposition of a mortgage or other encumbrance not expressly subordinate to this Easement on less than the entire Property, and any attempt to divide the Property into two or more legal parcels without prior approval of Holder as provided below is prohibited. [*We include this provision on sub-division because we understand that land trusts hope to avoid multiplying the issues of dealing with underlying fee owners. We advise considering carefully whether complete restriction on sub-division (not building, just sub-division) is, in the particular easement you are working on, worth the issues associated with later amending it. Land Trusts are likely to be inclined to permit an amendment of this provision when doing so would not compromise the conservation values but entering into such an amendment will require extensive documentation, careful attention to private benefit issues, and perhaps presentation to a court for approval, ideally under administrative amendment standards.*]

WASTE

22. Trash and Debris, Storage and the Like. The dumping, burial, burning, or other disposal or accumulation of wastes, ashes, refuse, debris, dredge spoils, hazardous or toxic materials, inoperative vehicles, or other unsightly or offensive material on the Property is prohibited, except that which is reasonably generated by activities permitted herein and disposed of in a lawful manner that does not cause, and is not likely to cause, soil degradation or erosion, harm to native plant communities, pollution of any surface or subsurface waters, or degradation of Conservation Values. *[Option: Agricultural products, agricultural chemicals (including herbicides, pesticides, fungicides, fertilizers, and other materials commonly used in farming operations), oil, fuels, and petroleum products for use in agricultural operations on the Property, agricultural byproducts, and agricultural equipment used on the Property may be stored on the Property in accordance with applicable federal, state, and local laws, regulations and requirements. The application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with applicable federal, state, and local laws, regulations and requirements, and only if the application of any of these materials will not substantially diminish the viability and productivity of the agricultural soils on the Property.]*

MINING

23. Surface Mining. The mining or extraction of any mineral substance by any method that substantially disturbs the surface of the land subject to this easement is prohibited. Methods of mineral extraction that are managed so as to have limited and localized impact on the Property and which do not have a materially adverse effect on the Conservation Values may be permitted upon notice to and approval by the Holder, as specified in paragraph 25.

VEHICLES

24. Vehicles. Use of bicycles, motorcycles, all-terrain vehicles, or any other type of motorized or non-motorized vehicles on or off roadways on the Property is prohibited except that Owner or others under Owner's control may make use of vehicles when reasonably necessary for permitted activities, permitted residential or recreational uses, or urgent emergency uses. However, to the extent (and only to the extent) that entities not under Owner's control are permitted to operate vehicles on the Property by existing easements of record as shown in the Baseline Documentation, Owner and Holder may operate vehicles on the Property.

NOTICE AND APPROVAL

25. Notice to and Approval of Holder. In addition to the provisions hereunder that specifically require that notice be provided to Holder in advance of a particular activity or use of the Property, Owner shall notify Holder at any time Owner proposes to undertake an activity or use that, pursued without sufficient regard, could have a materially adverse effect on the Conservation Values. The purpose of requiring Owner to notify Holder and seek approval for certain activities is to afford Holder an adequate opportunity to assess the activity, as specifically planned, for consistency with the objective of maintaining the Conservation Values. Thus, the notification must describe the nature, scope, design, location, schedule, and other material information about the proposed activity in sufficient detail that Holder is able to make an informed judgment as to its compatibility with the Conservation Values. Where

Owner is required to obtain Holder's permission or approval for a proposed action hereunder, Holder shall grant permission or approval to Owner only when Holder determines that the proposed action will not substantially diminish or impair the Conservation Values of the Property. [*Option: Such judgment is reserved to the sole discretion of Holder.*] Holder's response to a request for approval:

25.1. [*Option: Shall not be unreasonably delayed or withheld by Holder,*]

25.2. Shall be and given or denied in writing within [30/60/90] days after receipt of Owner's complete written application. If approval is withheld, Holder shall inform Owner in writing of the reasons. If Owner and Holder cannot reach agreement on a plan that addresses Holder's stated concerns within 10 days of the posting of Holder's explanation (or of the delivery, if Holder's explanation is delivered by means other than mail service) Owner may bring suit in a court of competent jurisdiction. If any such suit brought within 6 months of the posting or delivery of Holder's explanation proceeds to judgment, the prevailing party is entitled under this agreement to be reimbursed, by the party that does not prevail, for reasonable attorney's fees and other costs of the litigation. After such 6 month period, Owner waives, without requirement of a writing, the right to object to Holder's decision not to approve the planned activity.

RIGHTS OF HOLDER

26. Rights of Holder. To accomplish the purpose of this Easement the following rights are conveyed to Holder by this Easement:

26.1. To preserve and protect the Conservation Values of the Property.

26.2. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property as may be damaged by any inconsistent activity or use, pursuant to the remedies provided in paragraph 27.

26.3. To manage its responsibilities as Holder of this Easement in order to uphold the purposes of this Easement, including, but not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement, for the purpose of preserving the Property's Conservation Values. Failure of the Holder to carry out these responsibilities shall not impair the validity of this Easement or limit its enforceability. With reasonable advance notice as specified in sub-paragraph 26.4 (except in the event of an emergency circumstance or prevention of a threatened breach in which case no advance notice is required as further specified in sub-paragraph 26.4), Holder shall have the right to enter upon, inspect, observe, document, monitor and evaluate the Property to gain ongoing knowledge regarding land uses and management practices on the Property and to determine whether the condition, uses and practices are consistent with this Easement.

26.4. To enter upon the Property after reasonable advance notice to Owner for the purpose of inspecting for compliance with the terms of this Easement, subject to the following conditions:

26.4.1. Holder shall give at least forty-eight (48) hours notice to Grantor before entering upon the Property, except in the event of an emergency or suspected emergency or to prevent a breach of the Easement restrictions that Holder reasonably suspects is imminent, in which case verbal or written notice that is reasonable under the circumstances shall be attempted. The notice shall indicate the purpose of the entry and shall provide the timeframe during which Holder shall be upon the Property;

26.4.2. Holder shall promptly reimburse Owner for damages arising out of or in connection with such entry to the extent that such damages were the result of the negligent act of Holder or Holder's representative(s).

26.5. To use any and all access easements and rights-of-way, whether recorded or not, over the Property or the property of others that individually or together provide Owner with legal, physical and other access to the Property. Owner shall execute additional documents as necessary to evidence this assignment.

26.6. To erect and maintain small unlighted signs or other appropriate markers visible from public vantage points and along boundary lines to identify Holder and public programs that have supported the conservation of the Property, and/or informing the public that the Property is protected by this Easement and identifying activities prohibited by the Easement.

26.7. To interpret the terms of this Easement, apply the terms of this Easement to factual conditions on or about the Property, respond to requests for information from persons having an interest in this Easement or the Property, and apply the terms of this Easement to changes occurring on or proposed for the Property.

26.8. To exercise such additional rights as may be reasonably necessary to effectuate the purposes of this Easement, including the right (but not the obligation) if Holder determines doing so will serve the conservation purposes to *[Option: Here a provision authorizing affirmative management (this might include, for example, invasive species control, or prescribed burning) by Holder of elements of Conservation Values may be added if Holder desires and acceptable to Owner: after providing notice to Owner, to engage in management activity with the objective of maintaining the presence and vigor on the Property of all or any of the documented Conservation Values, and the right to remove or arrange for removal of debris, trash or wreckage, at Holders expense.]*

26.9. To a 20% share in the value obtained by Grantor should Grantor sell or trade carbon sequestration or other ecosystem services credits or some similar asset the value of which is supported by the long term conservation of the Property (which is evidenced in whole or in part by and accomplished in whole or in part through this Easement). *[We chose 20% as a figure reasonably representing the percentage of the value of the Easement that Holders may expect, on average, to expend on its stewardship and conservation, and thus a reasonable way to measure Holder's contribution to the possibility that saleable carbon or other credits might be created on the Property.]*

ENFORCEMENT AND REMEDIES

27. Enforcement and Remedies.

27.1. If Holder determines that a violation of this Easement has occurred, Holder shall so notify Owner, giving Owner 30 days to cure the violation, except in instances requiring immediate action as specified in sub-section 27.2. If the violation cannot reasonably be cured within 30 days, then Owner shall commence the cure within such 30 day period and shall be allotted such additional time, subject to Holder's approval which will not be unreasonably withheld, as shall be needed so that, that with reasonable diligence, Owner can complete the cure.

27.2. As specified in sub-section 27.1, where Holder in Holder's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Conservation Values of the Property, Holder may require Owner to immediately cure the violation and if no affirmative response is immediately forthcoming, Holder may bring an action to enjoin the violation, *ex parte* if the circumstances do not permit notice, through a temporary restraining order, preliminary injunction, and/or permanent injunction. Owner and Holder agree that the character of the Conservation Values is such that money damages or other remedies at law are insufficient to fully protect Holder's interests.

27.3. If the Holder elects to seek a judicial remedy, in addition to injunctive relief Holder shall be entitled to the following remedies, in the event of a violation:

27.3.1. Money damages, including damages for the loss of the Conservation Values protected by this Easement; and

27.3.2. Restoration of the Property to its condition existing prior to such violation.

27.3.3. Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

27.4. In any litigation or administrative proceeding enforcing this Easement, Holder shall be entitled to be reimbursed for its expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, unless Holder was unsuccessful in establishing that any breach of this conservation easement had occurred. The failure of Holder to discover a violation or to take legal action when a violation is discovered shall not bar Holder from taking legal action at a later time.

27.5. Without expanding or limiting Owner's liability therefore, Holder shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical the Holder shall apply any and all damages recovered first to furthering the conservation values specified in the Easement, and if no opportunity is then available to conserve those values, then to Holder's mission, with primary emphasis on conservation easement acquisition, monitoring, enforcement, or defense.

SUBORDINATION, ONGOING GRANTOR RESPONSIBILITIES

28. Subordination, Costs, Liabilities, Taxes, and Environmental Compliance.

28.1. Subordination. Grantor represents that as required under Treasury Regulation §1.170A-14, as of the date of this grant, there are no liens or mortgages outstanding against the Property that are not subordinated to Holder's rights under this Easement. It is understood that the required subordination must be encompassing; for example, should an event occur against which the Property is insured occur that renders it impossible to maintain the Conservation Values and thus results in the full or partial extinguishment of the Easement, this subordination will result in Holder's priority with regard to satisfaction of losses through the payment of insurance proceeds. Owner has the right to use the Property (but only the entire 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 Holder's rights under this Easement. No recording of any document, foreclosure, or any other action taken concerning any existing or subsequent lien or other interest in the Property shall compromise Holder's rights in the Property.

28.2. Costs, Legal Requirements, and Liabilities. Except as otherwise specified herein Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Owner remains solely responsible for obtaining any

applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement.

28.3. Taxes. Owner shall be solely responsible for payment of all taxes and assessments levied against the Property. If the situation arises in which Holder can best protect its interest in the Property by itself paying due taxes or assessments, Grantor will reimburse Holder for taxes paid on Grantor's behalf, with interest from (and at the prime rate prevailing at) the time Holder makes such payment.

28.4. Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:

28.4.1. *[Option for ag: Except what is reasonable, customary, and lawfully used in the agricultural practices on the Property,]* No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property.

28.4.2. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.

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

28.6. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Holder to exercise physical or managerial control over the day-to-day operations of the Property, or any of Owner's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

28.7. Hold Harmless. Owner hereby releases and agrees to hold harmless, indemnify, and defend Holder and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with:

28.7.1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence of any of the Indemnified Parties;

28.7.2. The violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA

and Indiana Hazardous Substances Responsible Property Transfer Law, Indiana Code 13-25-3-1, et seq., by any person other than any of the indemnified Parties, in any way affecting, involving, or relating to the Property;

28.7.3. The presence or release in, on, from, or about the 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, except to the extent caused by any of the Indemnified Parties; and

28.7.4. Breach of the obligations, covenants, representations, and warranties of paragraphs 28.4.1 and 28.4.2.

AMENDMENT OF EASEMENT

29. Amendment.

29.1. If circumstances arise under which an amendment to or modification of this Easement would be appropriate and would comply with this paragraph, Owner and Holder may jointly amend this Easement. Holder shall only agree to an amendment that meets the standards required by this paragraph, and is under no obligation to agree to any proposed amendment, and cannot and shall not propose or agree to an amendment that would affect the qualifications of this Easement under Indiana Code § 32-23-5-1 et seq. and 26 U.S.C. §170(h). Any amendment must be consistent with the conservation purpose of this Easement, must not affect its perpetual duration, must not result in any private benefit prohibited under the Internal Revenue Code, and must enhance or have no net adverse effect on the Conservation Values which are protected by this Easement. Any Easement amendment must be in writing, signed by both parties, and recorded in the Public Records of the county in which this Easement is recorded.

29.2. Standards for Approval of Conservation Easement Amendments:

29.2.1. Correction of an error or clarification of an ambiguity.

29.2.2. Modifications consistent with the conservation purpose(s), if:

29.2.2.1. The amendment creates a condition that strengthens or has no net effect on the protection of the Conservation Values identified in the Easement and

29.2.2.2. The amendment does not undermine the public's perception of reliability of conservation easements as a land conservation tool.

29.2.2.3. The amendment upholds the intent of the Grantor and the fiduciary obligation of the Holder to protect the Conservation Values for the benefit of the public in perpetuity.

TERMINATION OF EASEMENT

30. Termination, Condemnation, Eminent Domain, and Division of Proceeds.

30.1 An amendment pursuant to paragraph 29 herein is not a partial termination or extinguishment.

30.2. Unless terminated in whole or part in connection with the proper exercise of eminent domain rights, this Easement may only be terminated or extinguished, in whole or in part, by a court of competent jurisdiction, and in that case, the Easement shall be terminated only if there are circumstances so changed that the conservation purpose of this Conservation Easement is

manifestly impracticable to accomplish, because it is impossible or impracticable to maintain any of the Conservation Values, or any other significant conservation values. If the Easement is terminated, in whole or in part, whether in connection with eminent domain, or judicial order, Holder, as owner of a vested property right as defined in paragraph 12, is entitled, upon subsequent sale of the formerly restricted property, to compensation to be determined in accordance with sub-section 30.3 for the value of the rights that were dormant (as specified in paragraph 18 herein) when the Easement was in existence. That compensation is to be used in a manner that accomplishes as closely as possible under the changed circumstances the purposes of this Easement.

30.3. Proceeds upon the subsequent sale of formerly restricted property after whole or partial termination, condemnation, eminent domain, or proceeds paid on a claim on an insurance policy involving casualty, damage, harm or compromise to the property interest conveyed through this Easement shall be divided between Holder and Owner in accordance with the following method:

30.3.1. The fair market value of the Property subject to the event shall be determined, as of the time of the event.

30.3.2. The value attributable to allowable buildings, additions or improvements added after the grant of this Easement shall be deducted from that fair market value and distributed to Owner.

30.3.3 *[Option]The fair market value of the restrictions shall be determined by a qualified appraiser, as of the time of the event.*

30.3.4. The remaining proceeds shall be divided between Owner and Holder. Holder shall receive a percentage of the proceeds equal to that of the diminished value of Owner's property attributable to this Conservation Easement at the time it was conveyed divided by the unrestricted value of the Property at the time it was conveyed.*[Option: or the percentage determined in the current appraisal, whichever is higher.]*

30.3.4.1. If an income tax deduction was taken by Grantor with respect to the contribution, the deductible fraction of the Property value reflected in that tax return shall be binding on the parties. *[Option: unless the current appraisal reveals a higher current value of the restrictions, in which case that proportionate value shall be used to calculate Holder's share of proceeds.]*

30.3.4.2. *[Option]If no appraisal was obtained at the time of the granting of this easement, or if no such diminished value was determined at the time of the grant of this easement, or if it cannot be determined what value was then determined, then the proceeds will be divided evenly between Owner and Holder.*

30.3.5. For example, if the proceeds from a partial condemnation were \$100,000, and the value of added improvements on the condemned property was \$40,000, the \$40,000 in added improvement value would be paid to Owner. Assume the reduction in value deducted by Grantor for federal tax purposes was 60%. Then of the remaining proceeds, Owner would receive 40% (\$24,000) of the remaining \$60,000, and Holder would receive 60% (\$36,000) of the remaining \$60,000.

30.3.6. If sufficient funds are not immediately available upon extinguishment for Holder to be paid its full share of proceeds, or if for any other reason Holder does not immediately receive its full share, Holder has the right to recover its share of proceeds from Owner, and to record a lien on the Property pending subsequent sale, and to record such other liens on Owner's assets as are permitted under state law and as are necessary to secure its recovery.

ASSIGNMENT OF EASEMENT

31. Assignment.

31.1. If Holder should desire to transfer its interest in the Easement created by this Deed, Holder shall notify Owner at least 30 days before any transfer may take place. Further, Holder may transfer the Easement only to a qualifying organization under 26 U.S.C. §170(h) which has a commitment to the conservation purposes of the easement, resources available to enforce the restrictions, and which expressly agrees to assume the responsibility imposed on Holder by this Easement. The assignment and assumption agreement shall be duly recorded.

31.2. If the Holder, ever ceases to exist or no longer qualifies under Section 170(h) of the Internal Revenue Code, or applicable state law, to hold this Easement, and the Easement interest has not been assigned to a qualified successor, a court of competent jurisdiction shall transfer, upon consultation with Owner, Holder’s interest in this Easement to another qualified organization or unit of government that is committed to the conservation purposes of the easement, has resources available to enforce the restrictions, and agrees to assume the responsibilities imposed by this Easement.

GRANTOR'S TITLE WARRANTY

32. Grantor's Title Warranty and Title Insurance. Prior to the signing of this Easement, [*Grantor will provide Holder with*] [*Holder will acquire*] a commitment for a policy of title insurance. Grantor represents and warrants that Grantor has good fee simple title to the Property, subject only to any liens, encumbrances or defects reflected in that commitment. To the best of Grantor’s knowledge there are no off record liens or encumbrances affecting the Property not reflected in that commitment. If Owner discovers at any time that any old or new interest in the land exists that is not disclosed herein, Owner shall immediately notify Holder of the discovery of the interest, and shall take all necessary steps to assist Holder to make the discovered interest subject to this Easement.

TRANSFER OF PROPERTY

33. Subsequent Transfers by Owner. Owner agrees to disclose this Easement to all prospective buyers of the Property and to inform Holder in the manner described herein of a prospective sale. Owner agrees that the terms of this Easement shall be incorporated by reference in any deed or other legal instrument by which Owner transfers any interest in all or a portion of the Property or by which Owner grants to a third party a right or privilege to use the Property, including, without limitation, any easement, leasehold interest, or license agreement. The incorporation by reference shall include the placement of the following statement into the documents by which the interest being transferred is conveyed: *This conveyance is subject to the terms of a Deed of Conservation Easement dated the ___ day of _____, 2___, recorded in the Office of the Recorder of _____ County, Indiana on the ___ day of _____, 2___, and identified as an instrument in those records as follows:_____.* Upon the recordation of document by which any such transfer is accomplished, this deed of easement shall also be rerecorded. No attempted transfer of the Property shall be effective before and until the Easement is rerecorded. The required notice to Holder of intent to transfer shall be provided in writing at least 30 days prior to the date of such transfer or grant. The failure of Owner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability. If Property subject to this Easement is transferred while a violation remains uncured, Owner who transfers remains liable for the violation jointly and severally with the transferee(s)/successor Owner(s).

SUBSEQUENT EASEMENTS OR RESTRICTIONS

34. Subsequent Easements or Restrictions. The grant of any easements or use restrictions that might diminish or impair the Conservation Values of the Property is prohibited except as specifically permitted under the terms of this Easement. Owner shall notify Holder and seek approval, following the procedures set forth in paragraph 25 at least [30] days before the date Owner proposes to execute any such easements or restrictions on the Property. Unless Holder agrees otherwise (and Holder may not give a discretionary approval that compromises the Conservation Values), any such easements or use restrictions, and any subsequent encumbrances, shall be subordinate to this Easement and make reference to it in any documents submitted for recording.

ESTOPPEL CERTIFICATES

35. Estoppel Certificates. Upon request by Owner, Holder shall within 30 days execute and deliver to Owner, or to any party designated by Owner, a document, including an estoppel certificate, which certifies, if to the best of Holder's knowledge if it is so, Owner's compliance with any obligation of Grantor or Owner contained in this Easement. Such certification shall be limited to the condition of the Property as of Holder's most recent inspection. If Owner requests more current documentation, Holder shall conduct an inspection, at Owner's expense, within 30 days of receipt of Owner's written request therefore.

NOTICES

36. Notices. Except as otherwise provided herein, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

36.1. To Grantor:

36.2. To Holder:

NO MERGER OF TITLE

37. No Merger of Title. Except as expressly otherwise provided herein, this Easement shall be of perpetual duration. No merger of title, estate, or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Holder, or Holder's successor or assignee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Holder, or Holder's successor or assignee. [*We think that unless the Holder receives a fee interest that is restricted in the same manner the easement was restricted, the doctrine of merger does not apply to conservation easements anyway. This provision lets Grantors know that Holder will not profit from the use of rights the Grantor is giving up if Holder later acquires the underlying fee of the Property.*]

WAIVER

38. Waiver. No waiver by Holder of any default, or breach hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default or breach hereunder or affect any rights arising by

virtue of any prior or subsequent occurrence. Unless otherwise provided herein, no waiver shall be binding unless executed in writing by the party making the waiver.

RECORDATION

39. Recordation. This Easement shall be recorded in the Recorder's Office of the county or counties in which the Property is located. In addition to the re-recording provisions associated with the provisions herein on transfer, re-recording is permitted by either party at any time for any purpose, and the Easement shall be rerecorded upon any transfer of Owner's interest or any element thereof.

ACCEPTANCE OF EASEMENT

40. Acceptance. As attested by the authorized signature affixed hereto, Holder hereby accepts the rights and responsibilities conveyed by this Easement.

GENERAL PROVISIONS

41. General Provisions.

41.1. Interpretation. This Easement shall be interpreted under the laws of the State of Indiana or federal law as appropriate, resolving any ambiguities and questions regarding the validity of specific provisions so as to give maximum effect to its conservation purposes. References to authorities in this Easement are to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this easement becomes effective. No provision of this Easement shall constitute governmental approval of any improvements, construction, or other activities which may be permitted under this Easement.

41.2. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

41.3. Integration and Entire Agreement. This Easement, with respect to the subject matter hereof, is the final and complete expression of and the entire agreement between the parties with respect to the subject matter hereof. Any and all prior or contemporaneous agreements with respect to the subject matter hereof, written or oral, are merged into this written instrument.

41.4. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title.

41.5. Joint Obligation. In the event that title to the Property is held by more than one entity, the responsibility for fulfilling the obligations imposed by this Easement upon Grantor and Owner shall be joint and several.

41.6. Successors. As is clear from other provisions herein the provisions of this Easement that apply to Grantor, Owner or Holder shall also apply to, and this Easement shall bind and inure to the benefit of, their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

41.7. Exhibits. The attached Exhibits are incorporated herein by this reference.

41.8. Counterparts. This Easement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same Easement.

41.9. Holder Not Tax Adviser. Grantor affirms that Holder has made no representation regarding whether Grantor is entitled to state or federal tax benefits associated with the charitable contribution of this Easement. Holder and Grantor agree that Grantor will rely solely on Grantor's evaluation of Grantor's entitlement to any such benefits, or on the advice of consultants retained by Grantor. Grantor affirms that any statement by Holder regarding tax or other legal issues was, at most, considered as general introductory or background information, or an invitation to seek independent counsel, and Grantor did not, does not and will not rely on any such information or background provided by Holder concerning Grantor's entitlement to a deduction as a result of this gift, or any other matter. Grantor agrees to hold Holder harmless from any claim of any sort related to Grantor's entitlement to a charitable deduction, with the sole exception being that Holder is a qualified holder of a conservation easement as set forth in paragraph 5.

41.10. Liberal Construction. Building upon the foundation for interpretation in sub-section 41.1, and any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to achieve the conservation purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Easement and maintaining the Conservation Values shall be favored over any alternative interpretation. This Easement has been fully negotiated between the Parties

41.11. Authority. Grantor represents that the person signing on behalf of Grantor has authority to sign and convey the Easement, and Holder represents that the person signing on behalf of Holder has authority to sign and accept the Easement.

SOCIAL SECURITY NUMBERS

42. No Social Security Numbers. Holder affirms under the penalties for perjury, that Holder has taken reasonable care to redact each social security number in this document, unless otherwise required by law.

IN WITNESS WHEREOF, Grantor and Holder, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

GRANTOR:

Accepted by HOLDER:

By: _____

Title: _____

Exhibit A Legal Description of the Property
Exhibit B Map of Building Envelope and other features

Exhibit C Baseline Document
[*Exhibit D Management and Conservation Plan*]

This document prepared for _____, by _____, Attorney, Address

The Conservation Law Center, 116 S. Indiana Ave., Bloomington, IN 47408