

STATE OF MICHIGAN
COUNTY OF CASS
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Barbara Wilson
REGISTER OF DEEDS

RESTATEMENT OF CONSERVATION EASEMENT

DATE: December 15, 2006

DONORS/OWNERS: Alexander M. and Katherine Anne Bozymowski, whose address is 67291 Robbins Lake Road, Jones MI 49061 and their heirs, executors, administrators, designated successors and designated assigns.

DONEE/CONSERVANCY: Southwest Michigan Land Conservancy, Inc. a Michigan nonprofit corporation, whose address is 6851 South Sprinkle Road, Portage, Michigan 49002, its successors and assigns.

For purposes of this Restatement of the Conservation Easement, the Donors, who are the current Owners, and all subsequent Owners of the subject Property, will be referred to as the "Owner" throughout this Restatement of Conservation Easement. The Donee will be referred to as the "Conservancy" throughout this Restatement of Conservation Easement.

CONSERVATION EASEMENT:

The original Conservation Easement donation was recorded at the Cass County Register of Deeds on May 30, 1996 in **Liber 00611, Pages 479-490.**

THE OWNER AND CONSERVANCY AGREE TO THE FOLLOWING:

PURPOSE OF RESTATEMENT OF CONSERVATION EASEMENT

The former landowner and Conservancy executed a Conservation Easement dated May 28, 1996 and recorded on May 30, 1996 at the Cass County Register of Deeds, Cassopolis, Michigan, 49031, and hereinafter called the "Original Conservation Easement." The Owner and the Conservancy desire to amend and make a complete restatement of the Original Conservation Easement. The purpose of restated the conservation easement is to add property that is adjacent to the Original Conservation

Easement that adds conservation value to the property, and to amend the language from the Original Conservation Easement to further protect the Conservation Values of the Property. The additional protections of the Conservation Values include a prohibition of future land divisions for the Property and a prohibition on certain commercial timber harvesting on the Property.

Therefore, the Owner and the Conservancy hereby alter and amend the Original Conservation Easement. This instrument shall amend and supersede the Original Conservation Easement in its entirety and henceforth shall constitute, for all purposes, a complete restatement of the same. The Original Conservation Easement, as restated herein, shall be deemed to continue without interruption or cancellation as the land originally described therein, but henceforth the Original Conservation Easement shall be known as the Restated Conservation Easement dated December 15, 2006 which the Restated Conservation Easement shall apply not only to the land described in the Original Conservation Easement, but to all of the land described herein and only as set forth in this instrument and there shall henceforth be no need for or reference to the Original Conservation Easement.

The Owner and Conservancy acknowledge that neither the Owner nor the Conservancy are not in default under the Original Conservation Easement and are otherwise in full compliance with the terms of the Original Conservation Easement.

PROPERTY: **Property situated in Section 34, Township of Porter, County of Cass, State of Michigan, more specifically described as:**

(2006 ADDITION) PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 34, TOWNSHIP 7 SOUTH; RANGE 13 WEST; PORTER TOWNSHIP, CASS COUNTY, MICHIGAN, DESCRIBED AS, BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 34, THENCE S 0°25'15" E ALONG THE NORTH AND SOUTH QUARTER LINE OF SAID SECTION, 862.08 FEET, THENCE WEST 547.57 FEET, THENCE SOUTH 336.00 FEET, THENCE EAST 550.03 FEET TO THE NORTH AND SOUTH QUARTER LINE OF SECTION 34, THENCE S 0°25'15" ALONG SAID QUARTER LINE, 121.91 FEET, THENCE S 89°46'10" W 1320.00 FEET, THENCE N 0°25'15" W 1320.00 FEET TO THE NORTH LINE OF SECTION 34, THENCE N 89°46'10" E ALONG SAID NORTH LINE, 1320.00 FEET TO THE POINT OF BEGINNING.

(1996 ORIGINAL – "PARCEL A") PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 34, TOWNSHIP 7 SOUTH; RANGE 13 WEST; PORTER TOWNSHIP, CASS COUNTY, MICHIGAN, DESCRIBED AS, FROM THE NORTH QUARTER CORNER OF SECTION 34, MEASURE S 0°25'15" E ALONG THE NORTH AND SOUTH QUARTER LINE OF SAID SECTION, 1320.00 FEET TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED, THENCE S 0°25'15" E ALONG SAID QUARTER LINE, 1315.91 FEET TO THE CENTER OF SECTION 34, THENCE S 89°42'20" W ALONG THE EAST AND WEST QUARTER LINE OF SAID SECTION, 518.41 FEET TO THE CENTERLINE OF VALLEY ROAD, THENCE N 3° 03'00" W 151.08 FEET, THENCE N 30°14'30" W 98.54 FEET ALL ALONG SAID CENTERLINE, THENCE N 21°32'00" E 259.82 FEET, THENCE N

84°47'10" W 209.85 FEET, THENCE N 58°05'35" W 125.04 FEET, THENCE N 5°01'15" W 350.22 FEET, THENCE N 73°43'50" W 175.83 FEET, THENCE S 74°34'35" W 330.25 FEET, THENCE N 2°04'45" W 440.36, THENCE N 89°46'10" E 1320.00 FEET TO THE POINT OF BEGINNING, CONTAINING 25.67 ACRES MORE OF LESS. BEING SUBJECT TO THAT PORTION ALONG THE SOUTHWESTERLY SIDE THEREOF AS BEING USED FOR HIGHWAY PURPOSES.

(1996 ORIGINAL – "PARCEL B") PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 34, TOWNSHIP 7 SOUTH; RANGE 13 WEST' PORTER TOWNSHIP, CASS COUNTY, MICHIGAN, DESCRIBED AS, FROM THE NORTH QUARTER CORNER OF SECTION 34, MEASURE S89°46'10" W ALONG THE NORTH LINE OF SAID SECTION, 1320.00 FEET TO THE POINT OF BEGINNING OF THE LAND DESCRIBED, THENCE S 0°25'15" E 607.65 FEET, THENCE S 71°58'30" W 152.93 FEET, THENCE S 83°39'05" W 290.64 FEET, THENCE N 5°07'35" W 687.90 FEET TO THE NORTH LINE OF SECTION 34, THENCE N 89°46'10" E ALONG AID NORTH LINE, 491.29 FEET TO THE POINT OF BEGINNING. CONTAINING 7.00 ACRES MORE OR LESS.

(1996 ORIGINAL – "PARCEL D") PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 34, TOWNSHIP 7 SOUTH; RANGE 13 WEST' PORTER TOWNSHIP, CASS COUNTY, MICHIGAN, DESCRIBED AS, FROM THE NORTH QUARTER CORNER OF SECTION 34, MEASURE S 89°46'10" W ALONG THE NORTH LINE OF SAID SECTION, 1811.29 FEET TO THE POINT OF BEGINNING OF THE LAND HERIN DESCRIBED, THENCE S 5° 07'35" E 687.90 FEET, THENCE WEST TO THE ORIGINAL WATERS EDGE OF ROBBINS LAKE AND THE WEST LINE OF SECTION 34, THENCE NORTHERLY ALONG SAID WEST LINE TO THE NORTHWEST CORNER OF SECTION 34, THENCE N 89°46'10" E ALONG SAID SECTION 34, 814.11 FEET TO THE POINT OF BEGINNING. CONTAINING 13.3 ACRES MORE OR LESS. BEING SUBJECT TO THE RIGHT-OR-WAY OF ROBBINS LAKE ROAD AS USED.

All property above describes approximately 84 acres, more or less.

CONVEYANCE: The Owner conveys and warrants to the Conservancy a perpetual Conservation Easement (Restatement) over the Property. The scope of this Restatement of Conservation Easement is set forth in this agreement. This conveyance is a gift from the Donor to the Conservancy. Accordingly, this is exempt from Transfer Tax pursuant to MCL 207.505(a) and 207.526(a).

THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:

1. PURPOSES OF THIS RESTATEMENT OF CONSERVATION EASEMENT AND COMMITMENTS OF THE OWNER AND THE CONSERVANCY.
 - A. This Restatement of Conservation Easement ensures that the Property will be perpetually preserved in its predominately natural, scenic, agricultural, forested, and open space condition. The Purposes of this Restatement of Conservation Easement are to protect and improve the Property's natural resource and watershed values; to protect, maintain and enhance biodiversity; to retain quality

habitat for native plants and animals, to maintain and enhance the natural features of the Property, and to protect fish and wildlife habitat. Any uses of the Property that are inconsistent with the Purposes of this Restatement of Conservation Easement, as specifically delineated in the Conservation Values and not granted in the Permitted Uses are expressly prohibited.

- B. The Donor is the Owner of the Property and is committed to preserving the Conservation Values of the Property. The Owner agrees to confine use of the Property to activities consistent with the Purposes of this Restatement of Conservation Easement and the preservation of the Conservation Values.
 - C. The Conservancy is a qualified recipient of this Restatement of Conservation Easement, is committed to preserving the Conservation Values of the Property, and is committed to upholding the terms of this Restatement of Conservation Easement. The Conservancy protects natural habitats of fish, wildlife, plants, and the ecosystems that support them. The Conservancy also preserves open spaces, including farms and forests, where such preservation is for the scenic enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.
2. **CONSERVATION VALUES.** The Property possesses natural, scenic, open space, scientific, biological, and ecological features of prominent importance to the Owner, the Conservancy, and the public. These values are referred to as the "Conservation Values" in this Restatement of Conservation Easement. The Conservation Values include the following:

OPEN SPACE and SCENIC:

- A. A scenic landscape and both rural and natural character that would be impaired by residential development of the Property.
- B. A scenic panorama visible to the public from publicly accessible sites that would be adversely affected by modifications of the natural habitat.
- C. Prominent visibility to the public from Valley Road and Robbins Lake Road, which will enhance tourism if preserved in a natural state.
- D. Biological integrity of other land in the vicinity has been modified by intense residential development, and the trend is expected to continue.
- E. There is a reasonable possibility that the Conservancy may acquire other valuable property rights on nearby or adjacent properties to expand the Conservation Values preserved by this Restatement of Conservation Easement.

PUBLIC POLICY:

- F. The State of Michigan has recognized the importance of protecting our natural

resources as delineated in the 1963 Michigan Constitution, Article IV, Section 52, “The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety, and general welfare of the people. The legislature shall provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction.”

- G. The Property is preserved pursuant to a clearly delineated federal, state, or local conservation policy and yields a significant public benefit. The following legislation, regulations, and policy statements establish relevant public policy:
- Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.2140 *et seq.*;
 - Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.35501 *et seq.*; (Legislative Findings § 324.35502);
 - Water Pollution Control Act of 1972, 33 USC §§ 1251 - 1387 (§1251 Goals & Policy; § 1344 Wetlands permitting, aka “Section 404” Clean Water Act.);
 - Inland Lakes and Streams, Part 301 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.30101 *et seq.*;
 - Farmland and Open Space Preservation, Part 361 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.36101 *et seq.*;
 - Soil Conservation, Erosion, and Sedimentation Control, Parts 91 & 93 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.9101 *et seq.*; 324.9301 *et seq.*; (Legislative Policy § 324.9302);
- H. The Township of Porter has designated this area in its Natural Historical Scenic Preservation District, June 14, 2000. Valley Road has specifically been recognized within the Natural Historical Scenic Preservation District with setback regulations for natural growth removal.

WILDLIFE VALUES:

- I. The Property is home to many species of wildlife, including various reptiles, amphibians, avian species and large and small mammals.
- J. The Property provides vital corridor wetlands and upland wildlife habitats that serve as a connection for wildlife movement and create a natural greenway along

the Valley Road corridor and the Robbins Lake Drain. The property is directly adjacent to other protected property and creates a corridor of forested, agricultural, open fields and wetlands.

- K. The Property is noteworthy for its size, open space and its proximity to Robbins Lake and the Minter II and Mirror Valley conservation easement properties.

ECOLOGICAL / HABITAT:

- L. The Property contains significant natural habitat in which fish, wildlife, plants, and the ecosystems that support them, thrive in a natural state.
- M. Wetlands, as described in Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Code MCL 324.30301 et seq., identified as important natural resources for the people of the State of Michigan, are present on the Property.
- N. Habitat for rare, endangered, or threatened species of animal, fish, plants, or fungi, including Upland Boneset (*Eupatorium sessilifolium*) and Starry Campion (*Silene stellata*), threatened species in Michigan and Hairy Skullcap (*Scutellaria elliptica*), a species of special concern in Michigan are supported on the Property.
- O. The Property contains sustainable habitat for biodiverse vegetation, birds, fish, and terrestrial animals.
- P. The Property is characteristic of a gently rolling, pastoral landscape. Robbins Lake is contained on the northwestern portion of the Property, and is a major water resource to southeastern Cass County. The Property is dominated by productive agriculture fields containing prime agricultural soils. Forested areas on the Property contain a pine plantation as well as mixed hardwoods that slope down to Robbins Lake and contain maple, hickory and oak.
- P. The Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation.
- Q. Valued native forest land exists on the Property, which includes diverse native species, trees of many age classes and structural diversity, including a multi-story canopy, standing dead trees and downed logs.

WATERSHED PROTECTION:

- R. The Property provides important natural land within the watershed of St. Joseph River. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for southern Cass County and northern Indiana.
- S. The property contains over 700 feet of frontage on Robbins Lake.

ADJACENT TO PROTECTED LANDS:

T. The Property lies in close proximity to the following conserved properties that similarly preserve the existing natural habitat:

- 1) Minter Conservation Easement II, Southwest Michigan Land Conservancy, Cass County, Porter Township, Section 34;
- 2) Mirror Valley Conservation Easements I and II, Southwest Michigan Land Conservancy, Cass County, Porter Township, Section 34 and Porter Township, Section 3;
- 3) Three Rivers State Game Area, State of Michigan, Department of Natural Resources, Cass County, Porter Township, Sections 12 and 13 and St. Joseph County, Constantine Township, Sections 5, 6, 7, 8, 17, 18 and 19;
- 4) Dr. T.K. Lawless Park, Cass County Parks, Cass County, Porter Township, Section 6 and Newberg Township, Sections 31 and 32.
- 5) Crane Pond State Game Area, State of Michigan, Department of Natural Resources, Cass County, Newberg Township, Sections 3, 4, 8-10, 12-21 and 26-30 and Penn Township, Sections 13 and 24;

U. Preservation of the Property enables the Owner to integrate the Conservation values with other neighboring lands.

FARMLAND:

V. The upland portion of the Property consists almost entirely of Kalamazoo Loam 2-6% slope, interspersed with Kalamazoo Loam 0-2% Slope and Oshtemo Sandy Loam 2-6% Slope, all prime farmland soils as classified by the U.S. Department of Agriculture and the Natural Resources Conservation Service.

X. The Property is located within Porter Township, a community with an agriculture-based economy in an area presently experiencing rapid development, including the subdivision of prime farmland.

3. **BASELINE DOCUMENTATION.** Specific Conservation Values of the Property have been documented in a natural resource inventory signed by the Owner and the Conservancy. This "Baseline Documentation Report" consists of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features, and photographs. The parties acknowledge that this natural resources inventory, the Revised Baseline Documentation Report, is an accurate representation of the Property at the time of this donation.

4. **PROHIBITED ACTIONS.** Any activity on, or use of, the Property that is inconsistent with the Purposes of this Restatement of Conservation Easement, as specifically delineated in the Conservation Values and not granted in Permitted Uses, is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited:
- A. **Division.** Any division or subdivision of the Property is prohibited. The prohibition of division includes a split that was allowed in the Original Conservation Easement, more specifically at **Liber 00611, Page 0483, at Paragraph 1a**. This split was to occur at sections B and D, labeled on the Original Baseline Documentation Map at **Liber 00611, Page 0480**. This division is no longer allowed, and all other divisions of the property are also prohibited.
 - B. **Commercial Activities.** Any commercial activity on the Property is prohibited, except as provided for in Paragraphs **5B** and **5D**. *De minimis* commercial recreational activity is, however, permitted.
 - C. **Industrial Activities.** Any industrial activity on the Property is prohibited.
 - D. **Construction.** The placement or construction of any human-made modification such as, but not limited to, structures, buildings, fences, roads, and parking lots is prohibited except as provided under Paragraphs **5F** and **5G**.
 - E. **Cutting Vegetation.** Any cutting of trees or vegetation, including pruning or trimming, is prohibited, except for the cutting or removal of trees or vegetation that pose a threat to human life or property and as provided for under Paragraph **5B, 5C, 5D, 5E, 5F, 5G, 5H** and **5I**.
 - F. **Land Surface Alteration.** Any mining or alteration of the surface of the land is prohibited. Prohibited activities include the mining or extraction of any substance that must be quarried or removed by methods that will consume or deplete the surface estate, including, but not limited to, the removal of topsoil, sand, gravel, rock, and peat. In addition, exploring for, developing, and extracting oil, gas, hydrocarbons, or petroleum products are all prohibited activities.
 - G. **Dumping.** Waste and unsightly or offensive material is not allowed and may not be accumulated on the Property.
 - H. **Water Courses.** Natural water courses, lakes, wetlands or other bodies of water may not be altered.
 - I. **Off-Road Recreational Vehicles.** Motorized off-road vehicles such as, but not limited to dune buggies and motorcycles may not be operated off of roads and two tracks on the Property except those vehicles, such as tractors, trucks, snowmobiles

all terrain vehicles and other 4-wheel vehicles, that may be used expressly for activities described in Paragraphs **5B, 5C, 5D, 5E, 5F, 5G** and **5H**.

- J. **Agriculture.** Any agricultural activity on the Property is prohibited except as provided for under Paragraph **5D**. Agricultural activity is defined as the planting and harvesting of crops, nursery stock, and trees and the pasturing and stabling of livestock and barnyard animals.
- L. **Signs and Billboards.** Billboards are prohibited. Signs are prohibited, except the following signs may be displayed for the following purposes:
- To disclose the name and address of the Property or the owner's name.
 - To disclose that the area is protected by a conservation easement.
 - To state that trespassers or any unauthorized entry or use is prohibited.
 - To advertise the Property for sale.
 - To identify and interpret trails and natural features.
 - To warn of the presence of dogs or other animals.
5. **PERMITTED USES.** The Owner retains all ownership rights that are not expressly restricted by this Restatement of Conservation Easement. In particular, the following rights are reserved:
- A. **Right to Convey.** The Owner retains the right to sell, mortgage, bequeath, or donate the Property. Any conveyance will remain subject to the terms of the Restatement of Conservation Easement and the subsequent Owner will be bound by all obligations in this agreement.
- B. **Right to Remove Trees in Managed Woodland.**
- 1) *Retained Rights.* The Owner retains the right to conduct the following forestry activities on the Property in areas designated as **Managed Woodland** on the Revised Baseline Documentation Map:
 - a. Dangerous or diseased trees. Cutting or removing trees or other vegetation is permitted to remove dangerous trees, reduce a natural threat of infestation posed by diseased vegetation, or control invasive or non-native plant species.
 - b. Forest management for the growth and harvest of trees is permitted if (i) it is planned and undertaken meeting the following conditions and (ii) is conducted in accordance with a Forest Management Plan, and (iii) in a manner not detrimental to the purposes of this Restatement of Conservation Easement or detrimental to the Conservation Values of the Property described in Paragraph 2.
 - 2) *Goals.* The goals are:

- a. to minimize soil disturbance and erosion;
- b. to protect water quality, wetland, and riparian zones;
- c. to maintain or improve the overall quality of the forest (habitat, species diversity, and forest productivity);
- d. to conserve the scenic quality of the Property; and
- e. to conserve native plant and animal species.

3) *Forest Management Plan.* The Forest Management Plan must be prepared by a Professional Forester or other qualified natural resources specialist, said Forester or specialist approved in advance and in writing by the Conservancy. The Forest Management Plan must be prepared prior to selling or harvesting of trees. The Plan must be updated at least every ten (10) years and shall be provided to the Conservancy for review. The Conservancy shall have 60 days from receipt of the Forest Management Plan to review and either approve or notify the Owner of any deficiencies in the Plan that relate to the requirements of this paragraph **5B(3)**, including, but not limited to, protecting the Conservation Values of the Property described in Paragraph 2 of this Restatement of Conservation Easement. Such approval shall not be unreasonably withheld.

- a. *Objectives of the Plan.* The Forest Management Plan must be designed to:
 - i. Plan for and meet the conditions listed in paragraph **5B(2)** above.
 - ii. Preserve or enhance the Property's Conservation Values outlined in Paragraph 2.
 - iii. Comply with all applicable local, state, federal and other governmental laws and regulations.
 - iv. Comply with the standards set forth in the then current Best Management Practices, as outlined in "Water Quality Management Practices on Forest Land", (1994) Michigan Department of Natural Resources, and in accordance with the recommendations in "Riparian Forest Buffers", (Welsch, 1991) Forest Resources Management, USDA Forest Service, Radnor, PA, NA-PR-07-91.
 - v. Develop and maintain over the entire forest a well-distributed stand of uneven-aged and multiple species of trees conducive to supporting a natural forest ecosystem.
 - vi. Prevent high-grading as a harvesting method.
- b. *Notice of Harvest.* The Owner shall provide the Conservancy with a written Notice of Harvest at least 60 days prior to the first of the following events: bidding, selling, or harvesting of any trees. The proposed harvest is subject to the Conservancy's approval in order to implement the changes, if any, recommended by the

Conservancy to the harvest plan or procedures. Notice shall include the location of the harvest, contemplated dates, a cutting plan, a plan for ingress and egress, and a summary of activities and practices intended to achieve compliance with the requirements of this Paragraph **5B(3)**. Upon completion of harvest and after all restoration has been completed, Notice of Completion shall be provided to the Conservancy.

Timber harvesting shall be conducted under a written contract with competent operators. The contract shall specify relevant requirements for compliance with this Paragraph and this Restatement of Conservation Easement. Such contract shall be provided to the Conservancy prior to harvest.

c. *Definitions.*

Forest Management - Proper care and control of wooded land to maintain health, vigor, product flow, and other values (soil condition, water quality, wildlife preservation, and beauty) in order to accomplish specific landowner objectives.

High Grading - the harvesting of only large diameter, high quality trees of merchantable value while leaving trees that are not merchantable because of small size, poor quality, or undesirable species.

Individual Selection or Group Selection Harvesting - A harvest in which individual trees or small groups of trees in areas no greater than $\frac{3}{4}$ acre or with area diameters no greater than two times the height of the dominant trees in the canopy, whichever is smaller, are harvested at periodic intervals (usually 8-15 years) based on their physical condition or degree of maturity for the purposes of encouraging regular growth and maintaining an intact forest canopy over the landscape. The use of individual selection cutting or group selection should be used for regeneration of existing shade tolerant and shade intolerant trees species respectively, and to enhance the uneven-aged management system.

Silviculture - the art, science, and practice of managing and regenerating forest stands based on the landowners' objectives and on the knowledge of species characteristics and their environmental requirements.

The **Natural Area**, as marked on the Revised Baseline Documentation Map was referred to in the Original Conservation Easement as "wooded not tillable" on the Baseline Documentation Map #1, specifically at **Liber 00611, pages 480 and 481** and further described at **Liber 00611, Page 484-486, paragraph 3c**. This area is now marked as **Natural Area** because one managed woodland cut was performed in August 2001, thus fulfilling

the clause in the Original Conservation Easement that allows the owner “to harvest trees one time before the year 2010 using excepted forest management procedures”. This specific clause is sited at **Liber 00611, page 0485** of Original Conservation Easement, located at the Cass County Register of Deeds and recorded on May 30, 1996.

No further cutting of vegetation may occur in the **Natural Area**, except for what is specifically allowed in paragraph 5C.

- C. **Right to Maintain Natural Areas.** Cutting down or otherwise destroying or removing trees or other vegetation whether living or dead is prohibited in areas designated as **Natural Area** on the Revised Baseline Documentation Map except to remove dangerous trees, reduce a natural threat of infestation posed by diseased vegetation, or control invasive non-native plant species that endanger the health of native species.
- D. **Right to Maintain Agricultural and Open Space Activities.** The Owner retains the right to use the **Agriculture** area of the Property, as defined in the Revised Baseline Documentation Map, for the activities defined below. Agricultural management operations shall employ generally accepted agricultural management practices as defined and recommended in the Michigan Right-to-Farm Act, Public Act 93 of 1981, as amended, MCL 286.472, 286.473, and 286.474, or successor provisions then applicable, that address soil and water conservation, pest management, nutrient management and other management practices. In addition, any agricultural use of the Property shall also conform with the following Agricultural Management Practices:

AGRICULTURAL MANAGEMENT PRACTICES

- a. The owner shall make a reasonable effort to employ sound agricultural management practices on any agricultural land, as recommended by the Right-to-Farm Act, Public Act 93 of 1981, as amended by PA 240 of 1987, MCL 286.472, 286.473, and 286.474, or successor provisions then applicable, so as to minimize soil erosion, overgrazing, and other damaging occurrences.
- b. Manure and compost piles and pits shall not be located within one hundred (100) feet of streams or wetlands.
- c. Pesticides, herbicides, insecticides, fertilizers or other soil, flora or fauna additives shall be used in a manner consistent with applicable law and label instructions and shall not be used in a manner which would cause significant deterioration of surface of ground water quality and shall not be applied, deposited, dumped, or abandoned within one hundred (100) feet of streams or wetlands.

- d. The Conservancy may require the Owner to install storm water management or waste treatment measures and erosion control measures where agricultural and livestock activities may impair the surface or groundwater quality.
 - e. No depositing, dumping, or abandoning of any solid wasters, junk, liquid wastes, or chemical substances on or in the ground of the Restatement of Conservation Easement Property shall occur.
- 1) **Agricultural Use** means use of substantially undeveloped land for the production of horticultural, and agricultural crops useful to humans, including but not limited to fruits, nuts, vegetables, mushrooms, Christmas trees, timber trees, grains and feed crops, the pasturing and stabling of livestock, horses and barnyard animals.
- 2) **Open Spaces Uses** as used herein means:
 - a. Agricultural Uses as defined above;
 - b. Non-agricultural uses that conserve natural, scenic or designated historic resources;
 - c. Windbreaks and other vegetation, and;
 - d. Habitat for native wildlife species.
- E. **Right to Maintain the Agriculture Area as non-agricultural open fields.** If the Owner, wishes to manage the **Agriculture** area in whole or in part as non-agricultural open-field, the Owner maintains the right to cut vegetation or harvest any trees that may grow in the identified as **Agriculture** area on the Revised Baseline Documentation Map regardless of whether any such trees were planted or they encroached on the existing open space area through natural succession. The Owner may mow, burn or otherwise remove vegetation in this area provided any such vegetation removal is done to maintain the open space character of the Property, and provided it remains in some vegetative cover such as grass.
- F. **Right to Add Designated Structures or Uses.** The Owner retains the right to add the following structures, modifications, or uses on the following described portion of the Property referred to on the Revised Baseline Documentation Map as **Agriculture(A)**:
 - 1) **Animal Shelters.** Non-permanent, temporary animal shelters, or livestock shelters may be constructed.
 - 2) **Water Wells.** Creation and maintenance of wells are permitted for the purposes of human and livestock consumption and wildlife and uses incidental to such purposes. Disrupted surfaces shall be resorted in a manner consistent with agricultural uses, including replacement of a minimum of four (4) inches of topsoil and seeding within a reasonable

period of time after disruption

- G. **Right to Construct and Maintain Perimeter Barriers.** The Owner retains the right to construct and maintain fencing or other deterrent type of structures to prevent access by off-road recreation vehicles or other unauthorized access provided the construction of such fencing or structures do not adversely impact the Conservation Values of the Property.
- H. **Right to Conduct Ecological Restoration.** The Owner retains the right to conduct ecological restoration on the Property if (a) it is planned and undertaken meeting the following goals and (b) is conducted (i) in accordance with applicable government regulations, (ii) in accordance with a **Management Plan** or an **Ecological Restoration Plan** prepared by a qualified natural resource professional approved in advance by the Conservancy.

Ecological restoration is the process of assisting the recovery and management of ecological integrity with sensitivity to regional and historical context of the landscape. Ecological Restoration includes, but is not limited to, planting native species, removing non-native or invasive species, and implementation of a natural disturbance regime (e.g., fire) appropriate for the Property.

- 1) *Goals.* The goals are:
- a. to maintain, improve or enhance the overall ecological integrity of the Property (wildlife habitat and species diversity);
 - b. to maintain, improve or enhance the scenic character of the Property;
 - c. to restore the biodiversity, function, and ability of the property to reasonably accommodate normal disturbances;
 - d. to conserve native plant and animal species;
 - e. to protect water quality, wetland, and riparian zones; and
 - f. to minimize soil disturbance and erosion.

The **Ecological Restoration Plan** shall be provided to the Conservancy for the Conservancy's review and approval under the provisions of Paragraph 8. The Conservancy shall review and either approve or notify the Owner of any deficiencies in the Plan that relate to protecting the Conservation Values of the Property. The Conservancy's approval may be withheld only upon a reasonable determination by the Conservancy that the proposed action(s) would be inconsistent with the purposes of this Restatement of Conservation Easement or detrimental to the Conservation Values of the Property.

- I. **Right to Maintain Driveway.** The Owner retains the right to access the property via one (1) **Driveway** designated on the Revised Baseline Documentation Map and as noted in the Baseline Documentation Report. The **Driveway** will provide

access to residential and agricultural buildings via the public roadway known as Valley Road and may be improved and widened. The **Driveway** and corresponding right-of-way may not exceed 25 feet in width.

Prior to renovating or replacing such structure or making a significant change to the **Driveway**, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval under the provisions of Paragraph 8. Such approval shall not be unreasonably withheld.

- J. **Right to Hunt.** The Owner retains the right to allow hunting, fishing and trapping on the Property as regulated by the Michigan Department of Natural Resources or applicable successor agency and as a management tool in circumstances necessary to control wildlife and feral animals.
 - K. **Right to noncommercial Fruit, Berry and Mushroom Picking.** The Owner retains the right to noncommercial fruit, berry and mushroom picking provided such activities do not adversely impact the Conservation Values of the Property.
6. **RIGHTS OF THE CONSERVANCY.** The Owner confers the following rights upon the Conservancy to perpetually maintain the Conservation Values of the Property:
- A. **Right to Enter.** The Conservancy has the right to enter the Property at reasonable times to monitor the Restatement of Conservation Easement Property. Furthermore, the Conservancy has the right to enter the Property at reasonable times to enforce compliance with, or otherwise exercise its rights under, this Restatement of Conservation Easement. The Conservancy may not, however, unreasonably interfere with the Owner's use and quiet enjoyment of the Property. The Conservancy has no right to permit others to enter the Property. The general public is not granted access to the Property under this Restatement of Conservation Easement.
 - B. **Right to Preserve.** The Conservancy has the right to prevent any activity on or use of the Property that is inconsistent with the Purposes of this Restatement of Conservation Easement or detrimental to the Conservation Values of the Property.
 - C. **Right to Require Restoration.** The Conservancy has the right to require the Owner to restore the areas or features of the Property that are damaged by any activity inconsistent with this Restatement of Conservation Easement.
 - D. **Signs.** The Conservancy has the right to place signs on the Property that identify the land as protected by this Restatement of Conservation Easement. The number and location of any signs are subject to the Owner's approval.

7. **CONSERVANCY'S REMEDIES.** This section addresses cumulative remedies of the Conservancy and limitations on these remedies.

- A. **Delay in Enforcement.** A delay in enforcement shall not be construed as a waiver of the Conservancy's right to eventually enforce the terms of this Restatement of Conservation Easement.
- B. **Acts Beyond Owner's Control.** The Conservancy may not bring an action against the Owner for modifications to the Property resulting from causes beyond the Owners' control, including, but not limited to, unauthorized actions by third parties, natural disasters such as unintentional fires, floods, storms, natural earth movement, or even an Owner's well-intentioned action in response to an emergency resulting in changes to the Property. The Owner has no responsibility under this Restatement of Conservation Easement for such unintended modifications.
- C. **Notice and Demand.** If the Conservancy determines that the Owner is in violation of this Restatement of Conservation Easement, or that a violation is threatened, the Conservancy shall provide written notice to the Owner. The written notice will identify the violation and request corrective action to cure the violation and, where the Property has been injured, to restore the Property.

However, if at any time the Conservancy determines, at its sole discretion that the violation constitutes immediate and irreparable harm, no written notice is required. The Conservancy may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property.

If the Conservancy determines that this Restatement of Conservation Easement is, or is expected to be, violated, and the Conservancy's good-faith and reasonable efforts to notify the Owner are unsuccessful, the Conservancy may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting the Owner's opportunity to cure. The Owner agrees to reimburse all reasonable costs, including attorney fees, associated with this effort.

- D. **Failure to Act.** If, within 28 days after written notice, the Owner does not implement corrective measures requested by the Conservancy, the Conservancy may bring an action in law or in equity to enforce the terms of the Restatement of Conservation Easement. In the case of immediate or irreparable harm, or if an Owner is unable to be notified, the Conservancy may invoke these same remedies without notification and/or awaiting the expiration of the 28-day period.

The Conservancy is entitled to enjoin the violation through temporary or permanent injunctive relief and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Owner to restore the Property. If the court determines that the Owner has failed to comply with this Restatement of Conservation Easement, the Owner shall also reimburse the Conservancy for all reasonable litigation costs and reasonable attorney's fees, and all costs of corrective action or Property restoration incurred by the Conservancy.

- E. **Unreasonable Litigation.** If the Conservancy initiates litigation against the Owner to enforce this Restatement of Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Conservancy to reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action.
 - F. **Actual or Threatened Non-Compliance.** The Conservancy's rights under this Section, Conservancy Remedies, apply equally in the event of either actual or threatened violations of the terms of this Restatement of Conservation Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this Restatement of Conservation Easement is inadequate. The Conservancy shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory. The Conservancy's claim for injunctive relief or specific performance for a violation of this Restatement of Conservation Easement shall not require proof of actual damages to the Conservation Values.
 - G. **Cumulative Remedies.** The preceding remedies of the Conservancy are cumulative. Any, or all, of the remedies may be invoked by the Conservancy if there is an actual or threatened violation of this Restatement of Conservation Easement.
- 8. **NOTIFICATION PROVISION.** The Conservancy is entitled to 60 Days written notice whenever its approval is required under this Restatement of Conservation Easement. If the Conservancy fails to respond within 60 Days after it receives the written request, then its approval shall be deemed given. This implied approval shall not extend to any activity contrary to this Restatement of Conservation Easement or impairing a Conservation Value. The Conservancy's approval shall continue for three years. If the approved activity is not completed within three years after the approval date, then the Owner must re-submit the written application to the Conservancy.
 - 9. **CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.**

- A. This Conservation Easement is created pursuant to the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act (NREPA) - MCL §§ 324.2140 *et seq.*
 - B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. § 1.170A-14 *et seq.*, as amended.
 - C. The Conservancy is qualified to hold conservation easements pursuant to these statutes. It is a publicly funded, non-profit 501(c)(3) organization.
10. **OWNERSHIP COSTS AND LIABILITIES.** In accepting this Restatement of Conservation Easement, the Conservancy shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Property. The Conservancy, its members, directors, officers, employees and agents have no liability arising from injury or death to any person or physical damage to any property on the Property. The Owner agrees to defend the Conservancy against such claims and to indemnify the Conservancy against all costs and liabilities relating to such claims during the tenure of ownership of the Property. Subsequent owners of the Property will similarly defend and indemnify the Conservancy for any claims arising during the tenure of their ownership. Notwithstanding the foregoing, the Conservancy shall indemnify and hold harmless the Owner from any claims for injury or death of any person or property incurred in connection with or arising out of the Conservancy's use of the Property described in Paragraphs 6A and 6D above.
11. **CESSATION OF EXISTENCE.** If the Conservancy shall cease to exist or if it fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if the Conservancy is no longer authorized to acquire and hold conservation easements, then this Restatement of Conservation Easement shall become vested in another entity. This entity shall be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3). The Conservancy's rights and responsibilities shall be assigned to an entity having similar conservation purposes to which such right may be awarded under the *cy pres* doctrine.
12. **TERMINATION.** This Restatement of Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Restatement of Conservation Easement's purposes, or by exercise of eminent domain.
 - A. **Unexpected Change in Conditions.** If subsequent circumstances render the Purposes of this Restatement of Conservation Easement impossible to fulfill, then this Restatement of Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Conservancy will then be entitled to

compensation in accordance with the provisions of IRC Treasury Regulations Section 1.170A-14(g)(6)(ii) in effect on the date of this Restatement of Conservation Easement.

- B. **Eminent Domain.** If the Property is taken, in whole or in part, by power of eminent domain, then the Conservancy will be entitled to compensation by the method as is set forth in IRC Treasury Regulations Section 1.170A-14(g)(6)(ii) in effect on the date of this Restatement of Conservation Easement.
13. **LIBERAL CONSTRUCTION.** This Restatement of Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Code MCL 324.2140 *et seq.*
14. **NOTICES.** For purposes of this Restatement of Conservation Easement, required written notices shall be provided by either party to the other party by personal delivery or by First Class mail to the most recent address of record. If a new party succeeds either party or either party changes its address, the new address information shall be provided in writing to the other party as soon as practicable by personal delivery or First Class mail. Service will be complete upon personal delivery or upon depositing the properly addressed notice with the U.S. Postal Service with sufficient postage prepaid.
15. **SEVERABILITY.** If any portion of this Restatement of Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
16. **SUCCESSORS.** This Restatement of Conservation Easement is binding upon, and inures to the benefit of, the Donor/Owner's and the Conservancy's successors in interest. All subsequent Owners of the Property are bound to all provisions of this Restatement of Conservation Easement to the same extent as the Donor.
17. **TERMINATION OF RIGHTS AND OBLIGATIONS.** A party's future rights and obligations under this Restatement of Conservation Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.
18. **MICHIGAN LAW.** This Restatement of Conservation Easement will be construed in accordance with Michigan Law.
19. **ENTIRE AGREEMENT.** This Restatement of Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

20. **AMENDMENT.** This Restatement of Conservation Easement may be amended only under the following circumstances:

- A. **Prior Agreement.** In limited circumstances, a conservation easement has included a specific provision allowing modification of the restrictions at a future date under specified circumstances. Such agreements must be set forth in the conservation easement document or in a separate document signed by both parties at the time the conservation easement is executed. The amendment must be consistent with the terms and conservation intent of the original agreement.
- B. **Additional Property.** SWMLC may authorize an amendment in order to add real property to the legal description under a conservation easement, thus preserving additional land under the same conservation easement.
- C. **Correction of an Error or Ambiguity.** SWMLC may authorize an amendment to correct an error or oversight made at the time the conservation easement was entered into. This may include, but is not limited to correction of a legal description, inclusion of standard language that was unintentionally omitted, or clarification of an ambiguity in the terms of the restrictions so long as it does not weaken the conservation values of the easements.
- D. **Settlement of Condemnation Proceedings.** Conservation easements and other interests SWMLC holds in land use are subject to condemnation for public purposes, such as highways, schools, etc. Where it appears that the condemnation power would be properly exercised, SWMLC may enter into a settlement agreement with the condemning authority in order to avoid the expense of litigation. In reaching such an agreement, SWMLC shall attempt to preserve the intent of the original conservation easement to the greatest extent possible.
- E. **Enhancement of Conservation Values.** SWMLC may authorize an amendment to a conservation easement if SWMLC determines, in its sole discretion, that the amendment will enhance the conservation values and /or strengthen the restrictions set forth in the original easement.
- F. **Minor Modifications Consistent with Conservation Purpose.** SWMLC may authorize other, minor modifications of the conservation easements when (a) the modification is not inconsistent with the intent of the principal parties to the original conservation project, and (b) the amended conservation easement is substantially equivalent to or enhances the conservation goals of the original conservation easement.

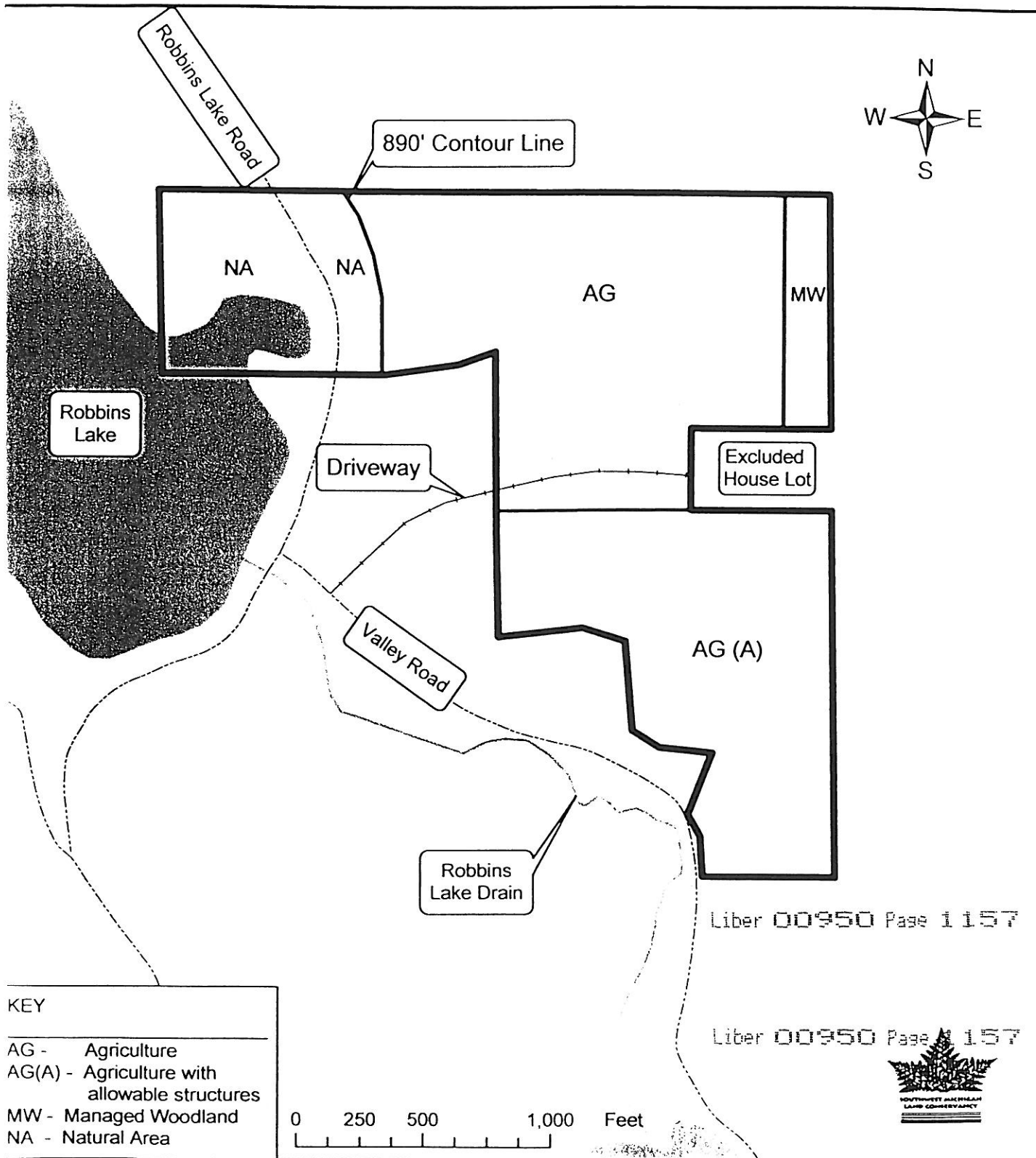
REVISED BASELINE DOCUMENTATION MAP

MINTER I CONSERVATION EASEMENT RESTATEMENT

Porter Township., Cass County, Michigan

OWNER: Alexander & Katherine Bozymowski
67291 Robbins Lake Rd.
Jones, MI 49061

CONSERVANCY: Southwest Michigan Land Conservancy
6851 S. Sprinkle Rd.
Portage, MI 49002



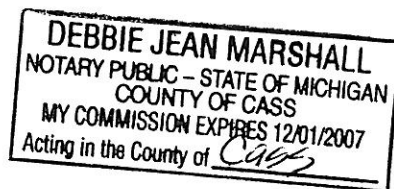
OWNER:

Alexander M Bozymowski
Alexander M. Bozymowski

Katherine Anne Bozymowski
Katherine Anne Bozymowski

STATE OF MICHIGAN)
)ss.
COUNTY OF Cass)

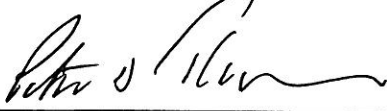
Acknowledged before me on this 15th day of December, 2006, by Alexander M. and Katherine Anne Bozymowski, husband and wife.



Notary Public
Debbie Jean Marshall

County, Michigan
Acting in _____ County
My commission expires: _____

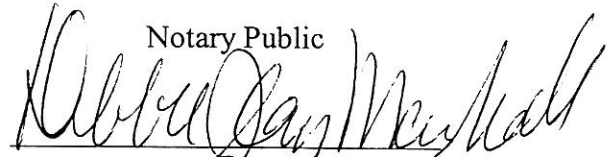
SOUTHWEST MICHIGAN LAND CONSERVANCY:



Peter D. Ter Louw
Its: Executive Director

STATE OF MICHIGAN)
)ss.
COUNTY OF Cass)

Acknowledged before me on this 15th day of December, 2006, by Peter D. Ter Louw, known to me to be the Executive Director of the Southwest Michigan Land Conservancy.

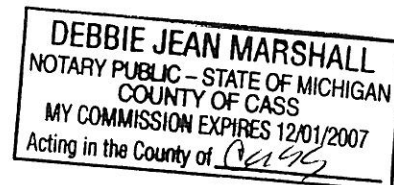


Notary Public

County, Michigan

Acting in _____ County

My commission expires: _____



SEND TAX BILL TO:

Owner

PREPARED BY AND AFTER RECORDING RETURN TO:

Pete DeBoer

Land Protection Specialist

Southwest Michigan Land Conservancy

6851 S. Sprinkle Road

Portage, MI 49002