

Topic: Open Space Preservation
Resource Type: Regulations
State: Michigan
Jurisdiction Type: State
Municipality: N/A
Year (adopted, written, etc.): Unknown
Community Type - applicable to: Urban; Suburban; Rural
Title: Michigan Model Conservation Easement
Document Last Updated in Database: April 13, 2017

Abstract

This is a model conservation easement that demonstrates the necessary elements of a conservation easement. Particular sections are specific to Michigan, but the general format may be followed in other states.

Resource

CONSERVATION EASEMENT

DATE: (INSERT DATE)

DONOR/OWNER: (INSERT DONOR'S NAME, MARITAL STATUS AND ADDRESS)

DONEE/CONSERVANCY: (INSERT NAME AND ADDRESS)

For Purposes of this Conservation Easement, the Donor, who is the current Owner, and all subsequent Owners of the subject Property, will be referred to as the "Owner" throughout this Conservation Easement. The Donee will be referred to as the "Conservancy" throughout this Conservation Easement. **(Donor and Donee should be listed as Grantor and Grantee in the case of a purchase of a conservation easement).**

PROPERTY: (INSERT COMPLETE LEGAL DESCRIPTION)

CONVEYANCE: The Owner conveys and warrants to the Conservancy a perpetual Conservation Easement over the Property. The scope of this 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). **(Delete exemption language in the case of a purchase of the conservation easement).**

THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:

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1. PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE DONOR/OWNER AND THE CONSERVANCY.

- A. This Conservation Easement assures that the Property will be perpetually preserved in its predominately natural, scenic, historic, agricultural, forested, and open space **(DELETE THOSE THAT DO NOT APPLY)** condition. The Purposes of this Conservation Easement are to protect the Property's natural resource and watershed values; to maintain and enhance biodiversity; to retain quality habitat for native plants and animals, and to maintain and enhance the natural features of the Property. Any uses of the Property which may impair or interfere with the Conservation Values 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 Easement and the preservation of the Conservation Values.
- C. The Conservancy is a qualified Recipient of this Conservation Easement, is committed to preserving the Conservation Values of the Property, and is committed to upholding the terms of this 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, historic, open space, scientific, biological, and ecological values **(DELETE THOSE THAT DO NOT APPLY)** of prominent importance to the Owner, the Conservancy, and the public. These values are referred to as the "Conservation Values" in this Easement. The Conservation Values include the following:

(NOTE TO DRAFTER: It is critically important to include all of the Conservation Values that are specific to your Property. Include the following values that pertain; add additional specific values; include local policy statements, goals, and laws; delete those Conservation Values that do not apply; delete any legislation that does not apply. The headings are meant to stimulate ideas for listing Conservation Values and may be deleted).

OPEN SPACE and SCENIC:

- A. A scenic landscape and natural character which would be impaired by modification of the Property.
- B. A scenic panorama visible to the public from publicly accessible sites which

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- would be adversely affected by modifications of the natural habitat.
- C. Relief from urban closeness.
 - D. Prominent visibility to the public from **(INSERT)**, and, which will enhance tourism if preserved in its natural state.
 - E. Biological integrity of other land in the vicinity has been modified by intense urbanization, and the trend is expected to continue. 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 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:

(For a more extensive list of relevant laws, see the *Collection of Conservation, Preservation, and Environmental Laws and Summaries* compiled by the Little Traverse Conservancy in April 2000 and provided to each land conservancy in Michigan.)

- 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);
- Sand Dune Protection and Management, Part 353 of the Michigan Natural Resources and Environmental Protection Act, MCL §§ 324.35301 *et seq.*; (Legislative Findings MCL § 324.35302);
- Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Act - MCL §§ 324.30301 *et seq.*; (Legislative Findings MCL § 324.30302);
- Water Pollution Control Act of 1972, 33 USC §§ 1251 - 1387 (§1251 Goals & Policy; § 1344 Wetlands permitting, aka "Section 404" Clean Water Act.);

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- Coastal Zone Management Act, 16 USC §§ 1451 *et seq.*; (§§ 1451, 1452 Congressional Findings and Policy.);
 - Shorelands Protection and Management, Part 323 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.32301 *et seq.*;
 - Inland Lakes and Streams, Part 301 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.30101 *et seq.*;
 - Great Lakes Submerged Lands, Part 325 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.32501 *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 **(INSERT)** governmental agency has endorsed the proposed scenic view of the Property under a landscape inventory, pursuant to a review process.
- I. The **(INSERT)** office has recognized the importance of the Property as an ecological and scenic resource, by designating this and other land as **(INSERT)**.
- J. The Township / County of **(INSERT)** has designated this area as **(INSERT)** in its Comprehensive Plan dated **(INSERT)**.
- K. **(Insert local policy statements which apply).**

WILDLIFE VALUES:

- L. The Property is home to many species of wildlife, including: **(INSERT)**.
- M. The Property provides vital corridor wetlands and upland wildlife habitats which serve as a connection for wildlife movement and create a natural “greenway” **(INSERT AREA)**.
- N. The Property is noteworthy for the **(INSERT)**.

ECOLOGICAL / HABITAT:

- O. The Property contains significant natural habitat in which fish, wildlife, plants, or the ecosystems which support them, thrive in a natural state.
- P. 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.
- Q. Habitat for rare, endangered, or threatened species of animal, fish, plants, or fungi, including: **(INSERT SPECIES)**. **(INSERT if threatened or endangered)**

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- and if in the State of Michigan or federal)** are supported on the Property.
- R. The Property contains natural areas which represent high quality examples of terrestrial or aquatic communities **(INSERT)**.
 - S. The Property contains sustainable habitat for biodiverse vegetation, birds, fish, and terrestrial animals.
 - T. A diversity of plant and animal life are found on the Property in an unusually broad range of habitats for a property of its size.
 - U. The Property is characteristic of **(INSERT)**. Its dominant vegetation is **(INSERT)** interspersed with **(INSERT other habitats, streams, important natural features)**. These plant communities are in a relatively natural and undisturbed condition and support the full range of wildlife species found in these habitat types.
 - V. The Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation.
 - W. 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:

- X. The Property provides important natural land within the watershed of **(INSERT)**. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the **(INSERT)** area.
- Y. The Property includes the **(INSERT)** feet of frontage on the **(INSERT)(river, stream, lake)**.
- Z. The Property has a significant amount of undeveloped frontage on the banks/shore of **(INSERT)**, which is a State designated Natural River (designated as a Wilderness River, Wild and Scenic River, or Country-Scenic River) under the Natural Rivers Section (Part 305) of the Michigan's Natural Resources Environmental Protection Act, MCL §§ 324.30501-30515 *et seq.*, **(OR)** a State designated "Blue Ribbon Trout Stream" considered by the Department of Natural Resources to be one of the "Top Ten" trout streams in Michigan.
- AA. Sections of the property are situated on hillsides with slopes greater than 20% that are adjacent to or in close proximity to **(INSERT BODY OF WATER OR STREAM)** and the vegetated slopes would be highly susceptible to erosion damage and accelerated stormwater runoff that could adversely affect water quality if the trees or other vegetation were removed.

ADJACENT TO PROTECTED LANDS:

- BB. The Property lies in close proximity to the following conserved properties which similarly preserve the existing natural habitat: **(INSERT)**.
- CC. This Easement protects a natural area which contributes to the ecological

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viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or similar conservation area.

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

FARMLAND:

EE. The Property consists entirely of “prime farmland” and “farmland of local importance” as classified by the U.S. Department of Agriculture and the Natural Resources Conservation Service.

FF. The Property has a long history of productive farming and contains significant areas with soil classifications designated as **(INSERT)**.

GG. The Property is located within **(INSERT)** 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 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 which is inconsistent with the Purposes of this Conservation Easement or which is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited:

- A. **Division.** Any division or subdivision of the Property is prohibited.
B. **Commercial Activities.** Any commercial activity on the Property is prohibited. *De minimis* commercial recreational activity is, however, permitted.

(Optional language) except as associated with permitted activities (such as agriculture, timber management, home business) as specified in Section 5 below.

- 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.
E. **Cutting Vegetation.** Any cutting of trees or vegetation, including pruning or trimming, is prohibited, except for the cutting or removal of trees or

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vegetation which pose a threat to human life or property.

- F. Land Surface Alteration. Any mining or alteration of the surface of the land is prohibited, including 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, Ground Water. Natural water courses, lakes, wetlands, or other bodies of water may not be altered. In addition, water from ground or surface sources may not be diverted.
- I. Off-Road Recreational Vehicles. Motorized off-road vehicles such as, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles may not be operated off of designated roads on the Property.
- J. Signs and Billboards. Billboards are prohibited. Signs are prohibited, except the following signs may be displayed to state:

The name and address of the property or the owner's name.

The area is protected by a conservation easement.

Prohibition of any unauthorized entry or use.

An advertisement for the sale or rent of the Property.

- 5. PERMITTED USES. The Owner retains all ownership rights which are not expressly restricted by this 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 Conservation Easement and the subsequent Owner will be bound by all obligations in this agreement.
 - B. (Optional) Right to Maintain and Replace Existing Structures. The Owner retains the right to maintain, renovate, and replace the existing structure(s) as noted in the Baseline Documentation Report in substantially the same location and size. Any expansion or replacement may not substantially alter the character or function of the structure. Prior to beginning renovation or replacement of the existing structures, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval. Such approval shall not be unreasonably withheld.
 - C. (Optional) Right to Add Designated Structures or Uses. The Owner retains the right to add the following structures, modifications, or uses on the

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following legally described portion of the Property (**Insert legal description of building envelope**). Prior to beginning construction, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval. Such approval shall not be unreasonably withheld.

1. _____

2. _____

3. _____

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 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 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 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 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 which are damaged by any activity inconsistent with this Conservation Easement.
- D. **Signs.** The Conservancy has the right to place signs on the Property which identify the land as protected by this Conservation Easement. The number and location of any signs are subject to the Owner's approval.

7.

8. **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 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,

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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 Conservation Easement for such unintended modifications.

- C. Notice and Demand. If the Conservancy determines that the Owner is in violation of this 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 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 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 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 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 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

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- 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 Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this 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 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 Conservation Easement.
9. NOTIFICATION PROVISION. The Conservancy is entitled to 60 Days written notice whenever its approval is required under this 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 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.
10. 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.
11. OWNERSHIP COSTS AND LIABILITIES. In accepting this 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's rights do not include the right, in absence of a judicial decree, to enter the Property for the purpose of becoming an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act. The Conservancy, its members, trustees or directors, officers, employees, and agents

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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 arising during the term of the Owner's ownership of the Property.

12. HAZARDOUS MATERIALS. (Suggested, but optional language) The Owner warrants that Owner has no knowledge of a release of hazardous substances or hazardous wastes on the Property. The Owner agrees to protect and defend the Conservancy against any claims of hazardous materials contamination on the Property.
13. 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 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 any entity having similar conservation purposes to which such right may be awarded under the *cy pres* doctrine.
14. TERMINATION. This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain.
 - A. Unexpected Change in Conditions. If subsequent circumstances render the Purposes of this Conservation Easement impossible to fulfill, then this 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).
 - 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).
15. LIBERAL CONSTRUCTION. This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Code MCL 324.2140 *et seq.*
16. NOTICES. For purposes of this agreement, notices may be provided to either party by personal delivery or by mailing a written notice to the party (at the last known address of a party) by First Class mail.
17. SEVERABILITY. If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.

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- 18. SUCCESSORS. This 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 Conservation Easement to the same extent as the Donor.
- 19. TERMINATION OF RIGHTS AND OBLIGATIONS. A party's future rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.
- 20. MICHIGAN LAW. This Conservation Easement will be construed in accordance with Michigan Law.
- 21. ENTIRE AGREEMENT. This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

TWO WITNESSES:

OWNER:

* Print/type names under signatures)

*

STATE OF MICHIGAN)

)

COUNTY OF _____)

Acknowledged before me on this ____ of _____, of 2001, by (Insert Owner's names) , (Insert marital status) .

Notary Public

[Type text]

_____ County, Michigan

My commission expires:

TWO WITNESSES:

CONSERVANCY:

(* Print/type names under signatures)

*

*

STATE OF MICHIGAN)

)

COUNTY OF _____)

Acknowledged before me on this ____ of _____, of 2001, by (Insert Executive Director or signer's name,) known to me to be the _____ of the _____ (Insert Conservancy name).

Notary Public

_____ County, Michigan

My commission expires:

AFTER RECORDING SEND TO:

SEND TAX BILL TO:
PREPARED BY:

Insert correct name and address

Owner
Insert
name and address