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BARRY COUNTY, MI

WOLTERSTORFF CONSERVATION EASEMENT

DATE: November 22, 2010

DONOR/OWNER: Nicholas P. Wolterstorff and Claire Wolterstorff, whose address is 58 Sunnybrook SE, Grand Rapids, Michigan, 49056 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 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.

PROPERTY: Land situated in the Township of Orangeville, County of Barry, State of Michigan, more specifically described as:

The East half of the Southwest quarter of Section 22, Town 2 North, Range 10 West.

Except therefrom a portion of the East half of the Southwest quarter of Section 22, Town 2 North, Range 10 West more specifically described as: commencing at the center post of Section 22, Town 2 North, Range 10 West, thence West along the East West Section line 602 feet to the place of beginning, thence South 0°0'0" West 265 feet, thence North 90°0'0" West 709 feet, thence North 01°03'0" West 255 feet along the quarter quarter Section line, thence East along the East West Section line 714 feet more or less to the place of beginning.

This property encompasses approximately 77 acres.

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).

THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:

1. **PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE DONOR/OWNER AND THE CONSERVANCY.**
 - A. This Conservation Easement ensures that the Property will be perpetually preserved in its predominately natural, scenic, historic, forested, and open space condition. The Purposes of this Conservation Easement are to protect land adjacent to already conserved land and expand on the conservation values protected; protect the scenic views from a State designated Natural Beauty Road; improve the Property's natural resource and watershed values as part of the Kalamazoo River Watershed which is designated by the U.S. Environmental Protection Agency (EPA) as an Area of Concern; maintain and enhance the natural features of the Property including the greenway Cave Creek corridor and adjacent wetlands which eventually flows in the Fish Lake and is majority conserved by the Michigan Department of Natural Resources; and to protect the high diversity of plant species found in the wetlands and high quality forested land with significant topographical relief; and to protect fish and wildlife habitat. Any uses of the Property that are inconsistent with the Purposes of this Conservation Easement, as specifically delineated in the Conservation Values and not granted in the Permitted Uses are expressly prohibited. The Permitted Uses therefore in **Section 4** are limited and do not have any affect on the Conservation Values.
 - 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, 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 Easement. The Conservation Values include the following:

ADJACENT TO PROTECTED LANDS:

- A. The Property shares a corner with the following conserved property that similarly preserve the existing natural habitat:



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- 1) Tenho S. Connable Conservation Easement, Orangeville Township, Section 22, Southwest Michigan Land Conservancy.
- B. The Property lies in close proximity (within approximately five miles) to the following conserved properties that similarly preserve the existing natural habitat:
- 1) Barry State Game Area, containing multiple sections in Orangeville, Hope, Rutland, and Yankee Springs Townships, Department of Natural Resources and Environment;
 - 2) Yankee Spring Recreation Area, containing multiple sections in Yankee Springs Township, Department of Natural Resources and Environment;
 - 3) Otis Sanctuary, Rutland Township, Sections 32 and 33, Michigan Audubon Society;
 - 4) Blackmore Agricultural Easement, Orangeville Township, Sections 22 and 15, Department of Agriculture;
 - 5) Hayward Conservation Easement, Orangeville Township, Section 34, Southwest Michigan Land Conservancy;
 - 6) Hazel and Josephine Rood Conservation Easement, Orangeville Township, Sections 21 and 22, Southwest Michigan Land Conservancy;
 - 7) Perry Family Conservation Easement, Hope Township, Sections 8 and 17, Southwest Michigan Land Conservancy; and
 - 8) Lux Arbor Reserve, Prairieville Township, Sections 10, 11, 14, and 15, Michigan State University.
- C. Preservation of the Property enables the Owner to integrate the Conservation values with these neighboring lands and additional landowners in the vicinity have expressed interest in conserving their land at some point.

ECOLOGICAL / HABITAT:

- D. The Property contains significant natural upland and lowland habitat in which fish, wildlife, plants, and the ecosystems that support them, thrive in a natural state.
- E. Approximately twenty (20) acres of 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 compromise the majority of the area designated as **Natural Area (NA)** on the **Baseline Documentation Map**.
- F. Wetlands on the Property include a patchwork of scrub-shrub and forested as described by the National Wetlands Inventory. A pocket of fen type wetland has



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also been found on the property with a variety of fen indicator species including Valerian.

- G. The Property contains a stretch of Cave Creek runs approximately through the middle of the land flowing from east to west into a large swampy area. The topography surrounding the creek is quite extreme, with steep forested slopes down to the creek's edge.
- H. On the Property along Cave Creek is an area that an MSU geologist claims is only one of the two sites in Michigan that he knows of that was not glaciated. In this area there are a series of caves perched above the creek that run into the northern hillside under large flat rocks.
- I. Due to the habitat and topological diversity there is a variety of fern species on the Property including Polypody fern, Christmas fern, Lady fern, Sensitive fern, Cinnamon fern, Royal fern, Wood fern, Maidenhair fern, Ebony Spleenwort and several others.
- J. The Property contains high quality valuable forested land. The southern half of the property has trees that are approximately 70 feet tall and provide a cathedral ceiling of oaks, hickories, cherries, and maples. There is also a wide diversity of sedges on the Property, one of the most common being Plantainleaf sedge (*Carex plantaginea*), which is rather uncommon and rich woodland indicator.
- K. The forests on the Property contain a carpet of spring ephemerals including Spring Beauty, Hepaticas, Trillium, Trout lily, False Solomon's seal, Jack-in-the-Pulpit, Indian Pipe, Waterleaf, Baneberry, and more.

OPEN SPACE and SCENIC:

- L. A scenic panorama visible to the public from Guernsey Lake Road, which is a state designated Natural Beauty Road, that would be adversely affected by the subdivision and development of the parcel into multiple house lots.
- M. Biological integrity of other land in the vicinity has been modified by residential development that is also starting to surround the area.
- N. 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:

- O. 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."

- P. 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:
- This Property contains approximately 1,000 feet of frontage on Guernsey Lake Road. Guernsey Lake Road is a state designated natural beauty road as part of Act 451 (Natural Resources and Environmental Protection Act) of 1994;
 - 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);
 - 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.);
 - 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).

WATERSHED PROTECTION:

- Q. The Property includes approximately a half of a mile stretch of Cave Creek which is a spring fed creek and associated wetlands.
- R. The Property provides important natural land within the Kalamazoo River watershed. This Conservation Easement will indirectly prevent increased phosphorus loading and runoff flows to Cave Creek which flows into the Kalamazoo River. The Kalamazoo River is subject to a phosphorus reduction program through a Total Maximum Daily Load (TMDL) process and is



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designated by the U.S. EPA as an Area of Concern with a Remedial Action Plan aimed at reducing the effects of contaminants, pathogens, non-point source pollution, and improper land management. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the Cave Creek in the Gun River sub-watershed of the greater Kalamazoo River Watershed.

WILDLIFE VALUES:

- S. The Property is home to many species of wildlife, including mammals, reptiles, amphibians and fish. Some of these species are included in the species list of the "Baseline Documentation Report" explained in **Section 3**.
 - T. The Property provides a vital corridor of wetland and upland wildlife habitats that serve as a connection for wildlife movement and create a natural greenway along Cave Creek which flows into Tamarack Lake and then into Fish Lake. The Fish Lake area is primarily owned and conserved by the Michigan Department of Natural Resources and Environment as the Fish Lake Unit of the Barry State Game Area.
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. **PERMITTED USES.** The Owner retains all ownership rights that 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. **Right to Add, Maintain, Renovate, and Replace Designated Structures and Uses in the Building Envelope.** The Owner retains the right to add, maintain, renovate, and replace the structures, driveway, and parking area, in the Building Envelope described below and as noted in the **Baseline Documentation Report**.
 - 1) The Owner retains the right to add, maintain, renovate, and replace one, single-family residential structure and one connecting driveway.
 - 2) The Owner retains the right to add, maintain, renovate, and replace one or more, ancillary outbuildings and storage structures, including but not limited to a guesthouse, garages, barns, storage buildings, or greenhouses.



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Any expansion or construction of new structures, or renovation or expansion of existing structures, shall not result in an aggregate impervious land surface area of more than 15,000 square feet. At the time of the conveyance of the Conservation Easement, there is no measurable impervious land surface area on the Property. There is rubble in the Building Envelope from the foundations of four previous structures, however, the impervious land surface area from this rubble is currently negligible. The impervious land surface area of all future expansions and additional construction shall not exceed 15,000 square feet. Thus, the aggregate impervious land surface area of all structures, both existing and future, shall never exceed 15,000 square feet land surface area within the **Building Envelope**.

The **Building Envelope** is more specifically described as the following:

Land situated in the Township of Orangeville, County of Barry, State of Michigan, more specifically described as a portion of the East half of the Southwest quarter of Section 22, Town 2 North, Range 10 West more specifically described as:

commencing at the center post of Section 22, thence West along the East West Section line 602 feet, thence South 0°0'0" West 265 feet, thence North 90°0'0" East 607 feet, thence North along the North South Section line 275 feet more or less to the center post of said Section. This building envelope encompasses approximately 4 acres.

To define the corners of the **Building Envelope** the owner permits the Conservancy to install small permanent concrete and metal rod markers. In the case of any real or perceived differences between the aforementioned description of the **Building Envelope** and the actual locations of the markers, the locations of the markers shall define the **Building Envelope**.

The Owner also retains the right to provide for utilities to serve the residence and outbuildings within the **Building Envelope**. These utilities include, but are not limited to, electricity, natural gas, water, and septic and sewer services. These utilities can be located either above ground, or below ground and whenever possible will be located within the right-of-way of the driveway, provided the activity does not substantially alter the landscape or adversely affect the Conservation Values of the Property. The driveway and corresponding right-of-way may not exceed twenty-five (25) feet in width.

Prior to adding any new structure and prior to renovating or replacing any 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 written approval under the provisions set forth in the Conservation Easement, specifically in **Paragraph 8**. The purpose of the Conservancy's review of the written plan is to make sure the proposed activity is consistent with the terms of this Conservation Easement. So long as the written plan is consistent with the terms of this Conservation Easement, the Conservancy shall approve the written plan.

- C. **Right to Manage Lawn and Garden.** In the area designated as the **Building Envelope** on the **Baseline Documentation Map**, the Owner retains the right to remove, trim, and otherwise manage lawn and gardens; and to grow and harvest



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fruits, nuts, and vegetables.

- D. **Right to Maintain Natural Area.** 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 **Baseline Documentation Map**, except to remove dangerous trees, reduce a natural threat of infestation posed by diseased vegetation, or control invasive and/or non-native plant species that endanger the health of native species.
- E. **Right to Selectively Remove Trees.** The Owner retains the right to selectively harvest trees in the **Building Envelope** as designated on the **Baseline Documentation Map** for personal use, particularly woodworking purposes. No more than one (1) tree can be removed in one calendar year. Prior to removing a tree the Owner will notify the Conservancy in writing for the Conservancy's review and written approval under the provisions of **Paragraph 8**. The removal of trees may not substantially alter the landscape of the Property nor shall it negatively affect the Conservation Values of the Property.
- F. **Right to Construct, Maintain, and Replace Designated Structure Outside of Building Envelope.** The Owner retains the right to construct, maintain, and replace the following structure on the Property:

- 1) One (1) bridge over Cave Creek.

The Owner retains the right to construct, maintain, renovate, and replace this structure in substantially the same location and size. Any renovation or replacement may not substantially alter the function of this structure. The use of any construction material determined to be detrimental to the health of humans or wildlife is prohibited. The bridge may not in any way inhibit or hinder the flow of Cave Creek. The occasional fording of streams which causes only minimal disturbance of stream banks or bottomland and which results in no more than momentary sedimentation or siltation is allowable. Prior to beginning any construction, renovation, or replacement of this structure, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval under the provisions of **Paragraph 8**.

- G. **Right to Add and Maintain Trails.** The Owner retains the right to maintain existing foot trails and existing unpaved two-tracks throughout the Property provided that the maintenance activity does not substantially alter the landscape or adversely impact the Conservation Values of the Property.

The Owner also retains the right to add additional trails. Prior to adding any new trail, the Owner will notify the Conservancy in writing for the Conservancy's review and written approval under the provisions of **Paragraph 8**. The addition of any new trails may not substantially alter the landscape of the Property nor shall it negatively affect the Conservation Values of the Property. Such written approval shall not be unreasonably withheld.



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- H. **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.
- I. **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 writing 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 written 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 written 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 Conservation Easement or detrimental to the Conservation Values of the Property.

- J. **Right to Construct and Maintain Hunting Blinds and Tree Stands.** The Owner retains the right to construct and place blinds on the Property for the purpose of hunting and viewing wildlife, provided such activities do not adversely impact the Conservation Values of the Property. Blinds shall not have a foundation constructed with concrete or other permanent materials. The Owner may affix permanent tree stands that are constructed from wood or fasten tree stands that are portable and non-permanent, made from any materials that are common or standard for these devices.



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- K. **Right to Exploit Subsurface Mineral Resources.** The Owner retains the right to extract oil, gas, hydrocarbons, or petroleum for commercial purposes provided that no exploration for, or extraction of, minerals shall be conducted from the surface of the Property. The Owner may enter into a non-developmental lease if said lease is part of a pool for oil, gas, hydrocarbons or petroleum which solely permits the extraction of oil, gas, hydrocarbons, or petroleum. Any construction or placement of any structures, including pipelines, on, over, UNDER, or across the Property is prohibited. Under no circumstances are surface mining methods allowed.

Prior to engaging in a non-development lease, the Owner will provide a draft of said lease to the Conservancy for the Conservancy's review and written approval under the provisions set forth in the Conservation Easement, specifically in **Paragraph 8**. The purpose of the Conservancy's review of the written plan is to make sure the proposed activity is consistent with the terms of this Conservation Easement. Approval from the Conservancy shall not be unreasonably withheld so long as the written plan is consistent with the terms of this Conservation Easement and does not adversely impact the Conservation Values.

Extraction of non-hydrocarbon or petroleum minerals, such as, sand, gravel, rock or peat, is prohibited.

5. **PROHIBITED ACTIONS.** Any activity on, or use of the Property that is inconsistent with the Purposes of this 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.
 - B. **Commercial Activities.** Any commercial activity on the Property is prohibited. *De minimis* commercial 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 for under **Paragraph 4**.
 - 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 poses a threat to human life or property and as provided for under **Paragraph 4**.
 - 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, except as provided for under **Paragraph 4**.

- G. **Dumping.** Waste and unsightly or offensive material is not allowed and may not be accumulated on the Property.
- H. **Water Courses.** Natural watercourses, 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, driveway 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 **Paragraph 4**.
- J. **Agriculture.** Any agricultural activity on the property is prohibited. Agricultural activity is defined as the planting and harvesting of crops, nursery stock, and trees.
- K. **Livestock.** Raising or housing of livestock, horses, commercial kenneling of animals and commercial aquaculture is prohibited on the Property.
- 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.
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 that are damaged by any activity inconsistent with this Conservation Easement.
 - D. **Signs.** The Conservancy has the right to place signs on the Property that identify the land as protected by this 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 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 Conservation Easement for such unintended modifications. The Parties expressly recognize the Conservancy's interest in preserving the Conservation Values of the property, and nothing in this paragraph shall be construed as a limitation against the Conservancy's right to pursue any lawful remedy against any unauthorized third party for actions that impair the Conservation Values or are inconsistent with the terms of this Conservation Easement.
 - 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, including attorney fees, associated with this effort.

- D. **Failure to Act.** If, within twenty-eight (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 twenty-eight (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 actual litigation costs and actual 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 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.

8. **NOTIFICATION PROVISION.** The Conservancy is entitled to sixty (60) Days written notice whenever its approval is required under this Conservation Easement. If the Conservancy fails to respond within sixty (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 (3) years. If the approved activity is not

completed within three (3) 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 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.

11. REGULATORY AUTHORITY. The Owner is solely responsible for obtaining any applicable permit or authorization or otherwise ensuring that any proposed use, building, construction, design, location, or other specification related to the Property meets applicable local, state, and federal zoning, requirement, regulation, rule, policy, or standard. In accepting this Conservation Easement, or in reviewing and/or approving any use, building, construction, design, location, or any other specification related to the Property or the use or development of the Property, the Conservancy makes no warranty that the proposed use, building, construction, design, location, or other specification meets any local, state, or federal zoning, requirement, regulation, rule, policy, or standard.

12. 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



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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.

13. **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) in effect on the date of this 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 Conservation Easement.
14. **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.*
15. **NOTICES.** For purposes of this 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.
16. **SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
17. **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.
18. **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.



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19. MICHIGAN LAW. This Conservation Easement will be construed in accordance with Michigan Law.
20. ENTIRE AGREEMENT. This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.
21. AMENDMENT. This Conservation Easement may be amended only under the following circumstances:
 - A. **Clerical Errors.** An Amendment is allowed to correct clerical errors in the recorded document, such as an inaccuracy in a legal description.
 - B. **Additional Property.** An Amendment may be allowed to add real property to the legal description and, therefore, preserve additional land.
 - C. **Enhancement of Conservation Values.** Any other Amendment may be allowed if the Conservancy determines, in its sole discretion that the amendment would enhance the Conservation Values and/or strengthen the restrictions set forth in the original easement.
 - D. **Consent of the Owner.** Any Amendment must be mutually agreed upon by the Owner and the Conservancy, signed and recorded at the Barry County Register of Deeds.



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Baseline Documentation Map

Wolterstorff Conservation Easement

Orangeville Township, Barry County, Michigan

Landowner:

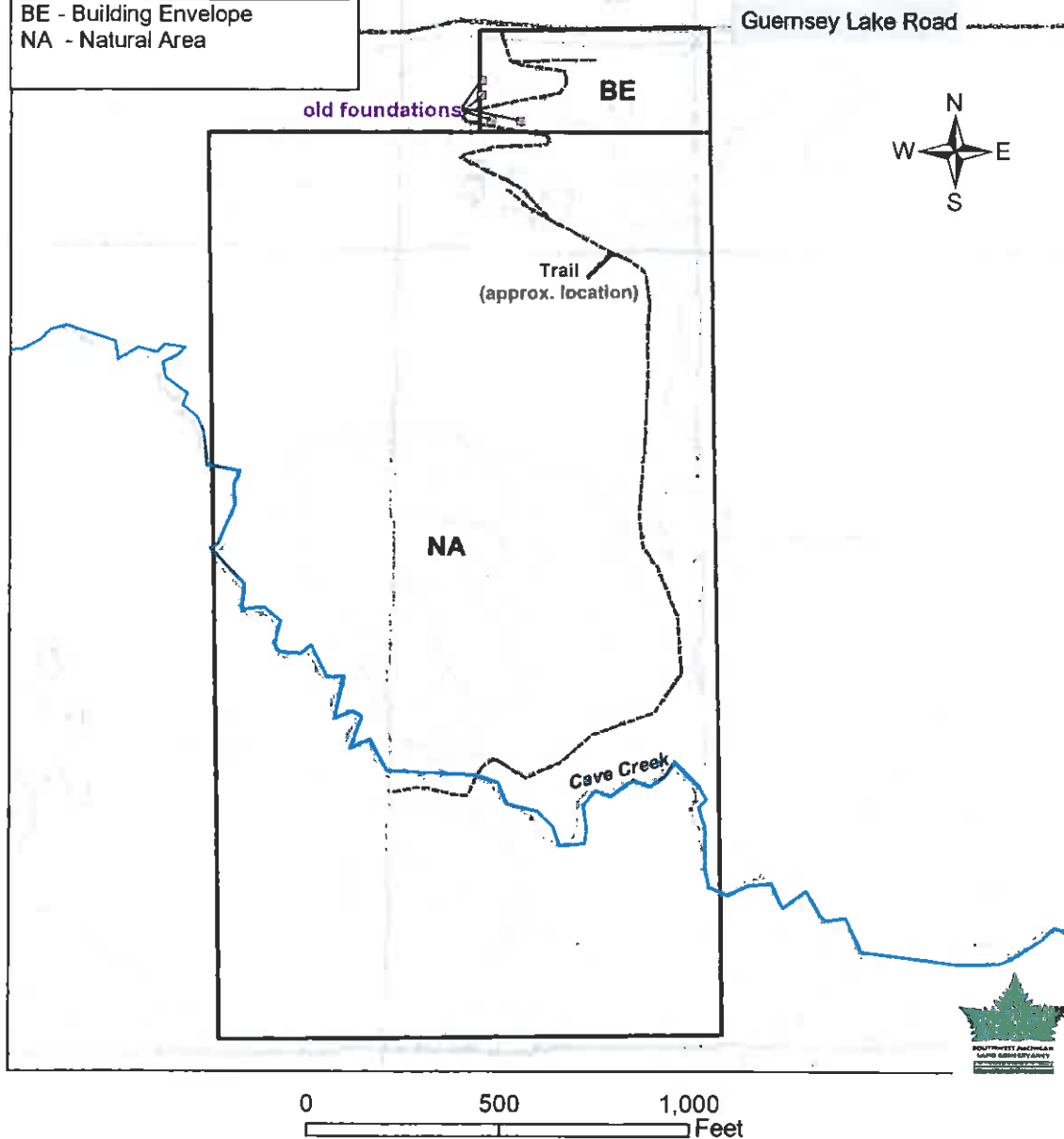
Nicholas and Claire Wolterstorff
58 Sunnybrook SE
Grand Rapids, MI 49506

Conservancy:

Southwest Michigan Land Conservancy
6851 S. Sprinkle Road
Portage, MI 49002

KEY

BE - Building Envelope
NA - Natural Area

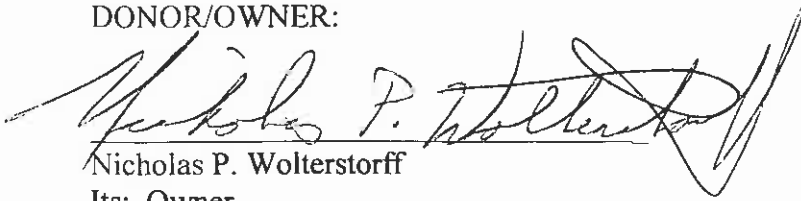


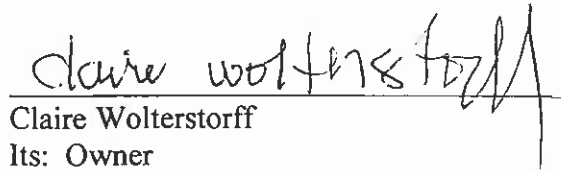
DONOR/OWNER:



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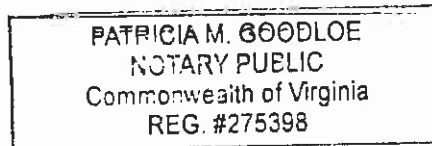
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Nicholas P. Wolterstorff
Its: Owner


Claire Wolterstorff
Its: Owner

STATE OF ^{Virginia} MICHIGAN)
)ss.
COUNTY OF Albemarle)

Acknowledged before me on this 18 day of November, of 2010, by Nicholas P. and Clair Wolterstorff, husband and wife.



Notary Public Patricia M. Goodloe
Albemarle County, Virginia
Acting in _____ County
My commission expires: 7-31-11

DONEE/ CONSERVANCY:
Southwest Michigan Land Conservancy:


Peter D. Ter Louw
Its: Executive Director

STATE OF MICHIGAN)
)ss.
COUNTY OF Kalamazoo)

Acknowledged before me on this 22 day of November, of 2010, by Peter D. Ter Louw, known to me to be the Executive Director of the Southwest Michigan Land Conservancy.

Notary Public Wynn Harris Jones
Kalamazoo County, Michigan
Acting in Kalamazoo County
My commission expires: 9-26-16

SEND TAX BILL TO:

Owner

PREPARED BY AND AFTER RECORDING SEND TO:

Emily E. Wilke

Director of Land Protection

Southwest Michigan Land Conservancy

6851 S. Sprinkle Road

Portage, MI 49002



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