

The Michigan Model Conservation easement below was a joint project of the Little Traverse Conservancy, Grand Traverse Regional Land Conservancy and Leelanau Conservancy. A number of attorneys and staffers from each organization participated. "Translation" into plain English was handled primarily by John Rohe, an attorney on the board of the Little Traverse Conservancy.

CONSERVATION EASEMENT

DATE:

DONOR: _____, (husband and wife)

LAND TRUST: Raisin Valley Land Trust P.O. Box 419 Manchester, MI 48158

PROPERTY: In () Township, Washtenaw County, Michigan: (full legal description)
CONVEYANCE: The Donor conveys and warrants to the Land Trust 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 Land Trust.

CONSERVATION VALUES: The Property possesses (natural, scenic, open space, scientific, biological and ecological) values of prominent importance to the Donor, the Land Trust and the public. These values are referred to as the "Conservation Values" in this Conservation Easement.

PURPOSE OF THIS CONSERVATION EASEMENT:

a. The Donor is fee simple title owner of the Property, and is committed to preserving the Conservation Values of the Property. This Conservation Easement assures that the Property will be perpetually preserved in its predominantly (natural, scenic, historic, agricultural, forested, open space) condition. Specifically, this Conservation Easement will serve to protect the (wetlands, woodlands and open spaces) identified in the Baseline Documentation Report. Any use of the Property which may impair or interfere with the Conservation Values, unless expressly permitted in this Conservation Easement, is expressly prohibited. The Donor agrees to confine use of the Property to activities consistent with the purposes of this easement and preservation of the Conservation Values.

b. The Raisin Valley Land Trust is a Michigan nonprofit organization, incorporated under the Michigan Nonprofit Corporation Act of 1982 (MCL 450.2101 et seq.) on August 10, 1989. The Land Trust is qualified under Internal Revenue Code Sections 501(c)(3) and 170(h)(3) as a tax-exempt entity and pursues activities described in the Michigan Conservation and Historic Preservation Easement Act of 1980 (MCL 399.251 et seq). The Land Trust was established to protect natural habitats of fish, wildlife, plants or similar ecosystems. The Land Trust was also established to preserve 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 will yield a significant public benefit.

c. The Property has the following specific Conservation Values: * significant natural habitat in which fish, wildlife, plants or a similar ecosystem thrive in a natural state. * habitat for rare, threatened or endangered species of animal, fish or plants. * natural areas which represent high quality examples of terrestrial or aquatic communities. * a natural area which contributes to the ecological viability of a local, state or national park, nature preserve, wildlife refuge, wilderness area or other similar conservation area. * It is preserved pursuant to a clearly delineated federal, state or local conservation policy and yields a significant public benefit. The following legislation establishes relevant public policies: the Water Pollution Control Act of 1972, 33 USC 404 et seq; the Coastal Zone Management Act, 16 USC §1451 et seq; the Michigan Shorelands Protection and Management Act of 1970, MCL 324.32301 et seq; the Goemaere-Anderson Wetland Protection Act of 1979, MCL 324.30301 et seq; the Inland Lakes and Streams Act, MCL 324.30101 et seq; the Great Lakes Submerged Lands Act, MCL 324.32501 et seq; the Michigan Farmland and Open Space Preservation Act of 1974, MCL 324.36101 et seq; the Conservation and Historic Preservation Easement Act, MCL 324.2140 et seq; and the Michigan Biological Diversity Conservation Act of 1992, MCL 299.231 et seq.; the Natural Rivers Act, MCL 324.30501 et seq.; and Washtenaw County Land Use Policies for land use management.) * a scenic landscape and natural character which would be impaired by a modification of the Property. * a scenic panorama visible to the public from publicly accessible sites which would be adversely affected by modifications of the natural habitat. * relief from urban closeness. * harmonious variety of shapes and textures for the scenic enjoyment of the public. * the _____ (governmental agency) has endorsed the proposed scenic view of the Property under a landscape inventory, pursuant to a review process. * valued wetlands, as described in the Goemaere-Anderson Wetland Protection Act of 1979 (MCL 281.701 et seq.). * sustainable habitat for biodiverse vegetation, birds, fish and terrestrial animals. * a diversity of plant and animal life in an unusually broad range of habitats for property of its size. * a natural habitat for the endangered or threatened _____. * proximity to the following conserved properties which similarly preserve the existing natural habitat: * preservation of the Property enables the Donor to integrate the Conservation Values with other neighboring lands. * the _____ (office) has recognized the importance of the Property as an ecological and scenic resource, by designating this and other land as a _____. * prominent visibility to the public from _____, and if preserved in its natural state it will enhance tourism. * 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 Land Trust may acquire other valuable property rights in the other nearby properties to expand the Conservation Values preserved by this Conservation Easement. * (access to the general public or historically important land or certified historical structures could be added here)

d. Specific Conservation Values of the Property have been documented in a natural resource inventory signed by the Donor and the Land Trust. This "Baseline

Documentation Report" consists of (maps, a depiction of all existing man-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features and photographs). The parties acknowledge that this Baseline Documentation is an accurate representation of the Property at the time of this donation.

THE PARTIES AGREE TO THE FOLLOWING TERMS OF THIS CONSERVATION EASEMENT:

1. PROHIBITED ACTIONS. Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement or detrimental to the Conservation Values is expressly prohibited. By way of example, the following activities and uses are explicitly prohibited:
 - a. Division. Any division or subdivision of the Property is prohibited.
 - b. Commercial Activities. Commercial or industrial activity is prohibited.
 - c. Construction. The placement or construction of any man-made modification such as buildings, structures, fences, roads and parking lots is prohibited, except as expressly permitted in this Conservation Easement.
 - d. Cutting Vegetation. Any cutting of trees or vegetation is prohibited.
 - e. Land Surface Alteration. Any mining or alteration of the land surface is prohibited.
 - f. Dumping. Waste and unsightly or offensive materials are not allowed and may not be accumulated on the Property.
 - g. Water Courses. Natural water courses, lake shores, wetlands or other water bodies may not be altered.
 - h. Off-Road Vehicles. Motorized off-road vehicles such as snowmobiles, dune buggies, all-terrain vehicles and motorcycles may not be operated on the Property. Bicycles may not be operated on the Property.
 - i. Billboards. Billboards and signs are prohibited. A sign may, however, be displayed to state: - the name and address of the Property. - the owner's name. - the area protected by this Conservation Easement. - prohibition of any unauthorized entry or use. - an advertisement for the sale or rent of the Property.
2. RIGHTS OF THE LAND TRUST. The Donor confers the following rights upon the Land Trust to perpetually maintain the Conservation Values of the Property:
 - a. Right to Enter. The Land Trust has the right to enter the Property at reasonable times to monitor or to enforce compliance with this Conservation Easement. The Land Trust may not, however, unreasonably interfere with the Donor's use and quiet enjoyment

of the Property. The Land Trust 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 Land Trust has the right to prevent any activity on or use of the Property that is inconsistent with the terms or purposes of this Conservation Easement.
 - c. Right to Require Restoration. The Land Trust has the right to require restoration of the areas or features of the Property which are damaged by activity inconsistent with this Conservation Easement.
 - d. Signs. The Land Trust has the right to place signs on the Property which identify the land as being protected by this Conservation Easement. The number and location of any signs are subject to the Donor's approval.
 - e. Right to Engage in Ecological Restoration. The Land Trust has the right to engage in activities that restore the biological and ecological integrity of the Property. Possible activities include planting native vegetation and use of controlled fire to reduce the presence of undesirable vegetation.
3. PERMITTED USES. The Donor 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 Donor retains the right to sell, mortgage, bequeath or donate the Property. Any conveyance will remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder will be bound by terms and conditions of this Conservation Easement.
 - b. Right to Maintain and Replace Existing Structures. The Donor 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.
 - c. Right to Add Designated Structures or Uses. The Donor retains the right to add the following structures, modifications or uses to the Property without notifying the Land Trust. * _____ *
4. LAND TRUST REMEDIES. This section addresses cumulative remedies of the Land Trust and limitations on these remedies.
- a. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of the Land Trust's right to enforce the terms of this Conservation Easement.

- b. Acts Beyond the Donor's Control. The Land Trust may not bring an action against the Donor for modifications to the Property resulting from causes beyond the Donor's control. Examples are: unintentional fires, storms, natural earth movement, trespassers or even a Donor's well-intentioned actions in response to an emergency resulting in changes to the Property. The Donor has no responsibility under this Conservation Easement for such unintended modifications. The Land Trust, may, however, bring an action against another party for modifications that impair the Conservation Values identified in this Conservation Easement.
- c. Notice and Demand. If the Land Trust determines that the Donor is in violation of this Conservation Easement, or that a violation is threatened, the Land Trust may provide written notice to the Donor unless the violation constitutes immediate and irreparable harm. The written notice will identify the violation and request corrective action to cure the violation or to restore the Property.
- d. Failure to Act. If, for a 28-day period after the date of the written notice, the Donor continues violating this Conservation Easement, or if the Donor does not abate the violation and implement corrective measures requested by the Land Trust, the Land Trust may bring an action in law or in equity to enforce the terms of the Conservation Easement. The Land Trust is also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Property. If the court determines that the Donor has failed to comply with this Conservation Easement, then the Donor also agrees to reimburse all reasonable costs and attorney fees incurred by the Land Trust compelling such compliance.
- e. Unreasonable Litigation. If the Land Trust initiates litigation against the Donor to enforce this Conservation Easement, and if the court determines that the litigation was without reasonable cause or in bad faith, then the court may require the Land Trust to reimburse the Donor's reasonable costs and attorney fees in defending the action.
- f. Donor's Absence. If the Land Trust determines that this Conservation Easement is, or is expected to be, violated, the Land Trust will make good-faith efforts to notify the Donor. If, through reasonable efforts, the Donor cannot be notified, and if the Land Trust determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Values, then the Land Trust may pursue its lawful remedies without prior notice and without awaiting the Donor's opportunity to cure. The Donor agrees to reimburse all costs associated with this effort.
- g. Actual or Threatened Non-Compliance. Donor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The Land Trust is entitled to invoke the equitable jurisdiction of the court to enforce this Conservation Easement.

- h. Cumulative Remedies. The preceding remedies of the Land Trust are cumulative. Any, or all, of the remedies may be invoked by the Land Trust if there is an actual or threatened violation of this Conservation Easement.
5. OWNERSHIP COSTS AND LIABILITIES. In accepting this Conservation Easement, the Land Trust shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Property. The Land Trust and its trustees, officers, employees, agents and members have no liability arising from injury or death to any person or from physical damage to any property on the Property or otherwise. The Donor agrees to defend the Land Trust against such claims and to indemnify the Land Trust against all costs and liabilities relating to such claims during the tenure of the Donor's ownership of the Property. The Donor is responsible for posting the Property's boundaries and for discouraging any form of trespass that may occur.
6. CESSATION OF EXISTENCE. If the Land Trust shall cease to exist or if it fails to be a "qualified organization" for the purposes of Internal Revenue Code Section 170(h)(3), or if the Land Trust 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 the purposes in Internal Revenue Code Section 170(h)(3). The Land Trust's rights and responsibilities shall be assigned to the following named entities in the following sequence: (1) _____ (2) _____ (3) Any other entity having similar conservation purposes to which such rights may be awarded under the cy pres doctrine.
7. 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 Land Trust will then be entitled to compensation in accordance with applicable laws and in proportion to the Land Trust's interest in the property at the effective 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 Land Trust will be entitled to compensation in accordance with applicable laws and in proportion to the Land Trust's interest in the property at the effective date of this Conservation Easement.
8. LIBERAL CONSTRUCTION. This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Michigan Conservation and Historic Preservation Easement Act (MCL 399.251 et seq).

9. NOTICES. For purposes of this agreement, notices may be provided to either party, by personal delivery or by mailing a written notice to that party at the address shown at the top of this agreement, or at the last known address of a party, by First Class mail. Service will be complete upon depositing the properly addressed notice with the U.S. Postal Service with sufficient postage.
10. SEVERABILITY. If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
11. SUCCESSORS. This Conservation Easement is binding upon, and inures to the benefit of, the Donor's and the Land Trust'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 current property owner.
12. 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.
13. MICHIGAN LAW. This Conservation Easement will be construed in accordance with Michigan Law.
14. ENTIRE AGREEMENT. This Conservation Easement, together with the Baseline Documentation Report, sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.

WITNESSES:

DONOR: (*print/type names under signatures) _____
 _____ * *
 _____ * * STATE OF MICHIGAN)) COUNTY OF
 WASHTENAW)

Acknowledged before me by _____ on
 _____, 19__, by _____ Notary Public,
 Washtenaw County, Michigan. My commission expires: _____

WITNESSES: RAISIN VALLEY LAND TRUST (*print/type names under signatures) a
 Michigan non-profit corporation _____
 _____ * By: Its: _____ * STATE
 OF MICHIGAN)) COUNTY OF WASHTENAW)

Acknowledged before me on _____, 19__, by
_____, known to me to be the _____ of the
RAISIN VALLEY LAND TRUST, a Michigan non-profit corporation.
_____ Notary Public, Washtenaw County, Michigan. My
commission expires: _____

PREPARED BY, AND WHEN RECORDED RETURN TO: _____,
_____, P.O. Box 419, Manchester, MI 48158