

## GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made by and between \_\_\_\_\_, (hereinafter referred to as the "Grantor") and Wood-Land-Lakes Resource Conservation and Development, Inc., an Indiana non-profit 501(c)(3) corporation organized and existing under the laws of the State of Indiana (hereinafter referred to as "WLL").

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property in \_\_\_\_\_ County, Indiana (described in Exhibit "A" attached hereto and referred to herein as the "Protected Property"); and

WHEREAS, the Protected Property in its present state, consists of \_\_\_\_\_ acres, has significant and substantial value as a natural, aesthetic, scientific, and educational resource by reason of the fact that it contains a combination of wetlands, wildlife habitat ground, woods and agricultural lands; and

WHEREAS, the preservation of open space, including farmland and forest land, where such preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit for the community of \_\_\_\_\_ Township and \_\_\_\_\_ County, Indiana; and

WHEREAS, Grantor desires and intends that the natural elements and the ecological and aesthetic features and values of the Protected Property be preserved and maintained by the preservation of the Protected Property in its current condition and/or by the continuation of patterns of land use on the Protected Property as they have been historically conducted in harmony with the said natural elements and ecological and aesthetic features and values; and

WHEREAS, the said value of the Protected Property was not and is not likely to be adversely affected to any substantial extent by the continued maintenance of such structures and facilities as presently exist, or by the future construction, repair, replacement or maintenance of such additional structures or facilities as may be specifically permitted herein; and

WHEREAS, WLL is a non-profit organization which has as one of its purposes and goals to assist in the preservation and conservation of natural areas and systems for aesthetic, scientific, charitable, and educational purposes; and

WHEREAS, WLL is an organization qualified to acquire and hold conservation easements under the provisions of Section 170(h)(3) of the Internal Revenue Code and the regulations promulgated thereunder and under the provisions of the laws of the State of Indiana; and

WHEREAS, Grantor and WLL both desire, intend and have the common purpose of conserving and preserving in perpetuity the Protected Property as the preservation of open space, including farmland and forest land, as that phrase is used in Section 170(h)(4)(A)(iii) of the Internal Revenue Code and in the regulations promulgated thereunder, by placing restrictions upon the use of the Protected Property and by transferring from Grantor to WLL through the creation of a conservation easement on, over and across the Protected Property affirmative rights to ensure the preservation of the natural elements and values of the Protected Property; and

WHEREAS, the primary purpose of this Conservation Easement is to enable the Protected Property to remain in agricultural use by preserving and protecting its agricultural soils, agricultural viability and productivity; and

WHEREAS, the terms and phrases “natural, ecological, scientific, aesthetic and educational value,” “natural elements,” “natural characteristics” and “ecological and aesthetic features,” as used herein shall mean, without limiting the generality of those terms, the physical condition of the Protected Property at the time of this grant, as evidenced by reports, photographs, maps and scientific documentation possessed by Grantor and/or WLL (now or in the future) which may include, but are not limited to, the following:

- a) the appropriate maps from the United States Geological Survey, showing surface characteristics, property lines and other contiguous or nearby protected areas;
- b) a map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);
- c) an aerial photograph of the Protected Property at an appropriate scale taken as close as possible to the date the donation is made;
- d) on-site photographs taken at appropriate locations on the Protected Property; and
- e) an easement documentation report which shall include, among other things, an acknowledgment by Grantor and WLL of conditions, background information, legal information, ecological features information and land-use and man-made features information with respect to the Protected Property.

NOW, THEREFORE, Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions herein contained and as an absolute and unconditional gift does hereby give, grant, bargain, and convey unto WLL, its successors and assigns, forever a Conservation Easement in perpetuity, defined by the Uniform Conservation Easement Act of Indiana Code IC 32-23-5, over the Protected Property consisting of the following:

- a) The right of WLL to enforce by proceedings at law or in equity the covenants hereinafter set forth. This right shall include, but shall not be limited to, the right to bring an action in any court of competent jurisdiction to enforce the terms of this agreement, to require the restoration of the Protected Property to its condition at the time of this grant, to enjoin non-compliance by appropriate injunctive relief, and/or to recover damages arising from non-compliance. WLL does not waive or forfeit the right to take action as may be necessary to ensure compliance with the covenants and purposes of this grant by any prior failure to act. Nothing herein shall be construed to entitle WLL to institute any enforcement proceeding against Grantor for any changes to the Protected Property due to causes beyond Grantor's control such as changes caused by fire, flood, storm, civil or military authorities undertaking emergency action or unauthorized wrongful acts of third parties.
- b) The right of WLL to enter the Protected Property, in a reasonable manner and at reasonable times, but always upon prior notice to Grantor, for the purpose of inspecting the Protected Property to determine if Grantor, Grantor's heirs, successors and assigns are complying with the covenants and purposes of this grant, and further, but only with prior permission of Grantor, to observe and study nature and to make scientific and educational observations and studies in such a manner as will not disturb the quiet enjoyment of the Protected Property by Grantor.

AND IN FURTHERANCE of the foregoing affirmative rights, Grantor makes the following covenants on behalf of Grantor's heirs, successors and assigns, which covenants shall run with and bind the Protected Property in perpetuity:

## **ARTICLE 2. COVENANTS**

Section 2.1. Uses. There shall be no commercial or industrial activity undertaken or allowed; nor shall any right of passage across or upon the Protected Property be allowed or granted if that right of passage is used in conjunction with commercial or industrial activity.

Section 2.2. Buildings. Except as provided in Section 2.8, there shall be no construction or placing of buildings, mobile homes, advertising signs, billboards, other advertising material, or other structures on the Protected Property. However, construction or placing of buildings or structures necessary for agricultural production shall be allowed. These may include, but shall not be limited to, buildings, irrigation equipment, grain bins, and other forms of buildings or structures commonly used in agricultural production.

Section 2.3. Topography. There shall be no dredging or filling. There shall be no excavating, mining or drilling, or removal of any topsoil, sand, gravel, rock, minerals, or other materials. There shall be no change in the topography of the land in any manner.

Section 2.4. Dumping. There shall be no dumping of trash, ashes, garbage or other unsightly or offensive material, especially including any hazardous waste or toxic waste.

Section 2.5. Water. Unless approved by WLL, there shall be no further manipulation or alteration of natural water courses, lakeshores, marshes, or other bodies of water. Activities or uses of the Protected Property detrimental to water purity or quality are prohibited. This Section shall not interfere with Grantor's right to repair, maintain, install or replace tiling where such tiling is only being utilized for farming activities. All tiling related activities must meet all federal, state, and local requirements, including, but not limited to, requirements for eligibility for USDA programs.

Section 2.6. Vehicles. There shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other types of motorized vehicles except in conjunction with authorized activities as set out herein.

Section 2.7. Vegetation and Harvesting of Timber. Except in conjunction with authorized activities and except in areas immediately adjacent to authorized structures, there shall be no removal, destruction, cutting, mowing or alteration of any vegetation or change in the natural habitat in any manner. Unless an otherwise permitted use, there shall be no introduction or planting of non-native species. There shall be no harvesting of timber, unless naturally fallen timber is removed for firewood, without the prior written consent of WLL.

Section 2.8. Signs. Signs may be displayed to state or mark:

- \* the name and address of the Protected 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 Protected Property
- \* trails

In addition, WLL has the right to place signs on the Protected Property which identify the land as being protected by this Conservation Easement. The number, size and location of any signs are subject to Grantor's approval.

Section 2.9. Subdivision. Subdivision of the Protected Property, recording of a subdivision plan, partition of the Protected Property, or any other attempt to divide the Protected Property into additional legal parcels without the prior written consent of WLL is prohibited.

### **ARTICLE 3. RESERVED RIGHTS AND PERMITTED USES**

Except as expressly set forth herein, Grantor reserves for Grantor's heirs, successors, and assigns all rights as owner of the Protected Property, including the right to use the property for all purposes not inconsistent with this grant and including the following specific rights, which are hereby expressly reserved by Grantor to and for Grantor's heirs, successors and assigns:

Section 3.1. *To remove noxious weeds from the Protected Property.*

Section 3.2. *To plant trees and other vegetation on the Protected Property.*

Section 3.3. *To mow the open fields and manage wildlife, wetlands and ponds on the Protected Property.*

Section 3.4. *To remove fallen or wind thrown trees and trees dangerously close to structures, driveways, or paths on the Protected Property.*

Section 3.5. *To maintain, repair, replace, add and reposition fences on the Protected Property.*

Section 3.6. *To engage in activities that restores the biological and ecological integrity of the Protected Property.*

Section 3.7. *Grantee shall provide Grantor with prior notification of its intention to access the Protected Property for purposes of annual inspection and Grantor shall provide access to the Protected Property for such inspections.*

#### **ARTICLE 4. GENERAL PROVISIONS RELATING TO GRANTOR'S RIGHTS**

Section 4.1. Nothing herein shall be construed as affording the public access to any portion of the land subject to this Conservation Easement.

Section 4.2. Nothing herein shall be construed as limiting the right of Grantor to sell, give, or otherwise convey the Protected Property or any portion or portions of the Protected Property, provided that any conveyance is subject to the terms of this easement.

Section 4.3. Grantor hereby agrees to notify WLL in writing before exercising any reserved right which may have adverse impact on the natural characteristics or ecological and aesthetic features of the Protected Property and shall provide WLL with photographs of any new or substantially altered structures following completion of the work.

Section 4.4. This Conservation Easement shall run with and burden the Protected Property in perpetuity and shall bind Grantor and Grantor's heirs, successors, and assigns. This Conservation Easement is fully valid and enforceable by any assignee of WLL, whether assigned in whole or in part.

Section 4.5. Grantor hereby warrants and represents that Grantor is seized of the Protected Property in fee simple and has good right to grant and convey this Conservation Easement, that the Protected Property is free and clear of any and all encumbrances, and that WLL and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

Section 4.6. Grantor agrees to pay any and all real property taxes and assessments, levied by competent authority on the Protected Property, and to relieve WLL from any responsibility for maintaining the Protected Property.

Section 4.7. In the event any real estate taxes or assessments are levied against WLL as a result of this easement for which an exemption cannot be obtained, said Grantor agrees to pay said taxes in the name of WLL.

Section 4.8. Grantor agrees that the terms, conditions, restrictions, and purposes of this easement will be inserted in any subsequent conveyance of any interest in said property, and that Grantor will notify WLL of any such conveyance in writing by certified mail within fifteen days after the conveyance.

Section 4.9. Grantor agrees that this donation of a perpetual Conservation Easement gives rise to a property right, immediately vested in WLL, with a fair market value that is at least equal to the proportionate value that the Conservation Easement, at the time of this gift, bears to the value of the Property as a whole at this time. Grantor agrees that this value is \_\_\_\_\_ percent (\_\_\_\_%) of the total value of the Property. For purposes of these provisions, that proportionate value of the Conservation Easement shall remain constant. Accordingly, if a change in conditions gives rise to that extinguishment of the restrictions of this Conservation Easement, as set forth above, WLL, on a subsequent sale, exchange, or taking of the Protected Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement, unless state law provides that Grantor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restrictions.

Section 4.10. The terms, "Grantor" and "WLL" as used herein shall be deemed to include, respectively, Grantor and Grantor's heirs, successors, personal representatives, executors and assigns, and WLL and its successors and assigns.

## **ARTICLE 5. WOOD-LAND-LAKES' REMEDIES**

This section addresses cumulative remedies of WLL and its successors and limitations on these remedies.

Section 5.1. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of WLL's right to enforce the terms of this Conservation Easement.

Section 5.2. Acts Beyond Grantor's Control. WLL may not bring an action against Grantor for modifications to the Protected Property resulting from causes beyond Grantor's control. Examples are unintentional fires, storms, natural earth movement, trespassers or even a Grantor's well-intentioned actions in response to an emergency resulting in changes to the Protected Property. Grantor has no responsibility under this Conservation Easement for such unintended modifications. WLL may, however, bring an action against another party for modifications that impair the Conservation Values identified herein above in this Conservation Easement.

Section 5.3. Notice and Demand. If WLL determines that Grantor is in violation of this Conservation Easement, or that a violation is threatened, WLL may provide written notice to Grantor 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 Protected Property.

Section 5.4. Failure to Act. If, for a thirty (30) day period after the date of the written notice, Grantor continues violating this Conservation Easement, or if Grantor does not abate the violation and implement corrective measures requested by WLL, WLL may bring an action in law or in equity to enforce the terms of the Conservation Easement. WLL 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 Protected Property. If the court determines that Grantor has failed to comply with this Conservation Easement, then Grantor also agrees to reimburse all reasonable costs and attorney fees incurred by WLL compelling such compliance.

Section 5.5. Unreasonable Compliance. If WLL initiates litigation against Grantor 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 WLL to reimburse Grantor's reasonable costs and attorney fees in defending the action.

Section 5.6. Grantor's Absence. If WLL determines that this Conservation Easement is, or is expected to be, violated, WLL will make good-faith efforts to notify Grantor. If, through reasonable efforts, Grantor cannot be notified, and if WLL determines that circumstances justify prompt action to mitigate or prevent impairment of the conservation values, then WLL may pursue its lawful remedies without prior notice and without awaiting Grantor's opportunity to cure. Grantor agrees to reimburse all costs associated with this effort.

Section 5.7. Actual or Threatened Non-Compliance. Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. WLL is entitled to invoke the equitable jurisdiction of the court to enforce this Conservation Easement.

Section 5.8. Cumulative Remedies. The preceding remedies of WLL are cumulative. Any, or all, of the remedies may be invoked by WLL if there is an actual or threatened violation of this Conservation Easement.

Section 5.9. Waiver. The enforcement of the terms of this Conservation Easement is subject to WLL's discretion. A decision by WLL not to exercise its rights of enforcement in the event of a breach of a term of this Conservation Easement shall not constitute a waiver by WLL of such term, any subsequent breach of the same or any other term, of any of WLL's rights under this Conservation Easement. The delay or omission by WLL to discover a breach by Grantor or to exercise a right of enforcement as to such breach shall not impair or waive its rights of enforcement against Grantor.

## ARTICLE 6. ADDITIONAL PROVISIONS

Section 6.1. Right to Convey. Grantor retains the right to sell, mortgage, bequeath or donate the Protected Property. Any conveyance will remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder will be bound by the terms and conditions of this Conservation Easement.

Section 6.2. Ownership Costs and Liabilities. In accepting this Conservation Easement, WLL shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Protected Property. WLL 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 Protected Property or otherwise. Grantor agrees to defend WLL against such claims and to indemnify WLL against all costs and liabilities relating to such claims during the tenure of Grantor's ownership of the Protected Property. Grantor is responsible for posting the Protected Property's boundaries and for discouraging any form of trespass that may occur.

Section 6.3. Cessation of Existence. If WLL 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 WLL is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity. This said entity shall be a "qualified organization" for the purposes of Internal Revenue Code Section 170(h)(3). In addition, in the event a successor entity is required, WLL's rights and responsibilities shall be assigned to a successor entity having similar conservation purposes to which such rights may be awarded under the cy pres doctrine.

Section 6.4. 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. WLL will then be entitled to compensation in accordance with applicable laws and in proportion to WLL's interest in the Protected Property at the effective date of this Conservation Easement.
- b) Eminent Domain. If the Protected Property is taken, in whole or in part, by power of eminent domain, then WLL will be entitled to compensation in accordance with applicable laws and in proportion to WLL's interest in the property at the effective date of this Conservation Easement.

Section 6.5. 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 herein, 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.

Section 6.6. Advice of Counsel. Grantor, prior to the execution of this Agreement, was advised to seek the advice and counsel of an independent attorney licensed to practice law in Indiana.

Section 6.7. Severability. If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.

Section 6.8. Successors. This Conservation Easement is binding upon, and inures to the benefit of, Grantor's and WLL's successors in interest. All subsequent owners of the Protected Property are bound to all provisions of this Conservation Easement to the same extent as Grantor.

Section 6.9. 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 Protected Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.

Section 6.10. Amendment. The parties may amend this Conservation Easement provided that such amendment (1) shall not impair or threaten the Conservation Values of the Protected Property; (2) shall not affect the perpetual duration of this Conservation Easement; (3) is approved by WLL pursuant to its own conservation easement policies; and (4) shall not affect the qualifications of this Conservation Easement under Indiana Law or the status of WLL under Section 170(h) of the Internal Revenue Code.

Section 6.11. Indiana Law. This Conservation Easement shall be construed in accordance with the laws of the State of Indiana.

Section 6.12. Entire Agreement. This Conservation Easement, together with any additional reports and Exhibits attached hereto or referenced herein, sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands under seal on the days and year set forth below.

GRANTOR

\_\_\_\_\_  
Landowner

\_\_\_\_\_  
Landowner

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, husband and wife, who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

A Resident of \_\_\_\_\_ County, Indiana

My Commission Expires:

\_\_\_\_\_

**ACCEPTANCE**

The foregoing Conservation Easement is hereby duly accepted by Wood-Land-Lakes Resource Conservation and Development, Inc. this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTEE

Wood-Land-Lakes Resource Conservation and Development, Inc.

\_\_\_\_\_  
signature

\_\_\_\_\_  
printed name

\_\_\_\_\_  
title

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Wood-Land-Lakes Resource Conservation and Development, Inc., who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

A Resident of \_\_\_\_\_ County, Indiana

My Commission Expires:  
  
\_\_\_\_\_

**ACCEPTANCE**

The foregoing Conservation Easement is hereby duly accepted by Wood-Land-Lakes Resource Conservation and Development, Inc. this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTEE

Wood-Land-Lakes Resource Conservation and Development, Inc.

\_\_\_\_\_  
signature

\_\_\_\_\_  
printed name

\_\_\_\_\_  
title

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Wood-Land-Lakes Resource Conservation and Development, Inc., who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

A Resident of \_\_\_\_\_ County, Indiana

My Commission Expires:  
  
\_\_\_\_\_

**Exhibit A**