

## CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED made this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_ whose address is \_\_\_\_\_, collectively the "Grantor," grants and conveys with warranty covenants to the City of Ann Arbor, a Michigan municipal corporation, with its address at 100 N. Fifth Avenue, Ann Arbor, Michigan 48104, "City," and to the United States of America, "United States," acting by and through the United States Department of Agriculture, Natural Resources Conservation Service, "NRCS," acting on behalf of the Commodity Credit Corporation, a perpetual Conservation Easement to run with an constitute a servitude upon the land for the preservation of the agricultural values over, under, upon and across \_\_\_ acres of the following described premises hereinafter referred to as the "Protected Property," situated in \_\_\_\_\_ Township, County of Washtenaw, and State of Michigan. The City and the United States listed above are hereinafter collectively referred to as the "Grantees," except when otherwise specified as the "City or the "United States." The Grantor and Grantees are hereinafter collectively referred to as "the Parties."

Protected Property Legal Description: See Exhibit A attached hereto.

Tax Parcel Code Numbers: \_\_\_\_\_

Conservation Values. The Protected Property consists of primarily undeveloped agricultural and open space lands comprised of \_\_\_% of prime farmland soil as classified by the NRCS. The specific Conservation Values of the Protected Property are included in an inventory of relevant features of the Protected Property ("Baseline Document") dated \_\_\_\_\_, 2009, on file with the City Clerk and the NRCS which is incorporated herein by this reference as Exhibit B. The Baseline Document consists of \_\_\_ pages which includes maps, photographs and other documentation that the Grantor and the City agree provides an accurate representation of the natural characteristics, ecological features and physical and man-made conditions of the Protected Property as of the date of this Conservation Easement Deed and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Easement Deed. The Baseline Document was prepared by the City or its agents and signed and acknowledged by the Grantor and an authorized representative of the City, establishing the condition of the Protected Property as of the date of this Conservation Easement Deed. The Baseline Document will be amended and the amendment recorded when a building permit is required on the Protected Property or a wetland forms and is not farmed for five (5) consecutive years. The City may use the baseline documentation in enforcing provisions of this Conservation Easement Deed, but is not limited to the use of the Baseline Document to show a change of conditions.

For good and valuable consideration in the amount of \_\_\_\_\_ and no/100 dollars \$\_\_\_\_\_ ) the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

This Conservation Easement is subject to the following terms and conditions:

This Conservation Easement is made pursuant to Section 36111(b) of the Natural Resources and Environmental Protection Act, (MCL 324.3611(l)(b); MSA 13A.3611(l)(b)); the City of Ann Arbor Chapter 42 Open Space and Parkland Preservation Ordinance. In addition, \_\_\_\_\_ and no/100 dollars (\$\_\_\_\_\_) of the funds used to purchase this Conservation Easement were provided by the Farm and Ranch Lands Protection Program ("FRPP"), 16 U.S.C. 3838h and 3838i, entitling the United States to the rights set forth herein. The purpose of FRPP is to purchase conservation easements to protect prime, unique and other productive soils from conversion to nonagricultural uses. FRPP is administered by the United States Department of Agriculture, Natural Resources Conservation Service, on behalf of the Commodity Credit Corporation.

The parties hereto agree that the same rights that are conveyed to the City are conveyed to the United States. The parties further agree that the City is the primary steward and enforcer of this Conservation Easement unless and until the United States exercises its rights pursuant to Section 2, below. The term "City" as used below shall be interpreted to mean the "United States" if and when the United States exercises its rights, unless the context specifically indicates otherwise.

1. This Conservation Easement Deed is made for the Purpose ("Purpose") of preserving the Protected Property's Conservation Values, including the protection of the agricultural land, open space and prime soils, by preventing any use that would significantly impair or interfere with the Conservation Values as established or defined by the Baseline Document.
2. Rights of the United States of America - Under this Conservation Easement Deed, the same rights are granted to the United States that are granted to the City of Ann Arbor. However, the Secretary of the United States Department of Agriculture (the "Secretary"), on behalf of the United States, will only exercise these rights under the following circumstances: In the event that the City of Ann Arbor fails to enforce any of the terms of this Conservation Easement Deed or assigns its enforcement rights under Section 6, below, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement Deed through any and all authorities available under Federal or State law. In the event that the City of Ann Arbor attempts to terminate, transfer or otherwise divest itself of any rights, title, or interests in this Conservation Easement without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in this Conservation Easement shall become vested solely

in the United States of America. In the event the United States declines to exercise its rights and option described in this Section, the Township shall have the contingent rights described in Section 30 below.

3. Restrictions. The Protected Property is subject to the following restrictions:

- a. Dividing or Subdividing the Protected Property: The Grantor shall not divide or subdivide the Protected Property. The Grantor further covenants and agrees not to undertake any action that would have the effect of subdividing or conveying any part of the Protected Property.
- b. Commercial, Industrial or other Activities: Commercial or industrial activity is prohibited except for those activities specifically permitted in Section 4 below. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or helicopters pads, motocross biking, or any other improvement or activity inconsistent with current or future agricultural production be permitted on the Protected Property.
- c. Installation of New Utilities: Installation of new utilities on the Protected Property is prohibited, except that the Grantor may install utilities necessary to carry out permitted uses of the Protected Property as long as such installation is consistent with the Purpose of this Conservation Easement Deed and is done in such a manner as to minimize, to the greatest extent possible, impact on prime soils. Under no circumstance may the topography be altered permanently. All earth movement must occur within a specific time frame, as determined by the City, and the topography must be returned to pre-existing conditions in accordance with the Baseline Document within one (1) year from the time earth movement activities cease. Future utility easements shall be subordinate to this Conservation Easement Deed. Prior to granting such an easement, the Grantor shall notify and obtain written approval from the City and the United States of proposed easement (s) via first class mail. Any easement arising after the date of this Conservation Easement Deed will be subordinated, by operation of law or otherwise to this Conservation Easement Deed.
- d. Construction of New Structures: The construction or placement of buildings, roads, driveways, patios, runways, athletic fields, motor cross tracks, helicopter pads, ATV tracks, camping accommodations, mobile homes, cell phone towers, or commercial wind turbines or any other structures or paved surfaces on the Protected Property are prohibited, except for structures specifically permitted in Section 4 of this Conservation Easement Deed. This Section does not prohibit the Grantor from installing and maintaining wind turbines or power generation for use by farm operations on the Protected Property.

- e. Roads: No new roads may be constructed on the Protected Property, and no existing roads may be paved in impervious surface, except as provided in Section 4.
  - f. Land Surface Alteration: Any alteration of the surface of the land is prohibited except as may be required for permitted agricultural and construction activities described herein. This Section shall not prohibit the Grantor from maintaining existing farm lanes or from making landscape alterations consistent with existing agricultural practices, such as, drain tile to improve agricultural drainage, burying a power line to provide power to a farm pond providing irrigation or regrading to maintain farm irrigation ponds. All activities must be consistent with State and local laws, the Conservation Plan, federal laws including highly erodible land (HEL) and wetland compliance provisions of the Food Security Act of 1985, as amended.
  - g. Mining or Resource Extraction: Mining or extraction of soil, sand, gravel, oil, natural gas, or other mineral is prohibited except that the Grantor may extract soil, sand and gravel solely for a permitted use on the Protected Property in a manner that is minimal in scope and impact, consistent with the conservation purpose of this Conservation Easement, and not exceeding one (1) acre in size, except as defined in Section 4(i), below. Any such alteration must be returned to as near its pre-existing condition as possible, as documented in the Baseline Document, within one (1) year from the time activities cease.
  - h. Dumping or Burning of Waste: The dumping or accumulation of waste or other unsightly or offensive material is prohibited except that the composting, burning, or use of plant and animal waste produced on the Protected Property is permitted provided that it is done in accordance with all applicable federal, state, and local laws and regulations and sound agricultural practices. The burn area is limited for personal use.
  - i. Motorized Vehicles: The use of motorized vehicles on the Protected Property is prohibited, except as is reasonably necessary to carry out the permitted agricultural, recreational, and monitoring activities permitted, or as otherwise stated in Section 4(b) of this Conservation Easement Deed.
4. Permitted Use. The Grantor retains all ownership and possession rights, which are consistent with the Purpose of this Conservation Easement Deed and not expressly restricted by this Conservation Easement Deed. In particular, the following rights are reserved to the Grantor subject to the impervious surface limitation set forth below:
- a. Agricultural Use: The Grantor retains the right to continue agricultural use. For Purpose of this Conservation Easement Deed, "agricultural use"

means land devoted to the production of plants and animals useful to humans, including forages, grains, feed crops, and field crops; horses; dairy and dairy products; poultry and poultry products; livestock including the breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees, and other similar uses and activities. In addition, storage, retail or wholesale marketing or processing of agricultural products is permitted on the Protected Property if more than fifty percent (50%) of the stored, processed, or merchandised products are produced by the farm operator on the Protected Property.

- b. **Recreational and Educational Activity:** Non-commercial and undeveloped recreational and educational activity is permitted as long as such activity is consistent with the Purpose of the Conservation Easement and does not adversely impact the soils and/or agricultural operations on the Protected Property. Personal recreation and educational improvements may only be built within the Farmstead Complex, as identified in Section 4(i). Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or helicopters pads, motocross biking, or any other improvement or activity inconsistent with current or future agricultural production be permitted on the Protected Property.
- c. **Construction of Fences and Seasonal Structures:** The construction of fences as is customary for an agricultural operation, and the construction of seasonal, de minimis structures such as duck or deer blinds.
- d. **Construction and Maintenance of Roads:** Construction and maintenance of unpaved, pervious roads necessary for agricultural operations on the Protected Property is permitted provided the impact to prime soils is minimized. Existing roads, as identified in the Baseline Document, may be maintained and repaired in their current state and within their current footprint.
- e. **Impervious Surfaces:** The maximum allowable impervious surface coverage shall not exceed two (2%) percent of the total area of the Protected Property. The total impervious surface coverage shall include all existing and future structures, driveways, roads (including, but not limited to concrete, asphalt, blacktop and chip and seal), parking facilities and other paved or impervious surfaces, as well as any temporary structures even if the soil surface is not disturbed, including, but not limited to, plastic greenhouses and farm structures, with or without a floor. Any such structure, facility or impervious cover shall be subject to this impervious surface limitation, unless said structure, facility or impervious surface cover is specifically identified in the NRCS Conservation Plan and is an approved conservation practice, and/or is necessary to be in

compliance with the Conservation Plan as determined solely by the NRCS.

- f. Right to Convey: The Grantor retains the right to sell, mortgage, bequeath, or donate the Protected Property. Any conveyance shall indicate the existence of and will be subordinate to and subject to the terms of this Conservation Easement Deed and the subsequent owner will be bound by all obligations in this Conservation Easement Deed.
- g. Right to Conduct Forestry Activities: The Grantor retains the right to conduct forestry activities for domestic and commercial purposes. Domestic forestry includes the cutting of firewood, blowdowns, dead and diseased trees, the selective removal of trees and hedge rows to improve the farming operation and trees that pose threats to persons or property. Timber management shall not include provisions allowing clear cutting or even-aged management. Commercial forestry activities shall be in accordance with a Forest Management Plan prepared by or in consultation with a registered professional forester. The goals of such commercial timbering practices or plans shall include the preservation of the conservation and scenic characteristics of the woodlands and wetlands and the maintenance of a healthy forest, and shall assure sustainable forest productivity in a manner not inconsistent with the Purpose of this Conservation Easement Deed. For purposes of this subsection, "commercial timbering" shall mean any cutting of trees for sale or use off the Protected Property other than by the Grantor for the Grantor's personal, non-commercial use. Such activities shall not materially impair the Conservation Values of the Protected Property.
- h. Irrigation Ponds; Irrigation Systems: Irrigation ponds may be established in accordance with the Conservation Plan. Any irrigation ponds, once established, may be cleaned and the spoils placed on two (2) acres of land with written approval from the City prior to implementation and cleaning and will be conducted in accordance with federal, state and local laws and the Conservation Plan. The spoils are to be deposited on agricultural fields and planted, and will be leveled and restored to as near the original topography as possible within eighteen (18) months. Irrigation systems, including central pivot irrigation systems and related pumping equipment may be established and maintained on the Protected Property for agricultural and farming purposes.
- i. Right to Maintain and Replace Structures: The Grantor retains the right to build, add on to, maintain, renovate, or replace any agricultural structures within the Farmstead Complex, as identified in the Baseline Document or any amendment thereto, consistent with the terms of this Conservation Easement Deed, as required for farming operations, provided the construction, repair and replacement of such new and existing buildings

and impervious access roads does not exceed two percent (\_\_\_\_\_ sq feet or \_\_\_ acres) of the total Conservation Easement area. Any addition of non-residential structures shall be for permitted uses on the Protected Property and may not substantially alter the unique agricultural value of the Protected Property. Structures built must be in conformance with all applicable federal, state and local laws, ordinances and regulations. The Grantor shall provide notification to the City of proposed buildings as provided in Section 5(a), below. No notice is required for construction of fences and seasonal structures such as duck or deer blinds.

5. Notice of the Intention to Undertake Certain Permitted Actions: The purpose of requiring the Grantor to notify the City prior to undertaking certain permitted activities is to afford the City and the United States an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Conservation Easement Deed.
  - a. Notice and Approval Required Regarding Construction and Placement of Buildings. The Grantor may construct buildings in accordance with Section 4(i). The City shall be notified by first class mail, within sixty (60) days prior to the construction of buildings. The City shall grant or withhold its approval in writing within sixty (60) days of receipt of the Grantor's written request thereof. The City's approval may be withheld only upon a reasonable determination by the City that the action as proposed would be inconsistent with the terms of this Conservation Easement Deed.
  - b. Notice and Approval Required Regarding Land Modification. The Grantor may modify the land in accordance with the provision of Section 4(i). The City shall be notified by first class mail, within sixty (60) days prior to the modification of the land. The City shall grant or withhold its approval in writing within sixty (60) days of receipt of the Grantor's written request thereof. The City's approval may be withheld only upon a reasonable determination of the City that the action as proposed would be inconsistent with the provisions of Sections 3(f) and 4(h) and the purpose of this Conservation Easement Deed.
6. Rights of the City. The Grantor confers the following rights upon the City to perpetually maintain the Conservation Values of the Protected Property:
  - a. Right to Enter: The City has the right to enter the Protected Property to monitor or to enforce compliance with this Conservation Easement Deed by the Grantor, the Grantor's successors, heirs or assigns. The City will notify the Grantor by personal contact, and failing that, by first class mail prior to entry for monitoring purposes. No notification to enter the Protected Property is required when emergency circumstances or prevention of a threatened breach of this Conservation Easement Deed require immediate entry. The City may not, however, unreasonably

interfere with the Grantor's use and quiet enjoyment of the Protected Property. The City has no right to permit others to enter the Protected Property for purposes unrelated to the Conservation Easement. The general public is not granted access to the Protected Property under this Conservation Easement Deed.

- b. Right to Enforce: The City has the right to enforce by proceedings at law or in equity the above covenants, including but not limited to, the right to require restoration of the Protected Property to as near the condition at the time of the grant of this Conservation Easement, as disclosed in the Baseline Document, as possible.
  - c. The same rights enumerated in Section 6(a) and (b) granted to the City are granted to the United States in accordance with the terms of Section 2 above.
7. Remedies of the City. The City shall have the discretion to enforce, forbear or delay exercising its rights under this Conservation Easement Deed. A delay in enforcement shall not be construed as a waiver of the City's right to eventually enforce the terms of this Conservation Easement Deed, nor can such delay be used by the Grantor, the Grantor's successors, heirs or assigns as an equitable defense in estoppel or laches. If the City determines that the Grantor is in violation of the Conservation Easement Deed, or that a violation is threatened, the City will provide written notice, via registered mail to the Grantor. The written notice will identify the violation and request corrective action to cure the violation or to restore the Protected Property. If, for a twenty-eight (28) day period after written notice, the Grantor continues violating this Conservation Easement Deed, or if the Grantor does not abate the violation and implement corrective measures requested by the City, the City may bring an action in law or in equity to enforce the terms of this Conservation Easement Deed. The City shall be entitled to enjoin the violation through injunctive relief, or to seek specific performance, declaratory relief, restitution, reimbursement of expenses, or an order compelling restoration of the Protected Property. If the court determines that the Grantor has failed to comply with this Conservation Easement Deed, then the Grantor also agrees to reimburse all costs and attorney fees incurred by the City. If the City determines that this Conservation Easement Deed is violated or is expected to be violated, the City will make good faith efforts to notify the Grantor. If, through reasonable efforts, the Grantor cannot be notified, or if the City determines that circumstances justify prompt action to mitigate or prevent impairment of the agricultural values, then the City may pursue its lawful remedies without prior notice and without awaiting the Grantor's opportunity to cure. The Grantor agrees to reimburse all costs associated with this effort. The preceding remedies of the City are cumulative. Any or all of the remedies may be invoked by the City if there is an actual or threatened violation of this Conservation Easement Deed.

8. Generally Accepted Agricultural Management Practices. The Grantor shall conduct all agricultural operations on the Protected Property in a manner consistent with the most current Michigan Department of Agriculture's Generally Accepted Management Practices (GAAMPs). If applicable Michigan's GAAMPs conflict with NRCS Standards and Specifications or NRCS Conservation Planning Policy and the Conservation Plan, then NRCS Standards and Specifications, NRCS Conservation Planning Policy and the Conservation Plan will be used by the Grantor.
  
10. Conservation Plan. As required by Section 12381 of the Food Security Act of 1985, as amended, the Grantor shall conduct all agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared in consultation with NRCS and approved by the Conservation District. This Conservation Plan shall be developed using the standards and specifications of the current NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect as of the date of this Conservation Easement Deed. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the Conservation Plan.

In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve (12) months, to take corrective action. If the Grantor does not comply with the Conservation Plan, NRCS will inform the City of the Grantor's non-compliance. The City shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of noncompliance with the Conservation Plan (b) NRCS has worked with the Grantor and the City to correct such noncompliance, and (c) the Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Conservation Easement Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor and the City to develop and implement a revised Conservation Plan. The provisions of this Section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

11. Acts Beyond the Grantor's Control. The Grantor shall not be responsible for changes to the Protected Property that are caused solely by weather, natural earth movement, or other similar acts that are completely beyond the Grantor's control as determined by the City.

12. Title Warranties. The Grantor warrants that the Grantor has good title to the Protected Property; that the Grantor has the right to convey this Conservation Easement; and that the Protected Property is free and clear of any encumbrances. The Grantor agrees not to place or to permit any third party to place any additional liens, easements, restrictions, claims or encumbrances against the Protected Property following the date of this Conservation Easement Deed that would adversely affect the rights granted under this Conservation Easement Deed.
13. Environmental Warranties. The Grantor warrants that it has no actual knowledge of its failure to comply with, and warrants that it shall remain in compliance with, all applicable Environmental Laws. The Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property.

The Grantor warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property. Moreover, the Grantor hereby promises to defend and indemnify the United States and the City against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws, by the Grantor or with regard to any presently known releases by any other prior owner of the Protected Property. The Grantor's indemnification obligation shall not be affected by any authorizations provided by the City to the Grantor with respect to the Protected Property or any restoration activities carried out by the City on the Protected Property; provided, however, that the City shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by the City.

"Environmental Law" or "Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

Hazardous Materials means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely

hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

14. **Liability and Indemnification.** The Grantor shall indemnify, defend and hold harmless the City and the United States from any liability resulting from the Grantor's negligent acts, including but not limited to, the release, use or deposit of any hazardous substance on the Protected Property. The Grantor acknowledges and agrees that the United States, and the City, its officials, employees and agents, shall not be liable for any injury that may occur to any person, or for any damage that may occur to any property, as a result of any act, decision, or other consequence or occurrence arising out of the acts or omissions of the Grantor, or any person or entity acting on behalf of the Grantor, other than the City, based on the existence of the application process preliminary to or the acquisition of development rights or conservation easements.
15. **Grantor's Ownership Costs and Liabilities.** The Grantor or the Grantor's successors, heirs or assigns retain ownership with full rights to control and manage the Protected Property and shall bear all costs and liabilities of any kind related to Protected Property's ownership, operation, maintenance, and taxes, including maintaining adequate comprehensive general liability insurance. This Section is intended to ensure that none of the liabilities attendant on land ownership are directly or indirectly transferred to the City or the United States under this Conservation Easement Deed as the City and the United States will have no management responsibilities and will exercise no direct control over any potential hazards on the Protected Property. The Grantor's liabilities under this Section transfer to a new owner upon transfer of the Grantor's interest in the Protected Property.
16. **Transfer of the Protected Property by the Grantor.** The Grantor agrees to incorporate by reference the terms of this Conservation Easement Deed in any deed or other legal instrument by which the Grantor transfers any interest in all or a portion of the Protected Property, including without limitation a leasehold interest for a term greater than one (1) year. All such conveyances are subject to the terms of this Conservation Easement Deed. The Grantor further agrees to give written notice to the City of the transfer of any such interest prior to, at, or at least twenty (20) days following the date of such transfer. The failure of the Grantor to perform any act required by this Section shall not impair the validity of this Conservation Easement Deed or limit its enforceability in any way.
17. **Subordination.** Any mortgage or lien arising after the date of this Conservation Easement Deed shall be subordinated to the terms of this Conservation Easement Deed. Any Farmland Agreements pertaining to the Protected Property arising before or after the date of this Conservation Easement pursuant to the State of Michigan Farmland and Open Space Preservation Program (commonly

known in Michigan as PA116 Agreements), shall be subordinated to this Conservation Easement.

18. Transfer of Conservation Easement by the City. Upon prior written consent from the United States, the City may transfer this Conservation Easement to a public agency or non-profit organization, which, at the time of transfer, is a qualified organization under Section 170(h) or successor provision of the Internal Revenue Code and is an organization which has, among its purposes, the conservation and preservation of land.
19. No Merger. In the event that the City should acquire fee title to the Protected Property, upon approval by the United States, the City shall transfer this Conservation Easement to a qualified state or local government agency or non-profit organization, which at the time of transfer, is a qualified organization under Section 170(h) or successor provision of the Internal Revenue Code.
20. Stewardship; Responsibilities of the City. To facilitate the fulfillment of its responsibilities under this Conservation Easement Deed, the City shall be responsible for the following (which shall include, but not be limited to): a) maintaining baseline information and annual monitoring of the Protected Property in accordance with applicable policies and guidelines, such as the Standards and Practices of the Land Trust Alliance and those required by the United States of America in the Cooperative Agreement by and between the United States of America, Commodity Credit Corporation and City of Ann Arbor dated April 4, 2008; b) responding to the Grantor's requests for approvals required under this Conservation Easement Deed; c) investigating potential Conservation Easement violations and/or encroachments and responding accordingly; d) providing an annual monitoring report to NRCS or its successor agency, indicating compliance with the terms of this Conservation Easement Deed and/or actions necessary for compliance; and e) maintaining a true copy of the Baseline Document.
21. Condemnation. If an act of condemnation of the Property on which this Conservation Easement is held is undertaken by the State of Michigan or any local governmental jurisdiction, immediate notification shall be provided to the United States and the consent of the federal government obtained before such a condemnation action proceeds, as the federal interest in the Property may not be terminated without such consent. With respect to the interest of the United States in the Conservation Easement, such condemnation must, and shall be confirmed by Order of an appropriate Federal District Court. Upon satisfaction of the foregoing and issuance of an appropriate confirmatory order by a Federal District Court, proceeds from the condemnation shall be paid to the United States as provided for below.
22. Limitations on Extinguishment. This Conservation Easement may only be terminated or extinguished by a court of competent jurisdiction upon a request as mutually agreed to by the Grantor, the City, and the United States and after a finding by the court that the conditions or circumstances on or surrounding the

Protected Property have changed to such a degree that it has become impossible to fulfill the Purpose of the Conservation Easement. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and net of any costs or expenses associated with such sale, the Grantor and the City shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by the Grantor after the effective date of this Conservation Easement Deed, which amount is reserved to the Grantor) in accordance with their respective percentage interests in the fair market value of the Protected Property, as such percentage interests are determined under the provisions of Section 23, adjusted, if necessary, to reflect a partial termination or extinguishment of this Conservation Easement. All such proceeds received by the City shall be used by the City in a manner consistent with its respective Purpose.

23. Proceeds for Extinguishment or Condemnation. If the Conservation Easement is condemned, extinguished or terminated in whole or in part, then the City, and the United States are entitled to their proportional share each of \_\_\_\_ percent (\_\_%) of gross sale proceeds or condemnation award, representing the relative value of this Conservation Easement as compared to the fee title as determined as of the date of this Conservation Easement Deed. The proportional share of the City, and the United States are \_\_\_\_\_ percent (\_\_%), and \_\_\_\_\_ (\_\_%), respectively, representing the proportion each party contributed to the purchase price of the Conservation Easement.
24. Amendment. This Conservation Easement Deed may be amended only if the United States, the City, and the Grantor agree to such amendment. Any amendment to this Conservation Easement Deed will not be inconsistent with the Purpose of this Conservation Easement. The terms and conditions of such amendment must be agreed upon by the United States, the City, and the Grantor. Any amendment must be signed by all parties and duly recorded and comply with all applicable laws and regulations. The City must provide to the United States timely notice in writing of any proposed amendment. Approval of the United States, in writing, is required prior to recording any amendment to the Conservation Easement Deed.
25. Choice of Law. This Conservation Easement Deed will be construed in accordance with the laws of the State of Michigan and the United States. This Conservation Easement Deed shall be enforceable against any subsequent owner of the Protected Property despite a lack of privity of estate or contract.
26. Effective Date. The Grantor and the Grantees intend that the restrictions arising hereunder take effect as of the date of this Conservation Easement Deed. The City may re-record this instrument at any time as may be required to preserve its rights in this Conservation Easement.

27. Notices. Any notices, which either the Grantor, the City, the Township or the United States may desire or be required to give to the other party, shall be in writing. The Property Owners collectively referred to as Grantor hereby, as evidenced by the execution of this Conservation Easement Deed, authorize the named Grantor to receive on behalf of all Property Owners any and all notices required herein until and unless any or all of the Property Owners elect to change their address for notice purposes by a notice sent in accordance with the provisions of this Conservation Easement Deed. The following addresses indicate where such notices shall be addressed:

Grantor:

City of Ann Arbor:

Ann Arbor City Clerk  
100 N. Fifth Avenue  
Ann Arbor, MI 48104  
Attn: Community Services Area Administrator

United States:

USDA  
National Resources  
Conservation Service  
3001 Coolidge Road, Suite 250  
East Lansing, Michigan 48823

28. Limitations on Amendment. If circumstances arise under which an amendment to or modification of this Conservation Easement Deed would be appropriate, the Grantor, the City, and the United States may agree to amend this Conservation Easement Deed; provided that no amendment shall be made that will adversely affect the qualification of this Conservation Easement or the status of the City under any applicable laws, including Sections 170(h) and 501(c) (3) of the Internal Revenue Code and the laws of the State of Michigan. Any such amendment shall be consistent with the purpose of this Conservation Easement Deed, shall not affect its perpetual duration, shall not permit residences to be constructed on the Protected Property, and shall not permit any impairment of the significant Conservation Values of the Protected Property. Amendments will be granted only to correct an error, including, but not limited to scrivener's, recording, or typographical errors, or when the amendment benefits the Conservation Values. Any such amendment shall be executed by the Grantor, the City, and the United States and shall be recorded in the office of the Register of Deeds for Washtenaw County, Michigan. Nothing in this Section shall require the Grantor, the City or the United States to agree to any amendment or to consult or negotiate regarding any amendment.

29. Captions. The captions appearing in this Conservation Easement Deed have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they appertain.

SAMPLE

TO HAVE AND TO HOLD the said Conservation Easement hereonto the said City of Ann Arbor and the United States of America and their successors and assigns forever.

IN WITNESS WHEREOF, The Parties have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2009

**GRANTORS**

\_\_\_\_\_/\_\_\_\_\_/09  
GRANTOR

\_\_\_\_\_/\_\_\_\_\_/09  
GRANTOR

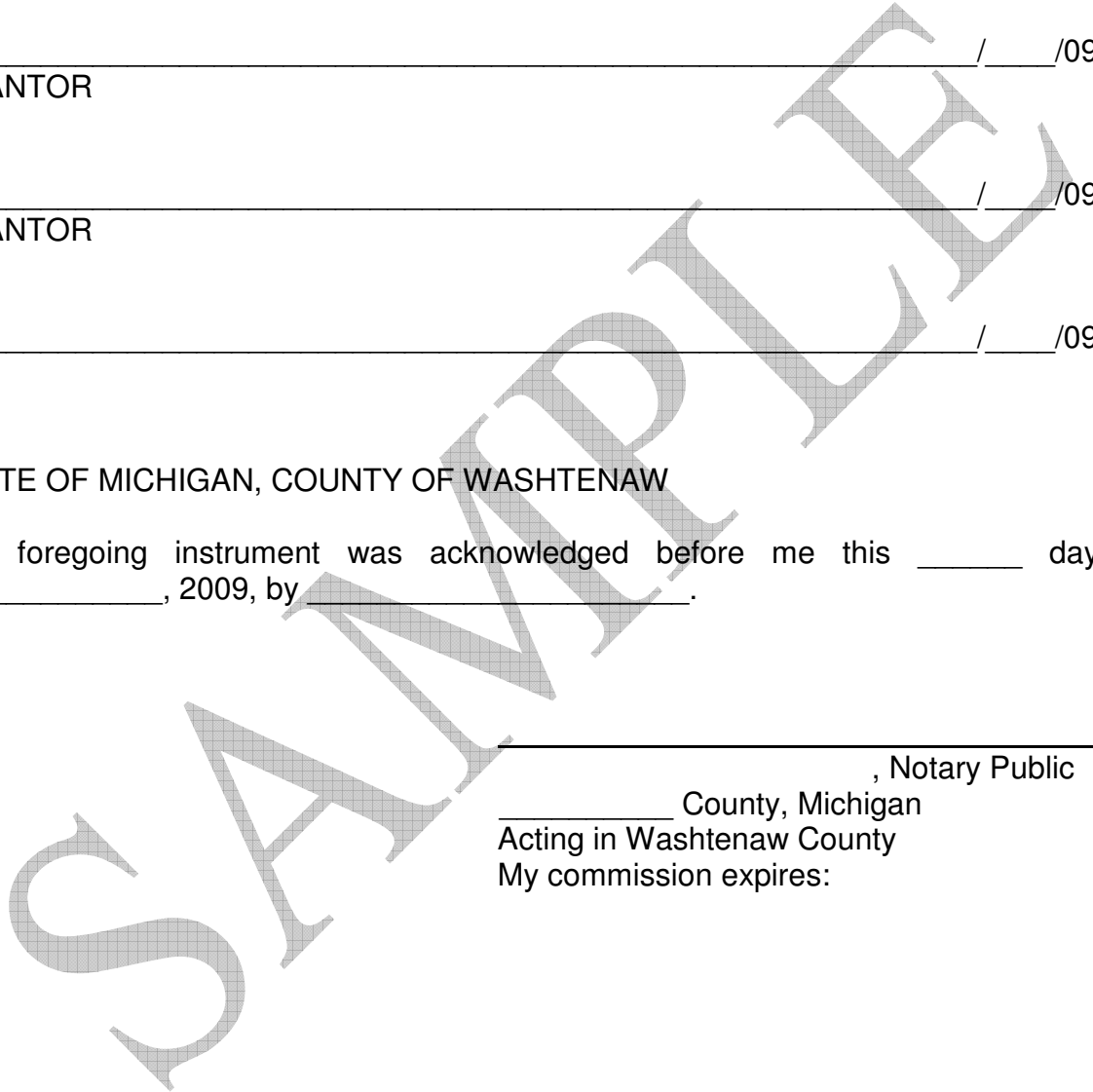
\_\_\_\_\_/\_\_\_\_\_/09

STATE OF MICHIGAN, COUNTY OF WASHTENAW

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_.

.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
Acting in Washtenaw County  
My commission expires:



**ACCEPTANCE OF PROPERTY INTEREST BY CITY OF ANN ARBOR**

*The City of Ann Arbor, a Michigan municipal corporation, hereby accepts and approves the foregoing Conservation Easement and the rights conveyed therein, on behalf of the City of Ann Arbor.*

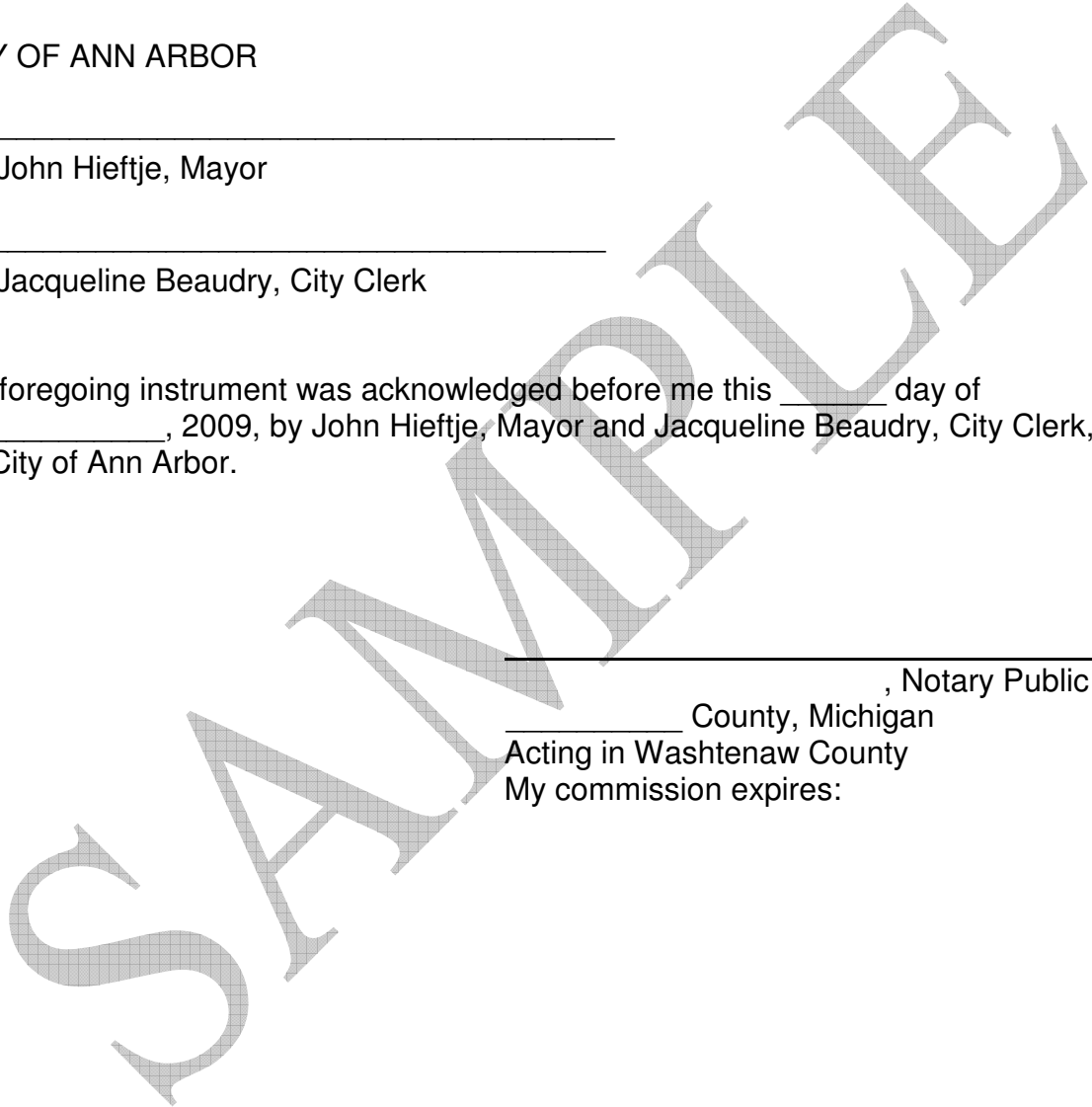
CITY OF ANN ARBOR

By: \_\_\_\_\_  
John Hieftje, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by John Hieftje, Mayor and Jacqueline Beaudry, City Clerk, of the City of Ann Arbor.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
Acting in Washtenaw County  
My commission expires:





**EXHIBIT A**  
**Legal Description**

SAMPLE

**EXHIBIT B  
BASELINE DOCUMENTATION**

SAMPLE