

CONSERVATION EASEMENT

This CONSERVATION EASEMENT is granted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the Grantor, landowner(s), legal status of landowner(s) (hereinafter "Landowner"), to the Grantee, Easement Holder, a legal status of Easement Holder, (hereinafter "Easement Holder").

RECITALS

- A. Property.** The Landowner is the sole owner of approximately \_\_\_\_ acres of real property in \_\_\_\_\_ County, Wisconsin (hereinafter the "Property"), which is legally described in Exhibit A, and depicted on a map shown in Exhibit B (hereinafter the "Property Map"). If there is any discrepancy between Exhibit A and Exhibit B, Exhibit A shall prevail. Both exhibits are attached to this Easement and incorporated by this reference.

Portions of the Property have been designated as Zone(s) to establish certain uses and management conditions within those areas. There is a "\_\_\_\_ Zone" and a "\_\_\_\_ Zone," which are delineated on the Property Map and described in Exhibit C. [ **Identify as many zones as needed. Use legal descriptions and/or an aerial photo with accompanying text to clearly describe each zone. If you do not need any Zones, delete this paragraph. ]**

- B. Conservation Values.** The Property, in its present state, has significant *natural, ecological, habitat, scientific, scenic, geological, archaeological, recreational, educational, forestry, agricultural and open space* [ **delete those that do not apply** ] values (collectively, "Conservation Values") of importance to the Landowner, Easement Holder and people of Wisconsin. In particular:

[ **Describe specific natural characteristics, features, community types, habitats, species that will be protected by the Easement; any scenic, recreational or educational values of benefit to the public; also proximity to other nearby protected lands that will be enhanced by the Easement. Include language from IRS Regulations, as appropriate. May also want to reference permitted uses that are consistent with the purpose of the Easement. See *Drafting Notes* for examples. ]**

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- C. Baseline Documentation.** The condition of the Property is further documented in an inventory of relevant features, characteristics and Conservation Values, which is on file at the office of the Easement Holder and incorporated by this reference. This Baseline Report consists of reports, maps, photographs, and other documentation that both parties agree provides an accurate representation of the condition of the Property at the time of conveyance of this Easement and which is intended to serve as an objective, but not exclusive, information baseline for monitoring compliance with the terms of this Easement.

- D. Public Policies.** Preservation of the Conservation Values of the Property will serve the following public policies:

➤ Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic and open space values of real property; assure its availability for agriculture, forestry, recreation or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.

Recording Area

Name and Return Address:

Parcel identification Number:

[ Cite additional statutes, administrative codes, comprehensive plans, programs or policy statements that identify federal, state or local government policies that the Easement supports. See *Drafting Notes* for examples. ]

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- E. Qualified Organization.** The Easement Holder is qualified to hold conservation easements under Section 700.40(1)(b) of the Wisconsin Statutes and is also a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder.
- F. Conservation Intent.** The Landowner and Easement Holder share the common purpose of preserving the Conservation Values of the Property in perpetuity. The Landowner intends to place restrictions on the use of the Property to protect those Conservation Values. The Landowner further intends to convey to the Easement Holder, and the Easement Holder agrees to accept, the right to monitor and enforce these restrictions in order to preserve, enhance and protect the Property for the benefit of this generation and generations to come.

### GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above, the mutual covenants contained in this Easement, *and in further consideration of the sum of \_\_\_\_\_ dollars and other valuable consideration* **OR** *as an absolute and unconditional gift*, [ **delete both or whichever does not apply** ] the receipt and sufficiency of which is hereby acknowledged, and pursuant to Section 700.40 of the Wisconsin Statutes, the Landowner hereby voluntarily grants and conveys to the Easement Holder a Conservation Easement in perpetuity over, in and to the Property (herein the “Easement”). This Easement consists of the following terms, rights and restrictions:

- 1. Purpose.** The Purpose of this Easement is to preserve the Property in perpetuity in its predominantly *natural, scenic, forested, agricultural, and open space* [ **delete any that do not apply** ] condition, and to prevent any use of the Property that will adversely impact or interfere with its Conservation Values. The Landowner intends that this Easement will confine the use of the Property to activities that are consistent with the Purpose of the Easement.

**[It is not necessary to list specific purposes here, since you have already described the Conservation Values in detail under the Recitals. However, you may do so if you wish, as long as they are consistent with the Conservation Values previously described. ]**

- 2. Restrictions, Prohibited Uses and Certain Reserved Rights of the Landowner.** Any activity on or use of the Property inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following provisions identify activities and uses that are expressly prohibited and some rights that are expressly reserved to the Landowner:

- 2.1 **Animals.** The Property may not be used as a game farm, shooting preserve, fur farm or deer farm, licensed under Chapter 169 of the Wisconsin Statutes, as that Chapter may be amended from time to time. *Poultry, cattle, horses and other livestock shall not be allowed on the Property for any purpose.* [ **See *Drafting Notes* for exceptions.** ]

*For the purposes of this Easement, livestock means farm animals that are kept for human use or raised for sale or profit, including, but not limited to, bovine animals, sheep, goats, swine, poultry, llamas, ostriches, emus and equine animals. Livestock does not include small domestic pets, such as dogs and cats that are customarily permitted by local ordinance.*

- 2.2 **Buildings, Structures and Other Improvements.** *The placement, installation or construction of any temporary or permanent buildings, structures or other improvements on the Property is prohibited, including, without limitation, roads, signs and billboards, utility corridors, waste disposal systems, towers, and trails, except as provided below.* [ **See *Drafting Notes* for alternative language.** ]

Note: Notice is hereby given that the Landowner has the obligation to comply with current state erosion control and storm water regulations pertaining to the placement, installation, construction and maintenance of buildings, structures and other improvements on the Property.

- a. Fences. Existing fences may be repaired, replaced, improved or removed. Additional fencing may be constructed to mark boundaries and secure the Property, or as needed to carry out activities permitted in this Easement.
- b. *Signs. Small, unlighted signs may be placed on the Property for the following purposes only: to state the name and address of the Property and Landowner; advertise the sale or lease of the Property; commemorate or explain the history or protection of the Property; prohibit trespassing or regulate uses; interpret natural features of the Property; mark the boundaries or provide directions, advertise the sale of goods or services produced on the Property; and display temporary political signs.*

***[ Add information on the size, number and location of signs. See Drafting Notes for options. ]***

- c. *Trails. Trails up to [ four ] feet in width may be established and maintained on the Property, provided that they do not diminish the Conservation Values of the Property and are located and constructed to prevent erosion, avoid habitat fragmentation, and protect sensitive areas and water quality. All trails shall have a pervious surface of natural materials.*

***[ See Drafting Notes for additional trail requirements for Natural Areas Grants .]***

- d. *Roads. Existing roads and bridges on the Property may be maintained, but shall not be widened or improved. No new roads may be constructed or established on the Property, except as specifically approved in this Easement.*

***[ See Drafting Notes for additional exceptions. ]***

- e. Buildings

2.3 Commercial, Agricultural, Residential and Industrial Uses. Use of the Property for commercial, agricultural, residential or industrial purposes is prohibited. ***[ See Drafting Notes for exceptions. ]***

2.4 Dumping. There shall be no dumping or storage on or under the Property of any trash, garbage, construction materials, sewage, ashes, manure, trees, brush, hazardous materials, discarded or salvageable materials such as junk cars, or other unsightly or offensive material. There shall also be no dumping or stockpiling of any soil, sawdust, gravel, or sand. *This is not intended to prohibit composting excess brush or other plant material generated on the Property by activities permitted in this Easement, provided that composting shall not be located within [ 100 ] feet of the ordinary high water mark of any water body.* ***[ See Drafting Notes for exceptions. ]***

2.5 Mining and Surface Alteration. There shall be no mining, drilling, exploring for, excavation or removal of any minerals, soil, sand, peat, gravel, rock or any other materials on or from the Property nor any alteration of the surface of the Property, including, without limitation, ditching, draining, diking, tiling, filling, or leveling, *except as may be required for activities or uses expressly permitted in this Easement or in an approved Land Management Plan, pursuant to Paragraph\_\_\_\_\_.* ***[ See Drafting Notes for other exceptions. ]***

2.6 Subdivision, Extinguishment of Development Rights, and Density

- a. The Property shall not be subdivided into smaller parcels, whether through legal or *de facto* subdivision, including division through the creation of condominiums, site leases or other means. *The intent of this Paragraph is to require that the entire Property remain as a single, indivisible tract managed for the Purpose of this Easement, and to prohibit the conveyance of any part except as a whole.* ***[ See Drafting Notes for exceptions. ]***
- b. All rights to develop or use the Property that are prohibited by or inconsistent with this Easement are extinguished, and cannot be used to transfer development rights to other land owned by the Landowner or any other party, or to permit increased development density or increased natural

resource use or extraction on other land, or to achieve other regulatory mitigation credits on land not subject to this Easement. [ See *Drafting Notes* for exceptions. ]

2.7 Vegetation. [ See *Drafting Notes* for options. ]

2.8 Vehicles. [ See *Drafting Notes* for options. ]

2.9 Water. There shall be no manipulation or alteration of any water body on or adjacent to the Property or its shoreline. [ See *Drafting Notes* for exceptions. ]

For the purpose of this Easement, a water body means a creek, stream, intermittent stream, drainage way, river, pond, lake, surface or subsurface spring, wetland or other body of water.

2.10 [ See *Drafting Notes* for Information on other Optional restrictions. ]

**3. Additional Reserved Rights of the Landowner.** In addition to rights reserved by the Landowner pursuant to Paragraph 2 above, the Landowner retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in a manner that is not expressly restricted or prohibited by the Easement or inconsistent with the Purpose of the Easement. The Landowner may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Property. The Landowner reserves:

3.1 The right to sell, give, bequeath, mortgage, lease or otherwise encumber or convey the Property, provided that:

a. Such encumbrance or conveyance is subject to the terms of this Easement.

b. The Landowner incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which the Landowner transfers any interest in all or part of the Property.

c. The Landowner notifies the Easement Holder of any conveyance in writing within fifteen (15) days after the conveyance, and provides the Easement Holder with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.

d. Failure of the Landowner to perform any act required in Subparagraphs 3.1 b. and 3.1 c. shall not impair the validity of this Easement or limit its enforceability in any way.

[ **3.2 May add additional reserved rights that are not directly related to a restriction. Any reserved right that can be linked to a specific restriction, must be included in Section 2. See *Drafting Notes*.** ]

**4. Easement Holder's Rights and Remedies.** In order to accomplish the Purpose of this Easement, the Landowner expressly conveys to the Easement Holder the following rights and remedies:

4.1 Preserve Conservation Values. The Easement Holder has the right to preserve and protect the Conservation Values of the Property.

4.2 Prevent Inconsistent Uses. The Easement Holder has the right to prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and to require the restoration of areas or features of the Property that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.

4.3 Enter the Property. The Easement Holder has the right to enter the Property to inspect it and monitor compliance with the terms of this Easement; obtain evidence for use in seeking judicial or other enforcement of the Easement; survey or otherwise mark the boundaries of all or part of the Property if necessary to determine whether there has been or may be a violation of the Easement; and otherwise exercise its rights under the Easement. The Easement Holder shall provide prior notice to the Landowner before entering the Property, except in cases where there is an emergency or the Easement Holder determines immediate entry is necessary to prevent, terminate or mitigate a violation of the Easement.

*The Landowner shall convey to the Easement Holder a separate access easement to the Property across adjacent property owned by the Landowner. This access easement shall be recorded in the Register of Deeds office and is incorporated into this Easement by reference. [ Include if the Property is landlocked. See Drafting Notes and Model Access Easement. ]*

4.4 Remedy Violations. The Easement Holder has the right to enforce the terms of this Easement and prevent or remedy violations through appropriate legal proceedings.

- a. Notice of Violation and Corrective Action. If the Easement Holder determines that a violation of the terms of this Easement has occurred or is threatened, the Easement Holder may initiate judicial action after the Landowner has been given written notice of the violation or threatened violation, and at least thirty (30) days to correct the violation. This provision shall not apply if, in the discretion of the Easement Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if good faith efforts to notify the Landowner are unsuccessful.
- b. Remedies. Remedies available to the Easement Holder in enforcing this Easement include temporary or permanent injunctive relief for any violation or threatened violation of the Easement, the right to require restoration of the Property to its condition *at the time of conveyance of this Easement OR to its prior condition in accordance with a plan approved by the Easement Holder [ delete whichever does not apply - see Drafting Notes ]*, specific performance or declaratory relief, and recovery of damages resulting from a violation of the Easement or injury to any of the Conservation Values of the Property. The restoration requirement shall not be construed to terminate any rights reserved by the Landowner under this Easement or to release the Landowner from any additional restoration obligations that may be required under the Easement. Without limiting the Landowner's liability, the Easement Holder, in its discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

*These remedies are cumulative and are available without requiring the Easement Holder to prove an adverse impact to the Conservation Values protected by the Easement. The Landowner and Easement Holder also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement. The Easement Holder is entitled to seek expedited relief, ex parte if necessary, and shall not be required to post any bond applicable to a petition for such relief.*

- c. Non-Waiver. The Easement Holder does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement by any delay or prior failure of the Easement Holder to discover a violation or initiate enforcement proceedings.
- d. Costs of Enforcement. *The Landowner shall be responsible for all costs incurred by the Easement Holder in enforcing the terms of this Easement, including, without limitation, costs and expenses of suit, reasonable attorneys' fees, and costs of restoration necessitated by violations of the terms of this Easement. If, however, the Landowner ultimately prevails in a judicial enforcement action, each party shall be responsible for its own costs. [ See Drafting Notes for another option. ]*
- e. Waiver of Certain Defenses. The Landowner hereby waives any defense of laches (such as a failure by the Easement Holder to enforce any term of the Easement) or estoppel (such as a contradictory statement or action on the part of the Easement Holder).
- f. Acts Beyond Landowner's Control. *The Easement Holder may not bring any action against the Landowner for any injury to or change in the Property resulting from causes beyond the Landowner's control, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the Landowner under emergency conditions to prevent or mitigate damage from such causes, provided that the Landowner notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the Purpose of the Easement, pursuant to Paragraph 5.3. [ See Drafting Notes for another option. ]*
- g. Right to Report. In addition to other remedies, the Easement Holder has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

**[Insert additional rights as appropriate - see Drafting Notes for examples.]**

**5. Notices and Approvals.**

5.1 Notice of Landowner's Intention to Undertake Reserved Rights. Although the Landowner does not need to obtain approval from the Easement Holder to exercise reserved rights, unless specifically required to do so in this Easement, the Landowner agrees to notify the Easement Holder in writing before exercising any reserved right that may have an adverse impact on the Conservation Values of the Property.

In cases, where the Landowner is specifically required to notify the Easement Holder before undertaking certain reserved rights, *including but not limited to, those reserved rights identified in Paragraph(s) \_\_\_\_\_*, the Landowner shall notify the Easement Holder at least [ **insert number (not less than thirty)** ] days prior to the date the Landowner intends to begin the activity, unless another time period is specified in the Easement. The Notice shall comply with Paragraph 5.4 of this Easement.

The purpose of notification is give the Easement Holder an opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the Purpose of the Easement.

5.2 Request for Approval. When the Landowner is required to obtain the Easement Holder's written approval before undertaking an action, *including but not limited to, those actions identified in Paragraph(s) \_\_\_\_\_*, the Landowner shall submit a written request for approval to the Easement Holder at least [ **insert number (not less than sixty)** ] days before the date the Landowner wishes to undertake the activity. The Notice shall comply with Paragraph 5.4 of this Easement. No action requiring approval under this Easement is allowed unless the Landowner receives written notice of the approval from the Easement Holder. The Easement Holder may withhold its approval if it does not receive sufficient information to make a decision or if it determines that the proposed action is not consistent with the Purpose or terms of the Easement. The Easement Holder may condition its approval on the Landowner's acceptance of modifications, which would, in the Easement Holder's judgment, make the proposed activity consistent with the Easement or otherwise meet any concerns. Pursuant to Paragraph 8.2 of this Easement, the Wisconsin Department of Natural Resources (hereinafter "DNR") may also need to approve certain actions.

5.3 Notice of Change in the Property Beyond Landowner's Control. Whenever notice is required pursuant to Paragraph 4.4(f) of this Easement, the Landowner shall provide oral notice to the Easement Holder within five (5) days and written notice within thirty (30) days after the occurrence, or after the Landowner becomes aware of the occurrence, whichever is later.

5.4 Content of the Notice or Request for Approval. The notice or request for approval shall describe the nature, scope, design, location, size, timetable, and any other material aspect of the activity in sufficient detail to permit the Easement Holder to make an informed judgment as to its consistency with the Purpose of this Easement.

5.5 Delivery. Any required notice or request for approval shall be in writing and must be delivered personally or sent by first class mail, postage prepaid, or by another nationally recognized delivery service to the appropriate party at the following address (or other address specified in writing):

To Landowner:  
Name of Landowner  
c/o Notice Agent, if any  
Landowner's address

To Easement Holder:  
Name of Easement Holder  
c/o Notice Agent, if any  
Easement Holder's Address

5.6 Time Period for Action. Following approval of a proposed action pursuant to Paragraph 5.2 above, the Landowner shall use their best efforts to complete the action as soon as possible or practicable. In no event should the Landowner exceed the period authorized in the written approval, or two years from the date of approval if no date is specified, to complete an approved activity. If the activity is not completed

within that time period, the Landowner must receive written approval from the Easement Holder to proceed or resubmit the request for review and approval, according to the procedures described in this Easement.

**6. Public Access.**

[ See Drafting Notes. ]

**7. General Provisions.**

- 7.1 Amendment. The Landowner and Easement Holder may jointly amend this Easement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for the county in which the Property is located, provided that no amendment shall be allowed if, in the judgment of the Easement Holder, it (i) diminishes the Conservation Values of the Property (ii) is inconsistent with the Purpose of the Easement (iii) affects the perpetual duration of the Easement, (iv) affects the validity of the Easement under Section 700.40 of the Wisconsin Statutes, or (v) affects the status of the Easement Holder under Section 170(h) of the Internal Revenue Code of 1986 or any successor provision. Pursuant to Paragraph 8.2, the DNR also needs to approve any amendment to this Easement.
- 7.2 Assignment. The Easement Holder may convey, assign or transfer its interests in this Easement to a unit of federal, state or local government or to an organization that is (i) “qualified” within the meaning of Section 170(h)(3) of the Internal Revenue Code, and in the regulations promulgated thereunder, or any successor provisions then applicable, and (ii) qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Easement shall be required to carry out its Purpose in perpetuity. The Easement Holder agrees to notify the Landowner of any assignment at least thirty (30) days before the date of such assignment; however, failure to give such notice shall not affect the validity of such assignment or limit its enforceability in any way. Pursuant to Paragraph 8.2, the DNR also needs to approve in writing any assignment of this Easement.
- 7.3 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not part of the Easement and shall have no effect on construction or interpretation.
- 7.4 Controlling Law and Liberal Construction. The laws of the State of Wisconsin shall govern the interpretation and performance of this Easement. Any general rules of construction to the contrary, ambiguities in this Easement shall be construed in a manner that best effectuates the Purpose of the Easement and protection of the Conservation Values of the Property.
- 7.5 Counterparts. The Landowner and Easement Holder may execute this Easement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 7.6 Entire Agreement. This instrument sets forth the entire agreement of the Landowner and Easement Holder with respect to this Easement (unless additional agreements are entered into for the use of grant funds), and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 7.7 Extinguishment. This Easement may be terminated or extinguished, whether in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Easement may be extinguished only under the following circumstances: (i) all or part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, or (ii) the Landowner and Easement Holder agree that a subsequent, unexpected change in the condition of or surrounding the Property makes it impossible to accomplish the Purpose of the Easement. Pursuant to Paragraph 8.2, the DNR also needs to approve any voluntary extinguishment of the Easement.

- a. The Landowner agrees that this Easement constitutes a real property right, immediately vested in the Easement Holder, which has a fair market value that is proportionate to the fair market value of the Property as a whole. This “Proportionate Share” of the Easement is a percentage arrived at by dividing the fair market value of the Easement by the fair market value of the Property as a whole at the time of conveyance. The Proportionate Share shall remain constant over time.

*The Landowner and Easement Holder agree that the fair market value of the Easement, at the time of conveyance, is equal to \_\_\_\_\_ percent of the fair market value of the Property as a whole. [ See Drafting Notes for another option. ]*

- b. If this Easement is extinguished in whole or in part, then upon the subsequent sale, exchange or involuntary conversion of the Property, and after the satisfaction of prior claims and reasonable expenses incurred by the Landowner and Easement Holder as a result of the Extinguishment, the Easement Holder shall be entitled to the Proportionate Share of the proceeds attributable to the Easement. *The Easement Holder may obtain a lien on the Property for the amount due until such time that it receives its Proportionate Share from the Landowner.*

The share of proceeds received by the Easement Holder may be further apportioned to other parties that have provided funds for this Easement in proportion to their contribution.

- c. The Easement Holder will use any proceeds it receives from any sale, exchange or involuntary conversion in a manner consistent with the conservation purposes of this Easement.

7.8 Joint Obligation. The obligations imposed by this Easement upon the Landowner shall be joint and several.

7.9 Ownership Responsibilities, Costs and Liabilities. The Landowner retains all responsibilities and shall bear all costs and liabilities related to the ownership of the Property, including, but not limited to, the following:

- a. Operation, upkeep and maintenance. The Landowner is responsible for the operation, upkeep and maintenance of the Property.
- b. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Easement Holder to exercise physical or managerial control over the day-to-day operations of the Property, to become involved in the management decisions of the Landowner regarding the generation, handling or disposal of hazardous substances, or otherwise to become an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar laws imposing legal liability on the owner or operator of real property.
- c. Permits. The Landowner remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction, other activity, or use shall be undertaken in accordance with applicable federal, state and local laws, regulations and requirements.

If requested by the Easement Holder, the Landowner agrees to apply or co-apply with the Easement Holder for any permits, approvals, licenses or funding deemed necessary or desirable by the Easement Holder for implementing rights granted to the Easement Holder in this Easement. This shall not be construed as committing the Landowner to paying any portion of the costs of an activity undertaken by the Easement Holder, or assuming any liability with respect to the permit, approval, license or funding, unless approved in a separate agreement.

- d. Hold Harmless. The Landowner releases and agrees to hold harmless, indemnify, and defend the Easement Holder and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively “Indemnified Parties”) from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with: (1) injury to or the



death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving or related to the Property; (3) the presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

- e. Taxes. The Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any taxes imposed upon or incurred as a result of this Easement, and shall furnish the Easement Holder with satisfactory evidence of payment upon request.
- 7.10 Recording. The Easement Holder shall record this Easement in the Office of the Register of Deeds for the county in which the Property is located, and may re-record it or any other document necessary to protect its rights under this Easement.
- 7.11 Severability. If any provision or specific application of this Easement is found to be invalid by a court of competent jurisdiction, the remaining provisions or specific applications of this Easement shall remain valid and binding.
- 7.12 Successors. This Easement is binding upon, and inures to the benefit of, the Landowner and Easement Holder and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.
- 7.13 Termination of Rights and Obligations. The Landowner's and Easement Holder's rights and obligations under this Easement terminate upon transfer of the party's interests in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.
- 7.14 Terms. The terms "Landowner" and "Easement Holder," wherever used in this Easement, and any pronouns used in place thereof, shall mean either masculine or feminine, singular or plural, and shall include Landowner's and Easement Holder's respective personal representatives, heirs, successors, and assigns.
- 7.15 Warranties and Representations. The Landowner warrants and represents that:
- a. The Landowner is the sole owner of the Property in fee simple and has the right and the ability to grant and convey this Easement to the Easement Holder;
  - b. As of the date of this Easement, there are no liens or mortgages outstanding against the Property, except any that are subordinated to the Easement Holder's rights under this Easement;
  - c. The Landowner and Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use;
  - d. There is no pending or threatened civil or criminal proceedings or investigation in any way affecting, involving, or relating to the Property, nor do there exist any facts or circumstances that the Landowner might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands or orders; and
  - e. To the best of the Landowner's knowledge, there has been no contamination on or from the Property by any substance classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment; nor are there any underground storage tanks located on the Property, except those that are in compliance with all applicable laws and regulations.

- 8. Acknowledgment of the Easement Holder’s Assignment of Rights to the Wisconsin Department of Natural Resources.** The Landowner acknowledges that the Easement Holder may obtain grant funds for acquisition of this Easement or offer it as match for grant funds under the State of Wisconsin *Knowles-Nelson Stewardship Program (Section 23.0917 of the Wisconsin Statutes)*, *Lake Protection Program (Section 281.69 of the Wisconsin Statutes)*, or *Rivers Program (Section 281.70 of the Wisconsin Statutes)* [ **delete those that do not apply** ]. In that event, the DNR shall obtain certain rights and interests with respect to this Easement and the Property. These rights and interests shall be established upon the execution and recording of a Grant Contract or Grant Agreement (hereinafter “Grant Contract”) between the DNR and the Easement Holder. The Easement Holder shall notify the Landowner if a Grant Contract is executed; however, failure of the Easement Holder to notify the Landowner shall not impair the validity of the DNR’s rights and interests under the Grant Contract.

The Landowner consents to the Easement Holder’s assignment of rights and interests to the DNR through such a Grant Contract, including, without limitation, the following:

- 8.1 The DNR has the right to enter and inspect the Property to determine if the Easement Holder is complying with the terms of the Grant Contract, and to exercise any other rights described in this Section of the Easement, in the same manner as described in Paragraph 4.3 and upon prior notice to the Easement Holder.
- 8.2 The Easement Holder must obtain the prior written approval of the DNR before approving a proposed amendment, assignment or extinguishment of the Easement (in whole or in part). *Actions that are subject to prior approval of the Easement Holder in Paragraph(s) or Subparagraph(s)\_\_\_\_\_ [ fill in citations and name of topics – see Drafting Notes ] must also be approved in writing by the DNR.*
- 8.3 If the Easement is extinguished in the future, a share of the Easement Holder’s proceeds shall be apportioned to the DNR. That share shall be set forth in the Grant Contract.
- 8.4 The DNR has the right to collect cash payments from the Easement Holder or assume the Easement Holder’s entire legal interest in this Easement, without the necessity of entry or legal judgment, if the Easement Holder violates an essential provision of the Grant Contract, and fails to correct the violation as called for in the Grant Contract. The DNR will notify the Landowner if the DNR becomes the Easement Holder as a result of a grant enforcement action.

[ Insert additional rights as appropriate - see Drafting Notes for examples. ]

**9. Special Conditions.**

- [See Drafting Notes]







**PLEASE INCLUDE THE FOLLOWING ONLY ON THE DRAFT YOU ARE SUBMITTING TO THE DNR FOR APPROVAL.**

<b>Certification by Attorney</b>	
I certify that I have either prepared or reviewed this easement for the Easement Holder/Project Sponsor. (This is not intended to imply that I am certifying that this Easement meets requirements for a charitable deduction.)	
Printed/Typed Name of Project Sponsor's Attorney	Name of Firm
Signature of Project Sponsor's Attorney	Date

<b>Certification by Grant Applicant</b>	
I certify that this easement uses the language contained in the DNR Standard Grant Easement, except for those paragraphs where customized language is permitted.	
Printed/Typed Name of Authorized Representative of the Grant Applicant	Name of Grant Applicant
Signature of Authorized Representative of the Grant Applicant	Date