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BARRY COUNTY
REGISTER OF DEEDS



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CONSERVATION EASEMENT

DATE: December 19, 2003

DONOR/OWNER: Schultz Lake Preserve, LLC, a Michigan Limited Liability Company, of 203 East Michigan Avenue, Marshall, Michigan 49068-1545.

DONEE/CONSERVANCY: Southwest Michigan Land Conservancy, Inc. a nonprofit corporation, whose address is 6851 South Sprinkle Road, Portage, Michigan 49002, its successors and assigns.

For Purposes of this Conservation Easement, the Donor, who is the current Owner, and all subsequent Owners of the subject Property, will be referred to as the "Owner" throughout this Conservation Easement. The Donee will be referred to as the "Conservancy" throughout this Conservation Easement.

PROPERTY: Beginning at the South $\frac{1}{4}$ corner of Section 10, Town 2 North, Range 9 West, Hope Township, Barry County, Michigan: thence N01° 35' 59"E, 2047.15 feet along the North and South $\frac{1}{4}$ line of said Section 10; Thence S86° 38'43" E, 364.00 feet; Thence N01° 35'59"E, 598.00 feet to the East and West $\frac{1}{4}$ line of said Section 10; Thence S86° 38'43"E, 949.75 feet along said East and West $\frac{1}{4}$ line; Thence N01° 35'53"E, 1332.89 feet along the West line of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 10; Thence S86° 40'03"E, 1315.97 feet along the North line of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 10; Thence S01° 41'39"W, 1333.34 feet along the East line of the southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 10; Thence S01° 36'17"W, 1975.44 feet along the East line of the Southeast $\frac{1}{4}$ of said Section 10; Thence N86° 51'24"W, 330.00 feet; Thence S01° 36'17"W, 660.00 feet to the South line of said Section 10; Thence N89° 51'24"W, 983.49 feet along said South section line; Thence N01° 36'08"E, 1264.54 feet along the West line of the Southeast $\frac{1}{4}$ of said Section 10; Thence S49° 22'53"W, 1364.71 feet along the Southeasterly line of the former Chicago, Kalamazoo and Saginaw Railroad; Thence continuing Southwesterly 409.11 feet along said Southeasterly line and the arc of a curve to the left, the radius of which is 1470.80 feet, the central angle of which is 15° 56'14" and the chord of which bears S41° 24'46"W 407.79 feet to said South section line; Thence N89° 51'24" W, 41.29 feet along said South section line to the point of beginning. Subject to an easement for public highway purposes over the westernmost 33 feet thereof for South M-43 highway, and over the easternmost 33 feet thereof, excepting therefrom that part lying North of the former C.K. and S. Railroad, for Lammers Road. Subject to a right reserved by Orville H. Hammond



and Georgia M. Hammond, and assigns, to pass over a triangle of land 20 feet North and South and 20 feet East and West in the Southwest corner of the above described parcel and to place gates for this purpose.

CONVEYANCE: The Owner conveys and warrants to the Conservancy a perpetual Conservation Easement over the Property. The scope of this Conservation Easement is set forth in this agreement. This conveyance is a gift from the Donor to the Conservancy. Accordingly, this is exempt from Transfer Tax pursuant to MCL 207.505(a) and 207.526(a).

THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:

1. **PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE DONOR/OWNER AND THE CONSERVANCY.**
 - A. This Conservation Easement ensures that the Property will be perpetually preserved in its predominately natural, scenic, forested, and open space condition. The Purposes of this Conservation Easement are to protect the Property's natural resource and watershed values; to maintain and enhance biodiversity; to retain quality habitat for native plants and animals, and to maintain and enhance the natural features of the Property. Any uses of the Property which may impair or interfere with the Conservation Values are expressly prohibited.
 - B. The Donor is the Owner of the Property and is committed to preserving the Conservation Values of the Property. The Owner agrees to confine use of the Property to activities consistent with the Purposes of this Easement and the preservation of the Conservation Values.
 - C. The Conservancy is a qualified Recipient of this Conservation Easement, is committed to preserving the Conservation Values of the Property, and is committed to upholding the terms of this Conservation Easement. The Conservancy protects natural habitats of fish, wildlife, plants, and the ecosystems that support them. The Conservancy also preserves open spaces, including farms and forests, where such preservation is for the scenic enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.
2. **CONSERVATION VALUES.** The Property possesses natural, scenic, open space, scientific, biological, and ecological values of prominent importance to the Owner, the Conservancy, and the public. These values are referred to as the "Conservation Values" in this Easement. The Conservation Values include the following:

OPEN SPACE and SCENIC:

- A. A scenic landscape and natural character which would be impaired by subdivision and development of the Property.



- B. A scenic panorama visible to the public from Lammers Road and M-43 would be adversely affected by modifications of the natural habitat.
- C. Prominent visibility to the public from Lammers Road and M-43, and, which will enhance tourism if preserved in its natural state.
- D. Biological integrity of other land in the vicinity has been modified by residential development, and the trend is expected to continue.
- E. There is a reasonable possibility that the Conservancy may acquire other valuable property rights on nearby or adjacent properties to expand the Conservation Values preserved by this Conservation Easement.

PUBLIC POLICY:

- F. The State of Michigan has recognized the importance of protecting our natural resources as delineated in the 1963 Michigan Constitution, Article IV, Section 52, "The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety, and general welfare of the people. The legislature shall provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction."
- G. The Property is preserved pursuant to a clearly delineated federal, state, or local conservation policy and yields a significant public benefit. The following legislation, regulations, and policy statements establish relevant public policy:
 - Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.2140 *et seq.*;
 - Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.35501 *et seq.*; (Legislative Findings § 324.35502);
 - Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Act - MCL §§ 324.30301 *et seq.*; (Legislative Findings MCL § 324.30302);
 - Water Pollution Control Act of 1972, 33 USC §§ 1251 - 1387 (§1251 Goals & Policy; § 1344 Wetlands permitting, aka "Section 404" Clean Water Act.);
 - Inland Lakes and Streams, Part 301 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.30101 *et seq.*;



- Farmland and Open Space Preservation, Part 361 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.36101 *et seq.*;
- Soil Conservation, Erosion, and Sedimentation Control, Parts 91 & 93 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.9101 *et seq.*; 324.9301 *et seq.*; (Legislative Policy § 324.9302);

WILDLIFE VALUES:

- H. The Property is home to many species of wildlife, including many species of waterfowl, wading birds, reptiles and amphibians and upland birds.
- I. The Property provides vital corridor wetlands and upland wildlife habitats that serve as a connection for wildlife movement and creates a natural “greenway” along a stream corridor that includes Long Lake to the south and Tillotson Lake to the north.
- J. The Property is noteworthy for the diversity of reptiles, amphibians and waterfowl that utilize Schultz Lake and the high quality wetland and upland habitats that surround the lake.

ECOLOGICAL / HABITAT:

- K. The Property contains significant natural habitat in which fish, wildlife, plants, and the ecosystems which support them, thrive in a natural state.
- L. Wetlands, as described in Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Code MCL 324.30301 *et seq.*, identified as important natural resources for the people of the State of Michigan, are present on the Property.
- M. Habitat for special concern and rare plant and animal species are supported on the Property.
- N. The Property contains natural areas that represent high quality examples of beech-maple and oak forests as well as wetland communities.
- O. The Property contains sustainable habitat for biodiverse vegetation, birds, fish, and terrestrial animals.
- P. A diversity of plant and animal life are found on the Property in an unusually broad range of habitats for a property of its size.
- Q. The Property is characteristic of a rolling glacial moraine with kettle hole wetlands. Its dominant vegetation is mature deciduous hardwoods interspersed with early and late successional old fields that surround Schultz Lake and its



associated wetland plant communities. These plant communities are in a relatively natural and undisturbed condition and support the full range of wildlife species found in these habitat types.

- R. The Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation.
- S. Valued native forest land exists on the Property, which includes diverse native species, trees of many age classes and structural diversity, including a multi-story canopy, standing dead trees and downed logs.

WATERSHED PROTECTION:

- T. The Property provides important natural land within Fall Creek, a sub-watercourse of the Thornapple River watershed. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the Cloverdale and Delton area.
- U. The Property includes Schultz Lake in its entirety.
- V. Sections of the property are situated on hillsides with slopes greater than 20% that are adjacent to or in close proximity to Schultz Lake and the vegetated slopes would be highly susceptible to erosion damage and accelerated stormwater runoff that could adversely affect water quality if the trees or other vegetation were removed.

ADJACENT TO PROTECTED LANDS:

- W. The Property lies in close proximity to the following conserved properties which similarly preserve the existing natural habitat:
 - 1) Barry State Game Area Hope Twp, Section 6, 5, 7, 8 and 15, Department of Natural Resources;
 - 2) Jones Conservation Easement, Baltimore Twp, Section 19, Southwest Michigan Land Conservancy;
 - 3) Brewster Lake Conservation Easement, Baltimore Twp, Sections 19 and 30, Southwest Michigan Land Conservancy;
 - 4) Boesch Conservation Easement, Baltimore Twp, Section 30, Southwest Michigan Land Conservancy;
- 3. **BASELINE DOCUMENTATION.** Specific Conservation Values of the Property have been documented in a natural resource inventory signed by the Owner and the Conservancy. This "Baseline Documentation Report" consists of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and



fauna, land use history, distinct natural features, and photographs. The parties acknowledge that this natural resources inventory, the Baseline Documentation Report, is an accurate representation of the Property at the time of this donation.

4. **PROHIBITED ACTIONS.** Any activity on, or use of, the Property that is inconsistent with the Purposes of this Conservation Easement or that is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited:
- A. **Division.** Any division or subdivision of the Property is prohibited.
 - B. **Commercial Activities.** Any commercial activity on the Property is prohibited except as provided for under Paragraph 5H2. *De minimis* commercial recreational activity is, however, permitted.
 - C. **Industrial Activities.** Any industrial activity on the Property is prohibited.
 - D. **Construction.** The placement or construction of any human-made modification such as, but not limited to, structures, buildings, fences, roads, and parking lots is prohibited except as provided for under Paragraphs 5B, 5C, 5D, 5J, 5K, 5L and 5N.
 - E. **Cutting Vegetation.** Any cutting of trees or vegetation, including pruning or trimming, is prohibited, except for the cutting or removal of trees or vegetation that pose a threat to human life or property and as provided for under Paragraphs 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L and 5M.
 - F. **Land Surface Alteration.** Any mining or alteration of the surface of the land is prohibited, including the mining or extraction of any substance that must be quarried or removed by methods that will consume or deplete the surface estate, including, but not limited to, the removal of topsoil, sand, gravel, rock, and peat. In addition, exploring for, developing, and extracting oil, gas, hydrocarbons, or petroleum products are all prohibited activities.
 - G. **Dumping.** Waste and unsightly or offensive material is not allowed and may not be accumulated on the Property.
 - H. **Water Courses.** Natural water courses, lakes, wetlands, or other bodies of water may not be altered except as permitted under Paragraph 5J and 5N.
 - I. **Off-Road Recreational Vehicles.** Motorized off-road vehicles such as, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles may not be operated off of designated roads on the Property except those vehicles, such as tractors, trucks, and other 4-wheel vehicles, that may be used expressly for activities described in Paragraphs 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K,



5L, 5M, 5N and 5O.

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- J. **Agriculture.** Any agricultural activity on the property is prohibited except as provided for under Paragraph 5H2. Agricultural activity is defined as the planting and harvesting of crops, nursery stock, and trees.
- K. **Animals.** The raising or housing of livestock, poultry or horses, the commercial kenneling of those animals or conducting commercial aquaculture on the Property is prohibited.
- L. **Signs and Billboards.** Billboards are prohibited. Signs are prohibited, except signs may be displayed for the following purposes:
- To disclose the name and address of the Property or the owner's name.
 - To disclose that the area is protected by a conservation easement.
 - To state that trespassers or any unauthorized entry or use is prohibited.
 - To advertise the Property for sale.
 - To identify and interpret trails and natural features.
 - To warn of the presence of dogs or other animals.
5. **PERMITTED USES.** The Owner retains all ownership rights that are not expressly restricted by this Conservation Easement. In particular, the following rights are reserved:
- A. **Right to Convey.** The Owner retains the right to sell, mortgage, bequeath, or donate the Property. Any conveyance will remain subject to the terms of the Conservation Easement and the subsequent Owner will be bound by all obligations in this agreement.
- B. **Right to Maintain and Replace Existing Structures in Building Envelope 1.** The Owner retains the right to maintain, renovate, and replace the existing structure, fences, driveway, and parking area, as noted in the Baseline Documentation Report in substantially the same location. Any expansion or replacement may not substantially alter the character or function of the structure.
- Building Envelope 1 is described as follows: Commencing at the southeast corner of Section 10, thence northerly 2,349 feet, more or less, along the centerline of Lammers Road, thence westerly 1,056 feet, more or less, to the point of beginning. Thence westerly 150 feet more or less, thence northerly 75 feet more or less, thence easterly 150 feet more or less, thence southerly 75 more or less, to the point of beginning.
- To define the corners of the Building Envelope 1 the Owner permits the Conservancy to install small permanent concrete and metal rod markers. In the case of any real or perceived differences between the aforementioned description of the Building Envelope 1 and the actual locations of the markers, the locations of the markers shall define Building Envelope 1.



The following structure and associated utilities, driveway and parking area may be maintained, replaced or renovated in Building Envelope 1 indicated on the Baseline Documentation map:

One, single-family home, not to exceed 3,000 square feet of land surface area or two stories in height.

Prior to beginning any renovation or replacement of any structures, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval under the provisions of Paragraph 8. Such approval shall not be unreasonably withheld.

- C. **Right to Maintain and Replace Structures in Building Envelope 2.** The Owner retains the right to maintain, renovate, and replace the existing structure, fences, driveway, and parking area, as noted in the Baseline Documentation Report in substantially the same location. Any replacement may not substantially alter the character or function of the structure and is subject to the limitations noted below in this Paragraph 5C.

Building Envelope 2 is described as follows: Commencing at the southeast corner of Section 10, thence northerly 2,707 feet more or less along the centerline of Lammers Road, thence westerly 433 feet, more or less, to the point of beginning. Thence westerly 150 feet more or less, thence northerly 325 feet more or less, thence easterly 150 feet more or less, thence southerly 325 feet more or less, to the point of beginning.

To define the corners of the Building Envelope 2 the Owner permits the Conservancy to install small permanent concrete and metal rod markers. In the case of any real or perceived differences between the aforementioned description of the Building Envelope 2 and the actual locations of the markers, the locations of the markers shall define Building Envelope 2.

1. One, single-family, two story home, to be demolished.

It is the intent of the Donors to demolish the existing structure in Building Envelope 2, a single-family, two story home. Following the demolition of the residence in Building Envelope 2, it is the intent of the Donors that the Property contain only one residence. That residence can be in Building Envelope 1 or in Building Envelope 2, but may not exceed size and height limitations described in Paragraph 5B for the residence in Building Envelope 1.

- D. **Right to Add Maintain and Replace Designated Structure or Uses.** The Owner retains the right to add, maintain and replace the following structure within the area designated as Building Envelope 2 on the Baseline Documentation Map:



One non-residential outbuilding, for storage purposes not to exceed 1,000 square feet of land surface area or two stories in height.

The Owner retains the right to maintain, renovate, and replace this structure, in Building Envelope 2, as noted in the Baseline Documentation Report, in substantially the same location, size, and character. Any renovation or replacement may not substantially alter the character or function of the structure.

Prior to adding any new structure and prior to later renovating or replacing such structure, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval under the provisions of Paragraph 8. Such approval shall not be unreasonably withheld.

- E. **Right to Maintain Natural Areas.** Cutting down or otherwise destroying or removing trees or other vegetation whether living or dead is prohibited in areas designated as Natural Areas on the Baseline Documentation Map except to remove dangerous trees, reduce a natural threat of infestation posed by diseased vegetation, control invasive non-native plant species that endanger the health of native species, or collect firewood in accordance with Paragraph 5I below.
- F. **Right to Maintain Trails.** The Owner retains the right to maintain existing foot trails and existing unpaved two-tracks, including the old railroad bed, throughout the Property provided that the maintenance activity does not substantially alter the landscape or adversely affect the Conservation Values of the Property.
- G. **Right to Manage Lawn and Garden.** In areas designated as Building Envelope 1 and Building Envelope 2 on the Baseline Documentation Map, the Owner retains the right to remove, trim, and otherwise manage lawn and gardens; and to grow and harvest fruits, nuts, and vegetables.
- H. **Right to Manage Land as Woodland or Open Field.**
 - 1) **Retained Rights.** The Owner retains the right to manage the area designated as Woodland/Open Field on the Baseline Documentation Map as Woodland or as Open Field, or as a mix of Woodland and Open Field.

To define the corners of the Woodland Open Field the Owner permits the Conservancy to install small permanent concrete and metal rod markers. In the case of any real or perceived differences between the aforementioned description of the Woodland Open Field and the actual locations of the markers, the locations of the markers shall define the Woodland/Open Field.

Management of the area as Woodland means the right to allow woody species to grow in what are now open fields. The Owner's management of the area in whole or in part as Woodland is subject to the restrictions and



permitted uses described Paragraphs 5E, 5I and 5M. Commercial growth and harvest of trees is not permitted.

- 2) If the Owner wishes to manage the area in whole or in part as Open Field, the Owner may control woody species encroaching from nearby woods and tree lines, and may implement an appropriate disturbance regime (e.g., burning, plowing, mowing, haying). The Owner may also plant non-woody vegetation including agricultural crops. The Owner's activities must be consistent with the goals listed below in subparagraph 5H2(a); and if the Owner engages in agricultural activities, the agricultural management operations shall employ generally accepted agricultural management practices as defined and recommended in the Michigan Right-to-Farm Act, Public Act 93 of 1981, as amended, MCL 286.472, 286.473, and 286.474, or successor provisions then applicable, so as to minimize soil erosion and other damaging occurrences.

a. *Goals.* The goals are:

- i. to minimize soil disturbance and erosion;
- ii. to protect water quality, wetland, and riparian zones; and
- iii. to conserve the scenic quality of the Property.

- I. **Right to Collect Firewood.** The Owner retains the right to remove dead and down trees on the property exclusively for the purposes of firewood collection for personal use only.
- J. **Right to Maintain the Dam of Schultz Lake.** The Owner retains the right to maintain the existing dam and the normal flow of water through the dam on Schultz Lake as designated in the Baseline Documentation Map. The Owner may from time to time remove debris including live and dead vegetation that are obstructing the dam to maintain the flow.
- K. **Right to Construct Perimeter Barriers.** The Owner retains the right to construct fencing or other deterrent type of structures to prevent access by off-road recreation vehicles or other unauthorized access provided the construction of such fencing or structures does not adversely impact the Conservation Values of the Property.
- L. **Right to Construct and Maintain Dock on Schultz Lake.** The owner retains the right to construct and maintain a dock on the property to access Schultz Lake. Prior to beginning the construction of the dock, the Owner will provide a written plan to the Conservancy for the Conservancy's review and approval under the provisions of Paragraph 8. Such approval shall not be unreasonably withheld.
- M. **Right to Add Trails.** The Owner retains the right to clear trails for low-impact pedestrian use provided the trails do not exceed four (4) feet in width and that such clearing does not substantially alter the landscape or adversely impact the Conservation Values of the Property. Use of natural materials, such as untreated

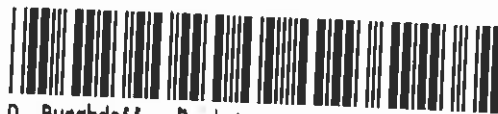


wood or woody debris, downed trees (as a result of natural occurrences), and stones collected from the Property, is permitted to prevent erosion and stabilize soil disturbed from the construction of trails provided the removal, relocation, or placement of natural materials does not substantially alter the land surface of the Property or adversely impact the Conservation Values of the Property.

- N. **Right to Maintain Bridge.** The Owner retains the right to maintain the existing bridge and the normal flow of water through the bridge on Schultz Lake as designated in the Baseline Documentation Map. The use of any construction material determined to be detrimental to the health of humans or wildlife is prohibited.
- O. **Right to Ingress and Egress.** The Owner retains the right to permit ingress and egress as described in an access easement granted to Orville H. Hammond and Georgia M. Hammond recorded in Liber 370 Page 152. These activities shall be confined to the area described in the access easement.

6. **RIGHTS OF THE CONSERVANCY.** The Owner confers the following rights upon the Conservancy to perpetually maintain the Conservation Values of the Property:

- A. **Right to Enter.** The Conservancy has the right to enter the Property at reasonable times to monitor the Conservation Easement Property. Furthermore, the Conservancy has the right to enter the Property at reasonable times to enforce compliance with, or otherwise exercise its rights under, this Conservation Easement. The Conservancy may not, however, unreasonably interfere with the Owner's use and quiet enjoyment of the Property. The Conservancy has no right to permit others to enter the Property. The general public is not granted access to the Property under this Conservation Easement except that the Conservancy may invite members of the general public to one nature walk each calendar year upon a 30 day written notice to, and with the concurrence of, the Owner as to a mutually convenient time; provided the Owner has the right to require participants of the nature walk to sign a release and an agreement of indemnity in the Owner's favor.
- B. **Right to Preserve.** The Conservancy has the right to prevent any activity on or use of the Property that is inconsistent with the Purposes of this Conservation Easement or detrimental to the Conservation Values of the Property.
- C. **Right to Require Restoration.** The Conservancy has the right to require the Owner to restore the areas or features of the Property that are damaged by any activity inconsistent with this Conservation Easement.
- D. **Signs.** The Conservancy has the right to place signs on the Property that identify



the land as protected by this Conservation Easement. The number and location of any signs are subject to the Owner's approval.

7. **CONSERVANCY'S REMEDIES.** This section addresses cumulative remedies of the Conservancy and limitations on these remedies.

- A. **Delay in Enforcement.** A delay in enforcement shall not be construed as a waiver of the Conservancy's right to eventually enforce the terms of this Conservation Easement.
- B. **Acts Beyond Owner's Control.** The Conservancy may not bring an action against the Owner for modifications to the Property resulting from causes beyond the Owners' control, including, but not limited to, unauthorized actions by third parties, natural disasters such as unintentional fires, floods, storms, natural earth movement, or even an Owner's well-intentioned action in response to an emergency resulting in changes to the Property. The Owner has no responsibility under this Conservation Easement for such unintended modifications.
- C. **Notice and Demand.** If the Conservancy determines that the Owner is in violation of this Conservation Easement, or that a violation is threatened, the Conservancy shall provide written notice to the Owner. The written notice will identify the violation and request corrective action to cure the violation and, where the Property has been injured, to restore the Property.

However, if at any time the Conservancy determines, at its sole discretion, that the violation constitutes immediate and irreparable harm, no written notice is required. The Conservancy may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property.

If the Conservancy determines that this Conservation Easement is, or is expected to be, violated, and the Conservancy's good-faith and reasonable efforts to notify the Owner are unsuccessful, the Conservancy may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting the Owner's opportunity to cure. The Owner agrees to reimburse all reasonable costs, including attorney fees, associated with this effort.

- D. **Failure to Act.** If, within 28 days after written notice, the Owner does not implement corrective measures requested by the Conservancy, the Conservancy may bring an action in law or in equity to enforce the terms of the Conservation Easement. In the case of immediate or irreparable harm, or if an Owner is unable to be notified, the Conservancy may invoke these same remedies without notification and/or awaiting the expiration of the 28-day period.



The Conservancy is entitled to enjoin the violation through temporary or permanent injunctive relief and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Owner to restore the Property. If the court determines that the Owner has failed to comply with this Conservation Easement, the Owner shall also reimburse the Conservancy for all reasonable litigation costs and reasonable attorney's fees, and all costs of corrective action or Property restoration incurred by the Conservancy.

- E. **Unreasonable Litigation.** If the Conservancy initiates litigation against the Owner to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Conservancy to reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action.
 - F. **Actual or Threatened Non-Compliance.** The Conservancy's rights under this Section, Conservancy Remedies, apply equally in the event of either actual or threatened violations of the terms of this Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this Easement is inadequate. The Conservancy shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory. The Conservancy's claim for injunctive relief or specific performance for a violation of this Conservation Easement shall not require proof of actual damages to the Conservation Values.
 - G. **Cumulative Remedies.** The preceding remedies of the Conservancy are cumulative. Any, or all, of the remedies may be invoked by the Conservancy if there is an actual or threatened violation of this Conservation Easement.
8. **NOTIFICATION PROVISION.** The Conservancy is entitled to 60 Days written notice whenever its approval is required under this Conservation Easement. If the Conservancy fails to respond within 60 Days after it receives the written request, then its approval shall be deemed given. This implied approval shall not extend to any activity contrary to this Conservation Easement or impairing a Conservation Value. The Conservancy's approval shall continue for three years. If the approved activity is not completed within three years after the approval date, then the Owner must re-submit the written application to the Conservancy.
9. **CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.**
- A. This Conservation Easement is created pursuant to the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources



and Environmental Protection Act (NREPA) - MCL §§ 324.2140 *et seq.*

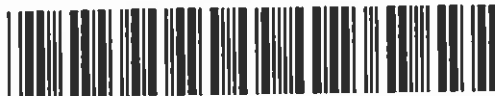
- B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. § 1.170A-14 *et seq.*, as amended.
- C. The Conservancy is qualified to hold conservation easements pursuant to these statutes. It is a publicly funded, non-profit 501(c)(3) organization.
10. **OWNERSHIP COSTS AND LIABILITIES.** In accepting this Conservation Easement, the Conservancy shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Property. The Conservancy, its members, directors, officers, employees and agents have no liability arising from injury or death to any person or physical damage to any property on the Property. The Owner agrees to defend the Conservancy against such claims and to indemnify the Conservancy against all costs and liabilities relating to such claims during the tenure of ownership of the Property. Subsequent owners of the Property will similarly defend and indemnify the Conservancy for any claims arising during the tenure of their ownership. Notwithstanding the foregoing, the Conservancy shall indemnify and hold harmless the Owner from any claims for injury or death of any person or property incurred in connection with or arising out of the Conservancy's use of the Property described in Paragraphs 6A and 6D above.
11. **HAZARDOUS MATERIALS.** The Owner warrants that Owner has no knowledge of a release of hazardous substances or hazardous wastes on the Property.
12. **CESSATION OF EXISTENCE.** If the Conservancy shall cease to exist or if it fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if the Conservancy is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity. This entity shall be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3). The Conservancy's rights and responsibilities shall be assigned to an entity having similar conservation purposes to which such right may be awarded under the *cy pres* doctrine.
13. **TERMINATION.** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain.
- A. **Unexpected Change in Conditions.** If subsequent circumstances render the



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Purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Conservancy will then be entitled to compensation in accordance with the provisions of IRC Treasury Regulations Section 1.170A-14(g)(6)(ii) in effect on the date of this Conservation Easement.

- B. **Eminent Domain.** If the Property is taken, in whole or in part, by power of eminent domain, then the Conservancy will be entitled to compensation by the method as is set forth in IRC Treasury Regulations Section 1.170A-14(g)(6)(ii) in effect on the date of this Conservation Easement.
14. **LIBERAL CONSTRUCTION.** This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Code MCL 324.2140 *et seq.*
15. **NOTICES.** For purposes of this Conservation Easement, required written notices shall be provided by either party to the other party by personal delivery or by First Class mail to the most recent address of record. If a new party succeeds either party or either party changes its address, the new address information shall be provided in writing to the other party as soon as practicable by personal delivery or First Class mail. Service will be complete upon personal delivery or upon depositing the properly addressed notice with the U.S. Postal Service with sufficient postage prepaid.
16. **SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
17. **SUCCESSORS.** This Conservation Easement is binding upon, and inures to the benefit of, the Donor/Owner's and the Conservancy's successors in interest. All subsequent Owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the Donor.
18. **TERMINATION OF RIGHTS AND OBLIGATIONS.** A party's future rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.



D. Burghdoff - Register, Barry Co. MI E

19. MICHIGAN LAW. This Conservation Easement will be construed in accordance with Michigan Law.
20. ENTIRE AGREEMENT. This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

TWO WITNESSES:

(* Print/type names under signatures)


 * Julia M. Schafer

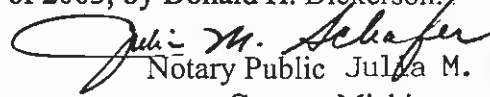

 * Leslie K. Mathie

Schultz Lake Preserve, LLC


 Donald H. Dickerson
 Its: Manager

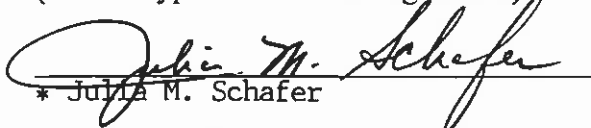
STATE OF MICHIGAN)
)ss.
 COUNTY OF CALHOUN)

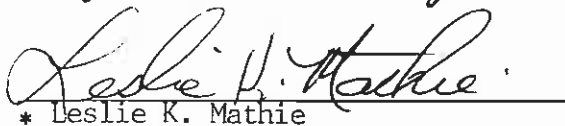
Acknowledged before me on this 19th day of December, of 2003, by Donald H. Dickerson.


 Notary Public Julia M. Schafer
 _____ County, Michigan
 My commission expires: 12/22/07

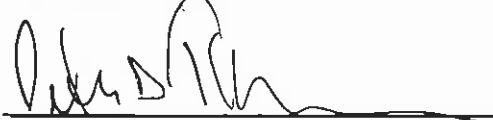
TWO WITNESSES:

(* Print/type names under signatures)


 * Julia M. Schafer


 * Leslie K. Mathie

SOUTHWEST MICHIGAN LAND CONSERVANCY:


 Peter D. Ter Louw
 Its: Executive Director

STATE OF MICHIGAN)
)ss.
 COUNTY OF CALHOUN)



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12/19/2003 11:02A

D. Burghdoff - Register, Barry Co. MI E

Acknowledged before me on this 19th day of December, of 2003, by Peter D. Ter Louw, known to me to be the Executive Director of the Southwest Michigan Land Conservancy.

Julia M. Schaefer, Notary Public

CALHOUN County, Michigan

My commission expires: 12/22/07

AFTER RECORDING SEND TO:

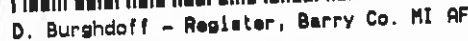
Jody Simoes
Land Protection Specialist
Southwest Michigan Land Conservancy
6851 S. Sprinkle Road
Portage, MI 49002

SEND TAX BILL TO:

Schultz Lake Preserve, LLC
203 East Michigan Avenue
Marshall, MI 49068
Attn: Donald H. Dickerson

PREPARED BY:

Jody Simoes
Land Protection Specialist
Southwest Michigan Land Conservancy
6851 S. Sprinkle Road
Portage, MI 49002



STATE OF MICHIGAN)) SS.
COUNTY OF CALHOUN)

Donald H. Dickerson, being first duly sworn, deposes and says as follows:

1. Schultz Lake Preserve, LLC, is a Michigan Limited Liability Company, and is currently in good standing with the Michigan Department of Consumer and Industry Services, Corporations and Land Development Bureau, as of the date of the execution of this Affidavit.
2. Pursuant to the Operating Agreement, Donald H. Dickerson, is the manager of Schultz Lake Preserve, LLC.
3. Pursuant to Article 6 of the Operating Agreement, the business and affairs of the company shall be managed by and under the authority of the manager, or managers appointed by the members. Article 6.1 provides that the initial manager shall be Donald H. Dickerson.
4. That, as manager, I have full authority to execute on behalf of Schulz Lake Preserve, LLC, a Michigan Model Conservation Easement with the Southwest Michigan Land Conservancy, Inc., and a Baseline Documentation Report, in regard to the following described property:

Beginning at the South ¼ corner of Section 10, Town 2 North, Range 9 West, Hope Township, Barry County, Michigan: thence N01° 35' 59"E, 2047.15 feet along the North and South ¼ line of said Section 10; Thence S86° 38' 43" E, 364.00 feet; Thence N01° 35' 59"E, 598.00 feet to the East and West ¼ line of said Section 10; Thence S86° 38' 43"E, 949.75 feet along said East and West ¼ line; Thence N01° 35' 53"E, 1332.89 feet along the West line of the Southeast ¼ of the Northeast ¼ of said Section 10; Thence S86° 40' 03"E, 1315.97 feet along the North line of said Southeast ¼ of the Northeast ¼ of said Section 10; Thence S01° 41' 39"W, 1333.34 feet along the East line of the southeast ¼ of the Northeast ¼ of said Section 10; Thence S01° 36' 17"W, 1975.44 feet

**1127604**

Page: 1 of 4

05/14/2004 10:53A

D. Burghdoff - Register, Barry Co. MI E

RECEIVED

MAY 14 2004

BARRY COUNTY
REGISTER OF DEEDS**AMENDMENT TO CONSERVATION EASEMENT**

DATE: April , 2004

OWNER: Schultz Lake Preserve, LLC, a Michigan Limited Liability Company, of 203 East Michigan Avenue, Marshall, Michigan 49068-1545.

CONSERVANCY: Southwest Michigan Land Conservancy, Inc., a nonprofit corporation, whose address is 6851 South Sprinkle Road, Portage, Michigan 49002, its successors and assigns.

PROPERTY: Beginning at the South $\frac{1}{4}$ corner of Section 10, Town 2 North, Range 9 West, Hope Township, Barry County, Michigan: thence N01° 35' 59"E, 2047.15 feet along the North and South $\frac{1}{4}$ line of said Section 10; Thence S86° 38'43" E, 364.00 feet; Thence N01° 35'59"E, 598.00 feet to the East and West $\frac{1}{4}$ line of said Section 10; Thence S86° 38'43"E, 949.75 feet along said East and West $\frac{1}{4}$ line; Thence N01° 35'53"E, 1332.89 feet along the West line of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 10; Thence S86° 40'03"E, 1315.97 feet along the North line of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 10; Thence S01° 41'39"W, 1333.34 feet along the East line of the southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 10; Thence S01° 36'17"W, 1975.44 feet along the East line of the Southeast $\frac{1}{4}$ of said Section 10; Thence N86° 51'24"W, 330.00 feet; Thence S01° 36'17"W, 660.00 feet to the South line of said Section 10; Thence N89° 51'24"W, 983.49 feet along said South section line; Thence N01° 36'08"E, 1264.54 feet along the West line of the Southeast $\frac{1}{4}$ of said Section 10; Thence S49° 22'53"W, 1364.71 feet along the Southeasterly line of the former Chicago, Kalamazoo and Saginaw Railroad; Thence continuing Southwesterly 409.11 feet along said Southeasterly line and the arc of a curve to the left, the radius of which is 1470.80 feet, the central angle of which is 15° 56'14" and the chord of which bears S41° 24'46"W 407.79 feet to said South section line; Thence N89° 51'24" W, 41.29 feet along said South section line to the point of beginning. Subject to an easement for public highway purposes over the westernmost 33 feet thereof for South M-43 highway, and over the easternmost 33 feet thereof, excepting therefrom that part lying North of the former C.K. and S. Railroad, for Lammers Road. Subject to a right reserved by Orville H. Hammond and Georgia M. Hammond, and assigns, to pass over a triangle of land 20 feet North and South and 20 feet East and West in the Southwest corner of the above described parcel and to place gates for this purpose.

RECEIVED MAY 14 2004

Page 1 of 4



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Page: 2 of 4

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D. Burghdoff - Register, Barry Co. MI E

CONSERVATION EASEMENT: The original Conservation Easement donation was recorded at the Barry County Register of Deeds on December 19, 2003 in Document 1119546 pages 1-18.

THE OWNER AND CONSERVANCY AGREE TO THE FOLLOWING:

PURPOSE OF AMENDMENT TO CONSERVATION EASEMENT

The purpose of this Amendment is to replace the Baseline Documentation Map for the Schultz Lake Conservation Easement recorded as part of the original Conservation Easement document, specifically Document 1119546 page 18 of 18, with the map attached hereto as Exhibit A entitled "Revised Baseline Documentation Map".

Schultz Lake Preserve LLC

Donald H. Dickerson

Its: Manager

STATE OF MICHIGAN)
)ss.
COUNTY OF CALHOUN)

Acknowledged before me on this 10th day of May, of 2004, by Donald H. Dickerson, known to be the Manager of the Schultz Lake Preserve LLC.

Notary Public, Lisa L. Avery

Calhoun County, Michigan

My commission expires: 01/21/2008

SOUTHWEST MICHIGAN
LAND CONSERVANCY:

Peter D. Ter Louw

Its: Executive Director



1127604

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05/14/2004 10:53A

D. Burghdoff - Register, Barry Co. MI E

STATE OF MICHIGAN)
)ss.
COUNTY OF Kalamazoo)

Acknowledged before me on this 22nd day of April, of 2004, by Peter D. Ter Louw, known to me to be the Executive Director of the Southwest Michigan Land Conservancy, a Michigan non-profit Corporation.

Notary Public
Julie A. Lewandowski
My Commission Expires 2-12-06

Notary Public
Kalamazoo County, Michigan
My commission expires:
Julie A. Lewandowski

PREPARED BY:
Jody Simoes
Southwest Michigan Land Conservancy
6851 S. Sprinkle Road
Portage, MI 49002

AFTER RECORDING RETURN DOCUMENT TO:
Southwest Michigan Land Conservancy
6851 S. Sprinkle Road
Portage, MI 49002

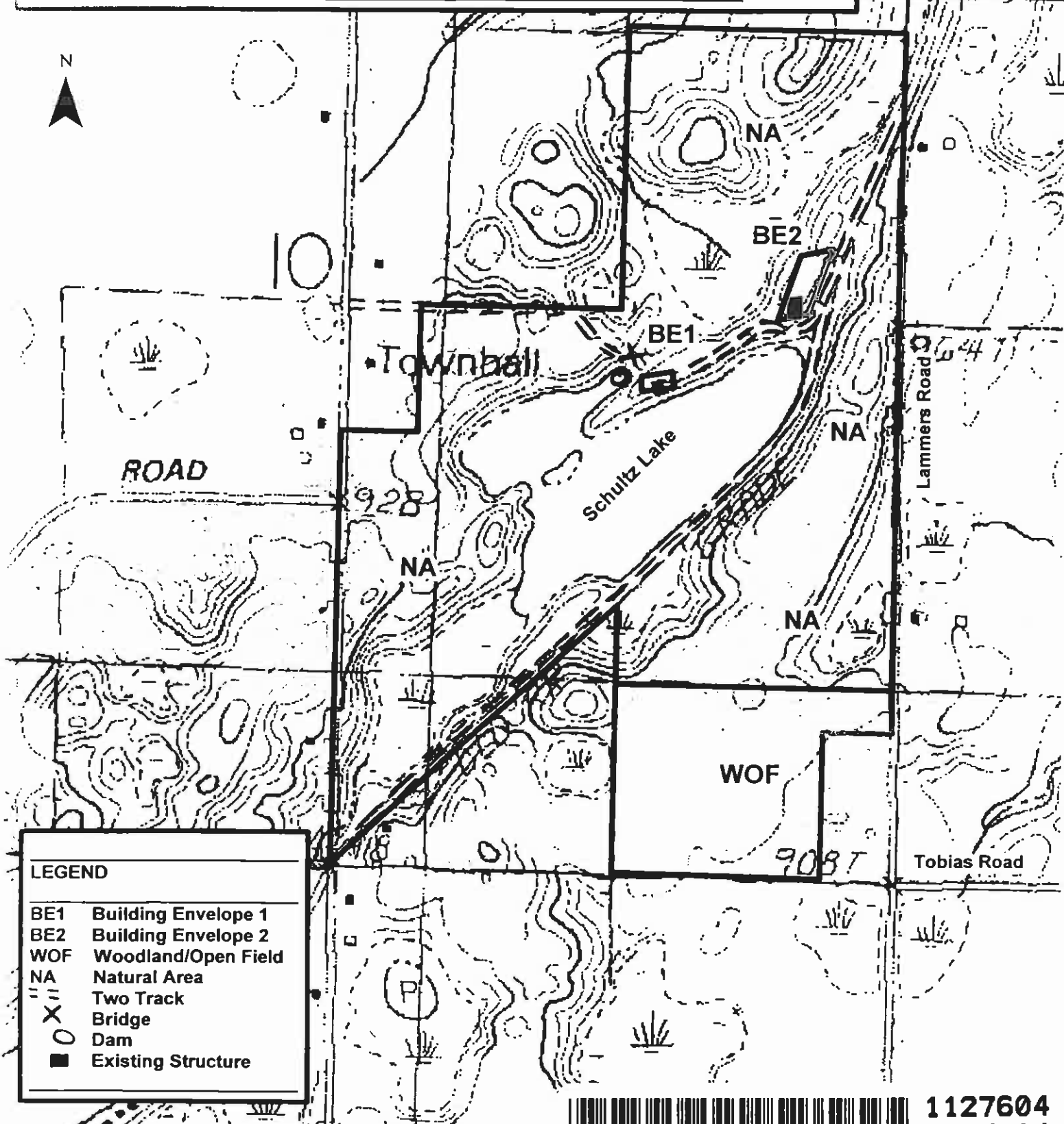
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REVISED BASELINE DOCUMENTATION MAP SCHULTZ LAKE CONSERVATION EASEMENT

DONOR: SCHULTZ LAKE L.L.C.
203 E. MICHIGAN AVENUE
MARSHALL, MI 49068-1591

Exhibit A

CONSERVANCY: SOUTHWEST MICHIGAN LAND CONSERVANCY
6851 S. SPRINKLE ROAD
PORTAGE, MI 49002



LEGEND

- BE1 Building Envelope 1
- BE2 Building Envelope 2
- WOF Woodland/Open Field
- NA Natural Area
- == Two Track
- X Bridge
- O Dam
- Existing Structure



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