

CONSERVATION EASEMENT AGREEMENT

On this ____ day of _____, 2021, and subject to the terms and conditions of this agreement (“this Agreement”), KR Property I, LLC, a Michigan limited liability company, the registered mailing address of which is 14252 US Highway 41, Copper Harbor, MI 49918 (“Grantor”) grants to Keweenaw Community Forest Company, a Michigan non-profit corporation, the principal address of which is 13992 Smith Fishery Road, Mohawk, MI 49950 (“Grantee”), for no consideration paid by Grantee: (1) a conservation easement (“the Conservation Easement”) over real property defined below as “the Conservation Easement Area,” located within Parcel One and Parcel Two described below (“the Property”); and (2) the right to enforce certain restrictions set forth below regarding the Property:

Parcel One: Real property in the Township of Grant, County of Keweenaw, and State of Michigan, legally described as follows:

The Southwest quarter of Section 31, Township 59 North, Range 28 West, subject to an easement for a highway right of way to Board of Commissioners of Keweenaw County and also subject to an easement for a highway right of way described as a strip of land 400 feet wide lying 200 feet each side of and adjacent to the center line of US Hwy 41, as now established, over the South half of the Southwest quarter, except for that portion of the parcel shown as “Proposed Parcel A” on Sheet #1 of a Certificate of Survey recorded in the records of the Keweenaw County Register of Deeds on July 14, 2017, Instrument No. 20170422, as amended by a Scrivener’s Affidavit filed on August 23, 2017, Instrument No. 20170502, that lies within said Southwest quarter of Section 31; and

That portion of the parcel of property shown as “Remaining Parent Parcel #2” on said Certificate of Survey that lies within the Southeast quarter of Section 31, Township 59 North, Range 28 West;

AND

Parcel Two: Real property in the Township of Eagle Harbor, County of Keweenaw, State of Michigan, legally described as follows:

The Southeast quarter of Section 36, Township 59 North, Range 29 West, subject to an easement for a highway right of way reserved to Board of Commissioners of Keweenaw County.

Grantor purchased the Property from Keweenaw County; as a condition of that sale, Grantor agreed to grant a perpetual easement, the Conservation Easement, to Grantee. The purpose of the Conservation Easement is to protect the Property from commercial, residential, or agricultural development and to preserve its natural and undeveloped state, reserving it in perpetuity for public access and recreational purposes (subject to certain exceptions defined and described in this Agreement). The State of Michigan is also being made a party to this Agreement, for purposes of being able to enforce the Agreement and as a required signatory to the termination of this Agreement.

Grantor is also the owner of the following real property (“Parcel A”) located in the Township of Grant, County of Keweenaw, State of Michigan, also referred to as “Parcel A” in a Certificate of Survey recorded in the office of the Keweenaw County Register of Deeds on July 14, 2017 as Document No. 20170422, as amended by a Scrivener’s Affidavit recorded on August 23, 2017 as document No. 20170502, and legally described as:

A parcel of land being a part of the South Half (S ½) of Section 31, T59N, R28W, Grant Township, Keweenaw County, Michigan, described as: Commencing at the Southeast corner of said Section 31 thence N 89°23’51” W 2136.51 feet along the South line of said Section 31 to the point of beginning of this description; thence N 89°23’51” W 505.12 feet along the South line of said Section 31 to the South Quarter corner of said Section 31; thence N 89°35’55” W 1343.78 feet along the South line of said Section 31 to a point on the Southeasterly right of way line of Highway U.S. 41 (200.00 feet from center line) and the point of curvature of a curve to the Right (Radius = 557.21 feet, Delta = 28°09’25”, Chord Bears N 12°42’25” E 271.08 feet); thence along the arc of said curve to the Right 273.83 feet; thence N 55°56’17” E 183.29 feet; thence N 88°38’15” E 998.32 feet; S 51°39’00” E 552.02 feet; thence S 85°13’53” E 189.44 feet; thence S 20°26’38” E 50.49 feet to the point of beginning of this description.

The Grantor further grants a perpetual easement across a portion of Parcel A, also for no consideration paid by Grantee, for public access to that portion of the Conservation Easement Area, described below, which lies to the east of the East Development Envelope, described below. This easement shall be by a permanent, 20-foot-wide strip of land beginning on the easterly right-of-way line of Golf Course Road and ending at the portion of the Conservation Easement Area lying to the east of the East Development Envelope, and lying ten feet to each side of the centerline of an existing trail that is located approximately within “Easement #1” as described in the Certificate of Survey recorded with the Keweenaw County Register of Deeds on July 14, 2017 as Document No. 20170422, as amended by a Scrivener’s Affidavit recorded on August 23, 2017 as Document No. 20170502.

The parties agree that this legal description for Easement #1 found within the 2017 Certificate of Survey does not accurately describe the trail that is currently in existence and over which the access easement shall run. Therefore, the parties have agreed to retain a licensed surveyor to complete a

drawing and legal description of the access easement that lies ten feet to either side of the center line of the current trail; the legal description contained in that survey shall control, and this paragraph shall be amended (and the amended Agreement shall be recorded) to describe the access easement with that survey description (and with the survey drawing attached to this Agreement as an exhibit).

This Agreement is made subject to the following terms and conditions.

1. **Restrictions on the Property.** Grantor agrees that the Property shall be subject to the following restrictions:

A. **One Allowed Division.** Grantor shall be allowed one division of the Property under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended. The boundary of the allowed division, should Grantor choose to use the division, shall follow the boundaries of the East and West Development Areas as described in Section 3. Otherwise, the Grantor shall not divide the Property.

B. **Prohibition on Condominiums.** No condominiums or condominium units may be placed anywhere on the Property.

2. **East Development Envelope; West Development Envelope; Easement Area.**

A. **East Development Envelope.** The following portion of the Property shall be referred to as “the East Development Envelope”: that part of the Property that is east of US Highway 41 and west of the eastern tree line of the electrical power line found within the parcel of the property shown as “Remaining Parent Parcel #2” on the Certificate of Survey recorded in the records of the Keweenaw County Register of Deeds on July 14, 2017, as Document No. 20170422, as amended by a Scrivener’s Affidavit filed on August 23, 2017, as Document No. 20170502, that lies within the Southeast quarter of Section 31, Township 59 North, Range 28 West. The parties have agreed to have a licensed surveyor complete a drawing and legal description of the East Development Envelope; the legal description contained in that survey shall control, and this paragraph shall be amended (and the amended Agreement shall be recorded) to describe the East Development Envelope with that survey description (and with the survey drawing attached to this Agreement as an exhibit). The East Development Envelope is subject to the restrictions on the Property contained in paragraph 1 of this Agreement entitled “Restrictions on the Property”, but is not subject to the terms contained in paragraph 3 of this Agreement entitled “Grant of Easement.”

B. **West Development Envelope.** The following portion of the Property shall be referred to as the “West Development Envelope”: That part of the S 1/2 of the SW ¼ of T59N R28W that is west of US 41 and to the south of the center line of the Garden Brook by 300 feet. The parties have agreed to have a licensed surveyor complete a drawing and legal description of the West Development Envelope; the legal description contained in that survey shall control, and this paragraph shall be amended (and the amended Agreement shall be recorded) to describe the West Development Envelope with that

survey description (and with the survey drawing attached to this Agreement as an exhibit). The West Development Envelope is subject to the restrictions on the Property contained in paragraph 1 of this Agreement entitled “Restrictions on the Property”, but is not subject to the terms contained in paragraph 3 of this Agreement entitled “Grant of Easement.”

C. **Conservation Easement Area.** The portions of the Property that are not within the East Development Envelope or the West Development Envelope are subject to the terms and conditions of the Conservation Easement granted by this Agreement and are referred to in this Agreement as the “Conservation Easement Area.” The Conservation Easement Area shall be subject to all conditions of this Agreement.

3. **Scope of the Conservation Easement.** The terms and conditions of the Conservation Easement which apply to the Conservation Easement Area are as follows:

A. **Restriction on Development.** Grantor and its successors and assigns shall not, and shall prevent any others from, developing the Conservation Easement Area, or any portion of it, for any commercial, residential, or agricultural uses.

B. **Restriction on Alterations to Land.** Unless necessary for the development or maintenance of existing and new non-motorized trails (in Grantor’s reasonable discretion), Grantor shall refrain from, and prevent others from, engaging in the following actions in the Conservation Easement Area:

- i. Alteration of the surface topography;
- ii. Creation of paths, trails, or roads for motorized vehicle use;
- iii. Placement of fill material;
- iv. Dredging, removal or excavation of any soil or minerals;
- v. Drainage of surface or groundwater;
- vi. Construction or placement of any structure, except that benches, picnic tables, or trash cans shall be permitted;
- vii. Plowing, tilling, mowing or cultivating the soils or vegetation;
- viii. Storage or disposal of ash, garbage, trash, debris, abandoned equipment or accumulation of machinery, bio-solids or other waste materials, including accumulated vegetative debris, such as grass clippings, leaves, yard waste or other material collected and deposited from areas outside the Conservation Easement Area;

- ix. Use or storage of automobiles, trucks or off-road vehicles including, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles; and
- x. Placement, maintenance, use, or storage of explosives, toxic materials, or other substances injurious to human health.

C. **Restrictions Concerning Trees or other Vegetation.** Grantor shall not plant or place non-native species of any kind whatsoever on the Conservation Easement Area. Grantor shall not remove trees or other vegetation from the Conservation Easement Area, except in any of the following circumstances:

- i. as necessary to control non-native, noxious or invasive vegetation;
- ii. as necessary to prevent soil erosion;
- iii. as necessary for development and maintenance of existing and new non-motorized trails;
- iv. as necessary for the safety and welfare of the general public; or
- v. berry or mushroom picking by the general public for personal, non-commercial use.

D. **Non-Motorized Trails.**

- i. **Existing Trails Easement.** The Conservation Easement Area has a number of existing non-motorized trails on it. Nearly all of such trails are the responsibility of the Copper Harbor Trails Society, Inc., a Michigan non-profit corporation, a.k.a. the Copper Harbor Trails Club (“CHTC”), which holds an easement over such trails pursuant to a separate easement agreement recorded as Document No. _____ in the office of the Keweenaw County Register of Deeds (“the Trails Easement”). The parties to this Agreement agree that CHTC are allowed to maintain and improve the trails located within the Trails Easement as provided for within that agreement.

Should the Trails Easement terminate, Grantor may, in its sole discretion, close any or all of the trails covered by the Trails Easement or maintain and repair them in accordance with this Agreement.

- ii. **New Trails.** Grantor and its successors and assigns may create new trails in the Conservation Easement Area, in such locations as Grantor may desire in its sole discretion, provided such trails:
 - a. are for the benefit of the public;

- b. allow for human-powered, non-motorized access only (including, but not limited to, hiking, bicycling, snowshoeing, and cross-country skiing) or for horseback riding; and
- c. do not exceed twenty feet in width.

Such trails may, but need not be, developed by Grantor in conjunction with the CHTC, and may but need not be made subject to the Trails Easement. Grantor may alter the land (including but not limited to topographical changes) if Grantor determines, in its reasonable discretion, that such alterations are necessary for the creation of such trails. Grantor may make improvements to such trails if the following requirements are met: the under surface of such improvements shall not be constructed higher than two feet above the natural level of the land; such improvements shall be constructed from wood or natural materials; and the trails shall not be paved.

Before existing trails are extended or new trails are constructed by either Grantor or CHTC, Grantor and/or CHTC shall provide notice of any such project to Grantee at least 10 days prior to commencement of construction activity. The notice shall include sufficient detail to substantially inform Grantee of the nature and extent of the work that is to be done. Grantor and/or CHTC shall also provide notice of 10 days to Grantee of the abandonment of any existing trail or portion of an existing trail by either Grantor or CHTC.

- iii. **Maintenance of Trails.** Grantor shall maintain any trails on the Property (whether pre-existing or created by Grantor) which are not subject to the Trails Easement, unless and until Grantor chooses to abandon any such trails. Such maintenance may include removal of trees or vegetation, placement of vegetation to prevent or minimize erosion, placement of fill or other improvements, and grooming of trails. Should Grantor choose to abandon any such trail, Grantor shall be responsible for restoring the land on which the trail was located to a reasonably natural state by removing any man-made improvements and, if necessary, planting native vegetation.

E. **Signs and Trail Markers.** Grantor may place within the Conservation Easement Area interpretive signs, trail markers, and signs restricting use as appropriate. CHTC is also permitted by the Trails Easement to place signs within the Conservation Easement Area. This Agreement does not limit or impair the right of CHTC to place or construct such signs, or not, within its discretion.

F. **Restoration.** Grantee has the right to require Grantor to restore the areas or features of the Conservation Easement Area which are damaged by any activity prohibited by the Conservation Easement if such damage is inflicted by Grantor or any party acting as an agent or contractor of Grantor, or with the explicit consent of Grantor. Provided, however, Grantor shall not be required to restore the Conservation Easement Area due to any causes beyond its control, including, but not limited to, unauthorized actions of

third parties that are not reasonably foreseeable or preventable by Grantor, or natural causes or natural events such as wildfires, floods, storms or natural earth movement.

- G. **Right to Enter.** Grantee has the right to enter the Conservation Easement Area at reasonable times to monitor and to enforce compliance with, or otherwise exercise its rights under the Conservation Easement. The Conservation Easement Area is intended for the benefit of the public. Grantee shall not interfere with the use of the Conservation Easement Area by the public unless such use violates or is inconsistent with the terms, conditions, and purposes of the Conservation Easement.
- H. **Right to Preserve.** Grantee has the right to prevent any activity on or use of the Conservation Easement Area that violates or is substantially inconsistent with the terms of this Agreement.
- I. **No Property Interest; Public Use.** Nothing contained in this Agreement creates or implies any property interests, including easements or rights-of-way, beyond the terms and conditions of this Agreement. This Agreement does not grant or convey to Grantee any ownership interest or right to exclusive use or possession of the Conservation Easement Area. Grantee and the general public are not being granted any interest in any area of the Property outside of the Conservation Easement Area.

Grantor shall not restrict the general public from use of the Conservation Easement Area, except for the following restrictions which Grantor may enforce:

- i. a prohibition on hunting, trapping, use of firearms, or other potentially dangerous uses in the Conservation Easement Area;
 - ii. a prohibition on overnight parking, camping, or overnight occupancy in the Conservation Easement Area;
 - iii. a prohibition on any fires or the use of any fire-producing devices within the Conservation Easement Area;
 - iv. the assigning of daylight hours for certain uses of the Conservation Easement Area; and
 - v. the restriction of trails in the Conservation Easement Area to certain uses; and
 - vi. any restriction deemed necessary for the safety and welfare of the public or necessary for the protection or continued vitality of the any portion of the Conservation Easement Area, in Grantor's reasonable discretion.
- 4. **Consideration.** The parties agree that the consideration for this Agreement is less than One Hundred Dollars (\$100) and such consideration is sufficient and adequate.
 - 5. **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, representatives, successors, and assigns, and shall create an easement appurtenant, running with the land in perpetuity. Termination of this Agreement shall require the written consent of an authorized representative of the State of Michigan's Department of Natural Resources. Grantor may assign its respective rights

and responsibilities under this Agreement, including but not limited to those described in paragraph 1 of this Agreement, without restriction. Grantee may only assign its rights and obligations under this Conservation Easement to (1) an organization that, at the time of the assignment, is a "qualified conservation organization" under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder by the Internal Revenue Service, or (2) to the State of Michigan or any subdivision of the State of Michigan or municipal corporation of the State of Michigan. Any other assignment by Grantee shall require the written consent of Grantor, which consent shall not be unreasonably withheld. Should the Grantee cease to exist or fail to remain a "qualified conservation organization" for purposes of Internal Revenue Code Section 170(h)(3), or if Grantee is no longer authorized to acquire and hold conservation easements, then this Agreement shall become vested in another entity, subject to the assignment restrictions listed above, and further provided that the State of Michigan (or any subdivision or municipal corporation thereof) shall have the first option to accept assignment of this Agreement from Grantee. Grantee shall provide notice of any of the events laid out above to the State of Michigan by mailing written notice to the following address: _____. The State of Michigan (or any subdivision or municipal corporation thereof) shall have ninety days from the date that notice is mailed by Grantee to exercise its option.

6. **Enforcement.** Should either party violate any requirement under this Agreement, the nonbreaching party may seek enforcement of the Agreement and damages (including but not limited to reasonable attorney fees) from a court of competent jurisdiction. Additionally, Grantor and Grantee agree that the State of Michigan may seek enforcement of this Agreement and damages (including but not limited to reasonable attorney fees) from a court of competent jurisdiction. Neither party shall forfeit its right to take legal action to enforce this Agreement by any prior failure to act. Any delay in enforcement by the Grantee shall not be construed as a waiver by Grantee of its right to enforce any or all of the terms of this Agreement. The parties' rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of the Conservation Easement. The parties agree that claims for money damages for any violation of the terms of the Conservation Easement are inadequate. Consequently, the parties shall be entitled to affirmative and prohibitive injunctive relief, specific performance, both prohibitive and mandatory, and other forms of equitable relief. A party's claim for injunctive relief or specific performance for a violation of the Conservation Easement shall not require proof of actual damages. The preceding remedies are cumulative. Any, or all, of the remedies may be invoked if there is an actual or threatened violation of the Conservation Easement.
7. **Jurisdiction.** Any lawsuits filed related to this Agreement, and of the rights and duties of the parties, shall be filed in Keweenaw County, Michigan and shall be governed by Michigan law.
8. **Severability.** If any portion of this Agreement is determined to be invalid, the remaining provisions will remain in force.
9. **Entire Agreement.** This Agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This Agreement may not

be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest.

10. **Effective Date.** This Agreement shall be effective as of the date that the last party to this Agreement executes the Agreement.

Exempt from State Transfer Tax under MCL 207.526(a); Exempt from County Transfer Tax under MCL 207.505(a).

GRANTOR
KR Property I, LLC

Dated: _____

By: John Mueller
Its: Member

STATE OF MICHIGAN)
)ss
COUNTY OF KEWEENAW)

On this ____ day of _____, 2021, before me a Notary Public, in and for said County, personally appeared John Mueller, _____ of KR Property I, LLC, to me known to be the same person described herein and who executed the foregoing instrument, and who acknowledged the same to be the company’s own free act and deed.

), Notary Public
Keweenaw County, Michigan
My Commission Expires:
Acting in Keweenaw County

GRANTEE
Keweenaw Community Forest Company

Dated: _____

By:
Its:

