

CONSERVATION EASEMENT

DATE: Oct 7 2004

OWNER: Grand Traverse Commons Redevelopment Corporation, a Michigan non-profit corporation, having an address at 1200 W. 11th Street, Traverse City, MI 49684, and its transferees and assigns.

CONSERVANCY: Grand Traverse Regional Land Conservancy, a Michigan non-profit corporation, having an address at 3860 N. Long Lake Road, Suite D, Traverse City, MI 49684.

For purposes of this Conservation Easement, the Owner, who is the current owner of the Property, and all subsequent owners, transferees and assigns of the subject Property, will be referred to as the "Owner" throughout this Conservation Easement. All subsequent owners of the property are bound to all provisions of this conservation easement to the same extent as the current property owner. A party's future rights and obligations under this easement terminate upon transfer of that party's interest in the Property.

PROPERTY: Property consisting of 7 acres, more or less, in Garfield Township, Grand Traverse County, Michigan, which is more fully described in Exhibit A and shown in Exhibit B.

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 Owner to the Conservancy.

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.

PURPOSE OF THIS CONSERVATION EASEMENT:

A. The Owner is the fee simple title owner of the Property, and is committed to preserving the Conservation Values of the Property. The purpose of this Conservation Easement is to ensure that the Property will be perpetually preserved in its predominately natural, scenic, historic, and forested condition and will be used solely and exclusively for the public recreational purposes of hiking, cross country skiing, and other passive non-motorized activities. Any use of the Property which may impair or interfere with the Conservation Values are expressly prohibited except as otherwise permitted in this

easement. Owner agrees to confine use of the Property to activities consistent with this easement, the purposes of this easement and preservation of the Conservation Values.

B. The Conservancy is a tax-exempt, nonprofit Michigan corporation and is a "qualified conservation organization" under Internal Revenue Code Sections 501(c)(3) and 170(h)(3) and 170(h)(4)(ii) and (iii); the Conservation and Historic Preservation Easement Act, MCL 399.251 et seq. The Conservancy protects natural habitats of fish, wildlife, plants or similar ecosystems. 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.

C. The conveyance of this conservation easement is consistent with the history of public involvement and concern regarding the preservation of the unique natural, historic, and recreational features of the Grand Traverse Commons property. This concern led local units of government to work with the State of Michigan to set up the Grand Traverse Commons Redevelopment Corporation to work with Grand Traverse County, Garfield Township, Traverse City, the State of Michigan, and concerned citizens to determine the future uses of the property. One of the Goals of the Grand Traverse Commons Redevelopment Corporation was to ensure the long-term protection of the open space and passive recreational uses the property provides. Knowing that the Grand Traverse Commons Redevelopment Corporation will eventually be dissolved after fulfilling its primary duties, this conservation easement will ensure the permanent protection of the natural features and passive recreational uses.

D. The Property has the following specific Conservation Values:

- Significant natural habitat in which fish, wildlife, plants or a similar ecosystem thrive in a natural state.
- A scenic landscape and natural character which would be impaired by a modification of the Property.
- Steep sensitive slopes that would be in danger of erosion if modification of the property should occur.
- A scenic panorama visible to the public from publicly accessible lands which would be adversely affected by modifications of the natural habitat.
- A natural area that provides public recreation for passive, non-destructive outdoor activities.
- A natural habitat that is in close proximity to schools that can utilize the area for outdoor education.
- Preservation of the Property enables the Owner to integrate the Conservation Values with other neighboring lands contributing to the creation of ecological corridors.
- The Property and adjacent land provides migration, breeding, feeding, nesting, and/or brood rearing habitat for at least 107 species of birds.
- The biological integrity of other land in the vicinity has been modified by intense urbanization, and this trend is expected to continue.

- This property is contiguous to a 27-acre parcel where the Conservancy holds a conservation easement and to a 101-acre parcel owned by Garfield Township as parkland. These properties form a contiguous 135 acre park which is adjacent to 136 acres of parkland owned by the City of Traverse City. Still other adjacent parcels may be acquired to extend the natural area.
- 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.*;
 - Water Pollution Control Act of 1972, 33 USC §§ 1251 - 1387 (§1251 Goals & Policy; § 1344 Wetlands permitting, aka "Section 404" Clean Water Act.);
 - Wetland Protection, Part 303 of the Michigan Natural Resources and Environmental Act - MCL §§ 324.30301 *et seq.*; (Legislative Findings MCL § 324.30302);
 - 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 Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.9101 *et seq.*; 324.9301 *et seq.*; (Legislative Policy § 324.9302);

E. Specific Conservation Values of the Property will be documented in a natural resource inventory signed by the Owner and Conservancy. This "Baseline Documentation" consists of maps, a depiction of all existing man-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) is an accurate representation of the Property at the time of this grant.

THE PARTIES AGREE TO THE FOLLOWING TERMS OF THIS CONSERVATION AGREEMENT:

1. **PROHIBITED ACTIONS.** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement or detrimental to the Conservation Values is expressly prohibited. By way of example, the following activities and uses are explicitly prohibited:
 - a. Division. Any division or subdivision of the Property is prohibited.
 - b. Industrial Activities. Industrial activity is prohibited.
 - c. Construction. The placement or construction of any man-made modification, such as buildings, structures, fences, roads and parking lots is prohibited except as permitted in paragraph 3, with the prior written approval of the Conservancy, to improve public use of the Property as a natural area for hiking, cross country skiing or other passive, non-destructive, permitted uses.
 - d. Cutting Vegetation. Any cutting of trees or vegetation is prohibited except for the purposes described below in paragraph 1d (1-3). When notice to the Conservancy is required for cutting vegetation, notice shall be given seven (7) days prior to the date of the intended activity, and may be verbal notification. Notice for other intended activities shall remain as described in paragraph 4 of this agreement. Owner may:

1) Cut limbs and trees less than 2 inches in diameter to control disease, prevent hazards and fire, or maintain public safety without prior notice of the Conservancy. Owner may cut trees greater than 2 inches in diameter in accordance with generally accepted forestry practices, according to a registered forester, to control disease, prevent hazards and fire, or maintain public safety, with prior notice to the Conservancy.

2) Clear trees and other vegetation as required in connection with other permitted uses described herein in paragraph 3. Specifically, the Owner may cut trees or other vegetation to create or maintain trails for hiking, cross-country skiing, and other passive, non-destructive, permitted activities. Creation of new trails requires prior notice and approval of the Conservancy. Maintenance of existing trails described in the Baseline Documentation or maintenance of trails approved by the Conservancy does not require prior notice to the Conservancy.

3) Trees and other vegetation may be cut, with prior notice to the Conservancy, for the purpose of general maintenance of existing utilities described in the Baseline Documentation or to facilitate other maintenance activities consistent with the purpose of this agreement.

e. Land Surface Alteration. Any mining or alteration of the surface of the land is prohibited except as may be required for the described permitted activities. The Owner retains the right to extract oil and gas deposits from the Property provided that no exploration for, or extraction of, minerals shall be conducted on the Property. The Property may be pooled as a part of a larger drilling unit, provided the drill site and all roads associated with mineral extraction are located off the Property

f. Waste Materials. The outside storage of junk, garbage and refuse is prohibited. By way of example and not limitation, "junk" means any of the following items which are scrap or unused: metal, wood, building materials, tires or car parts as well as motor vehicles which are unlicensed and inoperable, and similar items; "garbage" means crude wastes or similar items; and "rubbish" means solid wastes such as ashes, paper, containers, glass and similar items. However trash cans may be placed at trailheads.

g. Water Courses. Natural watercourses, wetlands, or other water bodies may not be altered except to construct footpaths, boardwalks, berms to prevent flooding and erosion, or as required in connection with other permitted uses.

2. 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 or to enforce compliance with this Conservation Easement.

b. Right to Preserve. The Conservancy has the right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement.

c. Right to Require Restoration. The Conservancy has the right to require restoration of the areas or features of the Property which are damaged by any activity or use of the Property that is inconsistent with the purpose of this Conservation Easement.

d. Signs. The Conservancy has the right to place signs on the Property which identify the land as being protected by this Conservation Easement. The number and location of any signs are subject to Owner's written approval.

3. PERMITTED USES. The Owner retains all ownership rights which 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 this Conservation Easement and any subsequent owner of the Property, will be bound by all obligations in this agreement.

b. Right to Use Property. The Owner retains the right to use the property for all purposes not inconsistent with this grant.

c. Right to Create and Maintain Recreation Trails. The Owner retains the right to construct and maintain footpaths, cross-country ski or snowshoe trails, and bike trails on the Property. Any new recreation trail should use existing openings and minimize cutting of trees or other vegetation, and shall be created only after the Conservancy's prior approval. Boardwalks or wildlife observation platforms may be constructed after receiving any necessary local, state or federal wetland permits, and with prior notification of the Conservancy. Trails are not to be used for motorized recreation such as motorcycles, All-Terrain Vehicles, or other off-road vehicles.

d. Right to Conduct Ecological Restoration. The Owner retains the right to conduct ecological restoration, including, but not limited to, planting native species, removing non-native or invasive species, or installing erosion control structures. Such activities may be carried out only according to a management plan prepared by a qualified natural resources professional, and approved by the Conservancy. Verbal or written notice shall be given to the Conservancy before commencing the activity.

4. NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS. The purpose of requiring Owner to notify the Conservancy prior to undertaking certain permitted activities, is to afford the Conservancy an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, the Owner shall notify the Conservancy in writing not less than thirty (30) days prior to the date the Owner intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Conservancy to monitor such activity.

a. Conservancy's Approval. Where the Conservancy's approval is required, such approval shall not be unreasonably withheld, and the Conservancy shall notify Owner of its decision in writing within thirty (30) days of receipt of Owner's written request therefor. The Conservancy's failure to respond within thirty (30) days shall be deemed approval by the Conservancy. The Conservancy's approval may be withheld only upon a reasonable determination by the Conservancy that the action as proposed would be incompatible with the purpose of this Conservation Easement.

5. CONSERVANCY 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 Owner's control. Examples are: unintentional fires, storms, natural earth movement, trespassers or even a Owner's well-intentioned actions 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 will provide written notice to the Owner unless the violation constitutes immediate and irreparable harm. The written notice will identify the violation and request corrective action to cure the violation or to restore the Property to the condition that existed prior to the time of the claimed violation.

d. Failure to Act. If, for a 28 day period after written notice, the Owner continues violating this Conservation Easement, or if the Owner does not abate the violation and implement corrective measures requested by the Conservancy, the Conservancy may bring an action in law or in equity to enforce the terms of this Conservation Easement. The Conservancy is also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses, or an order compelling restoration of the Property to the condition that existed prior to the time of the claimed violation.

e. Legal Fees. If litigation is commenced and the court determines that the Owner has failed to comply with this Conservation Easement by acting without cause or in bad faith, then the Owner also agrees to reimburse all reasonable costs and attorney fees incurred by the Conservancy in pursuing the action. If the Conservancy initiates litigation against the Owner to enforce this Conservation Easement, and if the court determines that the litigation was without reasonable cause or in bad faith, then the court may require the Conservancy to reimburse the Owner's reasonable costs and attorney fees in defending the action.

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

g. Actual or Threatened Non-Compliance. Owner acknowledges that actual or threatened events of non-compliance under the Conservation Easement constitutes immediate and irreparable harm. The Conservancy is entitled to invoke the equitable jurisdiction of the court to enforce this Conservation Easement.

h. 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.

6. **OWNERSHIP COSTS AND LIABILITIES.** The Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Owner shall keep the Conservancy's interest in the Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Owner.

The Owner agrees to release, hold harmless, defend and indemnify the Conservancy from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which the Conservancy may suffer or incur as result of or arising out of the activities of the Owner on the Property. The Conservancy agrees to release, hold harmless, defend and indemnify the Owner from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which the Owner may suffer or incur as a result of or arising out of the activities of the Conservancy on the Property.

7. 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 any entity having similar conservation purposes to which such right may be awarded under the *cy pres* doctrine.

8. 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 Act; MCL 399.251 et seq.

9. NOTICES. For purposes of this agreement, notices may be provided to either party by personal delivery or by mailing a written notice to that party (at the address shown at the top of this agreement, or at last known address of a party) by First Class mail. Service will be complete upon depositing the properly addressed notice with the U.S. Postal Service with sufficient postage.

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

11. SUCCESSORS. This Conservation Easement is binding upon, and inures to the benefit of, the 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 current property owner. The Conservancy may assign its rights and obligations under this Conservation Easement only to an organization that, at the time of the assignment, is a "qualified conservation organization" under Section 170(h) of the Code of 1986, as amended. The Conservancy shall require, as a condition of assignment, that the complete terms and conditions of this Conservation Easement continue to be carried out.

12. TERMINATION OF RIGHTS AND OBLIGATIONS. A party's future rights and obligations under this 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.

13. MICHIGAN LAW. This Conservation Easement will be construed in accordance with Michigan Law.

14. ENTIRE AGREEMENT. This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

Exhibit A

Portion of SUBAREA 7

Part of the Northwest fractional one-quarter of Section 9, Town 27 North, Range 11 West, Garfield Township, Grand Traverse County, Michigan, more fully described as: Commencing at the West one-quarter corner of said Section 9; thence North $00^{\circ}54'19''$ East, 962.96 feet, along the West line of said Section 9; thence East, 1613.66 feet, to the Point of Beginning; thence continuing East, 996.02 feet, along a line common to Subareas 3 and 7; to a point described as being South $00^{\circ}44'57''$ West, 1889.83 feet, and South $34^{\circ}33'44''$ West, 41.49 feet, from the North Quarter corner of said Section 9; thence South $34^{\circ}33'44''$ West, 842.05 feet, along a line common to Subareas 2 and 7; thence North $36^{\circ}46'38''$ West, 865.74 feet, along the Northeasterly line of Parcel RR as recorded in Liber 007, Page 741, to the Point of Beginning. Said parcel contains 7.93 acres.

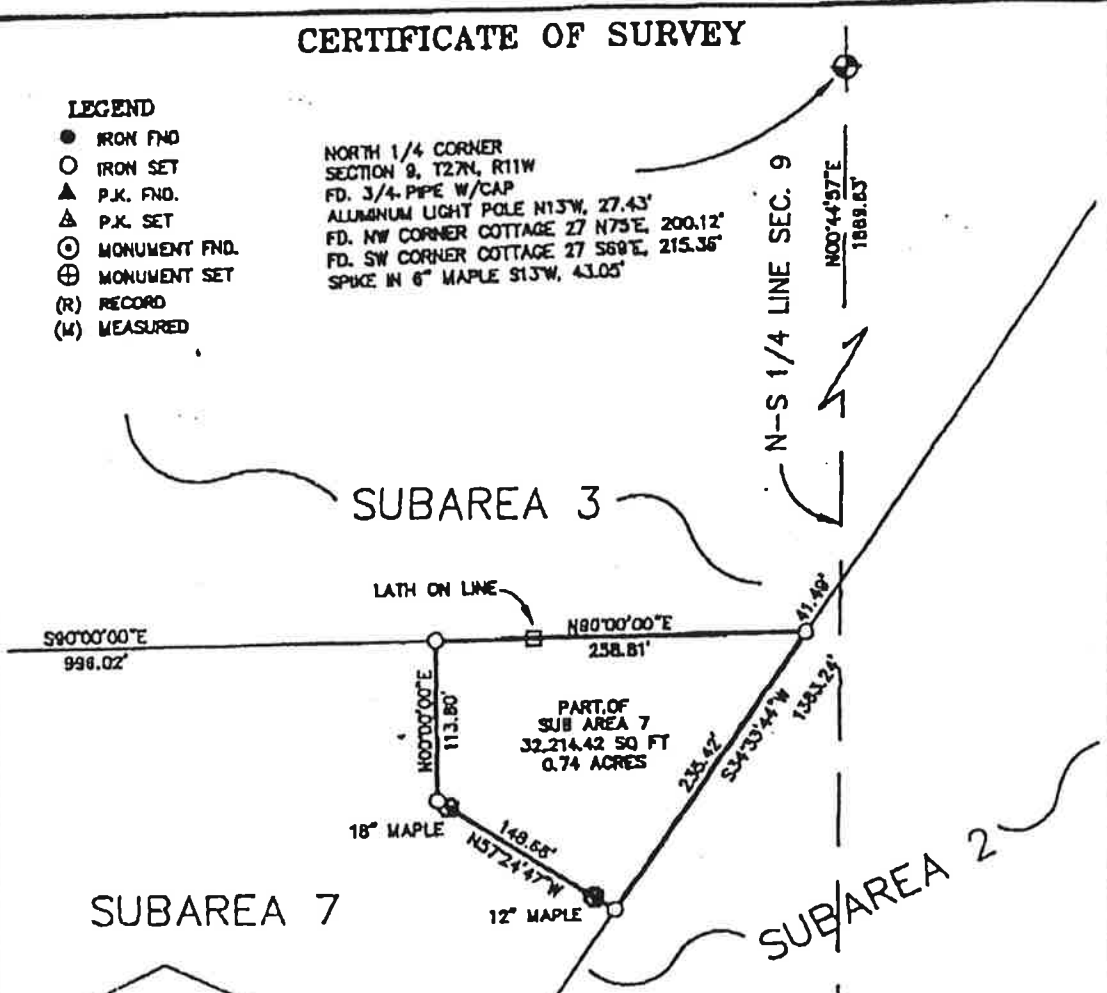
Excepting therefrom the following described 0.74-acre parcel: Part of the Northwest fractional $\frac{1}{4}$ of Section 9, Town 27 North, Range 11 West, more fully described as follows: Commencing at the North $\frac{1}{4}$ of said Section 9, thence $S00^{\circ}44'57''W$ along the North-South $\frac{1}{4}$ line of said Section; 1859.83 feet; thence $S34^{\circ}33'44''W$, 41.49 feet to the Point of Beginning; thence $S34^{\circ}33'47''W$, 235.42 feet; thence $N57^{\circ}24'47''W$, 148.66 feet; thence $N00^{\circ}00'00''E$, 113.80 feet, thence $N90^{\circ}00'00''E$, 258.81 feet to the Point of Beginning.

CERTIFICATE OF SURVEY

LEGEND

- IRON FND
- IRON SET
- ▲ P.K. FND.
- △ P.K. SET
- ⊙ MONUMENT FND.
- ⊕ MONUMENT SET
- (R) RECORD
- (M) MEASURED

NORTH 1/4 CORNER
SECTION 9, T27N, R11W
FD. 3/4" PIPE W/CAP
ALUMINUM LIGHT POLE N13°W, 27.43'
FD. NW CORNER COTTAGE 27 N75°E, 200.12'
FD. SW CORNER COTTAGE 27 S69°E, 215.36'
SPRUC IN 6" MAPLE S13°W, 43.05'



SCALE 1" = 100'



DESCRIPTION:

A PARCEL OF LAND SITUATED IN THE TOWNSHIP OF GARFIELD, COUNTY OF GRAND TRAVERSE, STATE OF MICHIGAN DESCRIBED AS FOLLOWS, TO-WIT:

PART OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 9, TOWN 27 NORTH, RANGE 11 WEST, MORE FULLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 9; THENCE S00°44'57"W ALONG THE NORTH-SOUTH 1/4 LINE OF SAID SECTION, 1869.83 FEET; THENCE S34°33'44"W, 41.49 FEET TO THE POINT OF BEGINNING; THENCE S34°33'44"W, 235.42 FEET; THENCE N57°24'47"W, 148.85 FEET; THENCE N00°00'00"E, 113.80 FEET; THENCE N80°00'00"E, 258.81 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.74 ACRES OF LAND.

SUBJECT TO ALL APPLICABLE BUILDING, USE RESTRICTIONS AND EASEMENTS, IF ANY.

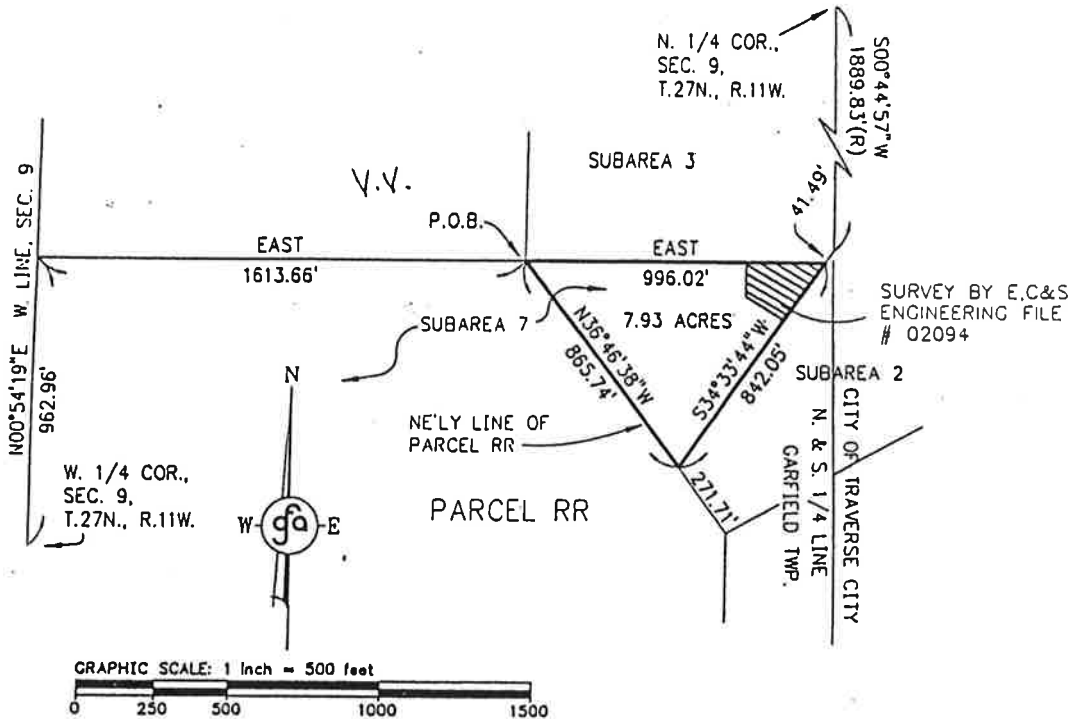


I, Richard J. Krol, a Professional Surveyor in the State of Michigan, do hereby certify that I have surveyed and mapped the herein described parcel(s), that the ratio of closure of the unadjusted field observations is within the accepted limits and that I have fully complied with the requirements of P.A. 132 of 1970, as amended.

The Minervini Group	RECORDING BASIS: Record Survey: Liber007 Page 740	DATE: 5/3/02	BY: RJK
		02004	
EC&S ENGINEERING INC. 2748 GARFIELD ROAD WEST, SUITE 9 TRAVERSER CITY, MI 49781 TELEPHONE (269) 641-0284, FACSIMILE (269) 641-2375	Section 9, T27N, R11W Traverse City Grand Traverse County, Michigan	1	1

V.6

DESCRIPTION SKETCH



Prepared for: GARFIELD TOWNSHIP

Portion of SUBAREA 7

Part of the Northwest fractional one-quarter of Section 9, Town 27 North, Range 11 West, Garfield Township, Grand Traverse County, Michigan, more fully described as:


Commencing at the West one-quarter corner of said Section 9;
 thence North 00°54'19" East, 962.96 feet,
 along the West line of said Section 9;
 thence East, 1613.66 feet,
 to the Point of Beginning;
 thence continuing East, 996.02 feet,
 along a line common to Subareas 3 and 7;
 to a point described as being South 00°44'57" West,
 1889.83 feet, and South 34°33'44" West, 41.49 feet,
 from the North Quarter corner of said Section 9;
 thence South 34°33'44" West, 842.05 feet,
 along a line common to Subareas 2 and 7;
 thence North 36°46'38" West, 865.74 feet,
 along the Northeasterly line of Parcel RR as recorded in
 Liber 007, Page 741, to the Point of Beginning.

Said parcel contains 7.93 acres.

Subject to easements or restrictions, if any.

PREPARED FOR: GARFIELD TOWNSHIP

BASIS OF BEARINGS: E.C. & S. Survey No. 02094

PH 231.946.5874 FAX 231.946.3703 WWW.gourdiefrazer.com 123 W. Front Street Traverse City, MI 49684	 <p>Gourdie-Frazer Municipal Development Transportation</p>	Location: Part of N.W. Fr 1/4, Section 9, Town 27 North, Range 11 West, Garfield Township, Grand Traverse County, MI	DATE 12-18-03 P.M. GDS DR. DFS CAD 031476 SHT 1 OF 1
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THESE DOCUMENTS ARE PREPARED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONTRACT FOR THIS PROJECT.