

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

UNITED STATES OF AMERICA and
STATE OF WISCONSIN,

Plaintiffs,

v.

TECUMSEH PRODUCTS COMPANY,
THOMAS INDUSTRIES, INC., and
WISCONSIN PUBLIC SERVICE
CORPORATION

Defendants.

CIVIL ACTION NO. 2:17-cv-1728

**CONSENT DECREE
WITH TECUMSEH PRODUCTS COMPANY**

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Secretary of the United States Department of the Interior (“DOI”) and the Secretary of the United States Department of Commerce (“Commerce”), and the State of Wisconsin (“Wisconsin” or the “State”), at the request of the Governor of Wisconsin and on behalf of the Wisconsin Department of Natural Resources (“WDNR”), filed a complaint in this action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9607.

B. The complaint alleges that defendant Tecumseh Products Company (or “Settling Defendant”) is liable under CERCLA for damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances at or from the Sheboygan River and Harbor Superfund Site in Sheboygan, Wisconsin (the “Site”).

C. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300, DOI, through the United States Fish and Wildlife Service (“FWS”), and Commerce, through the National Oceanic and Atmospheric Administration (“NOAA”), have been delegated authority to act on behalf of the public as the Federal Trustees for natural resources impacted by the release of hazardous substances at or from the Site.

D. The Governor of Wisconsin has designated WDNR to act as the State Trustee for natural resources impacted by the release of hazardous substances at or from the Site.

E. The Federal Trustees and the State Trustee have formed a Trustee Council to coordinate Natural Resource Damages related activities associated with the Site.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the United States Environmental Protection Agency (“EPA”) placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on May 21, 1986.

G. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

H. Settling Defendant previously resolved claims asserted by the United States against it for injunctive relief and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at or from the Site pursuant to a Consent Decree for the Upper River Work on the Sheboygan River and a Consent Decree for the Lower River Work on the Sheboygan River entered in *United States v. Tecumseh Products Co., et al.*, No. 1:03-cv-00401-WCG (E.D. Wisc.) on May 12, 2004 and August 15, 2011, respectively. These consent decrees, however, expressly reserved the United States' claim for "liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments."

I. Settling Defendant has entered into a Funding Reimbursement Agreement ("FRA") with Sheboygan County (the "County") to reimburse the County through a promissory note for \$1,295,500 in costs the County incurred for the acquisition and preservation of certain real property associated with the proposed Amsterdam Dunes NRD project. The promissory note shall be effective upon the lodging of this Consent Decree. The FRA further required the grant of a conservation easement to be recorded by the County. The Conservation Easement, attached hereto as Appendix D, was so recorded on July 9, 2015. The Trustees are not parties to the FRA and statements contained in Paragraph 3 of the FRA regarding how the Trustees may utilize funds obtained through this settlement are not binding on the Trustees nor enforceable

under this Consent Decree. A copy of the FRA between Settling Defendant and Sheboygan County is attached as Appendix E to this Consent Decree.

J. By entry into this Consent Decree, Settling Defendant does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

K. The Parties to this Consent Decree recognize, and the Court by entering this Consent Decree finds, that this Consent Decree: (i) has been negotiated by the Parties in good faith; (ii) will avoid prolonged and complicated litigation among the Parties; (iii) will expedite natural resource protection and restoration actions to be performed by the Trustees; and (iv) is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties to this Decree, it is hereby ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b). The Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property,

shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

a. “Amsterdam Dunes” shall mean the proposed Amsterdam Dunes NRD restoration project property, a legal description of which is appended to this Consent Decree as Appendix F.

b. “Amended Conservation Easement” shall mean the Amendment to the Grant of Conservation Easement attached hereto as Appendix C.

c. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

d. “Commerce” shall mean the United States Department of Commerce and any successor departments, agencies, or instrumentalities.

e. “Consent Decree” shall mean this Consent Decree and all appendices attached hereto (listed in Section XIV (Integration / Appendices)). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

f. “Conservation Easement” shall mean the Grant of Conservation Easement attached as Appendix D hereto.

g. “County” shall mean Sheboygan County, Wisconsin.

h. “DARR Fund” shall mean NOAA’s Damage Assessment and Restoration Revolving Fund.

i. “Date of Lodging” shall mean the date the proposed Consent Decree is filed with the Court as an attachment to a Notice of Lodging of Consent Decree, pending public comment as required in Section XVII (Lodging and Opportunity for Public Comment).

j. “Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal or State holiday, the period shall run until the close of business of the next working day.

k. “DOI” shall mean the United States Department of the Interior and any successor departments, agencies, or instrumentalities.

l. “DOJ” shall mean the U.S. Department of Justice and any successor departments, agencies, or instrumentalities.

m. “Effective Date” shall mean the effective date of this Consent Decree as provided by Section XV of this Consent Decree (Effective Date and Retention of Jurisdiction).

n. “EPA” shall mean the U.S. Environmental Protection Agency and any successor departments, agencies, or instrumentalities.

o. “Funding Reimbursement Agreement” or “FRA” shall mean the agreement between Settling Defendant and the County to reimburse the County for certain sums incurred for the acquisition and preservation of certain real property associated with Amsterdam Dunes, including the First Amendment to Funding Reimbursement Agreement. The FRA is attached hereto as Appendix E.

p. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The

applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at

<https://www.epa.gov/superfund/superfund-interest-rates>.

q. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

r. “Natural Resource” or “Natural Resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State.

s. “Natural Resource Damages” shall mean any damages recoverable by the United States or the State on behalf of the public, for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources at the Site as a result of a release of hazardous substances, including, but not limited to: (i) the reasonable costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

t. “NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund.

u. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

v. “Parties” shall mean the United States, the State of Wisconsin, and Settling Defendant.

w. “Plaintiffs” shall mean the United States and the State of Wisconsin.

x. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, also known as the Resource Conservation and Recovery Act.

y. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

z. “Settling Defendant” shall mean Tecumseh Products Company.

aa. “Settling Defendant’s Related Parties” or “Related Parties” shall mean: (i) Settling Defendant’s parents, successors, and assigns, but only to the extent that the alleged liability of such person is based solely on the alleged liability of Settling Defendant; (ii) Settling Defendant’s and Related Parties’ former or current officers, directors, employees, or shareholders, but only to the extent that the alleged liability of such person is based on acts or omissions which occurred in the scope of the person’s employment or capacity as an officer, director, employee, or shareholder of Settling Defendant or a Related Party; and (iii) Settling Defendant’s liability insurers, but only to the extent that any such insurer may be alleged derivatively liable in a direct action under Wis. Stat. § 632.24 based on the conduct of Settling Defendant.

bb. “Site” shall mean the Sheboygan River and Harbor Superfund Site, encompassing approximately 14 river miles, located in east-central Wisconsin, Latitude 43.75, Longitude 87.7, and running through the City of Sheboygan Falls, the Village of Kohler, and the City of Sheboygan, Sheboygan County, Wisconsin, and depicted generally on the map attached as Appendix A. The portion of the river included in the Site extends from the Sheboygan Falls Dam through the Outer Harbor area on the western shore of Lake Michigan. Also included in

the Site are floodplain soils adjacent to the river and soil and groundwater on the former Tecumseh Products Plant adjacent to the river in Sheboygan Falls, and all areas in proximity to the river, floodplain soils, and former Tecumseh Products Plant necessary for implementation of the remedial action set forth in the May 12, 2000 Record of Decision.

cc. “State” shall mean the State of Wisconsin.

dd. “Subparagraph” shall mean a portion of this Consent Decree identified by a lower case letter or an Arabic numeral in parentheses.

ee. “Trustees” shall mean DOI acting through FWS, Commerce acting through NOAA, and WDNR.

ff. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including Commerce, DOI, and EPA.

gg. “WDNR” shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objectives of the Parties are for Settling Defendant (i) to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of hazardous substance releases at and from the Site; (ii) to reimburse natural resource damage assessment costs incurred by FWS, NOAA, and WDNR; and (iii) to resolve its alleged civil liability for Natural Resource Damages as provided herein.

VI. PAYMENTS BY SETTLING DEFENDANT

5. Initial Payment into the Court Registry Account for Assessment Costs and for Trustee-Sponsored Natural Resource Restoration Projects. Within 45 Days after the Date of

Lodging of this Consent Decree, Settling Defendant shall pay \$980,375 into an interest-bearing Court Registry Account of the United States District Court for the Eastern District of Wisconsin.

6. Disbursements from the Court Registry Account. At any time after the Effective Date, funds deposited into the Court Registry Account under Paragraph 5 of this Consent Decree (and all accrued interest on such funds) shall be disbursed pursuant to one or more separate Withdrawal Orders entered by the Court, which shall provide for:

a. disbursement of \$670,000 to the United States, to be directed as follows:
(i) \$350,000 to be applied toward natural resource damage assessment costs incurred by DOI; and (ii) \$320,000 to be applied toward natural resource damage assessment costs incurred by Commerce;

b. disbursement of \$25,000 to the State as partial reimbursement for natural resource damage assessment costs incurred by the State, to be applied directly towards preservation or restoration projects; and

c. disbursement of all remaining funds in the Court Registry Account to the United States to be deposited in a segregated sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects in accordance with Section VII.

7. Subsequent Payment for Trustee-Sponsored Natural Resource Restoration Projects. Settling Defendant shall also make a payment of \$1,530,375 within one year and 45 Days after the Date of Lodging of this Consent Decree (“Second Payment Date”).

a. If the Second Payment Date falls after the Effective Date, payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2017V00722, and DOJ Case Number 90-11-2-06440/1. Payment shall be made in accordance

with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Wisconsin following entry of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. If the Second Payment Date falls before the Effective Date, payment shall be made into the account established Pursuant to Paragraph 5 and shall be subject to disbursement pursuant to Paragraph 6.c.

c. If prior to the Second Payment Date the Court has declined to approve this Consent Decree and a Party has voided this agreement pursuant to Paragraph 40, then Settling Defendant shall not be obligated to make a payment under this Paragraph 7.

8. The amount paid by Settling Defendant pursuant to Paragraph 7.a or, upon disbursement, Paragraph 7.b shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects in accordance with Section VII.

9. Funding Reimbursement Agreement. In accordance with the Funding Reimbursement Agreement attached hereto as Appendix E, Settling Defendant shall reimburse the County for \$1,295,500 incurred for the acquisition and preservation of real property associated with the proposed Amsterdam Dunes NRD restoration project. As set forth in the FRA, Settling Defendant's payment shall take the form of a promissory note which shall be effective upon the Date of Lodging of this Consent Decree.

10. Notice of Payment. Upon making any payment under Paragraph 5 or 7, Settling Defendant shall send written notice that payment has been made to:

Chief, Environmental Enforcement Section
U.S. Department of Justice
DJ #90-11-2-06440/1
P.O. Box 7611
Washington, DC 20044-7611

Assistant Solicitor, Branch of Environmental Restoration
U.S. Department of the Interior
MS-5311
Washington, DC 20240

Grant Blumberg, Attorney-Advisor
National Oceanic and Atmospheric Administration
Office of General Counsel
1315 East-West Highway, Room 15832
Silver Spring, MD 20910

Lorraine C. Stoltzfus
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

11. Non-Compliance with Payment Obligations.

a. Interest. In the event any payment required pursuant to Paragraph 5 or Paragraph 7 is not made when due, Settling Defendant shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment.

b. Stipulated Damages. In addition to the interest required to be paid under the preceding Subparagraph, if any payment required pursuant to Paragraph 5 or Paragraph 7 is not made when due, Settling Defendant shall also pay stipulated damages of \$1,500 per day through the date of full payment.

c. Payment of Interest and Stipulated Damages. Any Interest payments under Subparagraph 11.a shall be paid in the same manner as the overdue principal amount, and shall be directed to the same fund or account as the overdue principal amount. Any stipulated damages payments under Subparagraph 11.b shall be paid to the United States in accordance with payment instructions provided by the Financial Litigation Unit of the United States

Attorney's Office for the Eastern District of Wisconsin, and shall be deposited in the United States Treasury.

12. Refund from Court Registry Account. In the event that, pursuant to Paragraph 40, the Court should decline to approve this Consent Decree and any Party voids this agreement, the funds in the Court Registry Account shall be returned to Settling Defendant with accrued interest.

VII. TRUSTEE-SPONSORED NATURAL RESOURCE RESTORATION PROJECTS

13. Management and Application of Funds. All funds deposited in a segregated sub-account within the NRDAR Fund under Paragraphs 6.c and 8 shall be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration efforts in accordance with this Consent Decree. All such funds shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, or acquisition of equivalent resources, including but not limited to any administrative costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, or acquisition of equivalent resources undertaken.

14. Restoration Planning. The Trustees have prepared a draft Restoration Plan describing how the funds dedicated to Trustee-sponsored natural resource restoration efforts under this Section will be used. As provided by 42 U.S.C. § 9611(i) and 43 C.F.R. § 11.93, the Plan identifies how funds will be used for restoration, rehabilitation, replacement, or acquisition of equivalent resources. The Plan also identifies how funds will be used to address services lost to the public until restoration, rehabilitation, replacement, or acquisition of equivalent resources is completed. A copy of the draft Restoration Plan is attached as Appendix B to this Consent Decree.

15. Decisions regarding any use or expenditure of funds under this Section shall be made by the Trustees, acting through the Trustee Council. Settling Defendant shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of funds or restoration efforts under this Section.

VIII. CONSERVATION EASEMENT

16. Amsterdam Dunes Amended Conservation Easement. Within 30 Days of the Effective Date, Settling Defendant shall take all actions necessary to ensure that the Amended Conservation Easement, attached hereto as Appendix C is executed and recorded with the Register of Deeds, Sheboygan County, Wisconsin.

17. Stipulated Penalties. Settling Defendant shall be liable for a stipulated penalty of \$500 per day for any delayed compliance or noncompliance with Paragraph 16 above.

IX. COVENANTS NOT TO SUE BY THE PLAINTIFFS

18. Covenants by the United States to Settling Defendant. Except as specifically provided by Paragraph 21 (General Reservations by the United States and the State) and Paragraph 22 (Special Reservations by the United States and the State Regarding Natural Resource Damages), the United States covenants not to sue or to take administrative action against Settling Defendant or its Related Parties pursuant to CERCLA Section 107, 42 U.S.C. § 9607, for Natural Resource Damages relating to the Site. This covenant not to sue shall take effect upon the Effective Date of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and its Related Parties and does not extend to any other person.

19. Covenants by the State. Except as specifically provided by Paragraph 21 (General Reservations by the United States and the State) and Paragraph 22 (Special

Reservations by the United States and the State Regarding Natural Resource Damages), the State covenants not to sue or to take administrative action against Settling Defendant and its Related Parties for Natural Resource Damages relating to the Site pursuant to CERCLA Section 107, 42 U.S.C. § 9607, or Wisconsin statutory or common law. This covenant not to sue shall take effect upon the Effective Date of this Consent Decree. This covenant not to sue Settling Defendant and its Related Parties is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and its Related Parties and does not extend to any other person.

20. Nothing in this Consent Decree shall affect any covenants not to sue provided to Settling Defendant by the May 12, 2004 and August 15, 2011 consent decrees entered in *United States v. Tecumseh Products Co., et al.*, No. 1:03-cv-00401-WCG (E.D. Wisc.).

X. RESERVATION OF RIGHTS BY PLAINTIFFS

21. General Reservations by the United States and the State. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant and with respect to all matters not expressly included within Paragraphs 18 (Covenants by the United States) and Paragraph 19 (Covenants by the State). Notwithstanding any other provisions of this Consent Decree, the United States and the State reserve all rights against Settling Defendant with respect to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;

d. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant;

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and

f. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances outside of the Site.

22. Special Reservations by the United States and the State Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve the right to institute proceedings against Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, including costs of damages assessment, based on:

a. conditions with respect to the Site, unknown to the Trustees as of the Date of Lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources ("Unknown Conditions"); or

b. information received by the Trustees after the Date of Lodging of this Consent Decree which indicates that releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type or future persistence that was unknown to the Trustees as of the Date of Lodging of this Consent Decree ("New Information").

23. For purposes of Paragraph 22, the conditions and information known to the Trustees on the Date of Lodging shall include the conditions and information set forth in any sampling data and any other data or information in the possession and control of the Trustees at

any time prior to the Date of Lodging and any evaluation by the United States or the State of such data or information, including the contents of EPA's Administrative Record for the Site and documents generated by or provided to EPA relating to response actions at the Site, as of the Date of Lodging. Each of the following shall not be considered to be Unknown Conditions or New Information within the meaning of Paragraph 22: (1) an increase solely in the Trustees' assessment of the magnitude of a known injury to, destruction of, or loss of Natural Resources or in the resulting Natural Resource Damages; and (2) injury to, destruction of, or loss of Natural Resources at the Site, arising from the re-exposure, re-suspension, or migration by natural causes or entities other than Settling Defendant of hazardous substances known to be present in the sediments at the Site.

XI. COVENANTS BY SETTLING DEFENDANT

24. Covenants by Settling Defendant.

a. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site, including Natural Resource Damages, and this Consent Decree, including but not limited to:

(1) any direct or indirect claim for reimbursement of any payment from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

(2) any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Wisconsin Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

(3) any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site, including Natural Resource Damages.

b. Except as provided in Paragraph 30 (waiver of claim-splitting defenses), these covenants shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to any of the reservations set forth in Section IX (Reservations of Rights by United States and the State), other than in Paragraph 21.a (liability for failure to meet a requirement of the Consent Decree) or 21.b (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

25. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XII. EFFECT OF SETTLEMENT / CONTRIBUTION PROTECTION

26. Except as provided in the provisions concerning Settling Defendant's Related Parties, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in the provisions concerning Settling Defendant's Related Parties, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States or the State, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to

obtain additional Natural Resource Damages, response costs, or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

27. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Natural Resource Damages incurred or to be incurred, at or in connection with the Site. If, however, the United States or the State exercises rights under the reservations in Section X (Reservations of Rights by Plaintiffs), other than in Paragraph 21.a (liability for failure to meet a requirement of the Consent Decree) or 21.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those Natural Resource Damages within the scope of the exercised reservation.

28. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States and the State in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States and the State within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

29. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the persons identified in Section XIII (Notices) in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent

Decree, notify the persons identified in Section XIII (Notices) in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Defendant shall notify the persons identified in Section XIII (Notices) within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

30. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the United States or the State set forth in Section IX.

XIII. NOTICES

31. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to the United States:

As to the Department of Justice:

eescasemanagement.enrd@usdoj.gov

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611
Re: DJ # 90-11-06440/1

As to the Department of Interior:

Assistant Solicitor, Branch of Environmental Remediation
Office of the Solicitor
Division of Parks and Wildlife
U.S. Department of the Interior
1849 C Street, NW, MS-5311
Washington, DC 20240

As to National Oceanic and Atmospheric Administration:

Grant Blumberg, Attorney-Advisor
National Oceanic and Atmospheric Administration
Office of General Counsel
1315 East-West Highway, Room 15832
Silver Spring, MD 20910

As to the Environmental Protection Agency:

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

As to the State of Wisconsin:

Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921

Lorraine C. Stoltzfus
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707

As to Tecumseh:

Carrie Williamson
Tecumseh Products Company
5683 Hines Drive
Ann Arbor, MI 48108

and

David G. Mandelbaum
Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103

XIV. INTEGRATION / APPENDICES

32. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

33. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a map of the Site.

“Appendix B” is the draft Restoration Plan and Environmental Assessment.

“Appendix C” is the Amended Conservation Easement.

“Appendix D” is the Conservation Easement.

“Appendix E” is the agreement between Tecumseh and Sheboygan County.

“Appendix F” is a legal description of the proposed Amsterdam Dunes NRD restoration project property.

XV. EFFECTIVE DATE AND RETENTION OF JURISDICTION

34. This Consent Decree shall take effect upon the date upon which approval of this Consent Decree is recorded on the Court’s docket.

35. The Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. CONSENT DECREE MODIFICATIONS

36. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court’s power to enforce, supervise, or approve modifications to this Consent Decree.

37. The provisions of this Consent Decree are not severable. The Parties’ consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

38. Economic hardship or changed financial circumstances of Settling Defendant shall not serve as a basis for modifications of this Consent Decree.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

39. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations

which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

40. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES / SERVICE

41. Each undersigned representative of Settling Defendant, the United States, and the State certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

42. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

43. Settling Defendant shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons. The Parties agree that Settling Defendant need not file an answer to the Complaint in this action unless or until 60 days after the Court expressly declines to enter this Consent Decree.

XIX. FINAL JUDGMENT

44. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 19TH DAY OF APRIL, 2018.

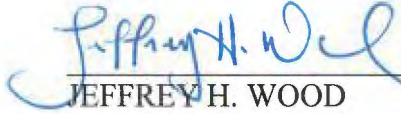
s/ Nancy Joseph

United States Magistrate Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and Wisconsin v. Tecumseh Products, et al.:

FOR THE UNITED STATES OF AMERICA

Date: 12/11/17



JEFFREY H. WOOD

Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 12/12/2017



JEFFREY A. SPECTOR

Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4432
Jeffrey.Spector@usdoj.gov

GREGORY J. HAANSTAD
United States Attorney
Eastern District of Wisconsin

Date: _____

SUSAN M. KNEPEL

Assistant United States Attorney
Office of the United States Attorney
517 E. Wisconsin Avenue, Room 530
Milwaukee, WI 53202

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and Wisconsin v. Tecumseh Products, et al.:

FOR THE UNITED STATES OF AMERICA

Date: _____

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

JEFFREY A. SPECTOR
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4432
Jeffrey.Spector@usdoj.gov

GREGORY J. HAANSTAD
United States Attorney
Eastern District of Wisconsin

Date: July 11, 2017

Susan M. Knepel
SUSAN M. KNEPEL
Assistant United States Attorney
Office of the United States Attorney
517 E. Wisconsin Avenue, Room 530
Milwaukee, WI 53202

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and Wisconsin v. Tecumseh Products, et al.:

FOR THE STATE OF WISCONSIN

Date: _____

7/19/17



CATHY STEPP

Secretary

Wisconsin Department of Natural Resources

101 South Webster Street

Madison, WI 53703

BRAD D. SCHIMEL

Attorney General

Date: _____

LORRAINE C. STOLTZFUS

Assistant Attorney General

Wisconsin Department of Justice

17 W. Main Street

Madison, WI 53703

State Bar # 1003676

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and Wisconsin v. Tecumseh Products, et al.:

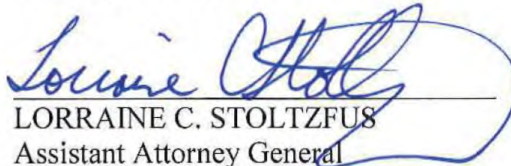
FOR THE STATE OF WISCONSIN

Date: _____

CATHY STEPP
Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703

BRAD D. SCHIMEL
Attorney General

Date: 7-28-17



LORRAINE C. STOLTZFUS
Assistant Attorney General
Wisconsin Department of Justice
17 W. Main Street
Madison, WI 53703
State Bar # 1003676

THE UNDERSIGNED PARTY enters into this Consent Decree in United States and Wisconsin
v. Tecumseh Products, et al.

FOR TECUMSEH PRODUCTS COMPANY, LLC

Date: 6/28/17

Cjn
Signature

Typed Name: Caroline Williamson

Title: General Counsel

Address: 5683 Hines Dr.
Ann Arbor, MI 48108

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

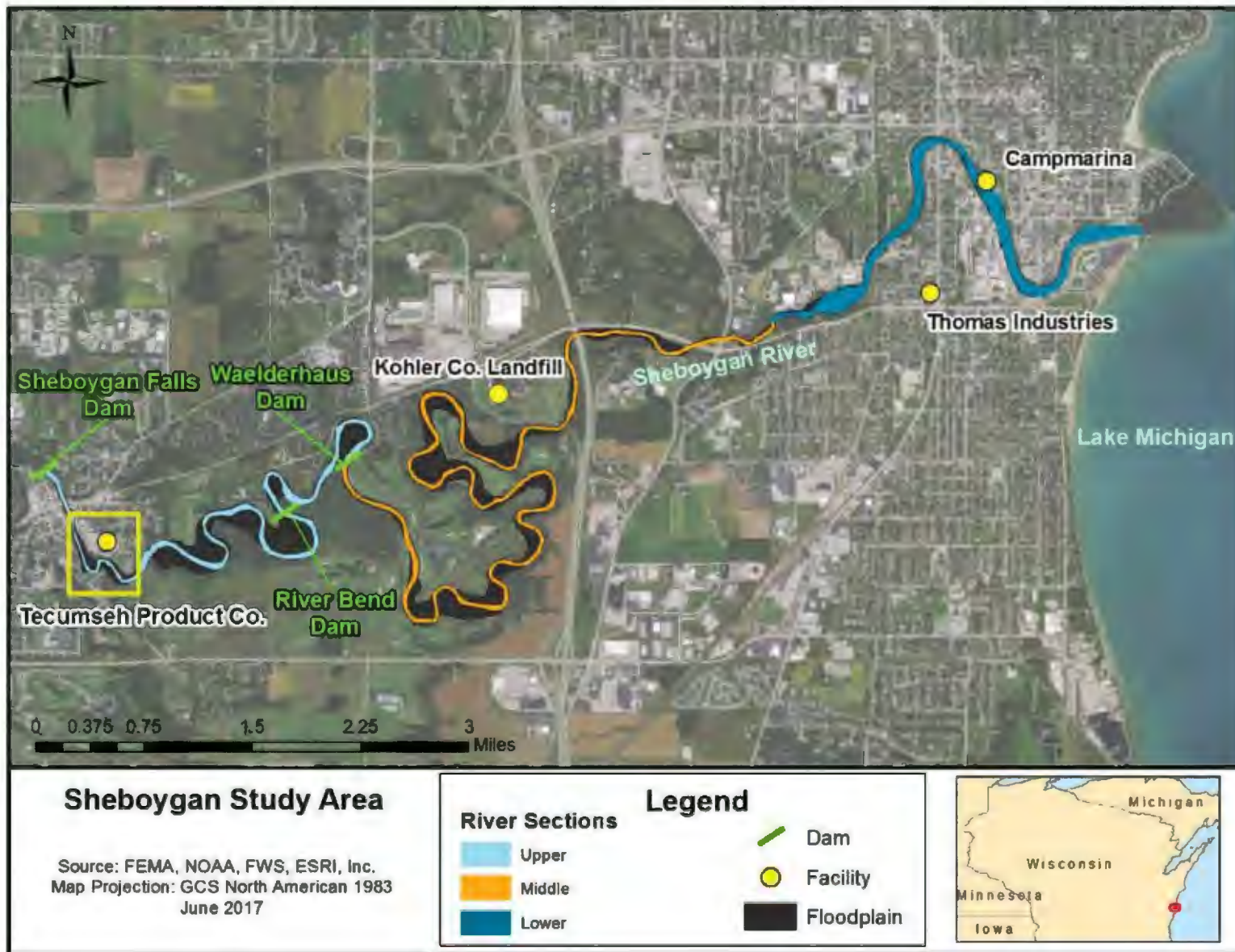
Typed Name: David Mandelbaum

Title: Shareholder

Address: Greenberg Taurig
2700 Two Commerce Sq.
2001 Market St
Philadelphia, PA 19103

ATTACHMENT A

MAP OF GEOGRAPHIC SCOPE AND AQUATIC AND FLOODPLAIN ASSESSMENT AREA



ATTACHMENT C

**Amendment to Grant of
Conservation Easement**

THIS AMENDMENT TO THE GRANT OF CONSERVATION EASEMENT, is made this ____ day of _____, 2017, by and between **SHEBOYGAN COUNTY, WISCONSIN**, a Wisconsin Governmental body corporate with its principal place of business at 508 New York Avenue, Sheboygan WI 53081-4126 ("Landowner") and **GLACIAL LAKES CONSERVANCY, INC.**, a Wisconsin non-stock not-for-profit corporation with an address of 529 Ontario Avenue, Sheboygan, WI 53081 ("Easement Holder" or "Holder").

WITNESSETH

WHEREAS, on July 9, 2015, Landowner granted and conveyed to Easement Holder a Grant of Conservation Easement ("Conservation Easement" or "Easement") attached as **Exhibit A** and incorporated by reference that covers approximately one hundred eighty-four acres (184) of lands ("Property") described in **Exhibit A** attached hereto and depicted on the map attached as **Exhibit B**, and

Name and Return Address

WHEREAS, the Conservation Easement was recorded July 9, 2015 with the Register of Deeds for Sheboygan County, WI, as Document #2005859 and

WHEREAS, paragraph 18 of the Conservation Easement provides that if circumstances arise causing the parties to determine that an amendment to or modification of the Easement would be appropriate, Landowner and Easement Holder may amend the Easement by a written instrument recorded in the office of the Register of Deeds for Sheboygan County provided that any such amendment would not diminish the conservation values, goals, purposes, or benefits of the Easement in any manner, affect its perpetual duration, or affect the qualification of the Easement or the status of Holder under Section 501(c)(3) of the Internal Revenue Code of 1986 or any successor provision, and

WHEREAS, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration ("NOAA"), and the Wisconsin Department of Natural Resources are causing Sheboygan County to receive \$1,295,000 in connection with the acquisition of the Property, and

WHEREAS, the U.S. Fish and Wildlife Service, NOAA, and the Wisconsin Department of Natural Resources are designated Natural Resource Trustees ("Trustees") for Natural Resource Damage Assessment and Restoration activities at the Sheboygan River and Harbor under the Comprehensive Environmental Response, Compensation, and Liability Act; and

WHEREAS, the Trustees have prepared a Sheboygan River and Harbor Restoration Plan/Environmental Assessment ("Restoration Plan/Environmental Assessment") proposing potential preservation and restoration projects, including the preservation and restoration of the Amsterdam Dunes Property; and

WHEREAS, future specific restoration projects proposed by the Trustees may be subject to analysis in future Sheboygan River and Harbor Restoration Plans (“future Restoration Plans”); and

WHEREAS, the common law and Wis. Stat. § 700.40 allows for a third-party enforcement right in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder, to enforce any term of the easement, and

WHEREAS, the U.S. Fish and Wildlife Service is a governmental body, although eligible to be a holder, is not a holder, and desires to enforce any term of the easement.

NOW, THEREFORE, in consideration of the recitals hereinabove set forth, the mutual covenants, terms, conditions, and restrictions contained in the Conservation Easement, Landowner and Holder hereby agree as follows:

1. The first sentence of Paragraph 2.d of the Conservation Easement is hereby amended to provide as follows:

“Except for restoration activities permitted by Paragraph 2.g.iv, 3.c, or as dictated by the Natural Resources Management Plan referred to in Paragraph 4.a herein or by the Restoration Plan/Environmental Assessment or future Restoration Plans referred to in Paragraph 4.c herein, and roadways and parking as may be necessary to fulfill the Conservation Values, no additional filling, dumping, excavation, or other alteration may be made to the surface or subsurface of the Property or to its surface waters or wetlands except to accomplish such rights reserved by the Landowner, in which case, the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the Conservation Values.”

2. Paragraph 2.g.iii of the Conservation Easement is hereby amended to provide as follows:

“Except for the clearing of brush and fence rows for approved firewood collection, dead or diseased tree removal, trail, road, and boundary maintenance, orchard trees, and to remove imminent threats to the safety of persons, animals, or structures, the cutting, removal, or harvesting of trees may be undertaken only pursuant to a Natural Resource Management Plan referred to in Paragraph 4.a that has a goal of restoring an old-growth sustainable forest, manages the forest on a single-tree basis, requires the removal of logs from the woods using non-invasive methods that help protect the understory and prevent soil erosion, compaction and degradation, or pursuant to the Restoration Plan/Environmental Assessment or future Restoration Plans referred to in Paragraph 4.c herein.”

3. Paragraph 2.g.iv of the Conservation Easement is hereby amended to provide as follows:

“The Property may be restored to native vegetation or wetlands pursuant to the Natural Resource Management Plan required by Paragraph 4.a or pursuant to

the Restoration Plan/Environmental Assessment or future Restoration Plans referred to in Paragraph 4.c herein.”

4. Paragraph 3.c of the Conservation Easement is hereby amended to provide as follows:

“to engage in activities that restore and maintain the natural biological and ecological integrity of the Property; possible activities including the planting and maintenance of native vegetation, management of natural and restored wetlands, and reducing the presence of undesirable vegetation and including the right to revert the agricultural lands to native plant communities for wildlife habitat and scenic and open space, all restoration activity being consistent with the provisions of the Natural Resources Management Plan required by Paragraph 4.a, or consistent with the Restoration Plan/Environmental Assessment or future Restoration Plans referred to in Paragraph 4.c;”

5. Paragraph 4.a of the Conservation Easement is hereby amended to provide as follows:

“Prior to undertaking any activity permitted by this Grant or exercising Reserved Rights that may impact the Conservation Values of the Property including cutting or removing trees and restoring all or portions of the Property to native vegetation, Landowner shall retain a qualified natural resource professional to prepare a natural resource management plan (the “Natural Resource Management Plan” or “the Plan”). Such plan shall include, by way of example and not limitation, a plan for forest management, restoration of wetlands or other portions of the Property, and the restoration or reintroduction of native species. Landowner shall provide a copy of that Natural Resource Management Plan to the Holder and to the U.S. Fish and Wildlife Service for their approval. The Holder and the U.S. Fish and Wildlife Service shall provide written notice within twenty (20) days of receiving the Plan whether they consent to the Plan or provide any objections thereto. The parties will resolve any objections before the Plan becomes final. If either the Holder or the U.S. Fish and Wildlife Service does not provide notice within thirty (30) days of receiving the Plan, that party will be deemed to have approved of the Plan. The Landowner may not undertake activities under the Plan without having provided notice to the Holder. To the extent allowable under the Stewardship Contract, a forest management plan prepared for Wisconsin’s Managed Forest Law program and/or a Conservation Reserve Program plan approved by the United States Natural Resource Conservation Service may be considered elements of Natural Resource Management Plan. In the absence of a Natural Resource Management Plan prepared by a qualified natural resource professional, the Landowner may undertake limited vegetation management activity provided the landowner shall provide notice to the Holder describing such proposed activity and the Holder shall approve or disapprove of the proposed activity within ten (10) days. The Landowner shall revise the Natural Resources Management Plan as necessary and such revisions shall be approved by the Holder and by the U.S. Fish and Wildlife Service in the same manner as the Plan.”

6. The Conservation Easement is hereby amended to include Paragraph 4.c. that provides as follows:

c. Sheboygan River and Harbor Restoration Plan/Environmental Assessment. The U.S. Fish and Wildlife Service, NOAA, and the Wisconsin Department of Natural Resources, acting as the designated Natural Resource Trustees ("Trustees") for Natural Resource Damage Assessment and Restoration activities at the Sheboygan River and Harbor under the Comprehensive Environmental Response, Compensation, and Liability Act have prepared a Sheboygan River and Harbor Restoration Plan/Environmental Assessment ("Restoration Plan/Environmental Assessment") proposing potential preservation and restoration projects, including the preservation and restoration of the Amsterdam Dunes Property. Future specific restoration projects proposed by the Trustees may be subject to analysis in future Sheboygan River and Harbor Restoration Plans ("future Restoration Plans").

7. The Conservation Easement is hereby amended to include Paragraph 19 that provides as follows:

"19. Third-Party Enforcement Right. Landowner and Holder agree that a third-party enforcement right to enforce any term of the easement shall be held by the U.S. Fish and Wildlife Service (to include any successor agencies)."

8. The Conservation Easement is hereby amended to include Paragraph 20 that provides as follows:

"20. Restoration Plan/Environmental Assessment, Restoration Projects. Notwithstanding any other provision of this Conservation Easement, the Property may be used for Natural Resource Damage Assessment and Restoration projects selected by the Trustees referred to in Paragraph 4.c, where such projects restore, maintain, or support the biological and ecological integrity of the Property."

IN WITNESS WHEREOF Landowner and Easement Holder have set their hands on the day and year first above written.

LANDOWNER: SHEBOYGAN COUNTY

Dated: _____

By: _____
Thomas Wegner, Chairperson

Dated: _____

By: _____
Jon Dolson, County Clerk

STATE OF WISCONSIN)
)ss
SHEBOYGAN COUNTY)

Personally came before me, this _____ day of _____, the above-named **Thomas Wegner**, Chairperson, and **Jon Dolson**, County Clerk, to me known to

be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

My Commission: _____

EASEMENT HOLDER:

GLACIAL LAKES CONSERVANCY, INC.

Dated: _____

By: _____
Mary Piehl, Executive Director

STATE OF WISCONSIN)
)ss
SHEBOYGAN COUNTY)

Personally came before me, this _____ day of _____, the
above-named **Mary Piehl**, Executive Director, to me known to be the person who executed the
foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

My Commission: _____

This Document Drafted By:
Attorney Carl K. Buesing
Sheboygan County Corporation Counsel
2124 Kohler Memorial Drive, Suite 310
Sheboygan, WI 53081
T: (920) 459-3093
F: (920) 457-8411

R:\CLIENT\08299\00018\00105280.DOCX

Exhibit A – Legal Description

Part of government lots 2 and 3, section 31, T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Beginning at the W $\frac{1}{4}$ corner section 31, T13N, R23E; thence N00°39'25"E, along the west line government lot 2, section 31, 208.37 feet to the south line of Iowa Street according to the Plat of Clear-Vue Resort; thence N89°55'14"E, along said south line, 533.60 feet; thence S00°01'41"W 883.78 feet; thence S63°39'52"E 434.68 feet; thence S00°04'06"E 103.79 feet; thence S89°47'00"E 742.98 feet to the west line of the Plat of Clear-Vue Resort; thence S00°31'09"E, along said west line 507.91 feet to the south line of Government lot 3; thence N89°29'16"W, along said south line, 1731.43 feet to the west line government lot 3, section 31; thence N00°41'49"E, along said west line, 1321.77 feet to the point of beginning, and containing 33.99 acres, including therein, 1.16 acres lying within the right of way of Sauk Trail Road.

Also:

Part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, part of government lots 2, 3, and 4, and part of the vacated portion of the Plat of Amsterdam, all in section 30, and part of government lots 1 and 2, section 31, all in T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Commencing at the W $\frac{1}{4}$ corner section 31, T13N, R23E; thence N00°39'25"E, along the west line government lot 2, section 31, 241.37 feet to the north line of Iowa Street according to the Plat of Clear-Vue Resort; thence N89°55'14"E, along said north line, 1432.94 feet to the point of beginning; Thence, continuing N89°55'14"E, along the north line of Iowa Street, 298.25 feet; thence N00°29'58"W 8.50 feet; thence N89°55'14"E 389.33 feet, more or less, to the water's edge of Lake Michigan; thence northeasterly, along said water's edge, 1535 feet more or less; thence S89°58'59"W 400 feet, more or less to the southeast corner of The Shores of Amsterdam Dunes, a subdivision plat; thence N89°57'06"W, along the south line of said subdivision plat, 66.00 feet; thence N00°02'54"E, along the west line of said subdivision plat, 877.69 feet to the northwest corner of The Shores of Amsterdam Dunes; thence N89°55'44"E, along the south line section 30, 160.85 feet; thence N02°45'50"E, along the west line of Marine Drive according to the Plat of Longfield Shores, 924.78 feet; thence N17°54'20"E, along the west line of Marine Drive, 2970 feet, more or less, to the centerline of Bahr Creek; thence northwesterly, along said centerline, 950 feet more or less, to the north line of government lot 2, section 30; thence S89°56'57"W, along said north line, 325 feet, more or less; thence S00°50'04"W 1322.50 feet to the north line government lot 3; thence N89°58'47"W, along said north line, 255.17 feet; thence S14°51'53"W 939.43 feet; thence S17°26'18"W 57.53 feet; thence S11°56'25"W 559.55 feet; thence S09°19'34"W 678.06 feet; thence S08°32'13"W 479.73 feet to the north line section 31, T13N, R23E; thence S09°26'09"W 419.97 feet; thence N85°43'49"W 53.68 feet; thence S10°27'06"W 931.47 feet to the north line of government lot 2, section 31; thence S89°57'46"E, along said north line, 542.47 feet; thence S02°23'33"W 1080.87 feet to the point of beginning, and containing 115.5 acres of land, more or less, including therein 0.9769 acres lying within the right of way of Amsterdam Road.

WHD/11648530.2

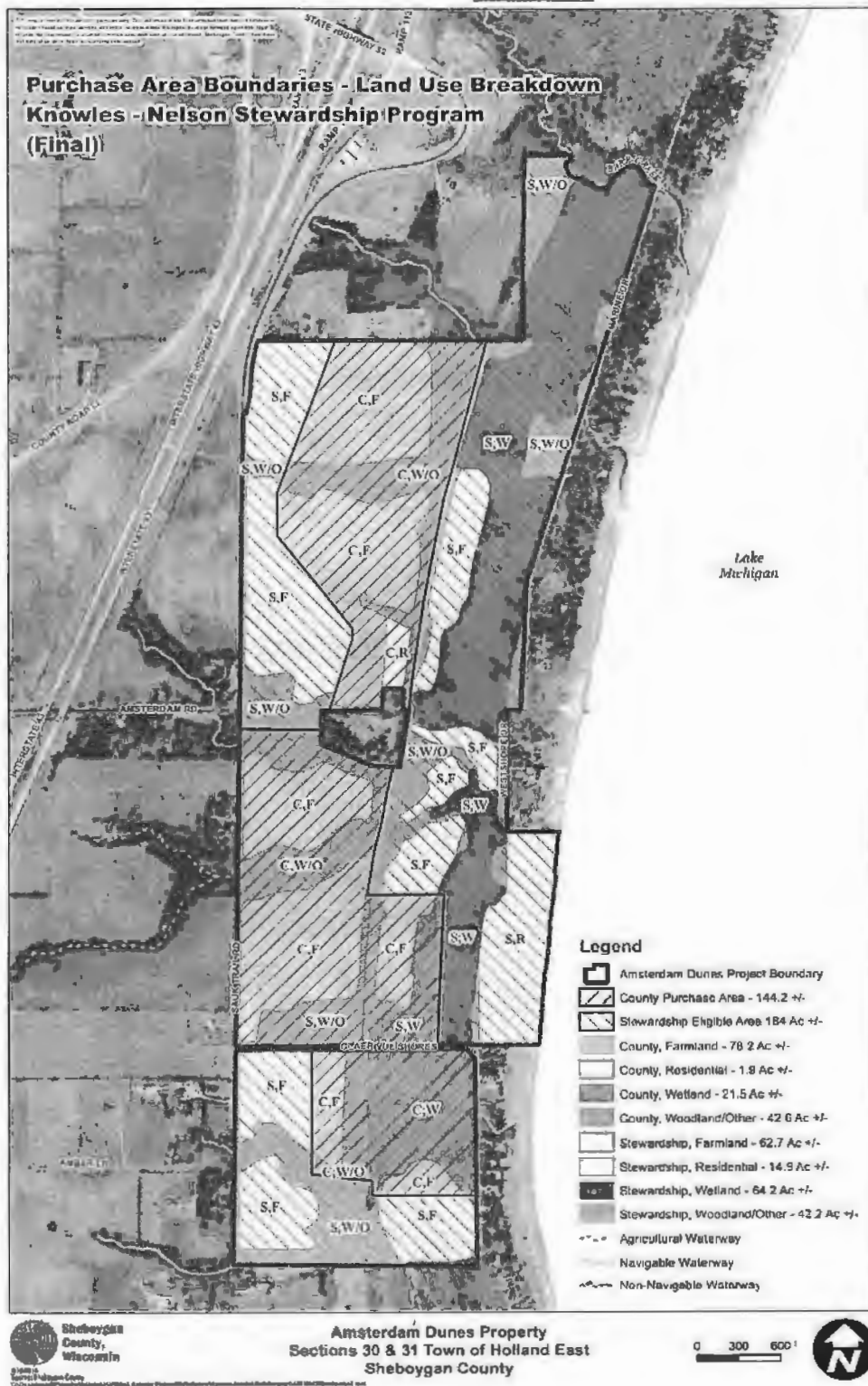
Also:

Part of government lot 1, section 31, and part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and part of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ section 30, T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Beginning at the NW corner section 31; thence S00°39'25"W, along the west line of government lot 1, section 31, T13N, R23E, 131.59 feet; thence S89°20'36"E 576.67 feet; thence N00°28'08"E 138.91 feet to the south line section 30; thence N89°55'44"E, along said south line, 55.17 feet; thence N17°42'28"E 547.48 feet; thence North 62.78 feet; thence N38°32'13"W 859.08 feet; thence North 306.41 feet; thence N20°41'53"E 1167.56 feet to the north line SW $\frac{1}{4}$ section 30; thence N89°58'47"W, along said north line, 533.19 feet to the east line of Sauk Trail Road; thence 381.80 feet southwesterly, along the arc of a curve to the left, said curve having a radius of 1372.39 feet, and a main chord which bears S08°37'21"W 380.57 feet; thence S11°12'45"W 147.33 feet; thence N89°20'50"W 32.29 feet to the west line SW $\frac{1}{4}$ section 30; thence S00°38'58"W, along said west line, 2135.61 to the point of beginning, and containing 31.56 acres of land, including therein 2.50 acres lying within the existing right of way of Sauk Trail Road, and Amsterdam Road.

WHD/11048530.2

EXHIBIT B



ATTACHMENT D



8 3 4 4 1 5 3

Tx:4096719

**GRANT OF CONSERVATION
EASEMENT**

Document Number

2005859**SHEBOYGAN COUNTY, WI****RECORDED ON****07/09/2015 4:17 PM****ELLEN R. SCHLEICHER****REGISTER OF DEEDS****RECORDING FEE: 30.00****EXEMPTION #****Cashier ID: 9****PAGES: 15**

THIS GRANT OF CONSERVATION EASEMENT is made this 9th day of July, 2015, by and between **SHEBOYGAN COUNTY, WISCONSIN**, a Wisconsin governmental body corporate with its principal place of business at 508 New York Avenue, Sheboygan, WI 53081-4126 ("Landowner") and **GLACIAL LAKES CONSERVANCY, INC.**, a Wisconsin non-stock not-for-profit corporation with an address of 529 Ontario Avenue, Sheboygan, WI 53081 ("Easement Holder" or "Holder").

PURPOSES

The purpose of this Grant of Conservation Easement ("Grant" or "Conservation Easement") is to forever conserve the Property for the following conservation purposes:

1. to protect in perpetuity the Property's significant open space, natural wildlife habitat, natural scenic and ecological conservation values for public benefit;
2. to maintain land cover and land use that are known to be effective in reducing the likelihood of adverse impacts to the water quality and quantity of subsurface and surface waters and wetlands values of the Property and to protect the fertility and quality of its soils;
3. to assure the sustained and natural capacity of the Property and its soils to support healthy and vigorous forests, wetlands, prairies, maintain a healthy and biologically-diverse landscape that supports a full range of native flora and fauna and limits adverse aesthetic and ecological impacts;
4. to ensure that the scenic and associated open space features of the property will be retained and maintained consistent with the Conservation Value of the Property and to permit the public to enjoy the scenic values of the Property;
5. to prevent any use or change of the Property that will significantly impair or interfere with the Property's Conservation Values.

Recording Area

Name and Return Address:

Attorney Daniel Geraghty

Whyte Hirschboeck Dudek, SC

555 East Wells

Milwaukee, WI 53202

The protected Conservation Values of the Property and the purpose hereof are more particularly described in the following Recitals, incorporated herein:

WITNESSETH:

WHEREAS, Landowner holds title in fee simple to certain real estate ("Property") in Sheboygan County, Wisconsin, legally described on **Exhibit A** attached hereto and depicted on the map attached as **Exhibit B** as the stewardship property, and

WHEREAS, the Property has and contains Conservation Values as described herein, and

WHEREAS, the Property is situated in three non-contiguous areas along Lake Michigan and comprises a total of approximately one hundred eighty-four (184) acres, more or less; including dry mesic, lowland, and mesic forest, to be restored dry and mesic prairies, forests, wetlands and shore land, all of which provide scenic vistas and all of which provide relatively natural habitat for plants and wildlife and are elements of the Conservation Values of the Property, and

WHEREAS, the Property is prominently visible from and provides scenic enjoyment to the general public from Sauk Trail Road, Amsterdam Road, and those areas of public beach, all of which are adjacent to the Property, and

WHEREAS further scenic enjoyment may be viewed from low-impact trails and/or observation platforms to be potentially implemented in the future, and

WHEREAS, the wooded areas, prairies, and wetlands on the Property are elements of the Conservation Values of the Property, and

WHEREAS, the Conservation Values of the Property include significant natural scenic and open space areas, relatively natural wildlife and plant habitat, glacial geology, and high quality wetlands to protect, preserve, and restore, and

WHEREAS, Landowner desires and intends to convey to Holder this Conservation Easement to achieve the purposes set forth herein, and Holder desires and intends to accept the Grant of Conservation Easement consistent with an Agreement for Transfer by Amsterdam Dunes, entered into by the parties on September 11, 2014, and

WHEREAS, Landowner desires and intends to protect and preserve the Property and the Conservation Values thereof, including the Property's open space, natural, scenic, and ecological values by prohibiting any development or use of the Property (other than as provided herein) that would diminish the Conservation Values thereof, and

WHEREAS Holder is a publicly-supported, tax-exempt organization described in Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code, among whose purposes are the preservation, protection, and enhancement of working, urban, and natural lands that contribute significantly to the ecological integrity, agricultural sustainability, scenic beauty, and recreational enjoyment of Fond du Lac, Manitowoc, Kewaunee, Calumet, and Sheboygan Counties in Wisconsin, and

WHEREAS, Holder is a qualified organization as described in Section 170(h) of the Internal Revenue Code, is qualified to hold conservation easements under Wis. Stat. § 700.40, and is a non-profit conservation organization as described in Wis. Stat. ch. 23 and the regulations promulgated thereunder and is eligible to receive grants thereunder, and

WHEREAS, the parties recognize that this Conservation Easement will provide a significant benefit to the people of Sheboygan County and the State of Wisconsin, and

WHEREAS, the common law and Wis. Stat. § 700.40 recognize conservation easements for the purposes of protecting the natural, scenic, and open space values of real property, protecting natural resources and maintaining or enhancing air and water quality, and

WHEREAS, the Conservation Values and the current, physical, and overall biological conditions of the Property, as well as its current uses and state of improvement, are described in a "Baseline Documentation Report" prepared by Holder with the cooperation of the Landowner, consisting of maps, photographs, and other documents, that the parties acknowledge is an accurate representation of the Property at the time of this Grant, allowing Holder to monitor compliance with the terms of this Easement. This report, however, is not intended to preclude the use of other evidence to establish the baseline condition of the Easement Area if there is a controversy over some aspect of that condition; and

WHEREAS, The parties acknowledge that the Property was purchased in part with State of Wisconsin Knowles-Nelson Stewardship funds and is therefore subject to a Stewardship Grant and Management Contract (Grant Number HA3-15-226) with the Wisconsin Department of Natural Resources (the "Stewardship Contract") and Landowner has agreed to an assignment of the Stewardship Contract and shall be bound thereto; and

WHEREAS, Landowner and Holder recognize the Conservation Values of the property, including the natural, open space, and scenic values of the Property described in the preceding recitals and share the common purpose of protecting these Values as reflected in this Grant to prevent the use or development of the Property for any purpose or in any manner that would conflict with the provisions of this Grant.

NOW, THEREFORE, in consideration of the recitals hereinabove set forth, the mutual covenants, terms, conditions, and restrictions contained herein, and as an absolute and unconditional gift and pursuant to Wis. Stat. § 700.40, Landowner hereby voluntarily grants and conveys unto Easement Holder and its successors and assigns a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth:

1. Rights Conveyed to Easement Holder. To accomplish the purposes of this Easement, the following rights are conveyed to Easement Holder:

- a. to own and to hold all interests, including property interests, conveyed by this Easement in perpetuity;
- b. to take such actions as are necessary to preserve and protect all of the Conservation Values of the Property in perpetuity;
- c. to enforce the terms of this Easement and otherwise prevent any activity on or use of the Property inconsistent with the protection of the Conservation Values of the Property or with the terms hereof and to require restoration of the Property as may be required on account of damage, inconsistent activity or violation hereof, by exercising the enforcement remedies provided below;
- d. to enter upon the Property at all reasonable times and upon reasonable prior notice to Landowner to identify the current condition of, uses, and practices thereon, and to monitor compliance with the terms hereof, provided that prior notice shall not be required in the event that Holder determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement or in the event of an emergency;
- e. to post signs with Landowner's approval to provide public notice of this Easement and of Holder's rights hereunder.

2. Prohibited Uses and Activities. In furtherance of the foregoing, Landowner makes the following covenants on Landowner's behalf and Landowner's heirs and assigns, which covenants shall run with and bind the Property in perpetuity. Without written consent from Easement Holder, which may be granted only as provided herein, any activity on or use of the Property inconsistent with the purpose of this Grant is prohibited. Without limiting the generality of the foregoing, the following specific uses and activities shall be and are expressly prohibited:

a. Division of Property Prohibited. The parties recognize that the fractionalization of ownership interest in the Property increases the burden on the Easement Holder to monitor and enforce this Grant and intend by this subparagraph to require that the Property remain in unified ownership, either joint or undivided, except to the extent permitted in this subparagraph. The Property shall not be subdivided, divided, or conveyed in separate parcels, whether through legal or *de facto* subdivision or by any other means, including divisions through the creation of condominiums, site adjustments, or other means except as permitted below. Further, ownership of any present or future buildings, structures, or improvements on the Property shall not be separated from the ownership of the Property by any means, direct or indirect, except as permitted below. Except as provided herein, it is the intent of this subparagraph to prohibit the conveyance of any existing tax parcels or whole legal descriptions, except as a part of the entire Property. Boundary line adjustments that in total do not exceed one-tenth of an acre (.1) for the entire Property are permitted only to correct technical errors made in the survey or legal description.

b. Buildings, Structures, and Improvements Limited. There shall be no commercial or residential development of the Property. Buildings, structures, or improvements may be constructed, maintained, renovated, expanded, or replaced only to support conservation or wetland-based recreation or educational purposes. If the Landowner desires to erect any such structures, it shall provide notice to the Holder describing the structure's dimension and proposed use at least thirty (30) days prior to construction. Within such thirty (30) day period, the Holder shall approve or disapprove of such buildings or structures. In no event will more than two (2) buildings be added, with an aggregate square footage of 4,500 square feet.

c. Commercial and Industrial Uses Prohibited. Use of the Property for commercial or industrial purposes, including use by easement or other right of access or passage across or upon the Property in conjunction with commercial activity other than underground utility easements that have previously been granted.

d. Surface Alterations Prohibited. Except for restoration activities permitted by Paragraph 2.g.iii, 3.c, or as dictated by the Natural Resources Management Plan referred to in Paragraph 4.a herein and roadways and parking as may be necessary to fulfill the Conservation Values, no additional filling, dumping, excavation, or other alteration may be made to the surface or subsurface of the Property or to its surface waters or wetlands

except to accomplish such rights reserved by the Landowner, in which case, the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the Conservation Values. Roadways and parking shall be limited to one roadway made of gravel or other pervious material or other material acceptable to Holder and a parking lot, or parking lots, of similar material no larger than a combined 10,000 square feet.

e. Soil Degradation Prohibited. Except for restoration activities permitted by Paragraphs 2.g.iii, 3.c, or as dictated by the Natural Resources Management Plan referred to in Paragraph 4.a herein, any use or activity that causes or is likely to cause significant soil degradation, loss, erosion, or significant pollution of any surface or subsurface waters is prohibited.

f. Wetlands Degradation and Water Manipulation Prohibited. Except for restoration activities permitted by Paragraph 3.c, or as dictated by the Natural Resources Management Plan referred to in Paragraph 4.a herein, any use or activity, including the draining, tiling, ditching, filling in with earth or any other material that causes or may cause significant degradation of the wetlands or of any wetlands, streams, springs, lakes, ponds, marshes, sloughs, swales, swamps, or potholes hereinafter occurring is prohibited. The construction of dams, dikes, levees, ditches, canals, channels, and any additional ponds is prohibited.

g. Manipulation of Vegetation Prohibited.

i. Vegetative buffers. Vegetative buffers shall be established and maintained upon lakes, ponds, wetlands, marshes, rivers, streams, and ditches. The area of the vegetative buffer shall extend at least seventy-five feet (75') from the edge of the surface water or wetland. There may be no activity that adversely affects the natural flow of surface or underground waters within the area of the easement.

ii. Leasing. In the event that Landowner desires to lease any portion of the Property, Landowner shall notify the Easement Holder of the proposed lessee and their expected use of the Property. Holder shall approve or disapprove of such lessees within ten (10) days of such notice. Landowner shall also provide the Easement Holder with the name and address of the lessees. Any and all lessees shall lease the Property expressly subject to the terms of this Conservation Easement.

iii. Tree Removal. Except for the cleaning of brush and fence rows for approved firewood collection, dead or diseased tree removal, trail, road, and boundary maintenance, orchard trees, and to remove imminent threats to the safety of persons, animals, or structures, the cutting, removal, or harvesting of trees may be undertaken only pursuant to a written natural resource management plan that has a goal of restoring an old-growth sustainable forest, manages the forest on a single-tree basis, requires the removal of logs from the woods using non-invasive methods that help protect the understory and prevent soil erosion, compaction and degradation and which has been approved by the Holder.

iv. Restoration. The Property may be restored to native vegetation or wetlands pursuant to the Natural Resource Management Plan required by Paragraph 4.a.

h. Animals Prohibited. Dogs as pets are permitted on the Property per the County ordinance. All other animals commonly kept as pets and all livestock and poultry are prohibited.

i. Dumps and Landfills Prohibited. No portion of the Property shall be used for dumps, landfills, or the accumulation, storage, or deposit of waste materials of any kind including trash, inoperative vehicles, vehicle parts, junk, refuse, or radioactive or hazardous waste, except as permitted below. Disposal of any waste materials generated by activities permitted under this Grant shall be in accordance with the requirements of applicable state, county, and local regulations. The composting of organic materials in an area of the Property not to exceed five hundred (500) square feet and the temporary storage of trash generated by the Property in receptacles for periodic off-site disposal shall be permitted without such prior approval. Brush, shrubs, trees, and other vegetation cut from the Property may be composted or burned on the Property.

j. Billboards and Signs Prohibited. The placement of advertising signs or billboards on the Property is prohibited except that, subject to applicable state, county, and local regulations, boundary markers, directional signs, historic, conservation, and recreational markers and explanations, signs stating the name and address of

the Property, signs posted to control unauthorized entry or use of the Property, signs stating the Property is protected by this Grant, and memorial plaques are permitted provided that the signs shall not be lighted.

k. Motor Vehicles Prohibited. Use of motorized vehicles including without limitation snowmobiles, all-terrain vehicles, and motorized cycles on the Property is prohibited except:

- i. in connection with permitted activities or uses as provided in this Conservation Easement;
- ii. in connection with permitted habitat and resource management and monitoring;
- iii. to the extent necessary to assist the physically challenged.

All motor vehicle use shall be limited to parking areas, lanes, and permitted trails as determined by Landowner. Any degradation of the Conservation Values of the Property resulting from motor vehicle use shall be promptly restored.

l. Other Prohibited Uses and Activities. The use of the Property for activities that may impair any of the Conservation Values of the Property, such as but not limited to, use as an aircraft landing or launching site, motorized vehicle race track, golf course, paint-ball games, camping, and other similar activities is prohibited.

m. Commercial Recreational Use Prohibited. The Property may not be used for commercial recreational activity. Low impact, recreational activities that are consistent with the conservation purposes of this Grant, such as hiking, nature observation, cross-country skiing, bird-watching, and hunting are permitted.

n. Incinerators Prohibited. Burning of hazardous, non-organic trash, garbage, or other materials is prohibited except for controlled burning consistent with the Natural Resources Management Plan. The burning of brush piles, and other organic materials generated from activities conducted on the Property and approved in the Natural Resources Plan is permitted consistent with applicable law.

o. Inconsistent Uses Prohibited. No use shall be made of the Property and no activity thereon shall be permitted which, in the reasonable opinion of the Holder is or is likely to become inconsistent with this Grant or will adversely impact the Conservation Values of the Property as stated above.

3. Reserved Rights of Landowner. Except as otherwise provided herein, Landowner for itself, its successors, and assigns reserves and shall have and shall be entitled to exercise all of the rights as owner of the Property, including the right to use the Property in any manner not inconsistent with the terms of this Easement and the right to sell, give, transfer, mortgage, or otherwise convey ownership of the Property or any portion thereof or interest therein subject, however, to the limitations and prohibitions of this Grant and the Stewardship Contract. Landowner agrees to notify Holder in advance and in writing before exercising any reserved right that may have an adverse impact on the Conservation Values associated with the Property and this Easement. Without limiting the foregoing, Landowner shall have the following rights:

a. to erect and maintain minor structures such as birdhouses and bird feeders, viewing platforms (up to forty (40) feet high for new structures and eighty (80) feet high if adopted using existing structures) and no larger than 35 feet by 35 feet), informational signs and kiosks, hunting stands and blinds and benches;

b. to remove dead or downed trees on the Property to prevent damage or injury to persons and property;

c. to engage in activities that restore and maintain the natural biological and ecological integrity of the Property; possible activities including the planting and maintenance of native vegetation, management of natural and restored wetlands, and reducing the presence of undesirable vegetation and including the right to revert the agricultural lands to native plant communities for wildlife habitat and scenic and open space, all restoration activity being consistent with the provisions of the Natural Resources Management Plan prepared by a qualified natural resource professional and subject to the approval of the Holder;

d. to construct or place and maintain walking trails on the Property, provided that such trails shall not be constructed in such a way as to obstruct the natural flow of surface water and shall be no wider than six feet and

surfaced with permeable materials such as aggregate or woodchips. Landowner shall have the right to remove brush, branches, trees, and other vegetation so as to construct and place said permitted walking trails, and all necessary steps shall be taken to design and maintain all paths and trails so as to prevent erosion, and any location where erosion occurs shall be promptly restored;

e. Landowner and Holder recognize that Landowner shall retain and reserve all carbon rights or credits, so-called, which may inhere or accrue to the Property.

4. Affirmative Obligations of Landowner.

a. Natural Resource Management Plan. Prior to undertaking any activity permitted by this Grant or exercising Reserved Rights that may impact the Conservation Values of the Property including cutting or removing trees and restoring all or portions of the Property to native vegetation, Landowner shall retain a qualified natural resource professional to prepare a natural resource management plan (the "Natural Resource Management Plan" or "the Plan"). Such Plan shall include, by way of example and not limitation, a plan for forest management, restoration of wetlands or other portions of the Property, and the restoration or reintroduction of native species. Landowner shall provide a copy of that Natural Resources Management Plan to the Holder for its approval. The Holder shall provide written notice within fifteen (15) days of receiving the Plan whether it consents to the Plan or provide any objections thereto. The parties will resolve any objections before the plan becomes final. If no notice is provided within twenty (20) days of the Holder receiving the Plan, the Holder will be deemed to have approved of the Plan. The Landowner may not undertake activities under the Plan without having provided notice to the Holder. To the extent allowable under the Stewardship Contract, a forest management plan prepared for Wisconsin's Managed Forest Law program and/or a Conservation Reserve Program plan approved by the United States Natural Resource Conservation Service may be considered elements of a Natural Resource Management Plan. In the absence of a Natural Resources Management Plan prepared by a qualified natural resource professional, the Landowner may undertake limited vegetation management activity provided the landowner shall provide notice to the Holder describing such proposed activity and the Holder shall approve or disapprove of the proposed activity within ten (10) days. The Landowner shall revise the Natural Resources Management Plan as necessary and such revisions shall be approved by the Holder in the same manner as the Plan.

b. Notice of Adverse Impacts. The Holder is to be notified in writing within seven (7) days of discovery of any adverse impact to the Conservation Values of the Property resulting from any permitted activities or activities conducted pursuant to Landowner's reserved rights as described in Paragraph 3 and the Property shall be promptly restored. An adverse condition or impact shall be reported if it is significant or expected to be significant to the Conservation Values of the Property either in isolation or taken together with other events or expected events prior to becoming effective.

5. Enforcement Remedies. To enforce the terms of this Easement and otherwise prevent or remediate any violation hereof or activity inconsistent herewith, Holder shall have the following remedies:

a. Notice of Violation. If Holder determines that a violation of the terms of this Easement has occurred or is threatened, Holder shall give written notice to Landowner describing such violation and demanding corrective action sufficient to cure the violation, including where the violation involves damage to the Property resulting from any use or activity inconsistent with the purposes of this Easement, restoration of the Property to its prior condition in accordance with a written plan approved by Holder.

b. Failure to Cure. If Landowner fails to cure the violation within thirty (30) days after receipt of notice thereof from Holder or under circumstances where the violation cannot reasonably be cured within a thirty- (30-) day period, fails to begin curing such violation within the thirty- (30-) day period or thereafter fails to continue diligently to pursue such to completion, Holder may bring an action at law or suit in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such violation.

c. Recovery of Damages. Holder shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including without limitation, damages for the loss of aesthetic, scenic, or Conservation Values.

d. Emergency Action. If Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the aesthetic, scenic, or Conservation Values of the Property, Holder may pursue any of its remedies under this Section 5 provided, however, that Holder provides Landowner with notice of its exercise of this right and without waiting for the expiration of any period otherwise herein provided for cure or remedy.

e. Remedies Cumulative. Holder's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. Landowner agrees that Holder's remedies at law for any violation of the terms of this Easement are inadequate and that Holder shall be entitled to the injunctive relief described above in addition to such other relief to which Holder may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Holder's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

f. Recovery of Costs. All reasonable costs incurred by Holder in enforcing the terms of this Easement, including without limitation costs and expenses of suit and reasonable attorneys' fees and any costs of restoration of the Property shall be borne by Landowner. If Landowner prevails in any action to enforce the terms of this Grant, each party shall be responsible for its own costs.

g. Easement Holder's Discretion. Enforcement of the terms of this Grant shall be at the discretion of Easement Holder, and any forbearance by Easement Holder to exercise its rights under this Easement in the event of any breach of any term of this Grant by Landowner shall not be deemed or construed to be a waiver by Easement Holder of any of Easement Holder's rights under this Grant. No delay or omission by Easement Holder in the exercise of any right or remedy upon any breach by Landowner shall impair such right or remedy or be construed as a waiver.

h. Waiver of Certain Defenses. Landowner hereby waives any equitable defense based on *laches*, balance of harms, estoppel and prescription, and the good faith purchaser defense under Wis. Stat. § 706.09 or any successor provision against any action brought by the Easement Holder with respect to this Easement.

i. The parties desire that any question arising from time to time concerning compliance with the terms of this Easement or any required notice or approval will be resolved through open communication and dialogue rather than unnecessarily formal or adversarial action. To this end, the parties state their mutual intention that if a party develops concerns about an actual or possible noncompliance with the terms of this Easement, wherever reasonably possible, the concerned party will informally notify the other party of the potential problem and explore the possibility of reaching an agreeable resolution prior to invoking the formal steps herein.

ii. If the parties cannot resolve the matter by informal methods and after notice of breach, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator who shall be an attorney licensed to practice law in Wisconsin who has experience with conservation easements including applicable tax law and training and experience in mediation. Mediation shall be conducted in Sheboygan County, Wisconsin.

iii. If the dispute has not been resolved by mediation within sixty (60) days after the first substantive meeting of the parties with the mediator, or if the parties are unable to agree to a mediator within sixty (60) days after the formal notice of breach, then, *if the parties agree*, the dispute shall be resolved by binding arbitration in accordance with the State Uniform Arbitration Act, and judgment upon the award rendered by the arbitrator may be enforced in any state court of competent jurisdiction.

iv. At any point in time the parties may take appropriate legal action, including an injunction to stop the alleged violation. Any costs incurred by Holder in enforcing the terms of this Easement against Landowner including without limitation any costs of restoration necessitated by Landowner's violation of the terms of this Easement shall be borne by Landowner unless the deciding body determines that Holder has acted in bad faith in seeking to enforce this Easement.

v. Holder's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values. The failure of Holder to discover a violation or to take action shall not waive any of Holder's rights, claims, or interests in pursuing any such action at a later date.

6. Representations and Warranties. Landowner represents and warrants that:

a. Hazardous Substances. To the best of Landowner's actual knowledge, no substance constituting a hazardous, toxic, polluting, or otherwise contaminating substance has been released, generated, disposed of, or abandoned on the Property. Landowner does use gasoline and motor oil for operating and maintaining agricultural vehicles and equipment and uses herbicides in connection with land management activities and to periodically control invasive plant species.

b. Underground Storage Tanks. There are not now and to the best of Landowner's knowledge, have never been any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements applicable to the Property and its use.

c. Compliance with Laws. To the best of Landowner's knowledge, the Property and Landowner's use thereof are now and since September 12, 2014, have been in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.

d. Absence of Litigation. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property or Landowner's landownership or use thereof.

e. No Pending Proceedings. No civil or criminal proceedings or investigations are now pending, and no notices, claims, demands, or orders have been received arising out of any violation or alleged violation of or failure to comply with any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

7. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Holder to exercise physical or managerial control over the day-to-day operation of the Property or any of Landowner's activities on the Property or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended or similar law imposing legal liability on the Landowner or operator of real property.

8. Extinguishment and Condemnation.

a. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

b. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority so as to terminate this Easement, in whole or in part, Landowner and Holder shall act jointly to recover the full value of the interests in the Property subject to the taking or purchase in lieu and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Landowner and Holder in connection with the taking or purchase in lieu shall be paid out of the amount recovered.

c. Use of Proceeds. In the event that the Grant is extinguished by changed circumstances or condemnation and compensation for the Property is paid to Holder, Holder shall use that compensation to protect the Conservation Values of any similar or comparable property.

9. Hold Harmless. Landowner hereby agrees to indemnify and hold harmless Holder and its members, directors, officers, employees, agents, volunteers, and contractors (collectively the "Indemnified Parties") from and

against any and all liabilities, penalties, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation reasonable attorneys' fees arising from or in any way connected with

a. injury to or the death of any person, or physical damage to any property resulting from any act, omission, condition, or other matter related to or occurring on or about the Property regardless of cause unless due to the negligence of any of the Indemnified Parties;

b. the violation or alleged violation of or other failure to comply with any state, federal, or local law, regulation, ordinance, or requirement by any person other than any of the Indemnified Parties in any way affecting, involving, or relating to the Property; and

c. the presence or release in, on, from, or about the Property at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, ordinance, or requirement as hazardous, toxic, polluting, or otherwise contaminating or harmful to human health or the environment unless caused solely by any of the Indemnified Parties.

10. Assignment of Easement. This Easement is transferable but Holder may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under applicable provisions of the Internal Revenue Code (or any successor provision then applicable) and authorized to acquire and hold conservation easements under Wis. Stat. § 700.40 or any successor provisions thereto or under the laws of the United States. In the event that Holder loses its tax-exempt status, is dissolved, ceases to be qualified to be a holder of the conservation easement or the parties otherwise agree, Ozaukee Washington Land Trust ("OWLT") shall become the Holder of this conservation easement pursuant to a Memorandum of Understanding entered into and recorded on the same date hereof.

11. Subsequent Transfers of Property. Landowner and each subsequent Landowner of the Property shall incorporate the terms of this Easement by reference in any deed or other legal instrument by which such Landowner divests any interest in all or in a portion of the Property, including without limitation a leasehold interest. Landowner further agrees and each subsequent Landowner of the Property by taking title thereto shall be agreeing to give written notice to Holder of the transfer of any interest in the Property at least thirty (30) days prior to the date of such transfer.

12. Notices. Any notice or other communication required or permitted hereunder shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

a. To Landowner: Sheboygan County
County Administrator
508 New York Avenue
Sheboygan, WI 53081-4126

b. to Holder: Glacial Lakes Conservancy, Inc.
529 Ontario Avenue
Sheboygan, WI 53081

or to such other address as either party from time to time shall designate by written notice to the other.

13. Recordation. Holder shall record this instrument in the office of the Register of Deeds for Sheboygan County at Holder's expense within two (2) business days of execution hereof.

14. Easement Binding on Successors. The benefits and burdens of the covenants, terms, conditions, and restrictions of this Easement are intended to and shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Landowner" and "Holder" wherever used herein, and any pronouns used in place thereof, shall include respectively the above-named Landowner and Landowner's personal representatives, heirs, successors, and assigns and Holder and its successors and assigns.

15. Taxes and Liens. Landowner shall pay and discharge when due all property taxes and assessments imposed upon the Property and any uses thereof and shall avoid the imposition of any liens that may affect Holder's rights hereunder. Landowner shall keep the Property free of any liens or encumbrances including without limitation those arising out of any work performed for, materials furnished to, or obligations incurred by Landowner. Holder may at its discretion pay any outstanding taxes or assessments and shall then be entitled to reimbursement by Landowner. The foregoing notwithstanding, the Landowner may mortgage the Property.

16. General Provisions.

a. Definitions.

i. *Structures* means anything that is built or constructed by humans from wood, metal, stone, concrete, plastic, or any other substance which is not a natural element of the environment and which is intended to be permanent or semi-permanent and includes but is not limited to all buildings, roads and trails, fences, gates, poles, towers, fences, utility infrastructure, gardens, play equipment, ponds, and any similarly constructed element.

ii. *Commercial activity* means actions undertaken for the purpose of providing a product or service to the public by operating a business or generating a profit.

iii. *Native plants* are those that were growing naturally in the Sheboygan County area before humans introduced plants from distant places.

b. Construction Favoring Validity. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Easement to affect the purposes of this Easement and the policy and purpose of the Wisconsin Conservation Easement Act, Wis. Stat. § 700.40 (2013). If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

c. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

d. Recitals and Exhibits Incorporated Herein. Any and all Recitals in this Grant of Conservation Easement are agreed by the parties to be accurate, are incorporated into this Easement by this reference, and shall constitute integral terms and conditions of this Easement. Any and all exhibits and addenda attached to and referred to in this Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

e. No Reversion. Nothing contained herein shall result in a forfeiture or reversion of Landowner's title to the Property in any respect.

f. Paragraph Headings. The paragraph headings in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation of this Easement.

g. Counterparts. The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by both parties, and each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

h. Governing Law. The construction and validity of this Easement shall be governed by the laws of the State of Wisconsin.

i. Effect. This Easement shall be effective upon Landowner's execution hereof and upon Holder's acceptance hereof.

j. Advisory Committee. The Landowner agrees that so long as it maintains the Amsterdam Dunes Advisory Committee, at least one person nominated by the Holder shall serve on such committee.

k. Notices for Approvals. Whenever the Landowner is required to give a notice of proposed action to Holder in order to obtain Holder's approval of a proposed action, in the event that the Holder does not provide a response to Landowner within the time provided, plus thirty (30) days, the Landowner may proceed with the proposed action as though approval was formally provided.

17. Assignment of Stewardship Grant and Management Contract. The parties acknowledge that the Property was purchased in part with State of Wisconsin Knowles-Nelson Stewardship funds and is therefore subject to the Stewardship Contract, recorded as Document #20004152 in the Office of the Sheboygan County Register of Deeds, a copy of which is adopted by reference herein. Landowner has obtained written approval from the Wisconsin Department of Natural Resources to grant this Conservation Easement pursuant to Essential Provision 1b of the Stewardship Contract. Landowner has executed an Assignment of the Stewardship Grant and Management Contract and shall hold Property Easement Holder harmless for any liability attributable thereto. This Grant of Conservation Easement is intended to complement the Stewardship Contract. Any conflicts between the substantive terms of this Conservation Easement and the Stewardship Contract shall be resolved in favor of the Stewardship Contract except that, if both documents address the same subject, the provision which extend the greater adherence to the Conservation Values shall control.

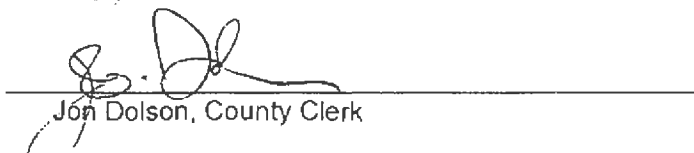
18. Amendment. If circumstances arise causing the parties to determine that an amendment to or modification of this Easement would be appropriate, Landowner and Holder may amend this Easement by a written instrument recorded in the office of the Register of Deeds for Sheboygan County provided that any such amendment shall not diminish the conservation values, goals, purposes, or benefits of the Easement in any manner, affect its perpetual duration, or affect the qualification of this Easement or the status of Holder under Section 501(c)(3) of the Internal Revenue Code of 1986 or any successor provision.

TO HAVE AND TO HOLD unto Easement Holder, its successors and assigns forever,

IN WITNESS WHEREOF Landowner and Easement Holder have set their hands on the day and year first above written.


LANDOWNER: SHEBOYGAN COUNTY

By: 
Roger Te Stroete, Board Chairman

By: 
Jon Dolson, County Clerk

STATE OF WISCONSIN)
) ss:
SHEBOYGAN COUNTY)

Personally came before me this 9th day of July, 2015, the afore-named **Roger Te Stroete** and **Jon Dolson** to me known to be the Sheboygan County Board Chairman and County Clerk, respectively, who executed the foregoing instrument and acknowledged the same.



Notary Public, State of Wisconsin
My Commission is permanent/~~expires~~ _____

ACCEPTANCE

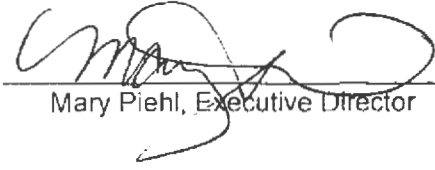
IN WITNESS WHEREOF, Holder hereby accepts Holder's interest in this Grant of Conservation Easement as of this 9th day of July, 2015.

HOLDER:

GLACIAL LAKES CONSERVANCY, INC.

By: 


Christine Krieg, Board President

By: 

Mary Piehl, Executive Director

STATE OF WISCONSIN)
) ss:
SHEBOYGAN COUNTY)

Personally came before me this 9th day of July, 2015, the above-named **Christine Krieg** and **Mary Piehl** to me known to be the Board President and Executive Director, respectively, of Glacial Lakes Conservancy, Inc., who executed the foregoing instrument and acknowledged the same.



Notary Public, State of Wisconsin
My Commission is permanent/~~expires~~ _____

Drafted by:

Attorney Carl K. Buesing
Office of the Corporation Counsel
SHEBOYGAN COUNTY
2124 Kohler Memorial Drive – Suite 110
Sheboygan, WI 53081-3174

State Bar No. 1017939
Phone: (920) 459-3093
Fax: (920) 457-8411

WHD/11402273.12 Grant of Conservation Easement

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Exhibit A – Legal Description

Part of government lots 2 and 3, section 31, T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Beginning at the W ¼ corner section 31, T13N, R23E; thence N00°39'25"E, along the west line government lot 2, section 31, 208.37 feet to the south line of Iowa Street according to the Plat of Clear-Vue Resort; thence N89°55'14"E, along said south line, 533.60 feet; thence S00°01'41"W 883.78 feet; thence S83°39'52"E 434.68 feet; thence S00°04'06"E 103.79 feet; thence S89°47'00"E 742.98 feet to the west line of the Plat of Clear-Vue Resort; thence S00°31'09"E, along said west line 507.91 feet to the south line of Government lot 3; thence N89°29'16"W, along said south line, 1731.43 feet to the west line government lot 3, section 31; thence N00°41'49"E, along said west line, 1321.77 feet to the point of beginning, and containing 33.99 acres, including therein, 1.16 acres lying within the right of way of Sauk Trail Road.

Also:

Part of the SW ¼ SW ¼, part of government lots 2, 3, and 4, and part of the vacated portion of the Plat of Amsterdam, all in section 30, and part of government lots 1 and 2, section 31, all in T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

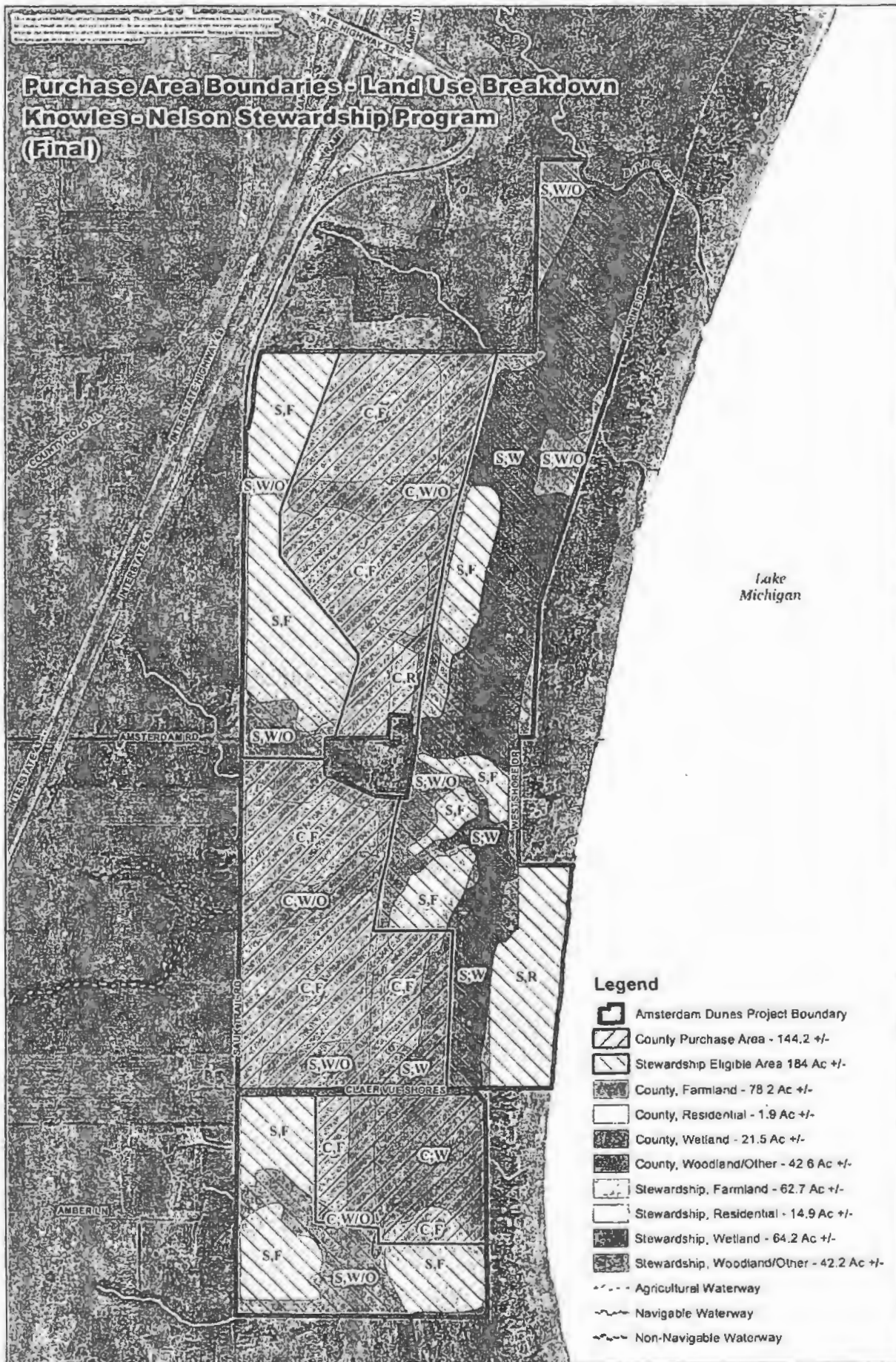
Commencing at the W ¼ corner section 31, T13N, R23E; thence N00°39'25"E, along the west line government lot 2, section 31, 241.37 feet to the north line of Iowa Street according to the Plat of Clear-Vue Resort; thence N89°55'14"E, along said north line, 1432.94 feet to the point of beginning;

Thence, continuing N89°55'14"E, along the north line of Iowa Street, 298.25 feet; thence N00°29'58"W 8.50 feet; thence N89°55'14"E 389.33 feet, more or less, to the water's edge of lake Michigan; thence northeasterly, along said water's edge, 1535 feet more or less; thence S89°58'59"W 400 feet, more or less to the southeast corner of The Shores of Amsterdam Dunes, a subdivision plat; thence N89°57'06"W, along the south line of said subdivision plat, 66.00 feet; thence N00°02'54"E, along the west line of said subdivision plat, 877.69 feet to the northwest corner of The shores of Amsterdam Dunes; thence N89°55'44"E, along the south line section 30, 160.85 feet; thence N02°45'50"E, along the west line of Marine Drive according to the Plat of Longfield Shores, 924.78 feet; thence N17°54'20"E, along the west line of Marine Drive, 2970 feet, more or less, to the centerline of Bahr Creek; thence northwesterly, along said centerline, 950 feet more or less, to the north line of government lot 2, section 30; thence S89°56'57"W, along said north line, 325 feet, more or less; thence S00°50'04"W 1322.50 feet to the north line government lot 3; thence N89°58'47"W, along said north line, 255.17 feet; thence S14°51'53"W 939.43 feet; thence S17°26'18"W 57.53 feet; thence S11°56'25"W 559.55 feet; thence S09°19'34"W 678.06 feet; thence S08°32'13"W 479.73 feet to the north line section 31, T13N, R23E; thence S09°26'09"W 419.97 feet; thence N85°43'49"W 53.68 feet; thence S10°27'06"W 931.47 feet to the north line of government lot 2, section 31; thence S89°57'46"E, along said north line, 542.47 feet; thence S02°23'33"W 1080.87 feet to the point of beginning, and containing 115.5 acres of land, more or less, including therein 0.9769 acres lying within the right of way of Amsterdam Road.

Also:

Part of government lot 1, section 31, and part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and part of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ section 30, T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Beginning at the NW corner section 31; thence S00°39'25"W, along the west line of government lot 1, section 31, T13N, R23E, 131.59 feet; thence S89°20'36"E 576.67 feet; thence N00°28'08"E 138.91 feet to the south line section 30; thence N89°55'44"E, along said south line, 55.17 feet; thence N17°42'28"E 547.48 feet; thence North 62.78 feet; thence N38°32'13"W 859.08 feet; thence North 306.41 feet; thence N20°41'53"E 1167.56 feet to the north line SW $\frac{1}{4}$ section 30; thence N89°58'47"W, along said north line, 533.19 feet to the east line of Sauk Trail Road; thence 381.80 feet southwesterly, along the arc of a curve to the left, said curve having a radius of 1372.39 feet, and a main chord which bears S08°37'21"W 380.57 feet; thence S11°12'45"W 147.33 feet; thence N89°20'50"W 32.29 feet to the west line SW $\frac{1}{4}$ section 30; thence S00°38'58"W, along said west line, 2135.61 to the point of beginning, and containing 31.56 acres of land, including therein 2.50 acres lying within the existing right of way of Sauk Trail Road, and Amsterdam Road.



ATTACHMENT E

FUNDING REIMBURSEMENT AGREEMENT

THIS FUNDING REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into effective as of the **30th** day of December, 2015, by and between **COUNTY OF SHEBOYGAN**, a Wisconsin governmental body corporate, organized pursuant to Wis. Stat. § 59.01, having its principal offices at 508 New York Avenue, Sheboygan, Wisconsin 53081 ("County") and **TECUMSEH PRODUCTS COMPANY**, a Michigan corporation licensed to do business in the state of Wisconsin, having its principal offices at 5683 Hines Drive, Ann Arbor, Michigan 48108 ("Tecumseh" or "TPC").

RECITALS

WHEREAS, pursuant to closings on September 11, 2014, and July 9, 2015, County acquired fee simple title to that certain real property commonly known as "Amsterdam Dunes" located in the Town of Holland East, Sections 30 and 31, Sheboygan County, Wisconsin, and consisting of seven separate tax parcels, as more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Amsterdam Dunes Property**"), and

WHEREAS, Tecumseh has been engaged in discussions concerning a settlement (the "**NRD Settlement**") with the United States Department of Justice, the Wisconsin Department of Natural Resources, the U.S. Fish and Wildlife Service, the National Oceanographic and Atmospheric Administration and certain other federal and state agencies designated as "natural resource trustees" (collectively, the "**Trustees**") with respect to the resolution of liabilities of Tecumseh and Thomas Industries in connection with natural resource damages to the Sheboygan River and Harbor Superfund site ("**NRD Liabilities**"), and

WHEREAS, with the acquisition of Amsterdam Dunes by County, County has placed permanent recorded conservation easements (the "**AD Conservation Easement**") on a portion of the Amsterdam Dunes Property consisting of approximately 184 non-contiguous acres, as more particularly shown and as described on **Exhibit B** attached hereto (the "**Restricted AD Property**"), and

WHEREAS, as part of and concurrent with the anticipated NRD Settlement, Tecumseh is willing to pay the "**Tecumseh Payment**" (as hereinafter defined) to County in exchange for the undertakings of County more particularly set forth in this Agreement, and

WHEREAS, without the anticipated support of Tecumseh to make the Tecumseh Payment, County would not have been positioned to acquire the Amsterdam Dunes Property and would therefore not have been positioned to preserve the Restricted AD Property for conservation purposes and to engage in the other undertakings more particularly set forth in this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Promissory Note Payment.** As more fully set forth herein, Tecumseh hereby covenants and agrees to pay County \$1,295,500 for costs in connection with the acquisition of the Amsterdam Dunes Property and the preservation of the Restricted AD Property (the "Tecumseh Payment"). The Tecumseh Payment represents reimbursement to the County of approximately 30% of County's initial out-of-pocket costs for the acquisition of the Amsterdam Dunes Property.

The Tecumseh Payment shall take the form of a Promissory Note executed by Tecumseh and payable to County (the "TPC Note"), which TPC Note shall be effective upon the consummation of the NRD Settlement and the lodging of a Consent Decree evidencing the same (the "Settlement Effective Date"). The TPC Note shall have a ten-year term and amortization, shall be payable quarterly, and shall bear interest at an interest rate equal to the Long-Term Applicable Federal Rate in effect on the last day of each calendar quarter during the term, compounded quarterly. The TPC Note shall be unsecured but shall be backed by the full faith and credit of TPC. The first quarterly payment shall be made within 15 days of the last day of the calendar quarter in which the Settlement Effective Date occurs. Notwithstanding the foregoing, the TPC Note shall be automatically cancelled and shall be null and void in the event that a motion to enter a Consent Decree pertaining to the NRD Settlement is denied by the United States District Court for the Eastern District of Wisconsin.

3. **Wetland Restoration.** TPC and County acknowledge and agree that, as part of the NRD Settlement, TPC or one or more other potentially responsible parties will contribute funds to the Natural Resource Damage Assessment and Restoration Fund ("NRD Fund"). The amount contributed to the NRD Fund will include at least \$354,500 (the "Restoration Funds"). TPC acknowledges that the County intends and expects that the Natural Resource Trustees will make this sum accessible to the County to be utilized by the County to partially finance the County's efforts to restore agricultural areas to wetlands and woodland and prairie settings in a portion of the Amsterdam Dunes Property, as required by the AD Conservation Easement (the "AD Restoration Work") and consistent with the restoration plan that the County is developing. TPC shall use commercially reasonable and diligent efforts to support the County's effort to access and draw upon the Restoration Funds from the NRD Fund for the performance of the AD Restoration Work.

4. **AD Conservation Easement.** A requirement of this Agreement is that County place the AD Conservation Easement as set forth on **Exhibit B.** County has fulfilled that requirement.

5. **NRD Settlement as Condition.** Notwithstanding anything to the contrary contained herein, in the event that the Settlement Effective Date has not occurred on or before December 31, 2016, Tecumseh may terminate this Agreement by written notice to County, whereupon neither party shall have any further rights or obligations hereunder, including without limitation, with respect to the Tecumseh Payment. Tecumseh shall notify County within ten days of any action approving or rejecting any NRD Settlement and Consent

Decrees. Notwithstanding the foregoing but subject to any duty of confidentiality that TPC may have to the Trustees, TPC shall provide regular status updates to County on the status of the NRD settlement discussions with the Trustees and shall provide copies to the County of any settlement documents or restoration plans provided to TPC as they become available for circulation that pertain to the AD Restoration Work or the Restoration Funds, as applicable.

6. **Notices.** All notices to Tecumseh or to County shall be made in writing and sent by hand delivery, certified or registered mail, return receipt requested, or by reputable overnight courier service to the addresses of the parties set forth below. Notices shall be deemed given on the date of receipt if sent by certified mail, or one day after being deposited with a reputable overnight courier service.

If to Tecumseh:

Tecumseh Products Company 5683
Hines Drive
Ann Arbor, MI 48108
Attention: Corporate Environmental Director (c/o Corporate Legal Services
Department)
Phone: (734) 585-9500 / (731) 644-8127

With a copy to:

Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Attention: Curtis B. Toll
Phone: (215) 988-7804

If to County:

County of Sheboygan
Administration Building
Third Floor, Room 311
508 New York Avenue
Sheboygan, WI 53081
Attention: County Administrator
Phone: (920) 459-3103

With a copy to:

Attorney Carl K. Buesing
Corporation Counsel
Sheboygan County
2124 Kohler Memorial Drive – Suite 110
Sheboygan, WI 53081-3174
Phone: (920) 459-3093

7. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin without regard to conflicts of law principles. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and may not be changed or terminated orally or by course of conduct, or by any other means except by a written instrument duly executed by the party to be bound thereby. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

8. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

9. **Successors and Assigns.** This Agreement shall be binding upon TPC, the County and their respective successors and assigns. Neither County nor TPC shall assign its rights or obligations under this Agreement without the prior written consent of the other party.

(The rest of this page intentionally left blank.)

IN WITNESS WHEREOF, this Funding Reimbursement Agreement is executed and delivered between the parties hereto as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

COUNTY:

COUNTY OF SHEBOYGAN

Alayne Bosman
Name: Alayne Bosman
Notary Public
expires 06/09/2018

By: Adam N. Payne
Name: Adam N. Payne
Title: County Administrator

TECUMSEH:

TECUMSEH PRODUCTS COMPANY
a Michigan corporation

Name:

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Funding Reimbursement Agreement is executed and delivered between the parties hereto as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

COUNTY:

COUNTY OF SHEBOYGAN

Alayne Bosman
Name: Alayne Bosman
Notary Public
expires 06/09/2018

By: Adam N. Payne
Name: Adam N. Payne
Title: County Administrator

TECUMSEH:

TECUMSEH PRODUCTS COMPANY
a Michigan corporation

Mary Karp
Name:

By: Harold Karp
Name: HAROLD KARP
Title: CEO

Exhibit A
Amsterdam Dunes Property

PHI 317380031v8

Legal Descriptions:

Part of the Southwest 1/4 of the Southwest 1/4 and of the Northwest 1/4 of the Southwest 1/4 and also parts of Government Lots 2, 3 and 4 of Section 30, Township 13 North, Range 23 East, in the Town of Holland, Sheboygan County, Wisconsin, described as follows: Commencing at the Southwest Corner of Section 30, also being the point of beginning; thence N01°01'44"W 2134.05 feet along the West line of Section 30, to a point; thence N88°58'16"E 33.00 feet to a point; thence N09°29'16"E 147.31 feet to a point; thence N04°46'56"E 277.61 feet to a point; thence N16°22'22"E 106.24 feet to a point on the North line of the Southwest 1/4; thence N88°19'15"E 1859.40 feet along the North line of the Southwest 1/4 and Government Lot 3 to a point; thence N00°50'38"W (N00°50'58"W of record) 1322.47 feet along the East line of the West 20 acres of Government Lot 2, to a point being the Northeast corner of the West 20 acres of Government Lot 2; thence N88°21'28"E 282.00 feet to the center of Bahr Creek; thence Southeasterly, Easterly, Northeasterly and Southeasterly along said centerline (S72°21'01"E 679.88 feet of record) to a point on the Westerly line of Marine Drive in the plat of Longfield Shores; thence S16°13'22"W 2969.79 feet along said Westerly line to a point; thence S01°03'49"W 924.79 feet along said Westerly line, to a point on the South line of the Southwest 1/4 (Government Lot 2) and the centerline of Amsterdam Road; thence S88°15'11"W 850.42 feet (850.52 feet of record) along said South line and centerline to a point; thence N00°02'59"E 154.00 feet to a point; thence N88°58'08"W 146.00 feet to a point; thence S01°44'49"E 161.00 feet to a point on said South line and centerline; thence S88°15'11"W 1004.60 feet along said South line and centerline to the point of beginning.

Tax Key Numbers: 59006-076970, 59006-077070 and 59006-077080

AND

Part of Government Lot 2 of Section 31, Township 13 North, Range 23 East, in the Town of Holland, Sheboygan County, Wisconsin, bounded and described as follows: Commencing at the Northwest Corner of said Government Lot 2; thence S01°01'18"E along the West line of the Northwest 1/4 (said Government 2) of Section 31, to a point being the North line of the recorded plat of Claer-Vue Resort (sometimes named Claervue Shores of record); thence N88°13'40"E 2070.00 feet, along the North line of said plat to a point on the West shore of Lake Michigan; thence Northeasterly (N09°01'23"E of record), along said West shore, to a point of intersection with the North line of said Government Lot 2; thence Westerly along said North line to beginning.

Tax Key Number: 59006-077170

AND

Part of Government Lots 2 and 3 of the Northwest 1/4 and the Southwest 1/4 of Section 31, Township 13 North, Range 23 East, in the Town of Holland, Sheboygan County, Wisconsin, bounded and described as follows: Commencing at the West 1/4 Corner of

Section 31, also being the point of beginning; thence N01°01'18"W 207.50 feet, along the West line of the Northwest 1/4 (Government Lot 2) to a point in the South line of Iowa Street (now known as Claer-Vue Shores) in the plat of Claer-Vue Resort (sometimes named Claervue Shores of record); thence N88°13'40"E 1641.83 feet along the South line of said Street to a point; thence Southeasterly to the West line of Lake Drive; thence S02°11'20"E 1479.37 feet along the Westerly line of Lake Drive in said plat of Claer-vue Resort to a point; thence S88°50'16"W 1731.06 (1731.26 of record) feet to a point on the West line of the Southwest 1/4 (Government Lot 3) of Section 31; thence N00°59'11"W 1327.73 (1321.57 of record) feet, along the West line of the Southwest 1/4 (Government Lot 3) of Section 31 to the West 1/4 Corner and the point of beginning.

Tax Key Numbers: 59006-077171 and 59006-077220

AND

Part of Government Lot 1 of Section 31, Township 13 North, Range 23 East, in the Town of Holland, Sheboygan County, Wisconsin, bounded and described as follows: Commencing at the Northwest Corner of Section 31, also being the point of beginning; thence S01°01'18"E 2407.24 feet along the West line of the Northwest 1/4 (Government Lots 1 and 2) of Section 31, to a point; thence N88°13'40"E 2070.00 feet, along the North line of the plat of Claer-Vue Resort (sometimes named Claervue Shores of record) to a point on the West shore of Lake Michigan; thence N09°01'23"E 1555.34 feet, along said West shore, to a point; thence S88°19'00"W 430.00 feet to a point on the East line of the 66 foot wide roadway identified as West Shore Drive on the Certified Survey Map recorded in Volume 1 of Certified Survey Maps on page 90 as Document Number 917676; thence N01°41'00"W along said East line 220.00 feet to a point; thence N88°19'00"E 460.00 to a point on said West shore line; thence N11°50'03"E 128.00 feet, along said West shore line, to a point; thence S88°19'00"W 490.00 feet to a point on the East line of said West Shore Drive; thence N01°41'00"W 250.00 feet along said East line to a point; thence N88°19'00"E 515.00 feet to a point on said West shore line; thence N02°13'10"E (Northerly 245± feet of record) 248.61 feet, along said West shore line to a point; thence N84°03'51"W (Northwesterly of record) 270.00 feet to a point on the North line of the Northwest 1/4 (Government Lot 1) and the centerline of Amsterdam Road; thence S88°15'11"W 966.45 feet, along said North line and centerline, to a point; thence S07°38'49"W 419.89 feet to a point; thence N87°25'20"W 216.28 feet to a point; thence N66°09'20"W 119.85 feet to a point; thence N68°09'58"W 254.56 feet to a point; thence N01°05'25"W 244.37 feet to a point on the North line of the Northwest 1/4 (Government Lot 1) and the centerline of Amsterdam Road; thence S88°15'11"W 576.45 feet, along said North line and centerline, to the point of beginning; together with the non-exclusive right to use of the lands identified as West Shore Drive on the Certified Survey Map recorded in Volume 1 of Certified Survey Maps on page 90 as Document Number 917676 (West Shore Drive and part of Amsterdam Road); but excepting therefrom all that portion of the afore-described land lying and being in Government Lot 2 of said Section 31; FURTHER EXCEPTING THEREFROM Lots 1, 2, 3 and Outlot 1 of The

Shores of Amsterdam Dunes, a local subdivision, recorded in Volume 15 of Plats on Page 278 as Document Number 1994022.

PIN: 59006-077121 (Formerly Part of Tax Key Number 59006-077120)

With respect to the following described portion of the property being conveyed herein, the rights conveyed are subject to the interests of the State of Wisconsin under Section 23.096 of the Wisconsin Statutes, Chapter NR51 of the Wisconsin Administration Code, and Stewardship Grant and Management Contract Number HA3-15-226 (the "Contract") entered into by and between the Wisconsin Department of Natural Resources and Glacial Lakes Conservancy.

By acceptance of this deed, Sheboygan County, for itself and its successors and assigns, hereby covenants and agrees not to convey, sell, lease, assign or mortgage the following described portion of the property herein conveyed or convert it to uses or purposes inconsistent with the Contract without prior written approval of the Wisconsin Department of Natural Resources. The Grantee further agrees that all rights, title and interests in and to the following described portion of the property shall vest in the State of Wisconsin without necessity of reentry, if the Grantee, its successors or assigns, violates any essential provision of said Contract.

Part of Government Lots 2 and 3, Section 31, Township 13 North, Range 23 East, Town of Holland, Sheboygan County, Wisconsin.

Beginning at the W1/4 corner of Section 31, Township 13 North, Range 23 East; thence N00°39'25"E, along the West line of Government Lot 2, Section 31, 208.37 feet to the South line of Iowa Street according to the Plat of Clair-vue Resort; thence N89°55-14"E, along said South line, 533.60 feet; thence S00°01'41"W, 883.78 feet; thence S83°39'52"E, 434.68 feet; thence S00°04'06"E, 103.79 feet; thence S89°47'00"E, 742.98 feet to the West line of the Plat of Clair-vue Resort; thence S00°31'09"E, along said West line 507.91 feet to the South line of Government Lot 3; thence N89°29'16"W, along said South line, 1731.42 feet to the West line of Government Lot 3, Section 31; thence N00°41'49"E, along said West line, 1321.77 feet to the point of beginning, and containing 33.99 acres, including therein, 1.16 acres lying within the right-of-way of Sauk Trail Road.

ALSO:

Part of the SW1/4 of the SW1/4 and part of Government Lots 2, 3, and 4, and part of the vacated portion of the Plat of Amsterdam, all in Section 30, and part of Government Lots 1 and 2, Section 31, Township 13 North, Range 23 East, in the Town of Holland, Sheboygan County, Wisconsin.

Commencing at the W1/4 corner of Section 31, Township 13 North, Range 23 East; thence N00°39'25"E, along the West line of Government Lot 2, Section 31, 241.37 feet to the North line of Iowa Street according to the Plat of Clair-vue Resort; thence

N89°55'14"E, along said North line, 1432.94 feet to the point of beginning; thence continuing N89°55'14"E, along the North line of Iowa Street, 298.25 feet; thence N00°29'58"W, 8.50 feet; thence N89°55'14"E, 389.33 feet, more or less, to the water's edge of Lake Michigan; thence northeasterly along said water's edge, 1535 feet more or less; thence S89°58'59"W, 400 feet, more or less, to the Southeast corner of The Shores of Amsterdam Dunes, a subdivision plat; thence N89°57'06"W, along the South line of said Subdivision Plat, 66.00 feet; thence N00°02'54"E, along the West line of said Subdivision Plat, 877.69 feet to the Northwest corner of The Shores of Amsterdam Dunes; thence N89°55'44"E, along the South line Section 30, 160.85 feet; thence N02°45'50"E, along the West line of Marine Drive according to the Plat of Longfield Shores, 924.78 feet; thence N17°54'20"E, along the West line of Marine Drive, 2970 feet, more or less, to the centerline of Bahr Creek; thence northwesterly along said centerline, 950 feet, more or less, to the North line of Government Lot 2, Section 30; thence S89°56'57"W, along said North line 325 feet, more or less; thence S00°50'04"W, 1322.50 feet to the North line of Government Lot 3; thence N89°58'47"W, along said North line, 255.17 feet; thence S14°51'53"W, 939.43 feet; thence S17°26'18"W, 57.53 feet; thence S11°56'25"W, 559.55 feet; thence S09°19'34"W, 678.06 feet; thence S08°32'13"W, 479.73 feet to the North line of Section 31; Township 13 North, Range 23 East; thence S09°26'09"W, 419.97 feet; thence N85°43'49"W, 53.68 feet; thence S10°27'06"W, 931.47 feet to the North line of Government Lot 2, Section 31; thence S89°57'46"E, along said North line, 542.47 feet; thence S02°23'33"W, 1080.87 feet to the point of beginning, and containing 115.5 acres of land, more or less, including therein 0.9769 acres lying within the right-of-way of Amsterdam Road.

ALSO:

Part of Government Lot 1, Section 31, and part of the SW1/4 of the SW1/4 and part of the NW1/4 of the SW1/4 of Section 30, Township 13 North, Range 23 East, Town of Holland, Sheboygan County, Wisconsin.

Beginning at the NW corner of Section 31; thence S00°39'25"W, along the West line of Government Lot 1, Section 31, Township 13 North, Range 23 East, 131.59 feet; thence S89°20'36"E, 576.67 feet; thence N00°28'08"E, 138.91 feet to the South line of Section 30; thence N89°55'44"E, along said South line, 55.17 feet; thence N17°42'28"E, 547.48 feet; thence North 62.78 feet; thence N38°32'13"W, 859.08 feet; thence North 306.41 feet; thence N20°41'53"E, 1167.56 feet to the North line of the SW1/4 of Section 30; thence N89°58'47"W, along said North line, 533.19 feet to the East line of Sauk Trail Road; thence 381.80 feet southwesterly along the arc of a curve to the left, said curve having a radius of 1372.39 feet and a main chord which bears S08°37'21"W, 380.57 feet; thence S11°12'45"W, 147.33 feet; thence N89°20'50"W, 32.29 feet to the West line of the SW1/4 of Section 30; thence S00°38'58"W, along said West line 2135.61 to the point of beginning, and containing 31.56 acres of land, including therein 2.50 acres lying within the existing right-of-way of Sauk Trail Road and Amsterdam Road.

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Exhibit B
AD Conservation Easement

PHI 317380031v8



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Tx: 4095719

**GRANT OF CONSERVATION
EASEMENT**

Document Number

2005859

SHEBOYGAN COUNTY, WI

RECORDED ON

07/09/2015 4:17 PM

ELLEN R. SCHLEICHER

REGISTER OF DEEDS

RECORDING FEE: 30.00

EXEMPTION #

Cashier ID: 9

PAGES: 15

THIS GRANT OF CONSERVATION EASEMENT is made this 9th day of July, 2015, by and between SHEBOYGAN COUNTY, WISCONSIN, a Wisconsin governmental body corporate with its principal place of business at 508 New York Avenue, Sheboygan, WI 53081-4128 ("Landowner") and GLACIAL LAKES CONSERVANCY, INC., a Wisconsin non-stock not-for-profit corporation with an address of 529 Ontario Avenue, Sheboygan, WI 53081 ("Easement Holder" or "Holder").

PURPOSES

The purpose of this Grant of Conservation Easement ("Grant" or "Conservation Easement") is to forever conserve the Property for the following conservation purposes:

Recording Area

Name and Return Address:
Attorney Daniel Geraghty
Whyte Hirschboeck Dudek, SC
555 East Wells
Milwaukee, WI 53202

1. to protect in perpetuity the Property's significant open space, natural wildlife habitat, natural scenic and ecological conservation values for public benefit;
2. to maintain land cover and land use that are known to be effective in reducing the likelihood of adverse impacts to the water quality and quantity of subsurface and surface waters and wetlands values of the Property and to protect the fertility and quality of its soils;
3. to assure the sustained and natural capacity of the Property and its soils to support healthy and vigorous forests, wetlands, prairies, maintain a healthy and biologically-diverse landscape that supports a full range of native flora and fauna and limits adverse aesthetic and ecological impacts;
4. to ensure that the scenic and associated open space features of the property will be retained and maintained consistent with the Conservation Value of the Property and to permit the public to enjoy the scenic values of the Property;
5. to prevent any use or change of the Property that will significantly impair or interfere with the Property's Conservation Values.

The protected Conservation Values of the Property and the purpose hereof are more particularly described in the following Recitals, incorporated herein:

WITNESSETH:

WHEREAS, Landowner holds title in fee simple to certain real estate ("Property") in Sheboygan County, Wisconsin, legally described on Exhibit A attached hereto and depicted on the map attached as Exhibit B as the stewardship property, and

WHEREAS, the Property has and contains Conservation Values as described herein, and

WHEREAS, the Property is situated in three non-contiguous areas along Lake Michigan and comprises a total of approximately one hundred eighty-four (184) acres, more or less, including dry mesic, lowland, and mesic forest, to be restored dry and mesic prairies, forests, wetlands and shore land, all of which provide scenic vistas and all of which provide relatively natural habitat for plants and wildlife and are elements of the Conservation Values of the Property, and

WHEREAS, the Property is prominently visible from and provides scenic enjoyment to the general public from Sauk Trail Road, Amsterdam Road, and those areas of public beach, all of which are adjacent to the Property, and

WHEREAS further scenic enjoyment may be viewed from low-impact trails and/or observation platforms to be potentially implemented in the future, and

WHEREAS, the wooded areas, prairies, and wetlands on the Property are elements of the Conservation Values of the Property, and

WHEREAS, the Conservation Values of the Property include significant natural scenic and open space areas, relatively natural wildlife and plant habitat, glacial geology, and high quality wetlands to protect, preserve, and restore, and

WHEREAS, Landowner desires and intends to convey to Holder this Conservation Easement to achieve the purposes set forth herein, and Holder desires and intends to accept the Grant of Conservation Easement consistent with an Agreement for Transfer by Amsterdam Dunes, entered into by the parties on September 11, 2014, and

WHEREAS, Landowner desires and intends to protect and preserve the Property and the Conservation Values thereof, including the Property's open space, natural, scenic, and ecological values by prohibiting any development or use of the Property (other than as provided herein) that would diminish the Conservation Values thereof, and

WHEREAS Holder is a publicly-supported, tax-exempt organization described in Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code, among whose purposes are the preservation, protection, and enhancement of working, urban, and natural lands that contribute significantly to the ecological integrity, agricultural sustainability, scenic beauty, and recreational enjoyment of Fond du Lac, Manitowoc, Kewaunee, Calumet, and Sheboygan Counties in Wisconsin, and

WHEREAS, Holder is a qualified organization as described in Section 170(h) of the Internal Revenue Code, is qualified to hold conservation easements under Wis. Stat. § 700.40, and is a non-profit conservation organization as described in Wis. Stat. ch. 23 and the regulations promulgated thereunder and is eligible to receive grants thereunder, and

WHEREAS, the parties recognize that this Conservation Easement will provide a significant benefit to the people of Sheboygan County and the State of Wisconsin, and

WHEREAS, the common law and Wis. Stat. § 700.40 recognize conservation easements for the purposes of protecting the natural, scenic, and open space values of real property, protecting natural resources and maintaining or enhancing air and water quality, and

WHEREAS, the Conservation Values and the current, physical, and overall biological conditions of the Property, as well as its current uses and state of improvement, are described in a "Baseline Documentation Report" prepared by Holder with the cooperation of the Landowner, consisting of maps, photographs, and other documents, that the parties acknowledge is an accurate representation of the Property at the time of this Grant, allowing Holder to monitor compliance with the terms of this Easement. This report, however, is not intended to preclude the use of other evidence to establish the baseline condition of the Easement Area if there is a controversy over some aspect of that condition; and

WHEREAS, The parties acknowledge that the Property was purchased in part with State of Wisconsin Knowles-Nelson Stewardship funds and is therefore subject to a Stewardship Grant and Management Contract (Grant Number HA3-15-226) with the Wisconsin Department of Natural Resources (the "Stewardship Contract") and Landowner has agreed to an assignment of the Stewardship Contract and shall be bound thereby; and

WHEREAS, Landowner and Holder recognize the Conservation Values of the property, including the natural, open space, and scenic values of the Property described in the preceding recitals and share the common purpose of protecting these Values as reflected in this Grant to prevent the use or development of the Property for any purpose or in any manner that would conflict with the provisions of this Grant.

NOW, THEREFORE, in consideration of the recitals hereinabove set forth, the mutual covenants, terms, conditions, and restrictions contained herein, and as an absolute and unconditional gift and pursuant to Wis. Stat. § 700.40, Landowner hereby voluntarily grants and conveys unto Easement Holder and its successors and assigns a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth:

1. Rights Conveyed to Easement Holder. To accomplish the purposes of this Easement, the following rights are conveyed to Easement Holder:

- a. to own and to hold all interests, including property interests, conveyed by this Easement in perpetuity;
- b. to take such actions as are necessary to preserve and protect all of the Conservation Values of the Property in perpetuity;
- c. to enforce the terms of this Easement and otherwise prevent any activity on or use of the Property inconsistent with the protection of the Conservation Values of the Property or with the terms hereof and to require restoration of the Property as may be required on account of damage, inconsistent activity or violation hereof, by exercising the enforcement remedies provided below;
- d. to enter upon the Property at all reasonable times and upon reasonable prior notice to Landowner to identify the current condition of, uses, and practices thereon, and to monitor compliance with the terms hereof, provided that prior notice shall not be required in the event that Holder determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement or in the event of an emergency;
- e. to post signs with Landowner's approval to provide public notice of this Easement and of Holder's rights hereunder.

2. Prohibited Uses and Activities. In furtherance of the foregoing, Landowner makes the following covenants on Landowner's behalf and Landowner's heirs and assigns, which covenants shall run with and bind the Property in perpetuity. Without written consent from Easement Holder, which may be granted only as provided herein, any activity on or use of the Property inconsistent with the purpose of this Grant is prohibited. Without limiting the generality of the foregoing, the following specific uses and activities shall be and are expressly prohibited:

a. **Division of Property Prohibited.** The parties recognize that the fractionalization of ownership interest in the Property increases the burden on the Easement Holder to monitor and enforce this Grant and intend by this subparagraph to require that the Property remain in unified ownership, either joint or undivided, except to the extent permitted in this subparagraph. The Property shall not be subdivided, divided, or conveyed in separate parcels, whether through legal or *de facto* subdivision or by any other means, including divisions through the creation of condominiums, site adjustments, or other means except as permitted below. Further, ownership of any present or future buildings, structures, or improvements on the Property shall not be separated from the ownership of the Property by any means, direct or indirect, except as permitted below. Except as provided herein, it is the intent of this subparagraph to prohibit the conveyance of any existing tax parcels or whole legal descriptions, except as a part of the entire Property. Boundary line adjustments that in total do not exceed one-tenth of an acre (.1) for the entire Property are permitted only to correct technical errors made in the survey or legal description.

b. **Buildings, Structures, and Improvements Limited.** There shall be no commercial or residential development of the Property. Buildings, structures, or improvements may be constructed, maintained, renovated, expanded, or replaced only to support conservation or wetland-based recreation or educational purposes. If the Landowner desires to erect any such structures, it shall provide notice to the Holder describing the structure's dimension and proposed use at least thirty (30) days prior to construction. Within such thirty (30) day period, the Holder shall approve or disapprove of such buildings or structures. In no event will more than two (2) buildings be added, with an aggregate square footage of 4,500 square feet.

c. **Commercial and Industrial Uses Prohibited.** Use of the Property for commercial or industrial purposes, including use by easement or other right of access or passage across or upon the Property in conjunction with commercial activity other than underground utility easements that have previously been granted.

d. **Surface Alterations Prohibited.** Except for restoration activities permitted by Paragraph 2.g.ii, 3.c, or as dictated by the Natural Resources Management Plan referred to in Paragraph 4.a herein and roadways and parking as may be necessary to fulfill the Conservation Values, no additional filling, dumping, excavation, or other alteration may be made to the surface or subsurface of the Property or to its surface waters or wetlands.

except to accomplish such rights reserved by the Landowner, in which case, the disturbed surrounding area must be restored as soon as reasonably possible to a state consistent with the Conservation Values. Roadways and parking shall be limited to one roadway made of gravel or other pervious material or other material acceptable to Holder and a parking lot, or parking lots, of similar material no larger than a combined 10,000 square feet.

e. Soil Degradation Prohibited. Except for restoration activities permitted by Paragraphs 2.g.iii, 3.c, or as dictated by the Natural Resources Management Plan referred to in Paragraph 4.a herein, any use or activity that causes or is likely to cause significant soil degradation, loss, erosion, or significant pollution of any surface or subsurface waters is prohibited.

f. Wetlands Degradation and Water Manipulation Prohibited. Except for restoration activities permitted by Paragraph 3.c, or as dictated by the Natural Resources Management Plan referred to in Paragraph 4.a herein, any use or activity, including the draining, filling, ditching, filling in with earth or any other material that causes or may cause significant degradation of the wetlands or of any wetlands, streams, springs, lakes, ponds, marshes, sloughs, swales, swamps, or potholes hereinafter occurring is prohibited. The construction of dams, dikes, levees, ditches, canals, channels, and any additional ponds is prohibited.

g. Manipulation of Vegetation Prohibited.

i. Vegetative buffers. Vegetative buffers shall be established and maintained upon lakes, ponds, wetlands, marshes, rivers, streams, and ditches. The area of the vegetative buffer shall extend at least seventy-five feet (75') from the edge of the surface water or wetland. There may be no activity that adversely affects the natural flow of surface or underground waters within the area of the easement.

ii. Leasing. In the event that Landowner desires to lease any portion of the Property, Landowner shall notify the Easement Holder of the proposed lessee and their expected use of the Property. Holder shall approve or disapprove of such lessees within ten (10) days of such notice. Landowner shall also provide the Easement Holder with the name and address of the lessees. Any and all lessees shall lease the Property expressly subject to the terms of this Conservation Easement.

iii. Tree Removal. Except for the clearing of brush and fence rows for approved firewood collection, dead or diseased tree removal, trail, road, and boundary maintenance, orchard trees, and to remove imminent threats to the safety of persons, animals, or structures, the cutting, removal, or harvesting of trees may be undertaken only pursuant to a written natural resource management plan that has a goal of restoring an old-growth sustainable forest, manages the forest on a single-tree basis, requires the removal of logs from the woods using non-invasive methods that help protect the understory and prevent soil erosion, compaction and degradation and which has been approved by the Holder.

iv. Restoration. The Property may be restored to native vegetation or wetlands pursuant to the Natural Resource Management Plan required by Paragraph 4.a.

h. Animals Prohibited. Dogs as pets are permitted on the Property per the County ordinance. All other animals commonly kept as pets and all livestock and poultry are prohibited.

i. Dumps and Landfills Prohibited. No portion of the Property shall be used for dumps, landfills, or the accumulation, storage, or deposit of waste materials of any kind including trash, inoperative vehicles, vehicle parts, junk, refuse, or radioactive or hazardous waste, except as permitted below. Disposal of any waste materials generated by activities permitted under this Grant shall be in accordance with the requirements of applicable state, county, and local regulations. The composting of organic materials in an area of the Property not to exceed five hundred (500) square feet and the temporary storage of trash generated by the Property in receptacles for periodic off-site disposal shall be permitted without such prior approval. Brush, shrubs, trees, and other vegetation cut from the Property may be composted or burned on the Property.

j. Billboards and Signs Prohibited. The placement of advertising signs or billboards on the Property is prohibited except that, subject to applicable state, county, and local regulations, boundary markers, directional signs, historic, conservation, and recreational markers and explanations, signs stating the name and address of

the Property, signs posted to control unauthorized entry or use of the Property, signs stating the Property is protected by this Grant, and memorial plaques are permitted provided that the signs shall not be lighted.

k. Motor Vehicles Prohibited. Use of motorized vehicles including without limitation snowmobiles, ~~all-terrain vehicles, and motorized cycles on the Property is prohibited except:~~

- i. In connection with permitted activities or uses as provided in this Conservation Easement;
- ii. In connection with permitted habitat and resource management and monitoring;
- iii. to the extent necessary to assist the physically challenged.

All motor vehicle use shall be limited to parking areas, lanes, and permitted trails as determined by Landowner. Any degradation of the Conservation Values of the Property resulting from motor vehicle use shall be promptly restored.

l. Other Prohibited Uses and Activities. The use of the Property for activities that may impair any of the Conservation Values of the Property, such as but not limited to, use as an aircraft landing or launching site, motorized vehicle race track, golf course, paint-ball games, camping, and other similar activities is prohibited.

m. Commercial Recreational Use Prohibited. The Property may not be used for commercial recreational activity. Low impact, recreational activities that are consistent with the conservation purposes of this Grant, such as hiking, nature observation, cross-country skiing, bird-watching, and hunting are permitted.

n. Incinerators Prohibited. Burning of hazardous, non-organic trash, garbage, or other materials is prohibited except for controlled burning consistent with the Natural Resources Management Plan. The burning of brush piles, and other organic materials generated from activities conducted on the Property and approved in the Natural Resources Plan is permitted consistent with applicable law.

o. Inconsistent Uses Prohibited. No use shall be made of the Property and no activity thereon shall be permitted which, in the reasonable opinion of the Holder is or is likely to become inconsistent with this Grant or will adversely impact the Conservation Values of the Property as stated above.

3. Reserved Rights of Landowner. Except as otherwise provided herein, Landowner for itself, its successors, and assigns reserves and shall have and shall be entitled to exercise all of the rights as owner of the Property, including the right to use the Property in any manner not inconsistent with the terms of this Easement and the right to sell, give, transfer, mortgage, or otherwise convey ownership of the Property or any portion thereof or interest therein subject, however, to the limitations and prohibitions of this Grant and the Stewardship Contract. Landowner agrees to notify Holder in advance and in writing before exercising any reserved right that may have an adverse impact on the Conservation Values associated with the Property and this Easement. Without limiting the foregoing, Landowner shall have the following rights:

a. to erect and maintain minor structures such as birdhouses and bird feeders, viewing platforms (up to forty (40) feet high for new structures and eighty (80) feet high if adopted using existing structures) and no larger than 35 feet by 35 feet, informational signs and kiosks, hunting stands and blinds and benches;

b. to remove dead or downed trees on the Property to prevent damage or injury to persons and property;

c. to engage in activities that restore and maintain the natural biological and ecological integrity of the Property; possible activities including the planting and maintenance of native vegetation, management of natural and restored wetlands, and reducing the presence of undesirable vegetation and including the right to revert the agricultural lands to native plant communities for wildlife habitat and scenic and open space, all restoration activity being consistent with the provisions of the Natural Resources Management Plan prepared by a qualified natural resource professional and subject to the approval of the Holder;

d. to construct or place and maintain walking trails on the Property, provided that such trails shall not be constructed in such a way as to obstruct the natural flow of surface water and shall be no wider than six feet and

surfaced with permeable materials such as aggregate or woodchips. Landowner shall have the right to remove brush, branches, trees, and other vegetation so as to construct and place said permitted walking trails, and all necessary steps shall be taken to design and maintain all paths and trails so as to prevent erosion, and any location where erosion occurs shall be promptly restored;

e. Landowner and Holder recognize that Landowner shall retain and reserve all carbon rights or credits, so-called, which may inhere or accrue to the Property.

4. Affirmative Obligations of Landowner.

a. **Natural Resource Management Plan.** Prior to undertaking any activity permitted by this Grant or exercising Reserved Rights that may impact the Conservation Values of the Property including cutting or removing trees and restoring all or portions of the Property to native vegetation, Landowner shall retain a qualified natural resource professional to prepare a natural resource management plan (the "Natural Resource Management Plan" or "the Plan"). Such Plan shall include, by way of example and not limitation, a plan for forest management, restoration of wetlands or other portions of the Property, and the restoration or reintroduction of native species. Landowner shall provide a copy of that Natural Resources Management Plan to the Holder for its approval. The Holder shall provide written notice within fifteen (15) days of receiving the Plan whether it consents to the Plan or provide any objections thereto. The parties will resolve any objections before the plan becomes final. If no notice is provided within twenty (20) days of the Holder receiving the Plan, the Holder will be deemed to have approved of the Plan. The Landowner may not undertake activities under the Plan without having provided notice to the Holder. To the extent allowable under the Stewardship Contract, a forest management plan prepared for Wisconsin's Managed Forest Law program and/or a Conservation Reserve Program plan approved by the United States Natural Resource Conservation Service may be considered elements of a Natural Resource Management Plan. In the absence of a Natural Resources Management Plan prepared by a qualified natural resource professional, the Landowner may undertake limited vegetation management activity provided the landowner shall provide notice to the Holder describing such proposed activity and the Holder shall approve or disapprove of the proposed activity within ten (10) days. The Landowner shall revise the Natural Resources Management Plan as necessary and such revisions shall be approved by the Holder in the same manner as the Plan.

b. **Notice of Adverse Impacts.** The Holder is to be notified in writing within seven (7) days of discovery of any adverse impact to the Conservation Values of the Property resulting from any permitted activities or activities conducted pursuant to Landowner's reserved rights as described in Paragraph 3 and the Property shall be promptly restored. An adverse condition or impact shall be reported if it is significant or expected to be significant to the Conservation Values of the Property either in isolation or taken together with other events or expected events prior to becoming effective.

6. **Enforcement Remedies.** To enforce the terms of this Easement and otherwise prevent or remediate any violation hereof or activity inconsistent herewith, Holder shall have the following remedies:

a. **Notice of Violation.** If Holder determines that a violation of the terms of this Easement has occurred or is threatened, Holder shall give written notice to Landowner describing such violation and demanding corrective action sufficient to cure the violation, including where the violation involves damage to the Property resulting from any use or activity inconsistent with the purposes of this Easement, restoration of the Property to its prior condition in accordance with a written plan approved by Holder.

b. **Failure to Cure.** If Landowner fails to cure the violation within thirty (30) days after receipt of notice thereof from Holder or under circumstances where the violation cannot reasonably be cured within a thirty- (30-) day period, fails to begin curing such violation within the thirty- (30-) day period or thereafter fails to continue diligently to pursue such to completion, Holder may bring an action at law or suit in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such violation.

c. **Recovery of Damages.** Holder shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including without limitation, damages for the loss of aesthetic, scenic, or Conservation Values.

d. Emergency Action. If Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the aesthetic, scenic, or Conservation Values of the Property, Holder may pursue any of its remedies under this Section 5 provided, however, that Holder provides Landowner with notice of its exercise of this right and without waiting for the expiration of any period otherwise herein provided for cure or remedy.

e. Remedies Cumulative. Holder's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. Landowner agrees that Holder's remedies at law for any violation of the terms of this Easement are inadequate and that Holder shall be entitled to the injunctive relief described above in addition to such other relief to which Holder may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Holder's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

f. Recovery of Costs. All reasonable costs incurred by Holder in enforcing the terms of this Easement, including without limitation costs and expenses of suit and reasonable attorneys' fees and any costs of restoration of the Property shall be borne by Landowner. If Landowner prevails in any action to enforce the terms of this Grant, each party shall be responsible for its own costs.

g. Easement Holder's Discretion. Enforcement of the terms of this Grant shall be at the discretion of Easement Holder, and any forbearance by Easement Holder to exercise its rights under this Easement in the event of any breach of any term of this Grant by Landowner shall not be deemed or construed to be a waiver by Easement Holder of any of Easement Holder's rights under this Grant. No delay or omission by Easement Holder in the exercise of any right or remedy upon any breach by Landowner shall impair such right or remedy or be construed as a waiver.

h. Waiver of Certain Defenses. Landowner hereby waives any equitable defense based on laches, balance of harms, estoppel and prescription, and the good faith purchaser defense under Wis. Stat. § 708.09 or any successor provision against any action brought by the Easement Holder with respect to this Easement.

i. The parties desire that any question arising from time to time concerning compliance with the terms of this Easement or any required notice or approval will be resolved through open communication and dialogue rather than unnecessarily formal or adversarial action. To this end, the parties state their mutual intention that if a party develops concerns about an actual or possible noncompliance with the terms of this Easement, wherever reasonably possible, the concerned party will informally notify the other party of the potential problem and explore the possibility of reaching an agreeable resolution prior to invoking the formal steps herein.

ii. If the parties cannot resolve the matter by informal methods and after notice of breach, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator who shall be an attorney licensed to practice law in Wisconsin who has experience with conservation easements including applicable tax law and training and experience in mediation. Mediation shall be conducted in Sheboygan County, Wisconsin.

iii. If the dispute has not been resolved by mediation within sixty (60) days after the first substantive meeting of the parties with the mediator, or if the parties are unable to agree to a mediator within sixty (60) days after the formal notice of breach, then, *if the parties agree*, the dispute shall be resolved by binding arbitration in accordance with the State Uniform Arbitration Act, and judgment upon the award rendered by the arbitrator may be enforced in any state court of competent jurisdiction.

iv. At any point in time the parties may take appropriate legal action, including an injunction to stop the alleged violation. Any costs incurred by Holder in enforcing the terms of this Easement against Landowner including without limitation any costs of restoration necessitated by Landowner's violation of the terms of this Easement shall be borne by Landowner unless the deciding body determines that Holder has acted in bad faith in seeking to enforce this Easement.

v. Holder's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values. The failure of Holder to discover a violation or to take action shall not waive any of Holder's rights, claims, or interests in pursuing any such action at a later date.

6. Representations and Warranties. Landowner represents and warrants that:

a. Hazardous Substances. To the best of Landowner's actual knowledge, no substance constituting a hazardous, toxic, polluting, or otherwise contaminating substance has been released, generated, disposed of, or abandoned on the Property. Landowner does use gasoline and motor oil for operating and maintaining agricultural vehicles and equipment and uses herbicides in connection with land management activities and to periodically control invasive plant species.

b. Underground Storage Tanks. There are not now and to the best of Landowner's knowledge, have never been any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements applicable to the Property and its use.

c. Compliance with Laws. To the best of Landowner's knowledge, the Property and Landowner's use thereof are now and since September 12, 2014, have been in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.

d. Absence of Litigation. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property or Landowner's landownership or use thereof.

e. No Pending Proceedings. No civil or criminal proceedings or investigations are now pending, and no notices, claims, demands, or orders have been received arising out of any violation or alleged violation of or failure to comply with any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

7. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Holder to exercise physical or managerial control over the day-to-day operation of the Property or any of Landowner's activities on the Property or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended or similar law imposing legal liability on the Landowner or operator of real property.

8. Extinguishment and Condemnation.

a. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

b. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority so as to terminate this Easement, in whole or in part, Landowner and Holder shall act jointly to recover the full value of the interests in the Property subject to the taking or purchase in lieu and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Landowner and Holder in connection with the taking or purchase in lieu shall be paid out of the amount recovered.

c. Use of Proceeds. In the event that the Grant is extinguished by changed circumstances or condemnation and compensation for the Property is paid to Holder, Holder shall use that compensation to protect the Conservation Values of any similar or comparable property.

9. Hold Harmless. Landowner hereby agrees to indemnify and hold harmless Holder and its members, directors, officers, employees, agents, volunteers, and contractors (collectively the "Indemnified Parties") from and

against any and all liabilities, penalties, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation reasonable attorneys' fees arising from or in any way connected with

a. injury to or the death of any person, or physical damage to any property resulting from any act, omission, condition, or other matter related to or occurring on or about the Property regardless of cause unless due to the negligence of any of the Indemnified Parties;

b. the violation or alleged violation of or other failure to comply with any state, federal, or local law, regulation, ordinance, or requirement by any person other than any of the Indemnified Parties in any way affecting, involving, or relating to the Property; and

c. the presence or release in, on, from, or about the Property at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, ordinance, or requirement as hazardous, toxic, polluting, or otherwise contaminating or harmful to human health or the environment unless caused solely by any of the Indemnified Parties.

10. Assignment of Easement. This Easement is transferable but Holder may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under applicable provisions of the Internal Revenue Code (or any successor provision then applicable) and authorized to acquire and hold conservation easements under Wis. Stat. § 700.40 or any successor provisions thereto or under the laws of the United States. In the event that Holder loses its tax-exempt status, is dissolved, ceases to be qualified to be a holder of the conservation easement or the parties otherwise agree, Ozaukee Washington Land Trust ("OWLT") shall become the Holder of this conservation easement pursuant to a Memorandum of Understanding entered into and recorded on the same date hereof.

11. Subsequent Transfers of Property. Landowner and each subsequent Landowner of the Property shall incorporate the terms of this Easement by reference in any deed or other legal instrument by which such Landowner divests any interest in all or in a portion of the Property, including without limitation a leasehold interest. Landowner further agrees and each subsequent Landowner of the Property by taking title thereto shall be agreeing to give written notice to Holder of the transfer of any interest in the Property at least thirty (30) days prior to the date of such transfer.

12. Notices. Any notice or other communication required or permitted hereunder shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

- a. To Landowner: Sheboygan County
County Administrator
808 New York Avenue
Sheboygan, WI 53081-4128
- b. to Holder: Glacial Lakes Conservancy, Inc.
629 Ontario Avenue
Sheboygan, WI 53081

or to such other address as either party from time to time shall designate by written notice to the other.

13. Recording. Holder shall record this instrument in the office of the Register of Deeds for Sheboygan County at Holder's expense within two (2) business days of execution hereof.

14. Easement Binding on Successors. The benefits and burdens of the covenants, terms, conditions, and restrictions of this Easement are intended to and shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Landowner" and "Holder" wherever used herein, and any pronouns used in place thereof, shall include respectively the above-named Landowner and Landowner's personal representatives, heirs, successors, and assigns and Holder and its successors and assigns.

15. Taxes and Liens. Landowner shall pay and discharge when due all property taxes and assessments imposed upon the Property and any uses thereof and shall avoid the imposition of any liens that may affect Holder's rights hereunder. Landowner shall keep the Property free of any liens or encumbrances including without limitation those arising out of any work performed for, materials furnished to, or obligations incurred by Landowner. Holder may at its discretion pay any outstanding taxes or assessments and shall then be entitled to reimbursement by Landowner. The foregoing notwithstanding, the Landowner may mortgage the Property.

16. General Provisions.

a. Definitions.

i. **Structures** means anything that is built or constructed by humans from wood, metal, stone, concrete, plastic, or any other substance which is not a natural element of the environment and which is intended to be permanent or semi-permanent and includes but is not limited to all buildings, roads and trails, fences, gates, poles, towers, fences, utility infrastructure, gardens, play equipment, ponds, and any similarly constructed element.

ii. **Commercial activity** means actions undertaken for the purpose of providing a product or service to the public by operating a business or generating a profit.

iii. **Native plants** are those that were growing naturally in the Sheboygan County area before humans introduced plants from distant places.

b. **Construction Favoring Validity.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Easement to effect the purposes of this Easement and the policy and purpose of the Wisconsin Conservation Easement Act, Wis. Stat. § 700.40 (2013). If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

c. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

d. **Recitals and Exhibits Incorporated Herein.** Any and all Recitals in this Grant of Conservation Easement are agreed by the parties to be accurate, are incorporated into this Easement by this reference, and shall constitute integral terms and conditions of this Easement. Any and all exhibits and addenda attached to and referred to in this Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

e. **No Reversion.** Nothing contained herein shall result in a forfeiture or reversion of Landowner's title to the Property in any respect.

f. **Paragraph Headings.** The paragraph headings in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation of this Easement.

g. **Counterparts.** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by both parties, and each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

h. **Governing Law.** The construction and validity of this Easement shall be governed by the laws of the State of Wisconsin.

i. Effect. This Easement shall be effective upon Landowner's execution hereof and upon Holder's acceptance hereof.

j. Advisory Committee. The Landowner agrees that so long as it maintains the Amsterdam Dunes Advisory Committee, at least one person nominated by the Holder shall serve on such committee.

k. Notices for Approvals. Whenever the Landowner is required to give a notice of proposed action to Holder in order to obtain Holder's approval of a proposed action, in the event that the Holder does not provide a response to Landowner within the time provided, plus thirty (30) days, the Landowner may proceed with the proposed action as though approval was formally provided.

17. Assignment of Stewardship Grant and Management Contract. The parties acknowledge that the Property was purchased in part with State of Wisconsin Knowles-Nelson Stewardship funds and is therefore subject to the Stewardship Contract, recorded as Document #20004162 in the Office of the Sheboygan County Register of Deeds, a copy of which is adopted by reference herein. Landowner has obtained written approval from the Wisconsin Department of Natural Resources to grant this Conservation Easement pursuant to Essential Provision 1b of the Stewardship Contract. Landowner has executed an Assignment of the Stewardship Grant and Management Contract and shall hold Property Easement Holder harmless for any liability attributable thereto. This Grant of Conservation Easement is intended to complement the Stewardship Contract. Any conflicts between the substantive terms of this Conservation Easement and the Stewardship Contract shall be resolved in favor of the Stewardship Contract except that, if both documents address the same subject, the provision which extend the greater adherence to the Conservation Values shall control.

18. Amendment. If circumstances arise causing the parties to determine that an amendment to or modification of this Easement would be appropriate, Landowner and Holder may amend this Easement by a written instrument recorded in the office of the Register of Deeds for Sheboygan County provided that any such amendment shall not diminish the conservation values, goals, purposes, or benefits of the Easement in any manner, affect its perpetual duration, or affect the qualification of this Easement or the status of Holder under Section 601(c)(3) of the Internal Revenue Code of 1986 or any successor provision.

TO HAVE AND TO HOLD unto Easement Holder, its successors and assigns forever,

IN WITNESS WHEREOF Landowner and Easement Holder have set their hands on the day and year first above written.

LANDOWNER: SHEBOYGAN COUNTY

By: _____


Roger Te Strope, Board Chairman

By: _____

Jon Daison, County Clerk

STATE OF WISCONSIN)
) ss:
SHEBOYGAN COUNTY)

Personally came before me this 9th day of July, 2015, the afore-named Roger Te Stroete and Jon Dolsen to me known to be the Sheboygan County Board Chairman and County Clerk, respectively, who executed the foregoing instrument and acknowledged the same.



Notary Public, State of Wisconsin
My Commission is permanent/expires _____

ACCEPTANCE

IN WITNESS WHEREOF, Holder hereby accepts Holder's interest in this Grant of Conservation Easement as of this 9th day of July, 2015.

HOLDER:

GLACIAL LAKES CONSERVANCY, INC.

By: 


Christine Krieg, Board President

By: 

Mary Piehl, Executive Director

STATE OF WISCONSIN)
) ss:
SHEBOYGAN COUNTY)

Personally came before me this 9th day of July, 2015, the above-named Christine Krieg and Mary Piehl to me known to be the Board President and Executive Director, respectively, of Glacial Lakes Conservancy, Inc., who executed the foregoing instrument and acknowledged the same.



Notary Public, State of Wisconsin
My Commission is permanent/expires _____

Drafted by:

Attorney Carl K. Buesing
Office of the Corporation Counsel
SHEBOYGAN COUNTY
2124 Kohler Memorial Drive - Suite 110
Sheboygan, WI 53081-3174

State Bar No. 1017939
Phone: (920) 459-3093
Fax: (920) 457-8411

WHD\1402273.12 Grant of Conservation Easement

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Exhibit A – Legal Description

Part of government lots 2 and 3, section 31, T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Beginning at the W ¼ corner section 31, T13N, R23E; thence N00°39'25"E, along the west line government lot 2, section 31, 208.37 feet to the south line of Iowa Street according to the Plat of Clear-Vue Resort; thence N89°55'14"E, along said south line, 533.80 feet; thence S00°01'41"W 883.78 feet; thence S83°39'52"E 434.88 feet; thence S00°04'06"E 103.78 feet; thence S88°47'00"E 742.98 feet to the west line of the Plat of Clear-Vue Resort; thence S00°31'09"E, along said west line 507.91 feet to the south line of Government lot 3; thence N89°28'16"W, along said south line, 1731.43 feet to the west line government lot 3, section 31; thence N00°41'49"E, along said west line, 1321.77 feet to the point of beginning, and containing 33.99 acres, including therein, 1.18 acres lying within the right of way of Sauk Trail Road.

Also:

Part of the SW ¼ SW ¼, part of government lots 2, 3, and 4, and part of the vacated portion of the Plat of Amsterdam, all in section 30, and part of government lots 1 and 2, section 31, all in T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Commencing at the W ¼ corner section 31, T13N, R23E; thence N00°39'25"E, along the west line government lot 2, section 31, 241.37 feet to the north line of Iowa Street according to the Plat of Clear-Vue Resort; thence N89°55'14"E, along said north line, 1432.94 feet to the point of beginning;
Thence, continuing N89°55'14"E, along the north line of Iowa Street, 288.25 feet; thence N00°29'58"W 8.50 feet; thence N89°55'14"E 388.33 feet, more or less, to the water's edge of Lake Michigan; thence northeasterly, along said water's edge, 1535 feet more or less; thence S89°58'59"W 400 feet, more or less to the southeast corner of The Shores of Amsterdam Dunes, a subdivision plat; thence N89°57'08"W, along the south line of said subdivision plat, 88.00 feet; thence N00°02'54"E, along the west line of said subdivision plat, 877.69 feet to the northwest corner of The Shores of Amsterdam Dunes; thence N89°55'44"E, along the south line section 30, 180.85 feet; thence N02°45'50"E, along the west line of Marina Drive according to the Plat of Longfield Shores, 924.78 feet; thence N17°54'20"E, along the west line of Marina Drive, 2870 feet, more or less, to the centerline of Bahr Creek; thence northwesterly, along said centerline, 950 feet more or less, to the north line of government lot 2, section 30; thence S89°58'57"W, along said north line, 325 feet, more or less; thence S00°50'04"W 1322.60 feet to the north line government lot 3; thence N89°58'47"W, along said north line, 255.17 feet; thence S14°51'53"W 939.43 feet; thence S17°26'18"W 57.53 feet; thence S11°55'25"W 559.55 feet; thence S09°19'34"W 678.06 feet; thence S08°32'13"W 478.73 feet to the north line section 31, T13N, R23E; thence S09°28'09"W 419.97 feet; thence N85°43'49"W 53.88 feet; thence S10°27'08"W 931.47 feet to the north line of government lot 2, section 31; thence S89°57'48"E, along said north line, 542.47 feet; thence S02°23'33"W 1080.87 feet to the point of beginning, and containing 115.6 acres of land, more or less, including therein 0.9789 acres lying within the right of way of Amsterdam Road.

WHD\11848530.2

Also:

Part of government lot 1, section 31, and part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and part of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ section 30, T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Beginning at the NW corner section 31; thence S00°39'25"W, along the west line of government lot 1, section 31, T13N, R23E, 131.58 feet; thence S89°20'36"E 578.87 feet; thence N00°28'08"E 138.91 feet to the south line section 30; thence N88°55'44"E, along said south line, 55.17 feet; thence N17°42'28"E 547.48 feet; thence North 62.78 feet; thence N38°32'13"W 859.08 feet; thence North 306.41 feet; thence N20°41'53"E 1167.56 feet to the north line SW $\frac{1}{4}$ section 30; thence N88°58'47"W, along said north line, 533.19 feet to the east line of Sauk Trail Road; thence 381.80 feet southwesterly, along the arc of a curve to the left, said curve having a radius of 1372.39 feet, and a main chord which bears S08°37'21"W 380.67 feet; thence S11°12'45"W 147.33 feet; thence N88°20'50"W 32.29 feet to the west line SW $\frac{1}{4}$ section 30; thence S00°38'58"W, along said west line, 2135.61 to the point of beginning, and containing 31.56 acres of land, including therein 2.50 acres lying within the existing right of way of Sauk Trail Road, and Amsterdam Road.

WHD11648530.2

**Purchase Area Boundaries - Land Use Breakdown
Knowles - Nelson Stewardship Program
(Final)**



FIRST AMENDMENT TO FUNDING REIMBURSEMENT AGREEMENT

This **FIRST AMENDMENT TO FUNDING REIMBURSEMENT AGREEMENT** (this "Amendment") is dated as of this 28th day of November, 2016, by and between **COUNTY OF SHEBOYGAN**, a Wisconsin governmental body corporate, organized pursuant to Wis. Stat. §59.01, having its principal offices at 508 New York Avenue, Sheboygan, Wisconsin 53081 ("County") and **TECUMSEH PRODUCTS COMPANY**, a Michigan corporation licensed to do business in the state of Wisconsin, having its principal offices at 5683 Hines Drive, Ann Arbor, Michigan 48108 ("Tecumseh").

BACKGROUND

WHEREAS, County and Tecumseh entered into a Funding Reimbursement Agreement dated December 30, 2015 (the "**Original Agreement**"), whereby Tecumseh agreed to make certain payments to County in exchange for certain undertakings by County related to County's acquisition of that certain real property commonly known as "Amsterdam Dunes" located in the Town of Holland East, Sections 30 and 31, Sheboygan County, Wisconsin; and

WHEREAS, County and Tecumseh desire to extend the Settlement Effective Date deadline in connection with the NRD Settlement.

NOW THEREFORE, for and in consideration of the foregoing, the sum of Ten Dollars (\$10.00) and the mutual covenants set forth herein and in the Original Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. **Definitions.** All defined terms not defined herein shall have the same meaning ascribed to them in the Original Agreement. All references in this Amendment or the Original Agreement to the "**Agreement**" shall constitute a reference to the Original Agreement as amended by this Amendment.
2. **NRD Settlement as Condition – Settlement Effective Date Deadline.** Section 5 of the Original Agreement is hereby amended to delete the phrase "December 31, 2016" and to insert in lieu thereof the phrase "December 31, 2017".
3. **Conflicts.** In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Original Agreement, the terms and conditions of this Amendment shall control.
4. **Counterparts; Facsimile and Electronic Signature.** This Amendment may be executed in one or more counterparts, any of which may contain the signatures of fewer than all the parties to this Amendment, but all of which together shall constitute one and the same Amendment. This Amendment, and any amendment hereto, may be executed and distributed by facsimile or electronic copy and a copy of this Amendment executed by facsimile, or in electronic format shall be deemed an original for all purposes.

5. Binding Agreement. Except as otherwise specifically amended hereby, the Agreement remain in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

Signed, sealed, and delivered in the presence of:

COUNTY:

COUNTY OF SHEBOYGAN

Name:

By: 

Name: Adam N. Payne

Title: County Administrator

TECUMSEH:

TECUMSEH PRODUCTS COMPANY,
a Michigan corporation


Name:

By: 

Name: Michael Bauersfeld

Title: EVP & CEO

[First Amendment to Funding Reimbursement Agreement – Signature Page]

ATTACHMENT F

Exhibit A – Legal Description

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Also:

Part of the SW ¼ SW ¼, part of government lots 2, 3, and 4, and part of the vacated portion of the Plat of Amsterdam, all in section 30, and part of government lots 1 and 2, section 31, all in T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Commencing at the W ¼ corner section 31, T13N, R23E; thence N00°39'25"E, along the west line government lot 2, section 31, 241.37 feet to the north line of Iowa Street according to the Plat of Clear-Vue Resort; thence N89°55'14"E, along said north line, 1432.94 feet to the point of beginning:

Thence, continuing N89°55'14"E, along the north line of Iowa Street, 298.25 feet; thence N00°29'58"W 8.50 feet; thence N89°55'14"E 389.33 feet, more or less, to the water's edge of lake Michigan; thence northeasterly, along said water's edge, 1535 feet more or less; thence S89°58'59"W 400 feet, more or less to the southeast corner of The Shores of Amsterdam Dunes, a subdivision plat; thence N89°57'06"W, along the south line of said subdivision plat, 66.00 feet; thence N00°02'54"E, along the west line of said subdivision plat, 877.69 feet to the northwest corner of The shores of Amsterdam Dunes; thence N89°55'44"E, along the south line section 30, 160.85 feet; thence N02°45'50"E, along the west line of Marine Drive according to the Plat of Longfield Shores, 924.78 feet; thence N17°54'20"E, along the west line of Marine Drive, 2970 feet, more or less, to the centerline of Bahr Creek; thence northwesterly, along said centerline, 950 feet more or less, to the north line of government lot 2, section 30; thence S89°56'57"W, along said north line, 325 feet, more or less; thence S00°50'04"W 1322.50 feet to the north line government lot 3; thence N89°58'47"W, along said north line, 255.17 feet; thence S14°51'53"W 939.43 feet; thence S17°26'18"W 57.53 feet; thence S11°56'25"W 559.55 feet; thence S09°19'34"W 678.06 feet; thence S08°32'13"W 479.73 feet to the north line section 31, T13N, R23E; thence S09°26'09"W 419.97 feet; thence N85°43'49"W 53.68 feet; thence S10°27'06"W 931.47 feet to the north line of government lot 2, section 31; thence S89°57'46"E, along said north line, 542.47 feet; thence S02°23'33"W 1080.87 feet to the point of beginning, and containing 115.5 acres of land, more or less, including therein 0.9769 acres lying within the right of way of Amsterdam Road.

Also:

Part of government lot 1, section 31, and part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and part of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ section 30, T13N, R23E, Town of Holland, Sheboygan County, Wisconsin.

Beginning at the NW corner section 31; thence S00°39'25"W, along the west line of government lot 1, section 31, T13N, R23E, 131.59 feet; thence S89°20'36"E 576.67 feet; thence N00°28'08"E 138.91 feet to the south line section 30; thence N89°55'44"E, along said south line, 55.17 feet; thence N17°42'28"E 547.48 feet; thence North 62.78 feet; thence N38°32'13"W 859.08 feet; thence North 306.41 feet; thence N20°41'53"E 1167.56 feet to the north line SW $\frac{1}{4}$ section 30; thence N89°58'47"W, along said north line, 533.19 feet to the east line of Sauk Trail Road; thence 381.80 feet southwesterly, along the arc of a curve to the left, said curve having a radius of 1372.39 feet, and a main chord which bears S08°37'21"W 380.57 feet; thence S11°12'45"W 147.33 feet; thence N89°20'50"W 32.29 feet to the west line SW $\frac{1}{4}$ section 30; thence S00°38'58"W, along said west line, 2135.61 to the point of beginning, and containing 31.56 acres of land, including therein 2.50 acres lying within the existing right of way of Sauk Trail Road, and Amsterdam Road.