

DOCUMENT NO. 202006010

Total Pages: 22  
09/21/2020 10:24 AM Fees: \$30.00  
DOROTHY M. MILLER, Register of Deeds  
Leelanau County, MI



**CONSERVATION EASEMENT AMENDMENT**

**DATE:** September 1, 2020 (Effective Date)

**OWNERS:** Omena Woods Association, Inc., a Michigan Non-Profit Corporation ISAOA  
P.O. Box 55  
Omena, MI 49674

**CONSERVANCY:** Leelanau Conservancy  
105 N. First Street  
P.O. Box 1007  
Leland, MI 49654

**PROPERTY:** The Property consists of 23.872 acres more or less, located in Section 25, Town 31 North, Range 11 West, Leelanau Township, Leelanau County, Michigan, more fully described in Exhibit A attached hereto and incorporated herein

**BACKGROUND:** This document restates and amends the Omena Woods Association, Inc. (OWA) Conservation Easement, recorded on December 23, 2015 at the Leelanau County Register of Deeds at Liber 1248, Pages 744-761, incorporated herein as Exhibit A, extinguishing reserved rights contained in Paragraphs 4B.2, 4.D, 4.E, 4.H, and 4I.

**THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:**

**1. PURPOSES OF THE AMENDED AND RESTATED CONSERVATION EASEMENT**

- A. Owner and Conservancy acknowledge that the general purposes of this OWA Amended and Restated Conservation Easement are conservation and protection of the Protected Property in perpetuity.
- B. Owner and Conservancy further acknowledge that the more

specific purposes of the OWA Amended and Restated Conservation Easement consist of the Original Easement purposes (as restated herein) and the additional purposes set forth below, which are hereinafter collectively referred to as the "Conservation Purposes." Any use of the Protected Property that is inconsistent with the Conservation Purposes is expressly prohibited.


- C. Owner and Conservancy, in accordance with Paragraph 9 of the aforesaid Conservation Easement, this amendment i) has been approved by the Conservancy on August 27, 2020 in its sole and absolute discretion, and (ii) this amendment shall not affect the qualification of this Conservation Easement or the status of the Conservancy under any applicable laws, including MCL 324.2140-324.2144, or Section 170(h) of the Code, and (iii) any amendment shall be consistent with the Purposes, and (iv) shall not affect the perpetual duration of this Conservation Easement. Any such amendment shall be in writing and recorded in the official records of Leelanau County, Michigan, and any other jurisdiction in which such recording is required.
- D. The additional purposes of the OWA Amended and Restated Conservation Easement are to create a net conservation gain by extinguishing reserved rights, to wit:
  - i. Paragraph 4B.2 Firewood;
  - ii. Paragraph 4.D Right to Construct and Maintain Wildlife Hunting and Viewing Blinds;
  - iii. Paragraph 4.E Right to Develop Subsurface Mineral Resources;
  - iv. Paragraph 4.H Right to Operate Motorized Vehicles;
  - v. Paragraph 4.I Right to Place Signs

- 2. **BINDING AGREEMENT.** This document shall and is explicitly intended to bind the parties them to this agreement and supersede the pertinent terms of the Conservation Easement recorded on December 23, 2015 at the Leelanau County Register of Deeds at Liber 1248, Pages 744-761, and any and all prior verbal or written representations. All other terms of said Conservation Easement remain valid and enforceable.
- 3. **LIBERAL CONSTRUCTION.** This Conservation Easement Amendment shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act MCL 324.2140 *et seq.*

4. **SEVERABILITY.** If any portion of this Conservation Easement Amendment is determined to be invalid, the remaining provisions will remain in force.
5. **SUCCESSORS.** This Conservation Easement Amendment is binding upon, and inures to the benefit of, the Owner's and the Conservancy's successors in interest. All subsequent owners of the Property are bound to all provisions of this Conservation Easement Amendment to the same extent as the Owner.
6. **MICHIGAN LAW.** This Conservation Easement Amendment will be construed in accordance with Michigan Law.
7. This agreement shall be binding upon the heirs, successors in interest and assigns of both parties.

**OWNER/GRANTOR CONVEYANCE AND APPROVAL**


Grantor hereby acknowledges, approves, and conveys the foregoing Easement and the rights conveyed therein.

By:   
 Mary Tonneberger, President  
 Omena Woods Association

STATE OF LEELANAU  
 COUNTY OF MICHIGAN

I HEREBY CERTIFY that on this 1st day of Sept., 2020, a Notary Public in and for the jurisdiction aforesaid, personally appeared Mary Tonneberger of the Omena Woods Association, Inc, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that she executed the same for the purposes therein contained and in my presence signed and sealed the same. (K)

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

  
 Molly Crimmins  
 Notary Public, State of Michigan, County of Leelanau  
 My registration No.: \_\_\_\_\_  
 My Commission Expires 5/20/24

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**LEELANAU CONSERVANCY/GRANTEE ACCEPTANCE**

Leelanau Conservancy hereby acknowledges, approves, and accepts, the foregoing Easement and the rights and obligations conveyed therein.

By:

  
\_\_\_\_\_

Ross G. Satterwhite

Its: Chairman

STATE OF MICHIGAN  
COUNTY OF LEELANAU

I HEREBY CERTIFY that on this 1st day of Sept., 2020, a Notary Public in and for the jurisdiction aforesaid, personally appeared Ross G. Satterwhite, of the Leelanau Conservancy, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained and acknowledges this Conservation Easement Amendment as Sept 1, of 2020, on behalf of said corporation.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

  
\_\_\_\_\_

MOLLY CRIMMINS  
Notary Public, State of Michigan, County of Leelanau

My registration No.: \_\_\_\_\_  
My Commission Expires 5/20/24



AFTER RECORDING SEND TO:  
Leelanau Conservancy  
P.O. Box 1007  
Leland, MI 49654

PREPARED BY:  
Thomas Nelson  
Leelanau Conservancy  
P.O. Box 1007  
Leland, MI 49654

EXHIBIT A

STATE OF MICHIGAN  
Leelanau County  
December 23, 2015 03:01 PM  
Receipt # 200613



REAL ESTATE  
TRANSFER TAX  
\$22.00 - CO  
\$150.00 - ST  
Stamp # 20936

Liber 1248 Page 744-761

Leelanau County STATE OF MICHIGAN  
Dorothy M. Miller Register of Deeds



RECORDED  
December 23, 2015 03:01 PM  
Liber 1248 Page 744-761  
18P FEE \$65.00



DMM Liber 1248 Page 744 #2015007315

CONSERVATION EASEMENT

**DATE:** December 18, 2015  
**OWNER:** Omena Woods Association, Inc., a Michigan Non-Profit Corporation, ISAOA  
PO Box 55  
Omena, MI 49674  
**CONSERVANCY:** LEELANAU CONSERVANCY  
N. 105 FIRST STREET, PO BOX 1007  
LELAND, MI 49654  
**PROPERTY:** Property consists of 23.872 acres more or less, located in Section 25, Town 31 North, Range 11 West, Leelanau Township, Leelanau County, Michigan, more fully described in Exhibit A attached hereto and incorporated herein  
**CONVEYANCE:** The Owner conveys and warrants to the Conservancy a perpetual Conservation Easement over the Property for the full consideration of Twenty Thousand Dollars (\$20,000.00), the receipt and adequacy of which is hereby acknowledged. The scope of the Conservation Easement is set forth in this agreement.

THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:

1. **PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE OWNER AND THE CONSERVANCY.**

- A. This Conservation Easement:
  - 1. Protects a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

These purposes will be referred to as the "Purposes" in this Conservation Easement.

This Conservation Easement assures that the Property will be perpetually preserved in its predominately natural, forested, and open space condition. The Purpose of this Conservation Easement is to protect the Property's natural resource conservation values; to maintain and enhance bio-diversity; to retain quality habitat for native plants and animals, and to maintain the natural features of the Property. Any uses of the Property which may impair or interfere with the Conservation Values are expressly prohibited.

- B. The Owner is the fee simple title owner of the Property is committed to preserving the Conservation Values of the Property. The Owner agrees to confine use of the Property to activities consistent with the Purposes and the preservation of the Conservation Values. Any uses of the Property which may impair or interfere with the Conservation Values are expressly prohibited.

008-125-018-30 Ang  
008-136-003-05

RCV'D LEELANAU COUNTY  
2015 DEC 23 PM 1:31

TAX CERTIFICATION  
LEELANAU COUNTY LELAND, MICHIGAN 12/23/2015  
I hereby certify that according to our records, all taxes returned to this office are paid for five (5) years preceding the 18th day of 12/2015. This does not include taxes in the process of collection by Township, Cities or Villages, Board of Review changes, Michigan Tax Tribunal changes, or changes due to Homestead exemptions or corrections

John A. Halloran Leelanau County Treasurer

C. The Conservancy (i) is a qualified holder of this Conservation Easement committed to preserving the Conservation Values of the Property and upholding the terms of this Conservation Easement (ii) is a tax-exempt, nonprofit Michigan corporation qualified under Internal Revenue Code Sections 501(c)(3) and 170(h)(3); and under the Conservation and Historic Preservation Easement, Sub Part 11 of Part 21 of Natural Resources and Environmental Protection Act, MCL §§ 324.2140 et seq., (iii) has the resources to enforce this Easement, (iv) protects natural habitats of fish, wildlife, plants, and the ecosystems that support them and (v) preserves open spaces, including farms and forests, where such preservation is for the scenic enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.

2. **CONSERVATION VALUES.** The Property possesses natural, open space, biological, and ecological values of prominent importance to the Owner, the Conservancy, and the public. These values are referred to as the "Conservation Values" in this Easement. Certain Conservation Values may have relevance to more than one Purpose, even though they are listed only once. The Conservation Values and relevant supportive public conservation policy include the following:

- A. The Property contains significant natural habitat in which fish, wildlife, plants or the ecosystems which support them, thrive in a natural state, as demonstrated by:
1. The Property supports a high quality example of a Mesic Northern Hardwoods ecological community.
  2. The Property contains sustainable habitat for a diverse assemblage of native vegetation, birds, amphibians and terrestrial animals. The Owner [or Conservancy] has documented the existence of whitetail deer, turkey, red fox, coyote, raccoon, opossum, bobcat, bald eagle and red-tailed hawk on the Property.
  3. The Property is characteristic of a Mesic Northern Hardwood ecological community. Its dominant vegetation is sugar maple and poplar interspersed with a diverse assemblage of native hardwood species. This ecological community is in a relatively natural and undisturbed condition and supports the full range of wildlife species found in this habitat type.
  4. Valued native forest land exists on the Property, which includes diverse native species, trees of many age classes and structural diversity, including a multi-story canopy, standing dead trees and downed logs.
  5. The Property provides important natural land within the Grand Traverse Bay watershed. Permanent protection of the Property in its natural and open space condition helps to ensure the quality and quantity of groundwater resources by facilitating natural groundwater recharge for the West Grand Traverse Bay area.
  6. The Property is adjacent to the following conserved properties which similarly preserve the existing natural habitat: Omena Woods Association Conservation Easement established on September 20th, 2004, which was recorded at the Register of Deeds for the County of Leelanau, State of Michigan, Liber 823 Page 202.
  7. This Easement protects a natural area which contributes to the ecological viability of the adjacent permanently conserved land.
  8. Preservation of the Property enables the Owner to integrate the Conservation values with the adjacent permanently protected property.
- B. Pursuant to U.S. Treasury Regulation § 1.170A-14 for Qualified Conservation Contributions, the Property provides open space for the scenic enjoyment of the general public and will yield a significant public benefit through:

1. A scenic landscape and natural character which would be impaired by modification of the Property.
2. Biological integrity of other land in the vicinity has been modified by intense urbanization, and the trend is expected to continue.
3. There is a reasonable possibility that the Conservancy may acquire other valuable property rights on nearby or adjacent properties to expand the Conservation Values preserved by this Conservation Easement.
4. The Property contains soil complexes classified as "prime farmland" and "farmland of local importance" by the U.S. Department of Agriculture and the Natural Resources Conservation Service.
5. The Property is desirable for substantial residential development because of its size, location, and orientation and in the absence of this Conservation Easement the Property could be developed in a manner that would destroy the Conservation Values.

C. The Property is preserved pursuant to a clearly delineated federal, state, or local conservation policy and yields a significant public benefit. The following legislation, regulations, and policy statements establish relevant public policy:

1. The State of Michigan has recognized the importance of protecting our natural resources as delineated in the 1963 Michigan Constitution, Article IV, Section 52, "The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety, and general welfare of the people. The legislature shall provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction."
2. Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.2140 *et seq.*;
3. Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.35501 *et seq.*; (Legislative Findings § 324.35502);
4. Farmland and Open Space Preservation, Part 361 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.36101 *et seq.*;
5. Soil Conservation, Erosion, and Sedimentation Control, Parts 91 & 93 of the Michigan Natural Resources and Environmental Protection Act – MCL §§ 324.9101 *et seq.*; 324.9301 *et seq.*; (Legislative Policy § 324.9302);
- 6.

3. **BASELINE DOCUMENTATION.** Specific Conservation Values of the Property have been documented in a natural resource inventory signed by the Owner and the Conservancy. This "Baseline Documentation Report", which is incorporated herein by reference, consists of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features, and photographs. The parties acknowledge that the Baseline Documentation Report is an accurate representation of the Property at the time of this donation. The Conservancy may use the Baseline Documentation Report in enforcing the provisions of this Conservation Easement but is not limited to the use of the Baseline Documentation Report to show a change in conditions. Any characterization of the terms of this Conservation Easement contained in the Baseline Documentation Report shall not be interpreted so as to alter, amend, or otherwise modify this Conservation Easement. In any conflict or inconsistency between the terms of this Conservation Easement and the Baseline Documentation Report, the terms of this Conservation Easement shall prevail.

4. **PERMITTED USES.** The Owner retains all ownership rights that are not expressly restricted by

this Conservation Easement. In particular, the following rights are reserved:

- A. Right to Convey. The Owner retains the right to sell, lease, mortgage, bequeath, or donate the Property. Any conveyance will remain subject to the terms of the Conservation Easement and all subsequent Owners are bound by all obligations in this agreement.
- B. Right to Manage Vegetation and Conduct Forestry Activities. The Owner retains the right to cut vegetation and conduct the following forestry activities on the Property as follows:
  1. Dangerous or Diseased Trees. Pruning or removing trees or other vegetation is permitted under the following conditions:
    - a. to remove trees that pose real danger to a structure or humans in frequently used areas due to a structural or health defect of the tree.
    - b. to remove trees in order to reduce a natural threat of infestation posed by diseased vegetation (as documented by a registered forester or other natural resource specialist and as approved by the Conservancy); or,
    - c. to control invasive non-native plant species that endanger the health of native species (as documented by a registered forester or other natural resource specialist and as approved by the Conservancy);.
  2. Firewood. The Owner retains the right to cut and use trees that are downed as a result of natural occurrence for personal use as firewood without a management plan, provided that said use retains adequate woody debris on the forest floor for habitat and soil productivity purposes. Except as provided in F.1 above, any removal of live or standing dead trees, whether for firewood or other purpose, is considered Forest Management and is subject to requirements of the Forest Management Plan and Notice of Harvest as described below.
  3. Forest Management. Forest management for the growth and harvest of trees including the production of forest products for use or commercial sale is permitted on the Property in accordance with the following Criteria:
    - a. it is in accordance with a Forest Management Plan (see below) prepared by a Forester, who is registered as such with the State of Michigan, or other qualified natural resources specialist that is pre-approved by the Conservancy.
    - b. it meets the minimum standards set forth in the then current Best Management Practices, as outlined in "Sustainable Soil and Water Quality Practices on Forest Land," (as revised 2009) Michigan Department of Natural Resources and Michigan Department of Environmental Quality, or similar successor publications approved by the Conservancy.
    - c. Any commercial harvest must be marked and supervised by a professional forester in order to ensure adherence to the Forest Management Plan and protection of the Conservation Values.
    - d. Forest Management shall be conducted under written contract(s) with the forester and a competent logging operator(s). The contract(s) shall specify relevant requirements for compliance with this Conservation Easement and the approved Forest Management Plan.
    - e. The forested character of the Property is maintained for habitat and scenic values.
    - f. Populations and diversity of native plant species and habitat for native animal species is preserved.
    - g. Water quality, wetlands, and riparian zones are protected.





such trimming does not adversely impact the Conservation Values of the Property.

E. Right to Develop Subsurface Mineral Resources.

The owner retains the right to extract oil, gas, and other hydrocarbons from the Property, provided that the surface of the Property may not be used for mining, exploring, or operating for oil, gas, or other hydrocarbons in any manner, including, but not limited to, seismographic or other geophysical and geological methods of exploration (except that seismographic exploration may occur on any public right of way if otherwise permitted by law), laying, operating, or maintaining pipelines, transmission lines, or roads, or the building of any structure such as tanks or power stations, whether the oil, gas, or other hydrocarbons are extracted or removed, or are intended to be extracted or removed, from the Property or other lands. In addition, the owner may enter into Oil and Gas Lease granting the Lessee the right to extract oil, gas, and other hydrocarbons from the Property, but only on the condition that the Oil and Gas Lease contains the following two provisions:

1. This Oil and Gas Lease is a surface non-development lease. Notwithstanding any other provision in this Lease, the Lessee's right to extract oil, gas, and other hydrocarbons from the Property does not include the right to use the surface of the Property for mining, exploring, or operating for oil, gas, or other hydrocarbons in any manner, including, but not limited to, seismographic or other geophysical or geological methods of exploration (except that seismographic exploration may occur on any public right of way if otherwise permitted by law), laying, operating, or maintaining pipelines, transmission lines, or roads, or the building of any structure such as tanks or power stations, whether the oil, gas, or other hydrocarbons are extracted or removed, or intended to be extracted or removed, from the Property or other lands. The Lessee, by exercising its rights under this Lease, agrees to comply with these provisions. Both the Lessor and the Leelanau Conservancy (which owns a Conservation Easement relating to the Property) shall have the right to enforce these limitations by seeking equitable relief in a court of competent jurisdiction.
2. The Lessee of this Oil and Gas Lease shall promptly repair and/or restore all damages to the surface (including lakes, streams, or other bodies of surface water) or subsurface potable aquifers of the Property (and/or pay the cost of repair and/or restoration of all such damages) caused by the Lessee's activities or conduct (or those of its employees, agents, and/or assigns) relating to the extraction of oil, gas, or other hydrocarbons from the Property or from other lands. The Lessee, by exercising its rights under this Lease, agrees to comply with these provisions. Both the Lessor and the Leelanau Conservancy (which owns a Conservation Easement relating to the Property) shall have the right to enforce this indemnity provision.

- F. Right to Add and Maintain Trails and to Construct Trail-related Structures. The Owner retains the right to add and maintain trails (by removing groundcover and shrubs and trimming tree branches) on the Property, except in the area designated as Natural Area on the Baseline Documentation Map, for low-impact pedestrian use provided such removal and trimming does not adversely impact the Conservation Values of the Property. Said removal and trimming does not include the right to remove trees.

The Owner also retains the right to construct and maintain benches, elevated walkways,

and small pedestrian bridges on the Property provided such construction does not adversely impact the Conservation Values of the Property. At least thirty (30) days prior to clearing or constructing any proposed trail or trail-related structure the Owner shall deliver a written plan to the Conservancy for review and approval pursuant to the terms set forth in paragraph 6.D. herein and install stakes on the Property identifying the location of the trail/structures.

- G. Right to Construct Gates. The Owner retains the right to construct and maintain gates on the existing roads on the Property to control or discourage unauthorized vehicle access to the Property. Any gating of the Property shall be constructed in a manner that does not impede wildlife movement on or across the Property.
  - H. Right to Operate Motorized Vehicles. The Owner retains the right to operate motorized vehicles on the Property on the established driveways, trails, and parking areas indicated in the Baseline Documentation Report. The Owner also retains the right to operate motorized vehicles off-road on the Property for the purpose of achieving the permitted maintenance/management uses described herein *and for the Owners personal access. However, the right to operate motorized vehicles offroad may be extinguished if the Conservancy determines that use of ORV's is adversely impacting the Conservation Values of the Property.*
  - I. Right to Place Signs. The Owner retains the right to place up to *three (3)* signs, each no larger than *six (6)* square feet in size, on the Property at one time. However, signs commonly used for prohibiting unauthorized access or use may be placed along the boundaries of the property. In order to maintain the scenic Conservation Values protected by this Conservation Easement, any other signs placed on the Property require written Conservancy consent.
5. **PROHIBITED ACTIONS.** Any activity on, or use of, the Property that is inconsistent with the Purposes or that is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited:
- A. Subdivision. The legal or defacto subdivision of the Property, including any subdivision, short subdivision, platting, binding site plan, testamentary division, creation of a site condominium or other submission of the Property to a condominium form of ownership, or other process by which the Property is divided into lots or in which title to different portions of Property are held by different owners is prohibited, *except as specified in Section 4. Permitted Uses herein.* Undeveloped acreage pursuant to this Conservation Easement shall not be included in calculations for density bonuses for any development proposals or projects under zoning and planning.
  - B. Commercial Activities. Any commercial activity on the Property is prohibited, except for de minimis commercial recreational activity as such term is referenced in Internal Revenue Code Section 2031(c)(8)(B).
  - C. Industrial Activities. Any industrial activity on the Property is prohibited.
  - D. Construction. The placement or construction of any human-made modifications, including structures, buildings, fences, roads, and parking lots is prohibited, *except as specified in Section 4. Permitted Uses herein.*
  - E. Cutting Vegetation. Cutting down or otherwise destroying or removing trees or other vegetation whether living or dead is prohibited, *except as specified in Section 4.*

*Permitted Uses herein.*

- F. Land Surface Alteration. Any mining or alteration of the surface of the land is prohibited, including extraction or alteration of any substance that must be quarried or removed by methods that will consume or deplete the surface estate, including, but not limited to, the removal of topsoil, sand, gravel, rock, and peat. In addition, exploring for, developing, and extracting oil, gas, hydrocarbons, or petroleum products is prohibited, *except as specified in Section 4. Permitted Uses herein.*
  - G. Dumping. Processing, storage, dumping, or disposal of liquid, solid, natural or man-made waste, refuse, or debris on the Property is prohibited, *except for human waste in a properly designed and authorized waste system.*
  - H. Water Courses, Ground Water. Natural water courses, lakes, wetlands, or other bodies of water may not be altered and water from ground or surface sources may not be diverted, *except as specified in Section 4. Permitted Uses herein.*
  - I. Off-Road Recreational Vehicles. Motorized off-road vehicles such as, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles may not be operated off of designated roads on the Property, *except as specified in Section 4. Permitted Uses herein.*
  - J. Livestock. Raising or housing of livestock, poultry or horses, commercial kenneling of animals and commercial aquaculture is prohibited on the Property, *except as specified in Section 4. Permitted Uses herein.*
  - K. Signs and Billboards. Billboards and signs are prohibited, *except as specified in Section 4. Permitted Uses herein.*
6. **RIGHTS OF THE CONSERVANCY.** The Owner conveys the following rights upon the Conservancy to perpetually maintain the Conservation Values of the Property:
- A. Right to Enter. The Conservancy has the right to enter the Property at reasonable times to monitor the Property and to enforce compliance with, or otherwise exercise its rights under, this Conservation Easement. Notwithstanding the foregoing, the Conservancy may not unreasonably interfere with the Owner's use and quiet enjoyment of the Property or permit others to enter the Property. The general public is not granted access to the Property under this Conservation Easement.
  - B. Right to Preserve. The Conservancy has the right to prevent any activity on or use of the Property that is inconsistent with the Purposes or detrimental to the Conservation Values of the Property.
  - C. Right to Require Restoration. The Conservancy has the right to require the Owner to restore the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.
  - D. Right to Review and Approve. Wherever herein the Conservancy is granted the right to review and approve any proposed plan for the use, modification, restoration or exploitation of any portion of the Property or improvements thereon, such approval shall be granted or denied by the Conservancy, in writing, within thirty (30) days of the date the Owner delivers notice of the proposed plan, unless otherwise provided herein. The Conservancy may obtain an additional thirty (30) day period to examine a proposed plan

by notifying the Owner of its intent to extend the time within the original thirty (30) day period. The Owner shall not undertake any activity on the Property during the initial or, if applicable, the extended period, or until it receives approval from Conservancy, whichever is sooner.

The Conservancy's approval for a proposal may be withheld only upon a reasonable determination by the Conservancy that the proposed action(s) would be contrary to or inconsistent with the terms of this Conservation Easement or detrimental or adverse to the Conservation Values of the Property. The Conservancy may request additional information in support of the request for approval, including without limit documentation of the Owner's right to undertake the proposal, copies of permits, and other documents that the Conservancy in its sole discretion deems necessary to evaluate whether the proposal complies with this Conservation Easement.

If the Conservancy fails to provide or deny approval within 30, or sixty (60) days if the Conservancy notifies Owner that it requires an additional 30 day review period, the approval shall conclusively be presumed to have been granted, and the Owner shall not be held liable for any action taken consistent with the proposed plan.

If the Owner fails to notify the Conservancy of any proposed activity that requires notice herein, then the Owner undertakes any such activities and/or incurs any related expenses at its own risk. By way of example only, if, upon discovery of the activity, the Conservancy denies approval for the construction or activity, then the Conservancy may in its sole discretion require the Owner to undo the activity or construction and restore the Property at its own expense. In any action to enforce the terms of this Conservation Easement, the fact that the Owner incurred expenses related to the unapproved activity shall not prejudice or limit the Conservancy's available remedies.

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

**7. CONSERVANCY'S REMEDIES.**

- A. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of the Conservancy's right to enforce the terms of this Conservation Easement.
- B. Third Party Violations. Notwithstanding the Owner's obligations under this Conservation Easement and the Conservancy's right to require restoration of the Property, the Owner shall have the following rights and obligations for acts or occurrences at the Property beyond the direct or indirect control of the Owner:
1. The Conservancy may not bring an action against the Owner for modifications to the Property or damage to the Property or its Conservation Values resulting from natural causes beyond the Owner's control, including natural disasters, unintentional fires, floods, storms, natural earth movement or other acts of God that impair the Conservation Values.
  2. The Owner shall be responsible for modifications or damage to the Property that impair or damage the Conservation Values of the Property and result from the acts of third parties whose use of, or presence on, the Property is authorized by the Owner. Owner shall perform such restoration pursuant to and in accordance with a restoration plan prepared by a competent professional selected by the Owner and approved by the Conservancy. The author and contents of the

restoration plan shall be subject to the prior written approval of the Conservancy.

3. In the event of an unauthorized third-party violation of the Conservation Values on the Property, the Conservancy shall not seek restoration or exercise remedies available to it if and so long as the Owner diligently pursues all available legal remedies against the violator. In the event illegal actions taken by unauthorized third parties impair the Conservation Values protected by this Conservation Easement, the Conservancy reserves the right, either jointly or singly, to pursue all appropriate civil and criminal penalties to compel restoration and Owner assigns any claim or right to recover against such third parties to Conservancy.
- C. Notice and Demand. If the Conservancy determines that the Owner is in violation of this Conservation Easement, or that a violation is threatened, the Conservancy shall provide written notice to the Owner. The written notice will identify the violation and request corrective action to cure the violation and, where the Property has been injured, to restore the Property. If at any time the Conservancy determines, in its sole and absolute discretion, that the violation constitutes immediate and irreparable harm, no written notice is required and the Conservancy may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property. If the Conservancy determines that this Conservation Easement is, or is expected to be, violated, and the Conservancy's good-faith and reasonable efforts to notify the Owner are unsuccessful, the Conservancy may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting the Owner's opportunity to cure. The Owner agrees to reimburse all reasonable costs associated with this effort.
- D. Failure to Act. If, within 28 days after written notice, the Owner does not implement corrective measures requested by the Conservancy, the Conservancy may bring an action in law and/or in equity to enforce the terms of the Conservation Easement. In the case of immediate or irreparable harm, as determined in the sole discretion of the Conservancy, or if an Owner is unable to be notified, the Conservancy may invoke these same remedies without notification and/or awaiting the expiration of the 28-day period. The Conservancy is entitled to enjoin the violation through temporary or permanent injunctive relief and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Owner to restore the Property. If the court determines that the Owner has failed to comply with this Conservation Easement, the Owner shall also reimburse the Conservancy for all reasonable litigation costs and reasonable attorney's fees, and all costs of corrective action or Property restoration incurred by the Conservancy.
- E. Frivolous Litigation. If the Conservancy initiates litigation against the Owner to enforce this Conservation Easement, and if the court determines that the Owner is the prevailing party and also determines that (i) the litigation was initiated with the primary purpose to harass, embarrass, or injure the Owner; (ii) the Conservancy did not have a reasonable basis to believe that the facts underlying the Conservancy's legal position were in fact true; or (iii) the Conservancy's legal position was devoid of arguable legal merit; then the court may require the Conservancy to reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action.
- F. Actual or Threatened Non-Compliance. The Conservancy's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this Easement is inadequate. The Conservancy shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both

prohibitive and mandatory. The Conservancy's claim for injunctive relief or specific performance for a violation of this Conservation Easement shall not require proof of actual damages to the Conservation Values.

- G. Cumulative Remedies. The preceding remedies of the Conservancy are cumulative. Any, or all, of the remedies may be invoked by the Conservancy if there is an actual or threatened violation of this Conservation Easement.
8. **REGULATORY AUTHORITY.** The Owner is solely responsible for obtaining any applicable permit or authorization or otherwise ensuring that any proposed use, building, construction, design, location, or other specification related to the Property meets applicable local, state, and federal zoning, requirement, regulation, rule, policy, or standard. In accepting this Conservation Easement, or in reviewing and/or approving any use, building, construction, design, location, or any other specification related to the Property or the use or development of the Property, the Conservancy makes no warranty that the proposed use, building, construction, design, location, or other specification meets any local, state, or federal zoning, requirement, regulation, rule, policy, or standard.
9. **AMENDMENT.** Owner and Conservancy may jointly amend this Conservation Easement; provided that (i) such amendment shall be approved by the Conservancy in its sole and absolute discretion, and (ii) no amendment shall be allowed that shall affect the qualification of this Conservation Easement or the status of the Conservancy under any applicable laws, including MCL 324.2140 – 324.2144, or Section 170(h) of the Code, and (iii) any amendment shall be consistent with the Purposes, and (iv) shall not affect the perpetual duration of this Conservation Easement. Any such amendment shall be in writing and recorded in the official records of Leelanau County, Michigan, and any other jurisdiction in which such recording is required.
10. **SUBORDINATION.** Owner represents and warrants that as of the date of execution and recording of this Conservation Easement, the Property is not subject to any mortgage, lien, claim or interest which has not been subordinated to this Conservation Easement. Any mortgage, lien, claim, lease or interest in the Property arising after the date of recording this Conservation Easement shall be subject and subordinate to the terms of this Conservation Easement.
11. **CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.**
- A. This Conservation Easement is an interest in real property created pursuant to the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act (NREPA) - MCL §§ 324.2140 *et seq.*
- B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. § 1.170A-14 *et seq.*, as amended.
- C. The Conservancy is qualified to hold conservation easements pursuant to these statutes. It is a publicly funded, non-profit 501(c)(3) organization.
12. **OWNERSHIP COSTS AND LIABILITIES.** In accepting this Conservation Easement, the Conservancy shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Property. The Conservancy's rights do not include the right, in absence of a judicial decree, to enter the Property for the purpose of becoming an operator of the Property

within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act. The Conservancy, its members, trustees or directors, officers, employees, and agents have no liability arising from injury or death to any person or physical damage to any property on the Property. The Owner agrees to defend, indemnify and hold harmless the Conservancy against such claims arising during the term of the Owner's ownership of the Property.

13. **CESSATION OF EXISTENCE.** If the Conservancy shall cease to exist or if it fails to be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3), or if the Conservancy is no longer authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another entity. This entity shall be a "qualified organization" for purposes of Internal Revenue Code Section 170(h)(3). The Conservancy's rights and responsibilities shall be assigned to any entity having similar conservation purposes to which such right may be awarded under the *cy pres* doctrine.
14. **TERMINATION.** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Purposes, or by exercise of eminent domain.
  - A. Unexpected Change in Conditions. If subsequent circumstances render the Purposes impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Conservancy will then be entitled to compensation in accordance with the provisions of Internal Revenue Code Treasury Regulations Section 1.170A-14(g)(6)(ii). Notwithstanding the foregoing, the Owner and Conservancy intend that this Conservation Easement not be subject to the legal doctrine of "changed conditions" that is applied to traditional servitudes.
  - B. Eminent Domain. If the Property is taken, in whole or in part, by power of eminent domain, then the Conservancy will be entitled to compensation by the method as is set forth in IRC Treasury Regulations Section 1.170A-14(g)(6)(ii).
15. **LIBERAL CONSTRUCTION.** This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act MCL 324.2140 *et seq.*
16. **NOTICES.** For purposes of this Conservation Easement, notices may be provided to either party by personal delivery or by mailing a written notice to the party (at the last known address of a party) by First Class mail.
17. **SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
18. **SUCCESSORS.** This Conservation Easement is binding upon, and inures to the benefit of, the Owner's and the Conservancy's successors in interest. All subsequent owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the Owner.
19. **TERMINATION OF RIGHTS AND OBLIGATIONS.** A party's future rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.
20. **MICHIGAN LAW.** This Conservation Easement will be construed in accordance with Michigan Law.



21. **EXHIBITS.** This Conservation Easement includes, and incorporates the following Exhibits:
  - A. Survey and Legal Description
22. **ENTIRE AGREEMENT.** This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

OWNER)

William C. Sulau  
Name: William C. Sulau  
Title: President

STATE OF MICHIGAN )

COUNTY OF LEELANAU )

Acknowledged before me on this 18th of December, of 2015, by William C Sulau, known to me to be the President of the Omena Woods Association, Inc., a Michigan Non-Profit Corporation, ISAOA, on behalf of the corporation.

Jodi L Wolfe  
Notary Public, State of Michigan  
County of Grand Traverse  
My Commission Expires November 23, 2018  
Acting in the County of Leelanau

Jodi L Wolfe  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
My commission expires: \_\_\_\_\_

CONSERVANCY: Warren H. Watkins

Name: Warren H. Watkins  
Title: Chairman

STATE OF MICHIGAN        )  
  )  
COUNTY OF LEELANAU    )

Acknowledged before me on this 18<sup>th</sup> of December, of 2015, by Warren H. Watkins, known to me to be the Chairman of the Leelanau Conservancy, a Michigan nonprofit corporation, on behalf of the corporation.

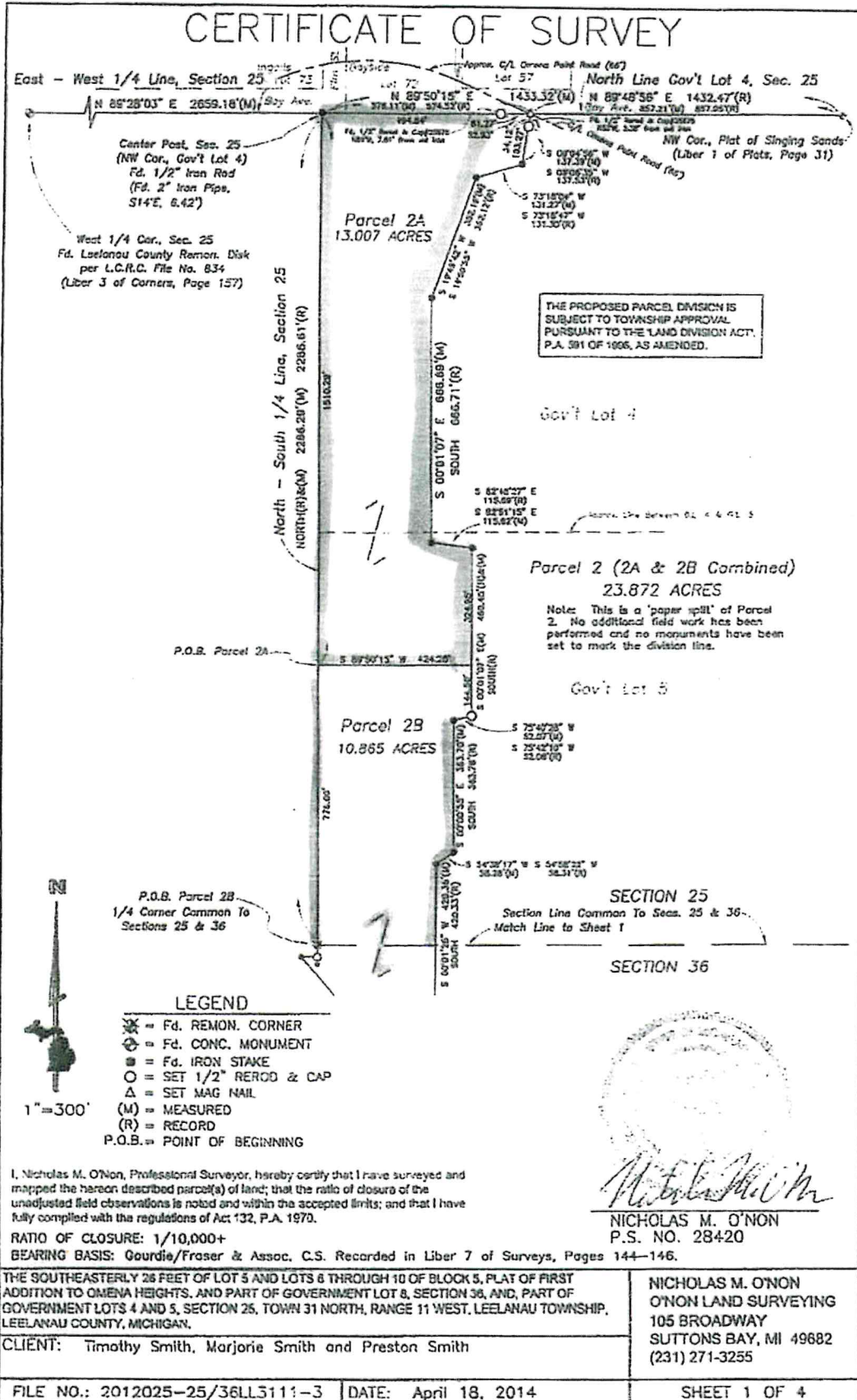
Jodi L Wolfe  
Notary Public, State of Michigan  
County of Grand Traverse  
My Commission Expires November 23, 2018  
Acting in the County of Leelanau

Jodi L Wolfe  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
My commission expires: \_\_\_\_\_

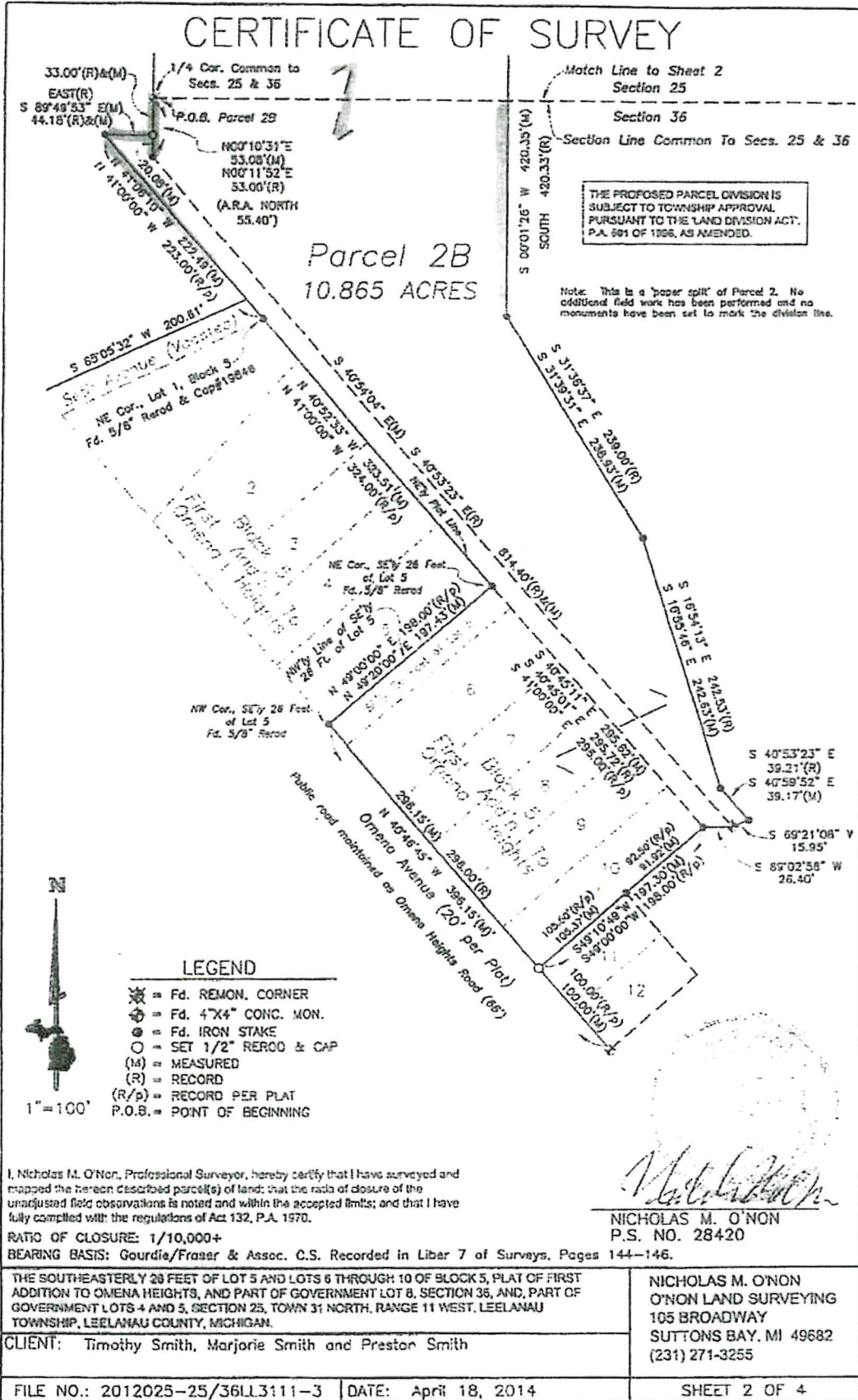
AFTER RECORDING SEND TO:	SEND TAX BILL TO:	PREPARED BY:
LEELANAU CONSERVANCY N. 105 First Street PO BOX 1007 Leland, MI 49654	Omena Woods Association, Inc., a Michigan Non-Profit Corporation, ISAOA PO Box 55 Omena, MI 49674	Matt Heiman, Director of Land Programs Leelanau Conservancy 105. N First St Leland, MI 49654

EXHIBIT A

CERTIFICATE OF SURVEY



# CERTIFICATE OF SURVEY



THE PROPOSED PARCEL DIVISION IS SUBJECT TO TOWNSHIP APPROVAL PURSUANT TO THE LAND DIVISION ACT, P.A. 601 OF 1996, AS AMENDED.

Note: This is a "paper split" of Parcel 2. No additional field work has been performed and no monuments have been set to mark the division line.



### LEGEND

- ✱ = Fd. REMON. CORNER
- ⊕ = Fd. 4"x4" CONC. MON.
- ⊙ = Fd. IRON STAKE
- = SET 1/2" REROD & CAP
- (M) = MEASURED
- (R) = RECORD
- (R/p) = RECORD PER PLAT
- P.O.B. = POINT OF BEGINNING

1" = 100'

I, Nicholas M. O'Non, Professional Surveyor, hereby certify that I have surveyed and mapped the herein described parcel(s) of land; that the radii of closure of the unadjusted field observations is noted and within the accepted limits; and that I have fully complied with the regulations of Act 132, P.A. 1970.

RATIO OF CLOSURE: 1/10,000+

BEARING BASIS: Gourdie/Fraser & Assoc. C.S. Recorded in Liber 7 of Surveys, Pages 144-146.

THE SOUTHEASTERLY 26 FEET OF LOT 5 AND LOTS 6 THROUGH 10 OF BLOCK 5, PLAT OF FIRST ADDITION TO OMENA HEIGHTS, AND PART OF GOVERNMENT LOT 8, SECTION 38, AND, PART OF GOVERNMENT LOTS 4 AND 5, SECTION 25, TOWN 31 NORTH, RANGE 11 WEST, LEELANAU TOWNSHIP, LEELANAU COUNTY, MICHIGAN.

CLIENT: Timothy Smith, Marjorie Smith and Preston Smith

NICHOLAS M. O'NON  
P.S. NO. 28420

NICHOLAS M. O'NON  
O'NON LAND SURVEYING  
105 BROADWAY  
SUTTONS BAY, MI 49682  
(231) 271-3255

FILE NO.: 2012025-25/36LL3111-3 | DATE: April 18, 2014

SHEET 2 OF 4

# CERTIFICATE OF SURVEY

Parcel 2 *2A+2B*

The Southeasterly 26 feet of Lot 5 and Lots 6 through 10 of Block 5, Plat of First Addition to Omena Heights according to the Plat thereof as recorded in Liber 1 of Plats, Page 17, and part of Government Lot 8, Section 36, and part of Government Lots 4 and 5, Section 25, Town 31 North, Range 11 West, Leelanau Township, Leelanau County, Michigan, described more fully as follows: Beginning at the ¼ Corner common to said Sections 25 and 36; thence North, along the North-South ¼ Line of said Section 25, 2286.29 feet (also recorded as 2286.61 feet) to the Northwest Corner of said Government Lot 4; thence N89°50'15"E, along the North Line of said Government Lot 4, 576.11 feet (also recorded as N89°48'56"E, 574.52 feet) to the centerline of Omena Point Road; thence S09°04'56"W, 137.39 feet (also recorded as S08°06'35"W, 137.53 feet); thence S73°18'04"W, 131.27 feet (also recorded as S73°18'47"W, 131.30 feet); thence S19°49'42"W, 352.19 feet (also recorded as S19°50'55"W, 352.12 feet); thence S00°01'07"E, 666.69 feet (also recorded as South, 666.71 feet); thence S82°51'15"E, 115.62 feet (also recorded as S82°48'27"E, 115.69 feet); thence S00°01'07"E (also recorded as South), 469.45 feet; thence S75°40'28"W, 52.07 feet (also recorded as S75°42'10"W, 52.08 feet); thence S00°00'55"E, 363.70 feet (also recorded as South 363.78 feet); thence S54°38'17"W, 58.28 feet (also recorded as S54°58'22"W, 58.31 feet); thence S00°01'26"W, crossing into said Section 36, 420.35 feet (also recorded as South, 420.33 feet); thence S31°39'31"E, 238.93 feet (also recorded as S31°36'37"E, 239.00 feet); thence S16°55'46"E, 242.63 feet (also recorded as S16°54'13"E, 242.53 feet); thence S40°59'52"E, 39.17 feet (also recorded as S40°53'23"E, 39.21 feet); thence S69°21'08"W, 15.95 feet; thence S89°02'58"W, 26.40 feet to the Southeasterly Line of said Lot 10; thence S49°10'49"W, along said Southeasterly Line of Lot 10, 197.30 feet (also recorded as S49°00'00"W, 198.00 feet) to the Northeasterly right of way line of Omena Avenue (also, the Southwesterly Line of said Block 5); thence N40°46'45"W, along said right of way line, 296.15 feet (also recorded as N41°00'00"W, 296.00 feet) to the Northwesterly Line of the Southeasterly 26 feet of said Lot 5; thence N49°20'00"E, along said northwesterly line, 197.43 feet (also recorded as N49°00'00"E, 198.00 feet) to the Northeasterly Line of said plat; thence N40°52'33"W, along said northeasterly plat line, 323.51 feet (also recorded as N41°00'00"W, 324.00 feet); thence N41°06'10"W, along said northeasterly plat line, 222.49 feet (also recorded as N41°00'00"W, 223.00 feet); thence S89°49'53"E (also recorded as East), 44.18 feet; thence N00°10'31"E (also recorded as N00°11'52"E and North), 33.00 feet to the Point of Beginning. The described parcel contains 23.872 acres of land and is subject to the rights of the public in that part of Omena Point Road that lies within it.

Subject to and together with other easements, restrictions and reservations of record, if any.



*Nicholas M. O'Non*  
 NICHOLAS M. O'NON  
 P.S. NO. 28420

I, Nicholas M. O'Non, Professional Surveyor, hereby certify that I have surveyed and mapped the hereon described parcel(s) of land; that the ratio of closure of the unadjusted field observations is noted and within the accepted limits; and that I have fully complied with the regulations of Act 132, P.A. 1970.

RATIO OF CLOSURE: 1/10,000+

BEARING BASIS: Gourdie/Fraser & Assoc. C.S. Recorded in Liber 7 of Surveys, Pages 144-146.

THE SOUTHERLY 26 FEET OF LOT 5 AND LOTS 6 THROUGH 10 OF BLOCK 5, PLAT OF FIRST ADDITION TO Omena Heights, AND PART OF GOVERNMENT LOT 8, SECTION 36, AND, PART OF GOVERNMENT LOTS 4 AND 5, SECTION 25, TOWN 31 NORTH, RANGE 11 WEST, LEELANAU TOWNSHIP, LEELANAU COUNTY, MICHIGAN.	NICHOLAS M. O'NON O'NON LAND SURVEYING 105 BROADWAY SUTTONS BAY, MI 49682 (231) 271-3255
CLIENT: Timothy Smith, Marjorie Smith and Preston Smith	
FILE NO.: 2012025-25/36LL3111	DATE: July 2, 2013
SHEET 5 OF 5	