

CONSERVATION EASEMENT

DATE: September 14, 2004
OWNER: Omena Woods Association
P.O. Box 55
Omena, MI 49674
CONSERVANCY: Leelanau Conservancy
105 N. First St., P.O. Box 1007
Leland, MI 49654

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

PROPERTY: In Leelanau Township, Leelanau County, Michigan, more particularly described in Attachment A, attached hereto and incorporated herein:

CONVEYANCE: The Owner conveys and warrants to the Conservancy a perpetual Conservation Easement over the Property. The scope of this Conservation Easement is set forth in this agreement.

THE OWNER AND THE CONSERVANCY AGREE TO THE FOLLOWING:

- I. PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE OWNER AND THE CONSERVANCY.**
- A. This Conservation Easement assures that the Property will be perpetually preserved in its predominately natural, scenic, and open space condition. The Purposes of this Conservation Easement are to protect the Property's natural resource and watershed values; to maintain and enhance biodiversity; to retain quality habitat for native plants and animals, and to maintain and enhance the natural features of the Property. Any uses of the Property that may impair or interfere with the Conservation Values are expressly prohibited.
 - B. The 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 of this Easement and the preservation of the Conservation Values.
 - C. The Conservancy is a qualified Recipient of this Conservation Easement, is committed to preserving the Conservation Values of the Property, and is committed to upholding the terms of this Conservation Easement. The Conservancy protects natural habitats of fish, wildlife, plants, and the ecosystems that support them. The Conservancy also preserves

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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.

- II. CONSERVATION VALUES.** The Property possesses natural, scenic, and ecological values of prominent importance to the Owner, the Conservancy, and the public. These values are referred to as the "Conservation Values" in this Easement. The Conservation Values include the following:
- A. 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."
 - B. The Leelanau County General Plan, adopted July 1994, recognizes the importance of protecting the County's natural resources and states, "The primary environmental goal of the Leelanau General Plan is the protection of unique and sensitive lands and the water resources from inappropriate and poorly designed development. This includes unique and prime agricultural lands as well as sensitive environments like dunes, wetlands, and wildlife habitat."
 - 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:
 - Water Pollution Control Act of 1972, 33 USC §§ 1251-1387 (§ 1251 Goals & Policy; § 1344 Wetlands permitting, a.k.a. "Section 404" Clean Water Act.);
 - Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.2140 *et seq.*;
 - Biological Diversity Conservation, Part 355 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.35501 *et seq.*; (Legislative findings § 324.5502);
 - Inland Lakes and Streams, Part 301 of the Michigan Natural Resources and Environmental Protection Act - MCL §§ 324.30101 *et seq.*;
 - D. The Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles and amphibians along with aquatic and emergent vegetation.
 - E. The Property provides important natural land within Mougey Lake subwatershed. Protection of the Property in its natural and open space condition helps to ensure the quality of water resources for the entire Grand Traverse Bay watershed.
 - F. The Property includes 100 feet of frontage on Mougey Lake.
 - G. Valued native hardwood 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.

III. BASELINE DOCUMENTATION. Specific Conservation Values of the Property have been documented in a natural resource inventory signed by the Owner and the Conservancy. This "Baseline Documentation Report" consists of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features, and photographs. The parties acknowledge that this natural resources inventory, the Baseline Documentation Report, is an accurate representation of the Property at the time of this donation.

IV. PROHIBITED ACTIONS. Any activity on, or use of, the Property which is inconsistent with the Purposes of this Conservation Easement or which is detrimental to the Conservation Values is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are explicitly prohibited:

A. **Division.** Any division or subdivision of the Property is prohibited.

EXCEPTION:

1. One (1) time-limited division of the Property is permitted to accommodate the construction of a single Residential Area and an associated driveway, pursuant to Paragraphs D1 and D2 below, for the sole purpose of security for a mortgage encumbrance on the Property at the time of the recording of this Conservation Easement. Said division is permitted only in the event of Grantor's default on the aforementioned mortgage loan. In the event of said default, the right to this Exception, if not executed pursuant to all applicable laws and regulations prior to December 31, 2009 shall be wholly and permanently extinguished at midnight on said date or upon the retirement of the mortgage debt encumbrance, whichever occurs first in time. Satisfaction of said debt shall be evidenced by the filing of the release of mortgage with the Register of Deeds.

B. **Commercial Activities.** Any commercial activity on the Property is prohibited.

C. **Industrial Activities.** Any industrial activity on the Property is prohibited.

D. **Construction.** The placement or construction of any human-made modification such as, but not limited to, buildings, fences, roads, and parking lots is prohibited.

EXCEPTIONS:

1. Pursuant to Item IV.A.1, the construction of one single-family residence and related buildings (such as garage, storage building(s) within a 2.0 acre Residential Area is permitted. The exact location and configuration of the Residential Area shall not significantly impact the Conservation Values of the Property described herein, and shall be approved in advance of construction in writing by the Conservancy. Such approval shall not be unreasonably withheld.

2. The construction and maintenance of a gravel driveway for the purpose of providing access to the Residential Area from Omena Point Road is permitted. The exact location and configuration of the driveway shall not impact the Conservation Values of the Property described herein, and shall be approved in advance of construction in writing by the Conservancy. Such approval shall not be unreasonably withheld.
 3. The construction of new and maintenance of existing natural surfaced trails for the purpose of nature hikes, enjoyment of the natural environment and skiing is permitted. The location and width of new trails shall be subject to approval by the Conservancy and such approval shall not be unreasonably withheld. The Conservancy will make every effort to respond within 30 days of receiving a trail request.
 4. The construction of a viewing pavilion not to exceed 700 square feet in area and 15 feet high is permitted in the picnic area as designated in the Baseline Documentation Report. The pavilion shall be of a natural color, made of natural looking materials and should blend into the surroundings. Location of any such structure shall be subject to approval by the Conservancy and such approval shall not be unreasonably withheld.
 5. Establishment of three unpaved parking areas, two of which shall not be more than 600 square feet in area and the third parking area shall not be more than 1000 square feet in area, is permitted in the areas delineated in the Baseline Documentation Report.
 6. The construction of a maintenance building not to exceed 400 square feet in area or 10 feet in height is permitted. Location of any such structure shall be subject to approval by the Conservancy and such approval shall not be unreasonably withheld.
 7. The construction of a sanitary waste pumping station is permitted in a location approved by the Conservancy and such approval shall not be unreasonably withheld.
 8. The construction of a sanitary septic field not larger than 2 acres and not to service more than 130 homes is permitted in a location subject to approval by the Conservancy and such approval shall not be unreasonably withheld.
- E. **Residence.** The occupation of any portion of the Property or buildings on the Property as a residence is strictly prohibited except as it related to Items IV.A.1 and IV.D.1 above.
- F. **Livestock.** Livestock are prohibited on the property at all times.
- G. **Cutting Vegetation.** Any cutting of trees or vegetation is prohibited.

EXCEPTIONS:

1. Forest management activities are permitted provided they are in accordance with the Forest Management Plan approved by the Conservancy. Said Forest

Management Plan shall maintain plant and wildlife habitats that contribute to ecological diversity.

2. Cutting of trees and shrubs is permitted within the existing open meadow area delineated in the Baseline Documentation Report for purposes of maintaining diverse wildlife habitat.
3. Cutting of trees and shrubs is permitted within the picnic area delineated in the Baseline Documentation Report.
4. Diseased trees and vegetation, as determined by a qualified forester approved by the Conservancy, may be removed in order to minimize the spread of such diseases.
5. Cutting and removal of all non-native vegetation, trees and shrubs, are permitted.
6. Specific trees may be cut to allow a filtered view overlooking Omena Bay. Such tree cutting must be limited to trees that are less than or equal to 8 inches in diameter. The area of cutting shall not exceed 100 feet in width as measured parallel to the shoreline of Omena Bay and shall occur in the area designated for such cutting in the Baseline Documentation Report.
7. Trees, shrubs and vegetation may be cut or trimmed in order to conduct the specific construction activities permitted by Paragraph IV D 1 and IV D 2 above.
8. Trees, shrubs and vegetation may be cut or trimmed in order to maintain new and existing trails permitted by Paragraph IV D 3 above.

H. **Planting Vegetation.** Only native plants and vegetation may be grown and cultivated on the Property. Disease resistant cultivars of native plants and vegetation are permitted.

I. **Land Surface Alteration.** Any mining or alteration of the surface of the land is prohibited, including any substance that must be quarried or removed by methods that will consume or deplete the surface estate, including but not limited to, the removal of topsoil, sand, gravel, rock, and peat. In addition, exploring for, developing, and extracting oil, gas, hydrocarbons, or petroleum products are all prohibited activities.

EXCEPTIONS:

1. The Owner retains the right to conduct land surface alteration required to conduct construction activities allowed in Section IV.D above.
2. The land surface of the gravel pit area may be restored to a natural contour. Prior to any land surface alteration in the gravel pit area, a plan for this activity shall be submitted in writing to the Conservancy for approval. Such approval shall not be unreasonably withheld.

J. **Dumping.** Waste and unsightly or offensive material is not allowed and may not be

- K. **Water Courses.** Natural water courses, lakes, wetlands, or other bodies of water may not be altered.
- L. **Off-Road Recreational Vehicles and Bicycles.** Motorized off-road vehicles such as, but not limited to, snowmobiles, dune-buggies, all-terrain vehicles, and motorcycles may not be operated on the Property.

EXCEPTIONS:

1. Motorized equipment is permitted for emergency purposes, forest management practices and maintenance of trails and picnic area permitted as specified above in Paragraphs IV D and IV G.
- M. **Signs and Billboards.** Billboards are prohibited. Signs are prohibited, except the following signs may be displayed to state:
- An address of the property or the owner's name.
 - The area is protected by a conservation easement.
 - Prohibition of any unauthorized entry or use.
 - An advertisement for the sale of the Property.
 - The name "Omena Woods Association".

V. **PERMITTED USES.** The Owner retains all ownership rights which are not expressly restricted by this Conservation Easement. In particular, the following rights are reserved.

A. **Right to Convey.** The Owner retains the right to sell, mortgage, bequeath, or donate the Property. Any conveyance will remain subject to the terms of the Conservation Easement and the subsequent Owner will be bound by all obligations in this agreement.

B. **Right to Conduct Reserved Activities.** The Owner retains the right to conduct all activities that are listed as explicit exceptions under Section IV.

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

A. **Right to Enter.** The Conservancy has the right to enter the Property at reasonable times to monitor the Conservation Easement Property. Furthermore, the Conservancy has the right to enter the Property at reasonable times to enforce compliance with, or otherwise exercise its rights under, this Conservation Easement. The Conservancy may not, however, unreasonably interfere with the Owner's use and quiet enjoyment of the Property. The Conservancy has no right to permit others to enter the Property. The general public is not granted access to the Property under this Conservation Easement.

B. **Right to Preserve.** The Conservancy has the right to prevent any activity on or use of the Property that is inconsistent with the Purposes of this Conservation Easement or detrimental to the Conservation Values of the Property.

C. **Right to Require Restoration.** The Conservancy has the right to require the Owner to

restore the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.

- D. **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.

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

- A. **Delay in Enforcement.** A delay in enforcement shall not be construed as a waiver of the Conservancy's right to eventually enforce the terms of this Conservation Easement.

- B. **Acts Beyond Owner's Control.** The Conservancy may not bring an action against the Owner for modifications to the Property resulting from causes beyond the Owners' control, including, but not limited to, unauthorized actions by third parties, natural disasters such as unintentional fires, floods, storms, natural earth movement, or even an Owner's well-intentioned action in response to an emergency resulting in changes to the Property. The Owner has no responsibility under this Conservation Easement for such unintended modifications.

- C. **Notice and Demand.** If the Conservancy determines that the Owner is in violation of this Conservation Easement, or that a violation is threatened, the Conservancy shall provide written notice to the Owner. The written notice will identify the violation and request corrective action to cure the violation and, where the Property has been injured, to restore the Property.

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

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

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

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

action or Property restoration incurred by the Conservancy.

- E. **Unreasonable Litigation.** If the Conservancy initiates litigation against the Owner to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Conservancy to reimburse the Owner's reasonable costs and reasonable attorney's fees in defending the action.
- F. **Actual or Threatened Non-Compliance.** The Conservancy's rights under this Section, Conservancy's Remedies, apply equally in the event of either actual or threatened violations of the terms of this Easement. The Owner agrees that the Conservancy's claim for money damages for any violation of the terms of this Easement are 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.

VIII. NOTIFICATION PROVISION. The Conservancy is entitled to 60 Days written notice whenever its approval is required under this Conservation Easement. If the Conservancy fails to respond within 60 Days after it receives the written request, then its approval shall be deemed given. This implied approval shall not extend to any activity contrary to this Conservation Easement or impairing a Conservation Value. The Conservancy's approval shall continue for three years. If the approved activity is not completed within three years after the approval date, then the Owner must re-submit the written application to the Conservancy.

IX. CONSERVATION EASEMENT REQUIREMENTS UNDER MICHIGAN LAW AND UNITED STATES TREASURY REGULATIONS.

- A. This Conservation Easement is created pursuant to the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Protection Act (NREPA) - MCL §§ 324.2140 *et seq.*
- B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. § 1.170A-14 *et seq.*, as amended.
- C. The Conservancy is qualified to hold conservation easements pursuant to these statutes. It is a publicly funded, non-profit 501(c)(3) organization.

X. SUBORDINATION. At the time of conveyance of this Easement, the Property is subject to the mortgage identified in Exhibit B attached hereto and incorporated by this reference, the holder of which has agreed by separate instrument, which will be recorded immediately after this Easement, to subordinate its rights in the Property to this Easement to the extent necessary to

permit the Grantee to enforce the purpose of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the mortgage holder. The priority of the mortgage holder to the proceeds of any sale, condemnation proceedings, or thereby, and any lien that may be created by Grantee's exercise of any of its rights under this Easement shall be junior to the existing mortgage.


- XI. 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 the Conservancy against such claims arising during the term of the Owner's ownership of the Property except such claims which are caused by negligent or intentional acts by the Conservancy, its directors, officers, employees or agents.
- XII. 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.
- XIII. TERMINATION.** This Conservation Easement may be extinguished only by an unexpected change in condition, which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain.
- A. Unexpected Change in Conditions.** If subsequent circumstances render the Purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Conservancy will then be entitled to compensation in accordance with the provisions of IRC Treasury Regulations Section 1.170A-14(g)(6)(ii).
- 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).
- XIV. LIBERAL CONSTRUCTION.** This Conservation Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property and in accordance with the Conservation and Historic Preservation Easement, Sub part 11 of Part 21 of the Michigan Natural Resources and Environmental Code MCL 324.2140 *et seq.*
- XV. NOTICES.** For purposes of this agreement, 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 or other means. The Conservancy shall exercise good faith and due diligence in providing notice to the Owner.

- XVI. SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.
- XVII. SUCCESSORS.** This Conservation Easement is binding upon, and inures to the benefit of, the Owner's and the Conservancy's successors in interest. All subsequent Owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the current Owner.
- XVIII. 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.
- XIX. MICHIGAN LAW.** This Conservation Easement will be construed in accordance with Michigan Law.
- XX. ENTIRE AGREEMENT.** This Conservation Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

For the OWNER:

* Print/type names under signatures


 Marsha Buehler, President
 Omena Woods Association


 Bruce Balas, Treasurer
 Omena Woods Association

*

STATE OF MICHIGAN)
)
 COUNTY OF LEELANAU)

Acknowledged before me on this 14th day of September of 2004 by _____,
 Marsha Buehler, President and Bruce Balas, Treasurer of the Omena Woods Association

JUNE M. SCHAUB
Notary Public, Leelanau County, MI
My Commission Expires 10-18-2007

June M Schaub
_____, Notary Public
Leelanau County, Michigan
My commission expires: _____

CONSERVANCY:

* Print/type names under signatures

Mary Lyons

Mary Lyons
Its: Board Secretary

STATE OF MICHIGAN)
)
COUNTY OF LEELANAU)

Acknowledged before me on this 14th day of September of 2004, by MARY LYONS known to me to be Board Secretary of the Leelanau Conservancy.

June M Schaub
_____, Notary Public
Leelanau County, Michigan
My commission expires: _____

JUNE M. SCHAUB
Notary Public, Leelanau County, MI
My Commission Expires 10-18-2007

PREPARED BY:

Matt Heiman & Thomas Nelson
Land Protection Specialists
Leelanau Conservancy
P.O. Box 1007
Leland, MI 49654

SCHEDULE OF EXHIBITS

A. Legal Description of the Property Subject to Easement

~~B. Identification of Prior Mortgage~~

A part of the Plat of Omena, part of the East ½ of the Southwest ¼ of Section 25, and part of the Plat of the First Addition to Omena Heights in Section 36, Town 31 North, Range 11 West, Leelanau Township, Leelanau County, Michigan, more fully described as follows:

Beginning at the South ¼ corner of said Section 25; thence along the South section line, South 89°57'40" West 50.21 feet to the East boundary of Terrace Avenue (now vacated) of the Plat of Omena; thence along said East boundary, South 10°22'49" East 33.50 feet to the Northeast corner of the plat of First Addition to Omena Heights; thence along the Easterly boundary of said Plat, South 40°59'32" East, 116.00 feet to the South line of Lot 3, Block 4 of said Plat; thence along said South line, South 64°26'40" West, 262.30 feet to the Easterly boundary of Omena Ave; thence, along said Easterly boundary along a 138.59 foot radius curve to the right, 63.50 feet (Delta=26°15'08", Chord=North 49°22'41" West 62.95 feet); thence, continuing along said Easterly boundary, North 23°17'25" West, 62.31 feet; thence, continuing along said Easterly boundary, North 09°59'00" West 104.06 feet to the South boundary of Front Street; thence, along said South boundary, West 40.90 feet to the centerline of vacated Bayview Ave. extended; thence, along said vacated centerline, North 66.00 feet; thence, continuing along said vacated centerline for the following 4 courses; thence North 10°30'43" West, 224.70 feet; thence North 24°59'38" West, 124.18 feet; thence North 57°15'06" West 395.03 feet; thence North 79°13'19" West, 428.31 feet; thence North 37°33'20" West, 25.00 feet to the centerline of vacated Terrace Avenue; thence, along said vacated centerline; South 52°26'40" West 39.79 feet; thence, continuing along said vacated centerline, South 74°47'25" West, 54.05 feet; to the East boundary of Lake Street; thence, along said East boundary, North 00°09'13" West, 63.04 feet (recorded as North 00°08'13" West, 36.03 feet) to a shoreline traverse along Moughey's Lake; thence, along said shoreline traverse, North 59°49'13" East 90.40 feet (recorded as North 59°09'22" East 90.84 feet); thence, along said shoreline traverse, North 25°06'51" East 9.16 feet; thence South 64°51'56" East, 38.19 feet (recorded as South 64°53'21" East 38.18 feet); thence, along the Westerly boundary of the Plat of Omena, North 31°59'08" East, 74.74 feet (recorded as North 32°00'00" East 74.72 feet); thence, along said Westerly boundary, North 22°15'29" East, 124.03 feet (recorded as North 22°15'00" East 124.00 feet); thence along the North boundary of said Plat, South 79°13'19" East, 428.10 feet (recorded as South 79°15'00" East, 428.00 feet); thence, along said North boundary, South 57°15'06" East, 146.67 feet (recorded as South 57°15'00" East); thence North 03°58'05" East, 718.81 feet (recorded as North 03°56'24" East 718.87 feet); thence North 13°46'17" 373.59 feet (recorded as North 13°47'04" West, 373.55 feet); thence South 89°02'56" West 240.25 feet (recorded as South 89°02'56" East); thence North 00°08'32" West 440.05 feet (recorded as North 00°08'13" West 440.00 feet) to the East-West ¼ line of Section 25; thence, along said ¼ line, North 89°20'23" East, 809.61 feet (recorded as 809.53 feet) to the North-South ¼ line of said Section; thence, along said ¼ line, South 00°08'16" East, 2286.34 feet (recorded as 2286.23 feet) to the Point of Beginning.

ALSO

All of Blocks 2 and 3 of the Plat of the First Addition to Omena Heights, and part of Section 36, Town 31 North, Range 11 West, Leelanau Township, Leelanau County, Michigan, more fully described as follows:

Commencing at the North ¼ corner of said Section 36; thence, along the North line of said section, West 255.02 feet; thence South 874.82 feet to the Point of Beginning, also being a point at the intersection of the centerline of Omena Point Road and the South line of the First Addition to Omena Heights (a/k/a McLean Avenue of said plat); thence, along the centerline of McLean Avenue, North 89°44'53" East 110.07 feet; thence North 00°15'07" West, 20.00 feet to the East boundary of the Park of First Addition to Omena Heights, thence along said East boundary, North 20°07'29" West 362.59 feet (recorded as North 20°40' West, 364.0 feet) to the Easterly boundary of Omena Point Road (Platted as Leslie Avenue); thence, along the Easterly boundary North 00°02'28" East, 115.83 feet (recorded as North 116.6 feet); thence, continuing along said Easterly boundary, North 20°30'50" West, 139.50 feet; thence, along the Northerly boundary of Block 2 of said First Addition, North 69°29'10" East 25.00 feet; thence, continuing along said Northerly boundary, South 68°00'00" East, 116.22 feet; thence, along the Northerly and Easterly boundary of Block 3 of said plat, along a 482.98 foot radius curve to the right, 227.60 feet (Delta=27°00'00", Chord=South 54°30'00" East 225.50 feet); thence, along the Easterly boundary of Block 3 and the West right of way of Omena Avenue (a/k/a Omena Heights Rd.), South 41°00'00"

East, 431.22 feet to the centerline of Lawn Court of the plat of New Mission; thence, along said centerline, North 48°00'00" East 20.00 feet; thence South 41°00'00" East 58.00 feet along the extended centerline Northeasterly line of Block 1 of the Plat of New Mission Point to the Northeasterly corner of Lot 1, Block 1 of said Plat; thence along the Southwesterly side of Omena Avenue, as constructed (per Liber 253, page 817), South 36°55'21" East, 328.77 feet (recorded as South 37°20' East, 329.84 feet); thence South 45°03'30" East 60.64 feet along said Southwest side; thence South 69°17'30" East 40.27 feet along the Northerly side of Richmond Ave.; thence South 41°00'00" East 85.30 feet to the Easterly boundary of Block 1 of the plat of New Mission Point; thence, along said East boundary for the next 6 courses; thence South 00°00'57" East 385.27 feet (recorded as South 384.76 feet); thence South 06°08'34" West, 392.59 feet (recorded as South 06°15' West 387.22 feet); thence South 27°19'40" East 713.88 feet (recorded as South 27°15' East 713.87 feet); thence South 01°20'33" West 208.54 feet (recorded as South 00°30'00" West 208.19 feet); thence South 20°04'23" East 447.30 feet (recorded as South 19°45'00" East, 447.73 feet); thence South 06°57'59" East 165.00 feet (recorded as South 07°15' East 165.00 feet) to the Southeast corner of said Block 10; thence North 89°34'59" East 888.30 feet (recorded as East 889.00 feet); thence North 15°30'00" West 268.00; thence North 09°00'00" West 132.00 feet; thence North 21°00'00" West, 264.00 feet; thence North 07°45'00" West, 198.00 feet; thence North 05°15'00" West 327.05 feet; thence North 02°21'39" West, 302.16 feet (recorded as North 03°55' West 304.70 feet); thence North 01°55'00" East, 100.00 feet; thence North 03°56'09" West, 93.90 feet (recorded as North 09°02' West, 93.90 feet); thence North 16°56'41" West, 99.85 feet (recorded as North 17°26' West, 99.90 feet); thence North 06°28'49" West, 297.04 feet (recorded as North 05°55' West, 315.60 feet); thence North 02°41'20" West, 299.80 feet (recorded as North 02°41'20" West, 299.80 feet); thence North 125.00 feet; thence North 05°00'00" West 100.36 feet; thence North 09°57'35" East 269.96 feet along a monumented line; thence North 89°45'14" East, 224.48 feet (recorded as North 89°26'20" East 224.48 feet) to the centerline of Omena Point Road; thence along said centerline for the following 17 courses: thence South 05°28'46" West, 286.63 feet; thence South 00°10'57" East 1778.25 feet; thence South 11°25'00" East 559.22 feet; thence South 16°14'09" East 488.74 feet; thence along the arc of a 5860.09 foot radius curve to the left, 251.46 feet (Delta=2°27'31", chord = South 17°27'55" East 251.44 feet; thence, along the arc of a 411.85 foot radius curve to the right, 889.63 feet (Delta=123°45'52", Chord = South 43°11'16" West 726.49 feet); thence North 74°55'49" West 602.36 feet; thence along the arc of a 620.19 foot radius curve to the right, 647.03 feet (Delta=59°46'32", Chord = North 45°02'32" West 618.08 feet); thence North 15°09'15" West 473.69 feet; thence, along the arc of a 1447.19 foot radius curve to the left, 284.08 feet (Delta=11°14'50", Chord = North 20°46'40" West 283.63 feet); thence North 26°24'05" West 310.50 feet; thence along the arc of a 1700.07 foot radius curve to the right, 309.94 feet (Delta=10°26'44", Chord = North 21°10'43" West 309.51 feet); thence North 15°57'21" West 497.58 feet; thence, along the arc of a 2043.33 foot radius curve to the left, 199.84 feet (Delta=05°36'13", Chord = North 18°45'28" West 199.76 feet); thence North 21°33'34" West 144.77 feet; thence, along the arc of a 2157.64 foot radius curve to the right, 210.83 feet (Delta=05°35'55", Chord = North 18°45'37" West 210.75 feet); thence North 15°57'39" West, 651.14 feet to the Point of Beginning.

SITUATED IN LEELANAU TOWNSHIP, COUNTY OF LEELANAU, STATE OF MICHIGAN.

SHRUBS - LINDSEY TOWNHIP, COUNTY OF ELM HURST STATE OF MONTANA