

OPEN SPACE PRESERVATION EASEMENT AGREEMENT

This Open Space Preservation Easement Agreement (the "Agreement") dated _____, _____, is entered into between **Douglas Property Development, LLC**, a Michigan limited liability company, whose address is 50 Crahen Avenue, N.E., Suite 200, Grand Rapids, Michigan 49525, for itself and its successors and assigns ("Owner") and the **City of the Village of Douglas**, a Michigan municipal corporation, whose address is 86 W. Center Street, Douglas, Michigan 49406 ("City") to establish an easement on the terms and conditions set forth below.

1. **Background.** Owner is the owner of real property located in the City of the Village of Douglas, Allegan County, Michigan, legally described on the attached **Exhibit A** (the "Burdened Parcel"). The parties are entering into this Agreement to establish an easement in, over and under the Burdened Parcel for the purpose of requiring certain areas within the Burdened Parcel to remain as open space in perpetuity.

2. **Creation of Easement.** In return for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner hereby grants to the City for the use and benefit of the public an open space easement (the "Easement") encumbering the areas of the Burdened Parcel legally described and designated as "Conservation Easement Area" on **Exhibit B** (the "Easement Area"). Owner and the City acknowledge that the Owner intends to develop a residential development on the Burdened Parcel (the "Development"). Owner and the City agree that, to the extent the Open Space area in a final site plan as may be approved by the City for the Development is different than the description of the Easement Area, the parties will amend this Agreement to include that Open Space as the new Easement Area description. The Easement confers the following rights to the City and restrictions upon the Owner, its successors and assigns, and any associations as may be formed to administer the common elements of any condominium project which may be developed within the Burdened Parcel (each, an "Association"):

- (i) Owner and if an Association is established, the Association, shall cause the Easement Area to remain undeveloped with no constructed improvements; provided however, that if an Association is established, Owner's obligations under this subsection shall be limited to complying with the foregoing requirement in the exercise of any reserved or statutory rights within the Easement Area; and further provided however, that to the extent only as is permitted by and consistent with all applicable City Ordinances and all applicable Michigan environmental and wetlands laws, regulations, requirements and permits [including, to the extent applicable to any relevant portion of the Easement Area, Permit WRP033523, v.

1, issued by the Michigan Department of Environment, Great Lakes and Energy ("EGLE"), and all amendments and replacements thereto], in every case as any of the foregoing then may be in effect (collectively, "**Applicable Regulations**") : (a) the Easement Area may be utilized by the public for nonintrusive uses, including, but not limited to, walking, biking, golf carts, and cross-country skiing subsequent to the Owner's construction of a non-motorized public trail system and informational signage pursuant to a perpetual non-motorized public trail easement to be granted to the City for the use and benefit of the public and located within the Easement Area, as is contemplated and required by City Ordinance 03-2012, as from time to time amended; and, (b) with the prior written approval of the City, Owner and Association may perform construction for the purposes described in (ii) and (iii) below; provided further, that after notice to the responsible party that it has failed to timely perform any maintenance described in (ii) below, the City may perform such construction at the expense of such party.

- (ii) Owner, or, if an Association shall have been established, the Association, shall maintain the Easement Area, such maintenance to include, without limitation, the removal of dead trees and foliage which constitute a hazard or impediment to surface water drainage and as is otherwise necessary or advisable to maintain compliance with Applicable Regulations; and
- (iii) The Easement Area may be used by the City or, upon receipt of a permit therefor, by the Owner or Association to direct the drainage of surface water from adjacent residential developments to existing streams and creeks traversing the Easement Area and for the installation, inspection, maintenance, repair and replacement of underground utilities.

3. **Other Terms.** This Easement does not grant or convey to City or members of the general public any right of ownership, possession, or use of the Burdened Parcel except as stated in this Agreement. Upon reasonable notice to Owner, or to the extent an Association is established, the Association, City and its authorized employees and agents may but without any City obligation to do so or to maintain or make any repair, enter upon and inspect the Easement to confirm that the Easement is being maintained in compliance with the terms of this Agreement. The Easement shall run with the land in perpetuity. This Agreement constitutes the complete final agreement of the parties and is intended to be binding upon the successors and assigns of the Owner, including, without limitation, any Association. Any amendment to this Agreement shall be effective only if, and when a writing, duly signed and acknowledged by the City and Owner, or if an Association is established, the Association, is recorded in the office of the Allegan County Register of Deeds.

This Easement was signed and is effective as of the date set forth above.

[Signature pages follow.]

Douglas Property Development, LLC,
a Michigan limited liability company
By: BDR Management, LLC, its Manager

By: _____
Kevin Einfeld, Manager

STATE OF MICHIGAN)
)
COUNTY OF KENT)

The foregoing document was acknowledged before me on _____, _____, by
Kevin Einfeld, as Manager of BDR Management, LLC, the Manager of Douglas Property
Development, LLC, a Michigan limited liability company, on behalf of the company.

Notary Public Kent County, Michigan
My Commission Expires: _____

DRAFT

The City of the Village of Douglas,
a Michigan municipal corporation

By: _____

Its:

By: _____

Its:

STATE OF MICHIGAN)
)
COUNTY OF ALLEGAN)

The foregoing document was acknowledged before me on _____, _____, by

the _____, and _____ the

of the City of the Village of Douglas, a Michigan municipal
corporation, on behalf of the municipal corporation.

Notary Public Kent County, Michigan
My Commission Expires: _____

Drafted by and when recorded return to:

Peter A. Schmidt
Varnum LLP
Bridgewater Place
333 Bridge Street, N.W.
Grand Rapids, MI 49504

#18257470

EXHIBIT A**Legal Description of the Burdened Parcel**

Part of the North 1/2 of Section 17, Town 3 North, Range 16 West, and part of Lot 8 of Trumbull's Addition to the Village of Douglas, as recorded in Liber 3 of Plats, Page 6, City of Douglas, Allegan County, Michigan, described as: Commencing at the East 1/4 corner of said Section; thence N90°00'00"W 450.00 feet along the East-West 1/4 line of said Section to the Point of Beginning; thence N90°00'00"W 555.80 feet along said East-West 1/4 line; thence N00°27'10"E 140.00 feet to Reference Point A; thence N00°27'10"E 17 feet, more or less, to the centerline of a drain; thence Northwesterly and Southwesterly 577 feet, more or less, along said centerline to a line bearing N00°00'00"E from Reference Point B, said Reference Point B being N72°47'35"W 170.00 feet, N51°10'45"W 175.00 feet and S56°26'58"W 182.38 feet from Reference Point A; thence S00°00'00"W 7 feet, more or less, to said Reference Point B; thence S00°00'00"W 199.20 feet; thence N90°00'00"W 150.38 feet along the East-West 1/4 line of said Section; thence N00°27'10"E 686.05 feet; thence S89°41'57"W 1004.98 feet (the previous two courses being along the boundary and boundary extended of West Shore Woods Condominiums, Allegan County Records) to the North-South 1/4 line of said Section; thence N88°20'23"W 164.17 feet along the boundary of Wildwood Lane Condominiums, Allegan County Records; thence N00°17'10"E 597.78 feet; thence N89°23'53"W 266.04 feet to the Easterly line of Lot 8, Trumbull's Addition to the Village of Douglas, Allegan County Records; thence N63°36'10"W 117.13 feet parallel with the Southerly line of said Lot 8; thence N26°11'58"E 20.00 feet along the Westerly line of said Lot 8 also being the Southeast line of Lakeshore Drive; thence S63°36'10"E 112.61 feet; thence S89°23'53"E 261.35 feet; thence S89°59'26"E 125.00 feet; thence N00°17'10"E 164.97 feet; thence S89°59'26"E 1155.39 feet along the boundary of McVea Plat, Allegan County Records; thence S02°23'54"E 275.19 feet; thence S49°30'10"E 268.35 feet; thence N84°48'49"E 418.89 feet; thence S75°00'51"E 149.85 feet; thence S20°43'28"E 155.47 feet; thence S38°02'56"E 305.04 feet; thence S03°04'08"E 228.39 feet (the previous three courses being along the centerline of the Drainage Easement, recorded in Liber 3051, Page 506, Allegan County Records); thence S65°57'24"E 133.18 feet; thence S00°21'57"W 200.00 feet parallel with the East line of said Section; thence N90°00'00"W 117.00 feet parallel with the East-West 1/4 line of said Section; thence S00°21'57"W 150.00 feet to the Point of Beginning. Contains 46 acres more or less. Subject to easements, restrictions and rights-of-way of record. Also subject to highway right-of-way for 131st Avenue over the most Southerly 33 feet thereof.

DRAFT

EXHIBIT B

Easement Area

[See Attached]