

State of Wisconsin
Department of Natural Resources
Box 7921
Madison, WI 53707

**WISCONSIN AGRICULTURAL
MITIGATION BANK
CONSERVATION EASEMENT**
Sec. 23.09 (10), Wis. Stats
(effective **xx-xx-20xx**)

THIS WISCONSIN AGRICULTURAL MITIGATION BANK CONSERVATION EASEMENT (“Conservation Easement”) is made by and between **The John and Jane Doe Revocable Trust dated May 16, 2012** (“Grantor”) and the State of Wisconsin Department of Natural Resources (“Grantee”), who are collectively referred to herein as “Parties.”

RECITALS

WHEREAS, the Grantor is the owner of fee simple title to certain real property located in the Town of **Manitowoc, Manitowoc** County, Wisconsin, which is depicted on the attached Exhibit “A”; and more particularly described as follows (“Easement Area”):

Part of the NW ¼ and NE ¼ of the NE ¼ NE ¼ of Section 9, Township 19 North, Range 24 East, containing 10 acres more or less;

WHEREAS, the Grantor and the Grantee have identified certain conservation/aesthetic values, maintenance measures and restorative needs (hereinafter collectively referred to as the “Conservation Values”) in the Easement Area;

WHEREAS, these Conservation Values are documented in the **XXXX** Site Mitigation Plan (SMP), which is located on file with the WWCT. The SMP includes baseline information, maintenance requirements and restorative measures; it describes the Conservation Values of the Easement Area at the time of this conveyance, and is intended to serve as an objective standard for monitoring compliance with the terms of this Conservation Easement;

WHEREAS, the Grantee and Grantor desire, intend and have the common purpose of conserving and preserving in perpetuity Conservation Values in the Easement Area. These Conservation Values are to be achieved by maintaining the Easement Area in a relatively natural condition through the placement of restrictions on the use of the Easement Area through the creation of this Conservation Easement, and by the Grantor to the Grantee, by conferring affirmative rights including enforcement authority to ensure the preservation of the Conservation Values of the Easement Area and the terms and conditions contained in the SMP;

WHEREAS, the common law of the State of Wisconsin and the Uniform Conservation Act, sec. 700.40, Wis. Stats., provides for the creation and conveyance of conservation easements which impose restrictions or affirmative rights on lands for conservation purposes; and

WHEREAS, the Grantee is eligible to be a qualified holder of a conservation easement pursuant to sec. 700.40, Wis. Stats., and is a qualified organization under Section 170(h) of the Internal Revenue Code of 1986.

Recording Area

Return: Department of Natural Resources
Bureau of Watershed Management – LF/6
P.O. Box 7921
Madison, Wisconsin 53707

Parcel Identification Number (PIN):

XXXX-XXXX-XX-XXXX

NOW THEREFORE, and in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby give, grant, bargain and convey to the Grantee, its successors and assigns, a Conservation Easement in perpetuity in the Easement Area in accordance with the following terms and conditions:

I. PURPOSE OF THE CONSERVATION EASEMENT

1. The purpose of this Conservation Easement is to ensure that the restoration activities and maintenance measures in the Easement Area will be implemented and the Conservation Values will not be destroyed or degraded by the Grantor and any subsequent owner of or holder of interests in the Easement Area.
2. In the event there is development to enhance recreation, specifics noted here, Example: *"This Conservation Easement also ensures that a public hiking and cross-country ski trail shall be developed in the Easement Area and authorizes the public to use that trail. It is intended that the trail be developed three years after the restoration project set forth in the SMP is completed. It is understood that the trail will be constructed by the Woodland Dunes Nature Center at a location mutually agreed upon by the Parties."*

II. RIGHTS AND REMEDIES OF THE GRANTEE

1. The Grantee shall have the right to enforce by proceedings at law or in equity the terms and conditions of this Conservation Easement hereinafter set forth. The right shall include but not be limited to, the right to bring an action in any court of competent jurisdiction to enforce the terms of this Conservation Easement, to require the restoration or enhancement of this Easement Area, consistent with the SMP and any subsequent amendments thereto, and/or to enjoin non-compliance by appropriate injunctive relief. The Grantee does not waive or forfeit the right to act as may be necessary to ensure compliance with terms of this Conservation Easement by any prior failure to act. Nothing herein shall be construed to entitle the Grantee to institute any enforcement action against the Grantor for any changes to the Easement Area due to causes beyond the Grantor's control and without the Grantor's fault or negligence (such as changes caused by fire, flood, storm, civil or military authorities undertaking emergency action or unauthorized wrongful acts of third parties). In the event that the Grantor fails to timely and completely perform one or more of its duties and responsibilities in the SMP and such failure shall continue for thirty (30) days following receipt of written notice from the Grantee, then in addition to any other rights and remedies available in law or equity, the Grantee may enter the Easement Area and perform all acts required to remedy the breach. The Grantor shall be responsible for all the Grantee's reasonable and necessary costs and expenses incurred in fulfilling the SMP's responsibilities.
2. The Grantee and its contractors, agents and invitees, shall have the right to enter the Easement Area, to conduct restoration activities and engage in long-term management according to the SMP, to inspect the Easement Area to determine if the Grantor is complying with the terms and conditions of this Conservation Easement and the SMP, and to observe, study, record and make scientific studies and educational observations.
3. The Grantee may install, operate, maintain, repair, remove and replace water control structures, consistent with the SMP, for the purpose of protecting, re-establishing and enhancing wetlands and their functional values. These rights include but are not limited to includes the right to transport construction materials to and from any existing or proposed water control structure.

4. The Grantee shall have the right to establish or re-establish vegetation through seeding or plantings, consistent with the SMP.
5. The Grantee shall have the right to manipulate vegetation, topography and hydrology on the Easement Area consistent with the SMP through diking, pumping, water management, excavating, burning, cutting, pesticide application and other suitable methods for the purposes of protecting and enhancing Conservation Values and complying with the terms of the SMP.
6. The Grantee shall have the right of access for ingress and egress to the easement area across adjacent or other properties of the Grantor Such right-of-way for access purposes is described in Exhibit "B" which is appended to and made a part of this Conservation Easement.

III. COVENANTS OF THE GRANTOR

The Grantor agrees and covenants that:

1. There shall be no commercial, agricultural or industrial activity undertaken or allowed within the Easement Area.
2. There shall be no buildings, dwellings, barns, roads, advertising signs, billboards or other personal property built or placed on the Easement Area unless determined by Grantee to be consistent with the SMP.
3. There shall be no dredging, filling, excavating, mining, drilling or removal of any topsoil, sand, gravel, rock, minerals or other materials within the Easement Area except in conjunction with authorized management activities consistent with the SMP.
4. There shall be no dumping of trash, plant materials or compost, ashes, garbage or other unsightly or offensive material, especially including any hazardous or toxic waste, within the Easement Area.
5. The hydrology of the Easement Area shall not be altered in any way or by any means including pumping, draining, diking, impounding or diverting surface or ground water into or out of the Conservancy Area, unless the alterations are consistent with the SMP.
6. All agricultural uses (e.g. plowing, tilling, haying, cultivating, planting or other agricultural activities) are prohibited within the Easement Area. This prohibition does not preclude mowing, planting, or herbicide use conducted for the purpose of enhancing the ecological functions and values of the Easement Area consistent with the SMP. The Grantor shall not stock animals or allow the grazing of animals on the Easement Area.
7. The Grantor is responsible for compliance with all federal, state and local laws governing the control of noxious weeds within the Easement Area.
8. There shall be no operation of motorized vehicles or equipment within the Easement Area except in conjunction with activities authorized by Sections II and III herein.
9. The Grantor shall not subdivide the Easement Area into smaller parcels through legal or de facto means. The Easement Area shall remain as a single, indivisible parcel managed in accordance with the SMP in order to protect the Conservation Values contained in the Easement Area.

IV. GENERAL PROVISIONS

1. This Conservation Easement shall run with and burden the Easement Area in perpetuity and shall bind the Grantor and its heirs, successors and assigns.
2. This Conservation Easement is fully valid and enforceable by any assignee of the Grantee, whether assigned in whole or in part. The Grantee may assign or transfer this Conservation Easement and the rights contained herein to any Federal or state agency or private conservation organization for management and enforcement purposes. The Grantor must approve any other assignment in writing before that assignment may be considered effective.
3. The Grantor shall timely pay all real property taxes, charges and assessments levied by competent authority on the Easement Area.
4. Nothing herein shall be construed as limiting the right of the Grantor's right to sell, give or otherwise convey the Easement Area provided that the conveyance is subject to the terms of this Conservation Easement.
5. The Grantor agrees that the terms, conditions, covenants and restrictions set forth in this Conservation Easement will be inserted in any subsequent conveyance of any interest of the Easement Area. The Grantor agrees to notify the Grantee of any such conveyance in writing and by certified mail no later than thirty (30) days before the conveyance.
6. As the Covenants of the Grantor ("Covenants") contained in this Conservation Easement are also material terms of the Wisconsin Agricultural Mitigation Bank (WAMB) Program Instrument between the The United States Department of Agriculture, National Resources Conservation Service (NRCS) and the Grantor, the NRCS shall also have the right to enforce the Covenants. This right of enforcement shall include, but not be limited to, the right to bring an action in the Wisconsin State Court System to enforce the terms of these Covenants, to require the restoration of the Easement Area to its natural condition, or to enjoin any non-compliance with the Covenants against the Grantor and the Grantor's successors in interest. The NRCS shall also have the right to enter the Easement Area, in a reasonable manner, for the purpose of inspecting the Easement Area to determine compliance with the Covenants. The Grantor shall notify the NRCS of any proposed conveyance of the Easement Area in writing and by certified mail no later than sixty (60) days before the conveyance. The enforcement of these Covenants by the NRCS shall be governed by federal law.
7. The terms "Grantor" and "Grantee" as used herein may be singular or plural and shall be deemed to include, respectively, the Grantor and its heirs, successors, personal representatives, executors and assigns, as well as the Grantee and its successors and assigns.
8. This Conservation Easement may not be modified or amended except by execution and recording of a written instrument signed by the Grantor, the Grantee and the Corps.
9. If any provision or specific application of this Conservation Easement is found to be invalid by a court of competent jurisdiction, the remaining provisions or specific applications of this Conservation Easement shall remain valid and binding.

10. This Conservation Easement shall be governed by and construed under the laws of the State of Wisconsin.
11. The Grantor releases and agrees to hold harmless, indemnify, and defend the Grantee and its employees, agents contractors, and invitees and the successors and assigns of each (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, or regulation, by any person other than the Indemnified Parties, in any way affecting, involving or related to the Property; (3) the presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; (4) the enforcement of any agreement(s) made outside of this Conservation Easement between the Grantor and any party, other than the Indemnified Parties, related to the management of the property.

IN WITNESS THEREOF, the Grantor has caused this Conservation Easement to be executed on its behalf this _____ day of _____, 20____.

By: _____ (SEAL)

Jon C. Doe, Trustee

Grantor, Jon C. Doe and Jane M. Doe Revocable Trust dated May 16, 2012

By: _____ (SEAL)

Jane M. Doe, Trustee

Grantor, Jon C. Doe and Jane M. Doe Revocable Trust dated May 16, 2012

STATE OF WISCONSIN)
) SS.
_____ COUNTY)

Personally appeared before me this _____ day of _____, 20____, the above named Jon C. Doe and Jane M. Doe, Trustees for The Jon and Jane Doe Revocable Trust dated May 16, 2012, and to me known to be the persons who executed the foregoing Conservation Easement and acknowledged that they executed and delivered the same as for the act and deed of the Grantor.

*
Notary Public, State of Wisconsin
My commission (expires) (is) _____

This instrument was drafted by:
State of Wisconsin
Department of Natural Resources

*Names of Grantor(s) must be typed.

IN WITNESS THEREOF, the Grantee has caused this Conservation Easement to be executed on its behalf this _____ day of _____, 20____.

State of Wisconsin
Department of Natural Resources
for the Secretary

By: _____(SEAL)
Dan Helsel
Waterways Program Director

State of Wisconsin)
) ss.
Dane County)

Personally came before me this _____ day of _____, 20____, the above named Dan Helsel, Waterways Program Director, Bureau of Waterways, State of Wisconsin Department of Natural Resources, to me known to be the person who executed the foregoing instrument and acknowledged that he executed and delivered the same as for the act and deed of said Department of Natural Resources.

Aubrey Johnson
Notary Public, State of Wisconsin
My Commission (expires)(is) _____

CONSENT TO EASEMENT BY LIEN HOLDER

(name of person or institution)

being the owner and holder of a certain _____

(lien, mortgage, land contract, etc.)

which is _____

(insert recording data: doc.#, volume, page, etc.)

against the Conservation Area, does hereby join in and consent to said conveyance free of said lien.

IN WITNESS THEREOF, the hands and seals of any person joining in and consenting to this Conservation Easement on the day and year first written.

_____ (SEAL)

_____ (SEAL)

STATE OF _____)
) ss.
_____ COUNTY)

Personally appeared before me this _____ day of _____, 20____, the above named _____ to me known to be the person(s) who executed the foregoing Conservation Easement and acknowledged the same.

*

Notary Public, State of Wisconsin

My commission (expires) (is) _____

This instrument drafted by:
State of Wisconsin
Department of Natural Resources

EXHIBIT A
EASEMENT AREA LEGAL DESCRIPTION

EXHIBIT B
INGRESS AND EGRESS RIGHT OF WAY