

**AGREEMENT FOR
PROJECT MANAGEMENT SERVICES FOR
SHORELINE PROJECT**

THIS SHORELINE PROJECT AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2013 by and between the Grand Traverse Regional Land Conservancy, a Michigan non-profit corporation (the “The Conservancy”), 3860 North Long Lake Road, Suite D, Traverse City, MI 49684, and the Township of Acme, a Michigan municipal corporation (the “Township”), of _____.

RECITALS:

A. The Conservancy and the Township have worked together on the “Acme Township Shoreline Project,” (the “Shoreline Project”).

B. Funding for the Shoreline Project has come from the Michigan Natural Resources Trust Fund ("MNRTF"), the Conservancy, and the Township.

C. Several of the properties that make up phases II and III (described in Exhibit A) of the Shoreline Project have buildings, structures, and parking lots on them that need to be removed or demolished. As a condition of MNRTF funding, the MNRTF is requiring removal of these buildings or structures. The properties will also require grading and in the case of the former Mountain Jack’s site, the installation and/or rehabilitation of retaining walls along a dock shared with East Bay Harbor Company. These additional activities are referred to as “Related Activities” in this Agreement.

D. The Conservancy desires to facilitate the demolition and/or removal of structures from the properties, and other related activities in order to facilitate and expedite the redevelopment of the project site into park land for the use and enjoyment of the Shoreline Project by current and future generations of residents and visitors.

E. To this end, the Conservancy offered to serve as the Township’s agent for purposes of coordinating the demolition and/or removal of structures and other Related Activities from the properties for the Shoreline Project and the Township has agreed.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, and in reliance upon the recitals set forth above, the parties agree as follows:

1. Demolition/Removal of Structures and Related Activities. The Conservancy agrees to act as the agent for the Township in procuring bids and overseeing contractors for the demolition and/or removal of structures on the Property. The bid specifications for the project are attached to this Agreement as Exhibit A. Through this Agreement, the Conservancy is authorized to seek bids for the project, select qualified contractors for the project to recommend for final selection by the Township, and do all other necessary activities to facilitate the project as set forth in the bid specifications. Through this Agreement, the Township authorizes the Conservancy to undertake the actions necessary to implement the items set forth in Exhibit A as the Township’s agent, and the Conservancy is

authorized to obtain any necessary permits on behalf of the Township. To the extent necessary, the Township Supervisor and/or the Township Manager are authorized to sign all necessary documentation on the Township's behalf to facilitate the activities listed in Exhibit A.

2. Funding for Project. Funding for the activities listed in paragraph 1 shall come from funds raised by the Conservancy for the Shoreline Project. The Conservancy shall be authorized to expend monies for the activities listed in Exhibit A from the Shoreline Project funds. The Conservancy and Township agree to work together in order to seek other potential funds for the project, including but not limited to grants and other sources of governmental funding.

3. Insurance. Any contractor or entity selected to perform demolition shall carry insurance in an amount of at least ___ per occurrence and ___ aggregate. Both the Township and the Conservancy shall be added as additional insured to any policy. Any contractor working on the project shall also agree to indemnify the Township and Conservancy for any claim based on the contractor's actions on the property.

4. Monthly Update. The Conservancy shall provide the Township with a written update of progress on the project in advance of the monthly Township board meeting.

5. Role of Conservancy. The Parties acknowledge that the Conservancy is facilitating the Demolition/Removal of Structures and Related Activities by overseeing the selection, hiring and monitoring activities of contractors to do the actual work on the Shoreline Project properties. The Conservancy will not undertake the physical actions on the property itself.

6. Entire Agreement. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This Agreement shall not be altered, modified or changed unless in writing and executed by all parties hereto. This Agreement shall be binding upon the parties, their heirs, executors, administrators, personal representatives, successors and assigns.

7. Counterparts; Facsimiles. This Agreement may be executed in any number of identical counterparts, including faxed counterparts, each of which shall be considered an original but together shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties enter into this Agreement the day and year set forth above.

THE CONSERVANCY:

The Grand Traverse Regional Land
Conservancy, a Michigan non-profit corporation

By: _____

Glen A. Chown
Its: Executive Director

THE TOWNSHIP:

Acme Township

By: _____

Jay B. Zollinger
Its: Supervisor

**EXHIBIT A
PROPERTY**

OPTION TO PURCHASE REAL ESTATE

On this ____ day of February, 2013, Schmidt Land Company, a Michigan Co-Partnership, having an address at 402 East Front Street, Traverse City, MI 49684 ("Seller") in consideration of Five Thousand Dollars (\$5,000.00), the receipt and adequacy of which is hereby acknowledged, and in consideration of the mutual covenants and agreements contained in this Option to Purchase Real Estate ("Option"), grants to the Grand Traverse Regional Land Conservancy, a Michigan nonprofit corporation, having an address at 3860 North Long Lake Road, Traverse City, MI 49684 (the "Conservancy"), and its successors and assigns, the exclusive right and option to purchase fee title to vacant land ("Property") as described in Exhibit A which is attached hereto and incorporated by this reference and all rights, easements, and appurtenances thereunto belonging, located in Acme Township, Grand Traverse County, Michigan.

TERMS AND CONDITIONS:

- PURCHASE PRICE.** The total purchase price for the Property shall be **One Hundred Forty Thousand Dollars (\$140,000.00)**. Any consideration paid for this Option shall be credited to the purchase price at closing. The purchase price, less credits for the amount paid for this Option, and costs related to closing as specified in paragraph 7, below, shall be payable in full at closing.
- OPTION PERIOD.** This Option will remain in effect from the date of execution of this Option Agreement until **June 30, 2013**, unless the Option is exercised, renewed, extended in accordance with Paragraph 16 (Environmental Liability), or terminated prior to such date in accordance with the terms of this Option. In the event the Conservancy does not exercise the Option by June 30, 2013, then this Option shall be terminated pursuant to Paragraph 3, herein.
- TERMINATION.** In the event of termination of the Option pursuant to Paragraph 2 (Option Period), Seller shall retain the Option Consideration unless the reason the Option is terminated is due to events specified in Paragraph 10 (Title Defects); Paragraph 12 (Board Approval), Paragraph 13 (Preservation of Property), Paragraph 14 (Risk of Loss) or Paragraph 16 (Environmental Liability), in which case the Option Consideration made shall be refunded to the Conservancy within 14 days of notice of termination for the afore-identified reason.
- EXERCISE OF OPTION.** This Option shall be exercised upon delivery of a written notice to Seller in care of:

Ken Schmidt
402 East Front Street
Traverse City, MI 49684

For purposes of this agreement, delivery shall constitute either personal delivery or mailing written notice to the above address by first class mail. If notice is sent by mail, the delivery date shall be the date that the letter is postmarked.

- EVIDENCE OF TITLE UPON EXERCISE OF OPTION.** A standard ALTA owner's title insurance commitment has been provided to the Conservancy at the Conservancy's expense. An updated title insurance commitment shall be provided to the Conservancy at the Seller's expense upon Exercise of Option. The updated title insurance commitment shall evidence Seller's ability to deliver marketable title at closing.
- CLOSING DATE.** Closing shall be within fifteen (15) days from the date the updated title insurance commitment evidencing marketable title is provided to the Conservancy. Closing may be held in escrow through an agent designated by the Conservancy or at a mutually acceptable place.

7. **DOCUMENTS FOR CLOSING**. At closing, the Seller shall deliver an executed Warranty Deed, title insurance, and any affidavits or documents required by the title insurance company. The Warranty Deed shall convey good, insurable and marketable title to the property, free and clear of all liens, and subject to any easements, restrictions and other exceptions of record. The title insurance, deed and other documents to be prepared by Seller for closing must be submitted to Conservancy legal counsel at 3860 North Long Lake Road, Suite D, Traverse City, Michigan, 49686, at least fifteen (15) days before closing.
8. **CLOSING EXPENSES**. Seller shall pay the cost of any transfer tax, title insurance, and Seller's own attorney's fees. Seller shall pay one-half of the cost of preparation of closing documents, and any escrow or closing fees. The Conservancy will pay any customary recording fees and one half the cost of preparation of closing documents and any escrow or closing fees.
9. **TAX PRORATION**. Property taxes shall be prorated to a date ninety (90) days prior to the closing date.
10. **TITLE DEFECTS**. The Conservancy shall be allowed thirty (30) days after receipt of a title insurance commitment on the Property to examine the title insurance commitment and make any objections to title. The Conservancy shall notify Sellers of any objections in writing or the objections will be deemed to be waived. If any objections are made, Sellers shall have fifteen (15) days from receipt of the notice to correct the title. During this time, Sellers will use due diligence in pursuing all reasonable efforts to correct the title problems, including bringing all necessary quiet title actions or other lawsuits.

Closing may be postponed pending correction of title but will take place within fifteen (15) days after the Conservancy receives written notice of the correction of title, or such other date as may be mutually agreeable to Sellers and the Conservancy. If title is not corrected within fifteen (15) days as provided for in this Option, the Conservancy may elect to: (1) Accept title to the property as it then is; (2) Declare this Option null and void and obtain a refund of all Option payments and Renewal Payments made; or (3) Allow the Sellers additional time to correct the title defect.

11. **BARGAIN-SALE**. It may be the Seller's intent to sell the Property at a "bargain-sale" arrangement and make a charitable contribution equivalent to the difference between the true fair market value of the Property, as determined by a qualified appraiser, and the agreed upon purchase price stated in this Option. The Conservancy makes no representation or warranty that this transaction will qualify as a "bargain sale" under state or federal law. Sellers agree that the cost of any appraisal update is their responsibility and that Seller shall not be entitled to any future adjustments to the Purchase Price on the basis of any appraisal update.
12. **BOARD APPROVAL**. This Option agreement is contingent upon the Conservancy's Board of Directors' approval. The Conservancy will seek approval for the terms of this Option agreement at the next regularly scheduled Board meeting on February 28, 2013. If the Board does not approve the Option agreement within thirty (30) days after execution of the Option, this Option agreement shall be considered null and void, and any monies paid as consideration shall be refunded to the Conservancy.
13. **PRESERVATION OF PROPERTY**. Sellers agree that the Property herein described shall remain as it now is until closing and that Sellers will prevent and refrain from any use of the property for any purpose or in any manner which would adversely affect the Conservancy's intended preservation or use of the Property. In the event of such

actions, the Conservancy may, without liability, refuse to accept the conveyance of title, in which event the Option consideration shall be refunded, without penalty.

14. **RISK OF LOSS.** All risk of loss or damage to the Property will pass from Seller to Conservancy at closing. In the event of loss or damage, the Conservancy may, without liability, refuse to accept the conveyance of title and all Option money paid shall be returned to the Conservancy.
15. **RIGHT OF ENTRY, INSPECTION AND LIMITED USE.** The Conservancy, and its employees, contractors, agents, assigns, and invitees shall have the right to enter upon the property at any time for inspection, inventory, scientific study, testing, research, surveying, fundraising, and other reasonable purposes related to this Agreement or the Conservancy's intended future use and management of the Property, provided such use does not interfere with the Seller's use of the Property. This right to use the Property shall also include, but not be limited to, the right to construct or place signs on the Property and the use of the Property for fundraising purposes.
16. **ENVIRONMENTAL LIABILITY.** Seller warrants that it has not caused any release of hazardous or toxic substances during its ownership and use of the Property, except as Seller discloses to the Conservancy within thirty (30) days of the date of this Agreement. Seller warrants that it knows of no condition, release, storage, use or disposal of hazardous or toxic substances on the property, except as Seller discloses to the Conservancy within thirty (30) days of the date of this Agreement.

Upon acceptance of this Agreement, the Conservancy or its employees, agents, or contractors have the right to enter and inspect the Property and perform a Phase I environmental evaluation, at the Conservancy's expense, to be completed prior to closing. If the Phase I evaluation reveals that a Phase II environmental evaluation is warranted, then the Conservancy shall notify Seller by writing at least thirty (30) days before closing. Closing may at the Conservancy's election be postponed until the Conservancy can complete such Phase II study.

If it is determined that the Property contains any "release" or "facility" as defined by Part 201, NEPA, M.C.L. 324.20101 et seq., then the Conservancy may: (1) Declare this Option null and void and obtain a refund of all Option Payments made; or (2) At its expense, cause a Baseline Environmental Assessment to be conducted and filed with the Michigan Department of Environmental Quality ("MDEQ") as provided by Part 201 and proceed with the purchase of the Property.

The Conservancy does not accept or assume any condition or liability for any such release or facility, hazardous substances, or any other contamination on the Property that existed before the date of closing, and does not assume any obligation or liability for such condition that has been caused or exacerbated by Seller or other person or entity. Further the Conservancy does not release any claim it may have against Seller for any such condition or release, hazardous substances, or contamination.

17. **LIABILITY / INSURANCE.** The Seller shall have no liability for loss or damages to any person or property arising solely out of Conservancy's or Conservancy's agents, assigns, or invitees' negligent or intentional conduct during the entry upon the Property and/or limited use as specified in paragraph 15 above. Conservancy agrees to release, indemnify and hold harmless the Sellers for any such loss or damage. The Conservancy will not release, indemnify, or hold harmless the Sellers for loss or damages to any person or property arising out of entry or activity by an unauthorized third party.

- 18. **ASSESSMENTS AND ENCUMBRANCES.** All assessments and encumbrances which are a lien against the Property at the time of conveyance to the Conservancy will be satisfied of record by Sellers at or before the transfer of title.
- 19. **BINDING EFFECT.** The terms and conditions of this Option shall apply to and bind the heirs, executors, administrators, successors, and assigns of Sellers.
- 20. **DELIVERY.** Seller shall deliver possession of the Property to Conservancy at closing.
- 21. **REMEDIES.** Failure to comply with any term of this agreement shall constitute a breach of this agreement. In addition to any other remedy specifically set forth in this Option, the Conservancy has the right to enforce the provisions of this Option through an action for injunctive relief or damages or other proceedings in law or equity. This includes, but is not limited to, the right to require restoration of the Property to its condition at the time this Option was granted. The election of any one available remedy shall not constitute a waiver of other available remedies.
- 22. **ASSIGNMENT and RECOGNITION.** The Conservancy may assign this Option and the rights and obligations contained herein to another party or entity (Assignee) at the Conservancy's discretion. The Option may be assigned in full or in portions. Upon assignment, the Assignee shall pay the Conservancy the amount equal to any and all monies paid by the Conservancy to the Sellers as Option Consideration or Renewal Payments.

As part of the assignment and consideration for this Option and by acceptance thereof, the Assignee agrees to erect and maintain on the Property a permanent plaque or other appropriate marker bearing a statement recognizing that the property was acquired with the assistance of the Grand Traverse Regional Land Conservancy. The Conservancy also retains the right to name other major donors on said plaque that assisted the Conservancy with the acquisition of the property.

- 22. **ENTIRE AGREEMENT.** This Option sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

SELLER:

 Ken Schmidt
 Its:

STATE OF _____)
)ss
 COUNTY OF _____)

Acknowledged before me on this ____ day of February, 2013, by _____.

 , Notary Public
 County, _____
 My Commission Expires: _____
 Acting in _____ County, _____

