

**MEMORANDUM OF AGREEMENT
BETWEEN THE TOWN OF DUNN AND
NATURAL HERITAGE LAND TRUST, INC.**

This agreement is made this 20th day of October, 2008 by and between the Town of Dunn, a Wisconsin municipal corporation (hereinafter the "Town") and the Natural Heritage Land Trust, Inc., a Wisconsin non-stock corporation (hereinafter the "Land Trust").

WHEREAS, the Town has established a purchase of development rights program pursuant to which the Town acquires holder's interests in conservation easements for the purpose of retaining agricultural and open space lands in the town; and

WHEREAS, the Land Trust conducts a land conservation program which includes the acceptance and holding of lands subject to conservation easements; and

WHEREAS, the Town and the Land Trust desire to work cooperatively in order to ensure that the conservation easements obtained by the Town are enforceable in perpetuity by having enforcement power over such easements simultaneously held by the Town and the Land Trust; and

WHEREAS, the parties desire and intend to set forth the more specific terms under which they propose to cooperatively acquire, hold, monitor, and enforce conservation easements acquired under the Town's Rural Preservation Program.

NOW THEREFORE, the Town and the Land Trust agree as follows:

GENERAL AGREEMENT

1. The Land Trust and the Town agree to cooperate in the acquisition of conservation easements pursuant to the Town's Purchase of Development Rights Program. The Land Trust agrees to co-hold conservation easements proposed to be acquired by the Town pursuant to the Program subject to the approval of each proposed conservation easement by the Land Trust's board of directors and the funding of the monitoring and enforcement endowment for each conservation easement in an amount determined by the Land Trust.
2. The Town agrees to provide the Land Trust with a written request within 21 days of the expected closing, that the Land Trust accept a co-holder's interest in each conservation easement the Town proposes to acquire, including rationale for inclusion in the Program, a draft conservation easement for the site, a map of the subject site and a proposed monitoring and enforcement endowment. Unless otherwise negotiated, the endowment will be ~50% of the Natural Heritage Land Trusts' calculated cost of monitoring and enforcement.
3. The Land Trust agrees to review each such request and to provide the Town with a written response within 21 days of receipt of the Town's request.

4. The Land Trust designates its Executive Director as its representative for purposes of this agreement. The Town designates its Land Use Manager as its representative for purposes of this agreement.

CONSERVATION EASEMENT ACQUISITIONS

5. The Town shall be responsible for the preparation of a Baseline Documentation Report at its expense that accurately evidences the conditions of the affected property and to provide the Report to the Land Trust for its review at least 10 days prior to the closing on the Conservation Easement.
6. The Town shall be responsible to obtain evidence of title for each Conservation Easement in a form acceptable to the land Trust and shall be responsible for the scheduling and conduct of the closing on each Conservation Easement acquisition, including the payment of the Purchaser's cost of closing. Unless otherwise negotiated, the Land Trust will pay \$1.00 for their interest in the Conservation Easement.

MONITORING AND ENFORCEMENT

7. The Town shall send a letter to the owner of each parcel over which the Town and the Land Trust hold a Conservation Easement informing them of the annual monitoring inspection at least 3 weeks prior to the inspection.

The Land Trust and Town will jointly conduct the monitoring inspection, which will occur yearly in October or November.

The Land Trust shall prepare a report of each such inspection within 30 days and provide a copy of such report to the Town for approval/signature. Upon approval, the Land Trust will keep a copy on file. The Land Trust will send by priority mail with delivery confirmation a copy of the report to the owner of the subject property. The Land Trust will also mail the Town and other easement co-holders or granting agencies when applicable copies of the monitoring report.

8. The Town and the Land Trust each agree to notify the other in the event that either receives information suggesting any actual or prospective change in the ownership or use of any site subject to a conservation easement or any actual or threatened violation of any such conservation easement. The Town and the Land Trust agree to cooperate in the investigation of any violation of a conservation easement under this agreement and to take appropriate steps to prevent or remedy such violation. The Town and Land Trust agree to make all best efforts to resolve any such violation. The Town and Land Trust agree to make all best efforts to resolve any such violation without recourse to litigation. In the event that litigation is necessary to enforce any such conservation easement, the Town and Land Trust shall endeavor to act jointly in engaging counsel and pursuing enforcement. However, each party may act independently in such an enforcement action if the parties cannot agree on a common course of action. Neither party may compel the other to take any action in connection with the enforcement of any conservation

easement, nor can either party compel the other to compensate them for the costs of enforcement.

9. The authority to approve certain activities by the property owner is granted to the Town and Land Trust in each Conservation Easement. Such approval shall be granted or denied in a letter to the property owner within a period of forty-five (45) days from the receipt of request or by a time period required in the conservation easement covering the subject property. The Town and Land Trust shall notify each other, in writing, of any request for approval required by either Grantee within 14 days of its receipt. The decision to approve or deny a request shall be jointly agreed upon by both the Town and Land Trust, following consultation. Neither party shall approve or deny a request unilaterally. Each party will present its opinion, in writing, to the other. If either party fails to provide an opinion within the 90-day period, that party shall have effectively waived its right to approval, and the other party's decision will stand. If one party in writing, approves the request, while the other party, in writing, denies the request, the request shall be denied. Should the parties jointly fail to provide the property owner with a written response within a 45-day period, the request shall be deemed disapproved.
10. Any reimbursement of legal fees or award of damages to the Town and/or the Land Trust shall be returned proportionally to the Town or Land Trust.
11. By August 1st of each year, the Land Trust will provide the Town with an annual account summary of the Land Trust's Conservation Easement Enforcement Fund.
12. This Memorandum may be amended at any time by the agreement of both parties. No violation of this Memorandum shall affect any conservation easements restrictions. This Memorandum creates no third party rights.

Dated this 20th day of October, 2008

TOWN OF DUNN

By:

Edmond P. Minihan
Edmond P. Minihan, Town Chair

Attest:

Rosalind Gausman
Rosalind Gausman, Clerk Treasurer

NATURAL HERITAGE LAND TRUST

By:

Jeffrey J. Strabel Secretary, NHCT
Jeffrey J. Strabel

Attest:

Jin Welsh, executive director
Jin Welsh