

DECLARATION OF CONSERVATION RESTRICTIONS

THIS DECLARATION OF CONSERVATION RESTRICTIONS ("Declaration" or "Conservation Restrictions") is made on the 14th day of April, 2004, by THE BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY, a Michigan constitutional body corporate, whose address is 3020 Seibert Administration Building, Kalamazoo, Michigan 49008-5134, referred to as "WMU."

RECITALS

A. WMU has legal jurisdiction over certain real property transferred to it by the State of Michigan pursuant to Public Act 316 of the Public Acts of 1975 as amended by Public Act 272 of the Public Acts of 1976, which property is located in Section 30, Town 2 South, Range 11 West, in the City of Kalamazoo, Kalamazoo County, Michigan, and referred to herein as the "Asylum Lake Preserve" or the "Preserve" or "Asylum Lake property."

B. Public Act 316 of the Public Acts of 1975 provided that the Preserve be subject to the restriction that it be used "solely for public park, recreation, or open space purposes, except that the legislature, by statute, may authorize WMU to utilize the property for some other public purpose." WMU has agreed to restrict the use of the Preserve in accordance with these Conservation Restrictions.

C. Michigan Compiled Laws 324.2140 et seq. authorizes the execution and recording of Conservation Restrictions as contained herein.

D. In 1998, WMU and the City of Kalamazoo ("City"), as part of the overall plan for developing and locating Western Michigan University's College of Engineering and Paper & Printing Science Research facility in the Business, Technology and Research Park, agreed to the following:

1. Private sources and the City of Kalamazoo will create a \$1.5 million endowment fund for the preservation and conservation of the Asylum Lake Preserve to permanently protect the Preserve, including efforts to reduce and reverse environmental degradation and to develop passive recreational opportunities, and

2. Create protective covenants.

E. It is the intent of WMU that Asylum Lake Preserve be an asset to the greater Kalamazoo community and be utilized as allowed under this Declaration of Conservation Restrictions.

F. In 1998, the Kalamazoo Community Foundation ("Foundation") established the Asylum Lake Preservation Fund toward the goal of permanently protecting the Preserve for passive public recreational use. This fund was established with \$1,300,000 from the Foundation and \$200,000 from the City and distributions are to include costs for development, operation, and maintenance of the Preserve for passive recreational use.

G. In developing this Declaration, WMU has considered many documents and correspondence, including but not limited to: Public Act 316 of the Public Acts of 1975, as amended by Public Act 272 of the Public Acts of 1976; The City of Kalamazoo Proposal of November 30, 1998 to WMU, entitled "WMU and Kalamazoo: A Partnership"; The February 5, 1999 letter from WMU President Elson S. Floyd to the Mayor of Kalamazoo; The joint WMU/City of Kalamazoo letter of October 27, 1999 to the Kalamazoo Foundation; The December 21, 1999 letter from the Kalamazoo Community Foundation to the City and WMU; and the June 20, 2003 letter from the Kalamazoo City Manager to the WMU Vice President for Business and Finance. These documents, as well as copies of other relevant documents and reports are available at the WMU Archives as File [name/number].

H. WMU desires to establish Conservation Restrictions in accordance with applicable law and its agreement with the City of Kalamazoo toward the goal of permanently protecting the Asylum Lake property, including efforts to reduce and reverse environmental degradation and to develop passive recreational opportunities. This goal also includes the following interdependent goals, referred to as the "Conservation Purposes":

1. Promote Ecosystem Integrity and Natural Aesthetics: Maintain the Asylum Lake Preserve as green space and wildlife habitat. Policies should be adopted that promote ecosystem integrity and natural aesthetics. Selected landscape features such as woodlands, old fields, wetlands and lake should be protected from further degradation and enhanced through carefully considered restorative action. Objectives include converting land previously used for agriculture to prairie and converting portions of old fields to oak savanna. Special attention should be given to water quality in Asylum Lake and protection of the Asylum Lake watershed.
2. Ensure Passive Recreation: Such activities should not have a detrimental impact on the landscape and should not entail significant infrastructure development. Passive recreational activities are defined as those which create opportunities for a high degree of interaction with the natural environment. Appropriate activities include hiking, wildlife watching, cross-country skiing, and running. Inappropriate activities include competitive sports and mechanized recreational conveyances.
3. Support Research and Education: The Asylum Lake Preserve should support and enhance the academic programs of WMU by providing a site for field studies, research, and community outreach. Such activities should be conducted in a manner that is consistent with and furthers the above-described Conservation Purposes.

I. The Preserve shall continue to be managed by WMU consistent with these Conservation Purposes.

NOW, THEREFORE, WMU declares and covenants that to the extent provided for by applicable law, contractual obligations, and other legal requirements and restrictions, the Asylum Lake Preserve shall be subject to the following restrictions, restrictive covenants and conditions. This instrument is exempt from taxation pursuant to MCLA 207.505(h) and MCLA 207.526(h)(i).

THEREFORE, WMU also declares that it is undertaking no new financial obligations beyond those it has under Public Act 316 (1975, as amended in 1976). Expenditures for the Asylum Lake Preserve shall be limited to the annual earnings of the Asylum Lake Preservation Fund and any additional private donations or grant money. Any budgeted University funds that WMU may choose to allocate in pursuit of the Conservation Purposes and related activities are completely at its discretion.

J. Recitals. The recitals are incorporated herein by reference, and are acknowledged to be true and correct and reflect the intent of WMU in declaring these Conservation Restrictions.

K. Definitions. Except as specifically defined in this document, words shall have their ordinary and common meaning and usage.

1. "Accessory improvement" includes without limitations any sign, bridge, culvert, dam, drain, barricade, viewing platform, observation deck and railing, gate, fence, or other improvement considered to further the Conservation Purposes.
2. "Building" means any structure that is permanently attached to the land with at least one floor, regardless if that floor is at, above or below grade level, and a roof.
3. "Motor vehicle or vehicle" includes any modes of transportation included within the definition of motor vehicle or vehicle, without the limitations, under the Motor Vehicle Code, MCL 257.1 et seq., as amended.
4. "Motorized recreational vehicle" includes without limitations any motor vehicle that is designed or capable of being driven on non- public trails, paths or terrain, scooter, go-kart, golf cart and utility cart, or other form of recreational vehicle, regardless of whether that vehicle is titled or registered.
5. "Mechanized recreational conveyance" includes without limitations, any bicycle, scooter, roller blades, roller skates or skateboard, but does not include cross country skis or snowshoes.
6. "Paved roads, paved paths, or paved parking lots" mean those constructed with non-porous materials, including, but not limited to, asphalt and concrete.
7. "Powered recreational toy" includes without limitation any remote controlled, electric, gas or powered vehicle, scooter, boat, airplane, or other toy.

The definitions herein shall also apply to any implementing documents, protocols, and/or policies.

L. Restrictions on Use. In declaring these Conservation Restrictions, and in addition to any limitation under applicable law, WMU imposes and establishes the following restrictions, subject to and as permitted by applicable law, on the use of the Preserve:

1. No buildings or structures for housing, business, commercial, or industrial development or use; no new buildings or large or visible structures; no telecommunications towers or above-ground transformers or substations; and no paved roads, paved paths, or paved parking lots to accommodate the general public shall be placed or erected.
2. The general topography and natural condition of the Preserve shall be restored, maintained, or improved in furtherance of the Conservation Purposes. No fill, dredging, alteration, modification, or development shall occur on any portion of the Preserve, except as may be permitted or required by WMU to undertake actions reserved to it herein. No use shall be made of the Preserve which may materially alter the natural features of the Preserve inconsistent with the Conservation Purposes.
3. No boat, sail or surfboard, recreational flotation device, motor vehicle, motorized recreational vehicle, mechanized recreational conveyance or mechanically powered recreational toy is permitted
4. No camping, bonfires or open burning is allowed.
5. No sporting, competitive or organized athletic games, race or activity are permitted.
6. No artificial lighting shall be permitted on the Preserve.
7. No activity or use inconsistent with the Conservation Purposes shall be permitted.

M. Exceptions and Rights Reserved by WMU. Notwithstanding the restrictions under Section 3, WMU retains and reserves the following rights and/or exceptions, including the use of vehicles, equipment, and/or other items to perform them:

1. To construct and maintain unpaved pedestrian trails and walkways, unpaved parking lots, and other similar improvements for access to the Preserve, including those which are accessible to individuals with disabilities as defined by the Americans with Disabilities Act.
2. To construct small maintenance buildings.
3. To construct and maintain accessory improvements such as signs, bridges, culverts, dams, barricades, viewing platforms, railings, gates, and fencing. Signs shall be limited to non-commercial signs of an informative nature relating to educational and recreational activities permitted or prohibited in the Preserve.
4. To construct and install, and to repair, maintain and restore utility services under and for the Preserve, including electricity, telecommunications, gas, water, and storm and sanitary sewer services. All of these activities shall be carried out with care to preserve vegetation and wildlife and to restore disturbed land to its previous state.

5. To cut, trim and remove trees and foliage in accordance with good horticultural practices as may be required to facilitate other permitted activities or as may be reasonably required to remove or eliminate dangerous conditions.

6. To conduct periodic prairie burns.

7. To access the Preserve, including using motor vehicles for maintenance or other appropriate management and operational purposes, and to maintain any structure and improvement, including those currently existing, and those constructed in the future to further the Conservation Purposes; and to restore, remove, repair, and maintain any such structure or improvement if it is destroyed or damaged by storm or other casualty, or otherwise in need of repair or maintenance.

8. To conduct any activity or use in the Preserve that is otherwise restricted or prohibited when an emergency arises, including the abatement of a dangerous condition likely to cause injury to an individual or the Preserve.

9. To employ those habitat, structural, and managerial practices that are required to effectively pursue the Conservation Purposes. Plans developed by WMU to improve the water quality of Asylum Lake and Little Asylum Lake shall include, and be included in, existing and planned Kalamazoo-area programs to manage non-point or point source pollution in the West Fork Portage Creek sub-watershed.

N. Binding. This Declaration of Conservation Restrictions is intended to run with the land and shall be binding upon WMU, its present and future boards, its successors and assigns and shall constitute a servitude upon the Preserve.

O. Severability. Whenever possible, each provision of this document shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this document is held to be invalid, illegal or unenforceable under any applicable law, that ruling or decision shall not invalidate this document or any remaining provision.

P. Termination. The intention to terminate this Declaration must be announced at an open meeting of the Policy and Management Council ("the Council"). See Section 8 herein. A hearing on said intention shall occur at the next meeting of the Council, which shall be scheduled within a reasonable time. At least 15 days and not more than 30 days before any hearing to terminate this Declaration, WMU shall place a public notice in the major local paper noticing the public hearing of said meeting at which public comment will be allowed concerning the intention to terminate. The Council shall make findings of fact regarding said intention to terminate this Declaration. A vote to support termination shall require a 3/4 vote of the Council. The action of the Council shall be presented to the WMU Board of Trustees at its next scheduled meeting within Kalamazoo County and at which public comment shall be allowed.

Q. Management Framework; Miscellaneous; Amendment. The attached Management Framework for the Asylum Lake Preserve, which has been developed after consultation with members of the community, is intended to effectuate this Declaration. Any violations of the Conservation Restrictions should be reported to

the WMU's Vice President for Business and Finance or other person designated by WMU, who shall direct the information to the appropriate management body or personnel. The provisions of this Declaration may be amended only by written instrument as recommended by the Policy and Management Council after at least one public hearing and approved by the WMU Board of Trustees at its next scheduled meeting within Kalamazoo County, provided that any such amendment shall be limited to those matters as may be reasonably required to further the Conservation Restrictions and/or for related purposes consistent with applicable law or rights of WMU. Any such amendment shall be recorded.

R. Privileges and Immunities Preserved. Except for the Restrictions on Use of the Asylum Lake property as set forth herein and any amendments thereto, WMU expressly reserves all of its other rights, defenses, and immunities provided to it by law and contract.

S. Authorization and Approval. The execution of this instrument was approved and authorized by WMU at its Board of Trustees meeting held on [date]. The Board of Trustees Resolution of Approval and the Asylum Lake Preserve Management Framework are attached hereto.

IN WITNESS WHEREOF, WMU has executed this instrument as of the date set forth above.

WITNESSES: WMU:
THE BOARD OF TRUSTEES OF
WESTERN MICHIGAN UNIVERSITY

By: _____

Its: _____

STATE OF MICHIGAN)
)SS
COUNTY OF KALAMAZOO)

On this _____ day of _____, 2004, before me personally appeared _____, to me personally known, who being by me sworn, said that he is the _____ of The Board of Trustees of Western Michigan University who executed this instrument; that this instrument was signed on behalf of the University by authority of its board of trustees; and that this instrument is acknowledged as the free act and deed of the University.

Notary Public
Kalamazoo County, State of Michigan
My Commission Expires: _____

Attachments: The Asylum Lake Preserve Management Framework
WMU Board of Trustees Resolution of Approval