

STATE OF NEW YORK
SUPREME COURT : COUNTY OF JEFFERSON

THOUSAND ISLANDS LAND TRUST, INC.,

Plaintiff,

-against-

Index No.: EF2024-00001583

RON CLAPP and CARLETON VILLA, LLC,

Defendants.

VERIFIED AMENDED COMPLAINT

Plaintiff, THOUSAND ISLANDS LAND TRUST, INC. (“TILT”), by and through its attorneys, Rupp Pfalzgraf LLC, as and for its Amended Complaint against Defendants, RON CLAPP and CARLETON VILLA, LLC (“Defendants”), alleges as follows:

PARTIES

1. At all times relevant to this action, TILT is and has been a not-for-profit corporation with a principal place of business in Jefferson County in the Town of Clayton, New York. TILT is a not-for-profit conservation organization as that term is defined under section 49-0303 of the N.Y. Environmental Conservation Law (the “ECL”) because it is organized to conserve and preserve real property and has the power to acquire interests in real property.

2. At all times relevant to this action, Defendant Carleton Villa, LLC (“Carleton Villa”) is and has been a domestic limited liability company duly authorized to do business in the State of New York.

3. At all times relevant to this action, Defendant Ron Clapp is and has been a resident of the State of Florida.

JURISDICTION AND VENUE

4. Under N.Y. CPLR § 301 and Article 49, Title 3 of the ECL, this Court has jurisdiction over this action because it concerns rights and interests in real property and a conservation easement located within the State.

5. Under N.Y. CPLR §§ 301 and 302, this Court has jurisdiction over the parties because Defendants are domiciliaries of New York State and/or own or have an interest in real property situated within the State, as well as because Defendants committed acts giving rise to this action in this State.

6. Under N.Y. CPLR §§ 503 and 507, venue in the County of Jefferson is proper because the wrongful acts described herein occurred in this county and because this action concerns real property that is located within this county.

FACTUAL BACKGROUND

7. At all times relevant to this action, Defendant Carleton Villa is and has been the owner of the parcel of real property located on Carleton Island in the Town of Cape Vincent, New York and designated with Tax Map No. 39.27-1-16 (the “Villa Property”).

8. At all times relevant to this action, Defendant Ron Clapp is and has been a member and/or principal of Defendant Carleton Villa.

9. At all times relevant to this action, TILT is and has been the grantee of a conservation easement (the “Conservation Easement” or the “Easement”) encumbering real property on Carleton Island (the “Conservation Property”). A copy of the deed creating the Conservation Easement — entitled “Deed of Conservation Easement in Gross Carleton Island Shoreline Buffer Zone” — is attached hereto as **Exhibit A**.

10. At all times relevant to this action, TILT is and was the owner of real property located on Carleton Island in the Town of Cape Vincent, New York and designated with Tax Map Nos. 28.00-1-1.127 and 28.00-1-1.125 (the "TILT Property").

11. The Conservation Property includes the entirety of the Villa Property and the TILT Property.

12. TILT also owns the parcel adjoining the Villa Property and the TILT Property designated with Tax Map No. 39.27-1-14 and known as the "Fort Haldimand Preserve." This is separate and apart from the TILT Property identified in paragraph 10 above.

13. The Conservation Property, including the Villa Property and the TILT Property, are also subject to restrictive covenants set forth in an instrument titled "Declaration of Restrictions of Carleton Island" (the "Declaration"), a copy of which is attached hereto as **Exhibit B**.

14. In August of 1986, Patten Corporation Northeast, a prior owner of the Conservation Property, created both the Conservation Easement and the Declaration.

15. The land encumbered by the Conservation Easement and the Declaration — i.e., the Conservation Property — is defined in both instruments in accordance with the Map of Carleton Island made by Rhinevault Surveyors dated June 2, 1986 and recorded in the Jefferson County Clerk's Office on July 9, 1986 (the "Carleton Island Map"). A copy of said map is attached hereto as **Exhibit C**. The Conservation Property consists of Lots 1 through 20 on the Carleton Island Map. The Villa Property is shown as Lot 1 on said map.

16. The development of Carleton Island has been a matter of significant public concern and regulatory oversight for decades. In the late 1970s, state agencies and local officials expressed strong interest in having New York State acquire Carleton Island or portions thereof for preservation purposes due to its recognized historic and environmental significance.

17. In 1978, the New York State Parks and Recreation Division for Historic Preservation determined that Fort Haldimand/Carleton Island was the site of sufficient historic and archaeological importance to merit nomination to the National Register of Historic Places.

18. During this same period, the St. Lawrence-Eastern Ontario Commission (“the Commission”) closely monitored proposed plans to subdivide Carleton Island. Commission memos from the 1970s raised concerns about the potential adverse environmental, scenic, and historic impacts of large-scale development on the island and emphasized the need for careful planning, deed restrictions, and conservation measures to mitigate these risks.

19. Ultimately, in 1986, the Commission reached an agreement with Patten Corporation Northeast, the then-owner of the island, imposing binding obligations and restrictions on future development. These included conservation easements protecting sensitive areas like Fort Haldimand, the shoreline buffer zone, and an Indian burial site, as well as deed restrictions governing matters such as subdivision and construction on the island.

A. The Conservation Easement

20. This action is commenced in part to enforce the Conservation Easement (it is also commenced to enforce the Declaration, as discussed in Section B below). The Conservation Easement was recorded on September 5, 1986, in the Jefferson County Clerk’s Office at Book No. 1037 of Deeds at Page 296.

21. The Conservation Easement is a conservation easement as that term is defined under section 49-0303 of the ECL because it limits development, management, or use of the Conservation Property for the purpose of preserving or maintaining the scenic, open, and natural condition of Carleton Island in a manner that is consistent with the public policy and purposes set forth in section 49-0301 of the ECL.

22. The Conservation Easement establishes that “portions of the [Conservation Property] remain in a substantially undisturbed natural state and have significant woodland, wildlife, and aesthetic values.”

23. Moreover, the Conservation Easement states that the grantor, Patten Corporation Northeast, “desires to identify and to assure the preservation in perpetuity of the property’s significant natural elements, and to maintain its vegetative cover.”

24. Accordingly, the agreed-upon purpose of the Conservation Easement is to “preserve and protect in perpetuity the scenic, aesthetic, natural, woodland, wildlife habitat, wetland, watershed, successional vegetative features, and open space features and value of the [Conservation Property].”

25. In order to implement the agreed-upon conservation purpose, Patten Corporation Northeast agreed on limitations on the use of the Conservation Property. Among other limitations, Section 3 of the Easement prohibits the following uses and practices on the Conservation Property:

- (a) The construction or placement of any structures, permanent or temporary, with the exception of duck blinds, docks, and boathouses.
- (b) The cutting of more than 50% of the natural vegetation. Within any 300’ frontage there must be one contiguous strip of at least 100’ parallel and

perpendicular to the shore retained in natural vegetative condition. Except those lots of less than 200' frontage must retain a contiguous 50% of-said frontage in natural vegetative cover but said natural vegetative strip may be less than 100' in frontage.

(c) Temporary, seasonal or permanent occupancy of the shoreline buffer zone for residential purposes shall be prohibited.

26. To give force and effect to the Conservation Easement, Patten Corporation Northeast conveyed to the grantee of the Conservation Easement several affirmative rights. Specifically, Section 2 of the Easement empowers TILT with the following rights:

(a) To identify, to preserve and to protect in perpetuity the natural, wildlife, wetland, open space, aesthetic, scenic, successive vegetative, and woodland features and values of the property,

(b) To enter upon the property to inspect and to enforce the rights herein granted upon prior notice to grantor, their successors and assigns, in a manner that will not unreasonably interfere with the proper uses being made of the property at the time of such entry,

(c) The right to enforce the terms hereof by proceeding at law or in equity or as otherwise may be appropriate and to require the grantor, at the grantor's expense, to cease non-conforming uses and restore the [Conservation Property] to the conditions that exist on the date of this grant.

27. Further, Sections 5 and 6 of the Easement provide TILT enforcement rights as follows:

5. Enforcement Rights of Grantee. In the event of a violation of any term, condition, covenant, or restriction contained in this easement, after thirty (30) days' notice of violation to the grantor, the grantee may institute a suit to enjoin by temporary and/or permanent injunction such violation, or for damages for breach of covenant, or may take such other action as it deems necessary to insure compliance with the terms, conditions, covenants, and purposes of this easement: provided, however, that any failure to so act by the grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this easement in the future.

6. Restoration. Grantor further intends that should any prohibited activity be undertaken on the property, the grantee, except in the case of emergencies requiring immediate action, shall after 30 days of written notification of such violation have the right to cause the restoration of that portion of the property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. In such case, the cost of such restoration shall be borne by grantor, its successors or assigns.

B. The Declaration

28. This action also is commenced in part to enforce the Declaration. The Declaration was recorded on September 11, 1986, in the Jefferson County Clerk's Office in Book No. of 1038 Deeds at Page 211.

29. For the purpose of providing uniform restrictive covenants for the Conservation Property and to protect scenic and other conservation values, Patten Corporation Northeast, the owner of the Conservation Property at the time of conveyance of the Declaration, created restrictive covenants. Among other restrictions, the Declaration provides as follows:

4. The placement of trailers, mobile homes, or motor homes on the [Conservation Property] at any time for any reason is prohibited.

...

7. The dumping of ashes, trash, garbage and other unsightly material is prohibited.

...

9. Construction of all structures within the 100' shoreline buffer area as shown on [the Carleton Island Map], with the exception of duck blinds, docks and boathouses, is prohibited.

...

15. There shall be no commercial . . . excavation on any lot at any time.

...

16. There shall be no grading of land surface, excavation, or exhumation activity on any portion of Lots 1, 2, and 20 located within the Fort Haldimand Buffer Zone, i.e. within "limits of nominated lands" as shown on the [Carleton Island Map] without a minimum 30-day notice to [TILT]. All parties may be relieved from the responsibility of this notice requirement upon written approval by the New York State Historic Preservation Officer and a representative of the New York State Museum.

30. The purpose of the Declaration is and was to benefit the Conservation Property, then held by Patten Corporation Northeast, and to provide for the orderly and uniform development of such property consistent with protecting the conservation values and then-existing uses of the Conservation Property. Therefore, TILT is entitled to enforce the Declaration as the owner of the TILT Property and the Fort Haldimand Preserve.

31. Further, the circumstances of the Declaration demonstrate that Patten Corporation Northeast intended that the grantee of the Conservation Easement be entitled to enforce the Declaration. Therefore, TILT also is entitled to enforce the Declaration as the grantee of the Conservation Easement.

C. Violations in Defendants' Development Plan

32. On or about October 4, 2023, Defendants submitted to the Town of Cape Vincent a Special Use Permit Application seeking regulatory approval for a plan of development for the Villa Property (the "Development Plan"). A copy of said application is attached hereto as **Exhibit D**.

33. Defendants have submitted updated "Site Plans" to the Town of Cape Vincent as part of the permit application process. The most recent Site Plan submitted by Defendants is attached hereto as **Exhibit E** (the "Site Plan").

34. The Development Plan, as depicted by the Site Plan, will violate both the Conservation Easement and the Declaration. These violations are not merely incidental, but rather demonstrate a fundamental disregard for the conservation values and use restriction that TILT is obligated to protect.

35. The following structures depicted in the Site Plan would violate the prohibition on “structures” within Section 3(a) of the Conservation Easement:

- The “Beach Expansion”;
- Other structures associated with the beach, including structures mandated by the New York State Department of Health for bathing beaches;
- The “Floating Platform”;
- Suspected utility line(s) shown as a dotted line labeled “E”;
- The “Stone Retaining Wall”;
- The “mulch/gravel” path(s);
- Utilities necessary for the living spaces, including utility lines, utility boxes (with low-landscape screening surrounding), men’s and women’s accessible washrooms and bathrooms, on-site laundromat, covered seating/waiting area, and septic infrastructure;
- The “Cobblestone paved” path(s); and
- The “Community Garden.”

36. The term “structure” as used in the Conservation Easement, and as defined by the Court of Appeals, is not limited to buildings but encompasses “any production or piece of work artificially built up or composed of parts joined together in some definite manner.” *Joblon v. Solow*, 91 N.Y.2d 457, 464 (1998) (quoting *Lewis-Moors v. Contel of N.Y.*, 78 NY2d 942, 943)). This includes, but is not limited to the proposed paths, retaining walls, and other artificial improvements to the Villa Property.

37. The Site Plan depicts the removal of a large number of trees and/or other vegetation from the Villa Property, which would violate the limits on cutting natural vegetation in Section 3(b) of the Conservation Easement.

38. The twelve “cabins” depicted on the Site Plan would violate the prohibition of “trailers, mobile homes, or motor homes” within Section 4 of the Declaration.

39. Defendants’ proposed development is essentially a commercial venture akin to a hotel or resort. The site plan indicates that the property will be used to accommodate up to 196 patrons who will pay Defendants to vacation there. The New York State Building Code, which sets minimum requirements for building construction and operation, classifies hotels and resorts as “R-1” occupancies, which are defined as “occupancies containing sleeping units where the occupants are primarily transient in nature.” This classification underscores the commercial nature of these land uses, as they cater to transient occupants rather than permanent residents.

40. While the Declaration prohibits “trailers, mobile homes, or motor homes” Defendants’ proposed “cabins” are functionally similar structures in which people will eat, sleep, and perform other activities of daily living. The cabins, like mobile homes, are designed for habitation and would have comparable impacts on the Conservation Property.

41. Upon information and belief, the “cabins” proposed in Defendants’ development plan are equivalent to the mobile homes prohibited under Section 4 of the Declaration. The Site Plan provided by Defendants offers minimal detail regarding the construction and installation of these cabins. The reference photo in the Site Plan appears to be a mass-produced and pre-built cabin, these cabins are typically constructed on skids to facilitate transportation to the final site. Defendants likely intend to have these cabins built off-site and transported to Carleton Island. Moreover, upon information and belief, Defendants plan to place these cabins on gravel or concrete pads, rather than permanently affixing them to a foundation. This method of installation would render the cabins non-permanent and easily relocatable,

further blurring the distinction between the proposed structures and the mobile homes prohibited under the Declaration.

42. The language of Section 4 of the Declaration is clearly aimed at preventing the placement of mobile or temporary structures used for living accommodations on the Conservation Property. Absent evidence that the proposed cabins are designed to be permanently fixed to a foundation, there is no meaningful distinction between these pre-built, skid-mounted cabins and the prohibited mobile homes.

43. Attached below is the rendering from the Site Plan depicting a cabin that Defendants intend to place on the Conservation Property. Also attached below is a stock image of a mobile home that is built upon skids. Upon information and belief, the photo on the right is of a similar build to the cabins that Defendants intend to place on the Conservation Property. This side-by-side comparison demonstrates that the difference between the structures is in name only.



44. The construction necessary to effectuate the Development Plan as depicted in the Site Plan would violate the prohibition on dumping of ashes, trash, garbage or unsightly material within Section 7 of the Declaration.

45. The construction necessary to effectuate the Development Plan as depicted in the Site Plan would violate the prohibition on commercial excavation under Section 15 of the Declaration given that the excavation would be for the purposes of facilitating the commercial use of the Villa Property.

46. Defendants' violations in the Development Plan demonstrate a willful and wanton disregard for the conservation values protected by the Conservation Easement and Declaration and their clear intent to proceed with the Development plan despite the prohibitions contained in these instruments.

47. Upon information and belief, Defendants proposed development, including the increased usage as a quasi-marina, likely spillover of trash and debris from commercial living spaces, and heightened usage of the road, will have a negative impact on the Fort Haldimand Preserve Property, which is a property of significant historical value owned by TILT and adjacent to the Villa Property.

48. Upon information and belief, the violations in the Defendants' Development Plan, if left unchecked, will cause significant and irreparable harm to the scenic, aesthetic, natural, woodland, wildlife habitat, wetland, watershed, vegetation, and open space features and values of the Conservation Property. These violations will also impair TILT's ability to carry out its conservation mission and protect these features, values, and other important ecological resources on the Conservation Property.

D. Violations by Defendants' Development Efforts

49. By letter dated March 1, 2024, counsel for TILT advised Defendants that the Development Plan would violate the Conservation Easement and the Declaration and

demanded that Defendants cease and desist from all efforts to proceed with the Development Plan. Despite this clear notice and demand, Defendants have willfully and recklessly proceeded with their Development Efforts in violation of the Conservation Easement and Declaration.

50. By letter dated April 5, 2024, counsel for TILT informed Defendants' counsel that TILT representatives would be conducting a monitoring visit on the Villa Property pursuant to Section 2(b) of the Conservation Easement.

51. On April 9, 2024, representatives of TILT visited the Fort Haldimand Preserve adjacent to the Villa Property and observed heavy earth-moving and/or vegetation removal equipment being delivered to and then used on the Villa Property (Defendants' "Development Efforts"). They observed representatives of Defendants cut down or destroy a significant amount of vegetation, perform excavation and grading, and perform other work in furtherance of the Development Plan on the Villa Property.

52. Based on firsthand observations by TILT representatives, the following work was performed by Defendants in violation of the Conservation Easement and Declaration:

- More than 50% of the vegetation has been cleared from the shoreline on both North Bay and South Bay, thereby violating Section 3(b) of the Conservation Easement.
- Commercial excavation has been performed to grade and create roads and for septic test pits, thereby violating Section 15 of the Declaration.
- Clearing, grading, and excavation work has occurred within the area marked as nominated lands on the 1986 map, thereby violating Section 16 of the Declaration by failing to provide 30 days' notice to TILT.

53. Defendants' development efforts have caused and, upon information and belief, will continue to cause substantial and irreparable damage to the Conservation Property.

The unauthorized cutting of vegetation, excavation, and other development activities have

destroyed important wildlife habitat, impaired water quality, and diminished the scenic values of the property. These damages are difficult, if not impossible, to quantify in monetary terms, and they represent a significant loss to the conservation features, values, and other important ecological resources that TILT is committed to protecting.

54. Upon information and belief, prior to April 9, 2024, Defendants had not undertaken any work in furtherance of the Development Plan.

55. Thus, only four days after TILT notified Defendants of a monitoring visit, Defendants began the above-described work, which, upon information and belief, was done to undercut TILT from enforcing its rights to protect the Conservation Property and was done willfully, wantonly, and in utter disregard of TILT's rights and the sanctity of the Conservation Property.

56. The willful nature of Defendants' violations and their refusal to cease their development efforts despite clear notice from TILT, demonstrate a blatant disregard for the Conservation Easement, the Declaration, and public benefits of these instruments as statutorily recognized. Defendants' conduct is precisely the type of egregious and intentional conduct that warrants the imposition of punitive damages to deter future violations.

57. Upon information and belief, Defendants did not obtain written approval for such activity from the New York State Historic Preservation Officer or a representative of the New York State Museum.

58. Upon information and belief, Defendants' Development Efforts on the Villa Property have caused other violations of the Conservation Easement and the Declaration.

59. The obligations and restrictions on development set forth in the Commission's 1986 agreement with Patten Corporation Northeast and subsequently incorporated into the Conservation Easement and Declaration were intended to protect the recognized historic, archaeological, environmental, and scenic value of Carleton Island.

60. Defendants' development efforts, including the unauthorized cutting of vegetation, excavation, and other development activities, evince a reckless and willful disregard for the conservation values protected by the Conservation Easement and Declaration. These actions were taken without the required notice to TILT and without any apparent effort to comply with the Conservation Easement or Declaration. Given the willful nature of these violations, TILT is entitled to seek punitive damages to deter similar deliberate violations in the future.

E. Riparian/Underwater Rights and Bottom Rights in North Bay and South Bay

61. As the owner of the TILT Property, the owner of the Fort Haldimand Preserve, and the grantee of the Conservation Easement, TILT holds riparian and underwater rights in the areas adjacent to the Villa Property and TILT Property.

62. Defendants' Development Plan and Development Efforts threaten to interfere with and impair TILT's riparian rights and underwater rights.

63. TILT is entitled to protect its riparian and underwater rights from infringement by Defendants.

64. In 2013, the New York State Supreme Court, Jefferson County, issued a Memorandum Decision and Order and a Judgment in the case of *Kernan, et al. v. Williams*,

Index No. 2011-2617 (N.Y. Sup. Ct. Jefferson Cnty. Jan 15, 2013), which recognized a confirmed certain bottom rights in the waters of North Bay and South Bay adjacent to Carleton Island.

65. The Memorandum Decision and Order dated January 15, 2013 determined that the plaintiffs in the *Kernan* case had mutually held bottom rights governing the use and ownership of the river-bottom in North Bay and South Bay adjacent to their properties because they were upland owners on Carleton Island. The court found that these bottom rights originated from an 1895 deed from the Carleton Island Club to William O. Wyckoff.

66. The Judgment dated February 11, 2013 permanently enjoined the defendants in the *Kernan* case, who were also upland owners on Carleton Island, from entering the plaintiff's underwater lands in North Bay and South Bay without permission, and from constructing any docks or structures that would interfere with the plaintiffs' bottom rights.

67. The *Kernan* Memorandum Decision and Order and Judgment confirm that the bottom rights in the North Bay and South Bay are held exclusively by the upland owners on Carleton Island who trace their title back to the 1895 Wyckoff deed. TILT, as the owner of upland property on Carleton Island and the holder of the Conservation Easement, has standing to enforce these bottom rights and seek to redress for any violations thereof.

68. TILT's riparian, underwater, and bottom rights extend to the areas of North Bay and South Bay where Defendants' Development Plan and development efforts will occur, including the proposed dredging, filling, installation of structures, and increased use by a significant number of vessels.

69. Defendants' proposed activities in North Bay and South Bay would violate and interfere with TILT's riparian, underwater, and bottom rights. These activities would constitute a trespass and a nuisance and would impair the conservation values protected by the Conservation Easement and the Declaration of Rights.

FIRST CAUSE OF ACTION
**(Declaratory Judgment and Permanent Injunction –
Violation of the Conservation Easement and the Declaration)**

70. TILT repeats, reiterates, and re-alleges each and every allegation that is set forth in paragraphs "1" through "69" of this Amended Complaint with the same force and effect as though fully set forth at length herein.

71. As stated above, the Development Plan would violate the restrictions of the Conservation Easement and the Declaration. Specifically, as alleged above, the Development Plan would violate

72. Further, as stated above, Defendants' Development Efforts already have violated the restrictions of the Conservation Easement and the Declaration.

73. TILT is entitled to enforce said restrictions.

74. Moreover, the Development Plan and Defendants' Development Efforts pose a threat to the natural, wildlife, wetland, open space, aesthetic, scenic, successive vegetative, and woodland features and values of the Villa Property.

75. Therefore, pursuant to Section 2 of the Conservation Easement and pursuant to its rights as an owner of the TILT Property and the Fort Haldimand Preserve, TILT is

entitled to commence a proceeding to preserve and protect said features and values, including for a judgment ceasing the Development Plan and Defendants' Development Efforts.

76. Defendants' Development Efforts demonstrate an intent to carry out the Development Plan regardless of violations of the Conservation Easement or the Declaration.

77. TILT has no adequate remedy at law because the Conservation Property cannot be fully restored to exactly the same condition it was in prior to Defendants' violations, thereby causing a loss of the above-mentioned conservation and ecological features and values of that property cannot be quantified with a monetary value.

78. The equities weigh in TILT's favor given the irreparable loss of the above-mentioned conservation and ecological features and values of the Conservation Property and infringement of statutorily acknowledged public policies, while Defendants purchased the Villa Property subject to the Conservation Easement and the Declaration.

79. Based on the foregoing, TILT is entitled to a declaratory judgment that Defendants' Development Plan would violate the Conservation Easement and the Declaration.

80. Additionally, based on the foregoing, TILT is entitled to a permanent injunction enjoining Defendants from taking any steps on the Villa Property to carry out the Development Plan.

SECOND CAUSE OF ACTION
(Violations of the Conservation Easement and Declaration)

81. TILT repeats, reiterates, and re-alleges each and every allegation that is set forth in paragraphs "1" through "80" of this Amended Complaint with the same force and effect as though fully set forth at length herein.

82. As discussed above, Defendants' Development Efforts already have violated the Conservation Easement and/or Declaration. Specifically, Defendants' Development Efforts have violated Section 3(b) of the Conservation Easement and have violated Sections 15 and 16 of the Declaration.

83. Pursuant to the Conservation Easement, if there have been any violations and they have not been cured within thirty days' notice thereof, TILT is entitled to enforce the Conservation Easement in law or equity. As discussed above, TILT provided notice to Defendants on March 1, 2024 that the Development Plan would violate the Conservation Easement, but Defendants carried on with Defendants' Development Efforts anyway. TILT further notified Defendants of the expected and actual violations upon the commencement of this action on April 10, 2024, but Defendants have failed to cure said violations and have failed to forego their Development Plan.

84. As an owner of the TILT Property and the Fort Haldimand Preserve, TILT is entitled to enforce the Declaration.

85. Moreover, Defendants' violations contravene the purpose of the Conservation Easement and the Declaration because they are detrimental to the scenic, aesthetic, natural, woodland, wildlife habitat, wetland, watershed, successional vegetative features, and open space features and values of the Villa Property and the Conservation Property as a whole.

86. Based on the foregoing, TILT is entitled to a judgment for a monetary amount that is sufficient to cure the violations of the Conservation Easement and the Declaration, to restore the Villa Property as closely as possible to its condition prior to those violations, and to otherwise mitigate and/or cure any damage to the Villa Property.

87. Also, in this respect, TILT is entitled to a declaratory judgment that pursuant to Sections 2(c), 5, and 6 of the Conservation Easement, TILT has all rights necessary to undertake and/or procure all reasonable efforts to cure the violations of the Conservation Easement, including, but not limited to, the right to enter onto the Villa Property and/or having contractors to do so for the purposes of undertaking such efforts.

88. In the alternative to the relief demanded in the previous paragraph and to the extent that TILT is deemed not to have an adequate remedy at law, TILT is entitled to an injunction compelling Defendants to cure Defendants' violations of the Conservation Easement and the Declaration by restoring the Property to its condition prior to the violations, and otherwise mitigating and/or curing any damage to the Property resulting therefrom.

89. Based on the foregoing, TILT is entitled to a judgment for a monetary amount that is sufficient to compensate it for the lost conservation value of the Conservation Property that is a direct and proximate result of Defendants' violations of the Conservation Easement and the Declaration.

90. TILT is further entitled to a judgment for a monetary amount that is sufficient to compensate it for the staff time, stewardship costs, and other expenses incurred in addressing and curing Defendants' violations of the Conservation Easement and the Declaration.

91. Lastly, Defendants' violations of the Conservation Easement and Declaration were willful, wanton, and undertaken with a reckless disregard for TILT's rights and the conservation features and values protected by these instruments. Defendants' conduct was particularly egregious given their knowledge of the Conservation Easement and Declaration and their clear intent to proceed with the prohibited activities despite TILT's objections. This is

shown by the fact that Defendants started development work only four days after TILT gave notice of a monitoring visit. As such, TILT is entitled to recover punitive damages in an amount sufficient to deter similar violations in the future.

THIRD CAUSE OF ACTION
(For Attorneys' Fees, Litigation Costs, and Stewardship Expenses)

92. TILT repeats, reiterates, and re-alleges each and every allegation that is set forth in paragraphs "1" through "91" of this Amended Complaint with the same force and effect as though fully set forth at length herein.

93. The Conservation Easement provides that Defendants are required to pay for all expenses necessary to enforce the terms of the Conservation Easement, to cease non-conforming uses, and to restore the Villa Property to the condition in which it existed prior to such uses. Accordingly, TILT is entitled to recover from Defendants all attorneys' fees and disbursements incurred by TILT as a result of any violation of the Conservation Easement and/or any enforcement action by TILT.

94. As discussed above, Defendants' Development Efforts have violated the Conservation Easement.

95. As discussed above, Defendants proceeded with their Development Efforts despite notice from TILT that the same would violate the Conservation Easement and the Declaration, thereby rendering this action necessary to enforce the terms of the Conservation Easement, to cease non-conforming uses, and to restore the Villa Property to the condition in which it existed prior to such uses.

96. Defendants have refused to withdraw their Development Plan and have refused to restore the Villa Property despite due demand for the same through TILT's initial complaint, thereby further rendering this action necessary to enforce the terms of the Conservation Easement, to cease non-conforming uses, and to restore the Villa Property to the condition in which it existed prior to such uses.

97. Accordingly, TILT is entitled to a judgment for a monetary amount that is sufficient to reimburse TILT for any and all reasonable expenses, including, but not limited to, attorneys' fees, staff time, and stewardship costs, that have been and that will be incurred in connection with this action and that have been and that will be otherwise incurred to enforce the Conservation Easement and/or to address and/or to cure Defendants' violations of the Conservation Easement.

FOURTH CAUSE OF ACTION
(Declaratory Judgment and Permanent Injunction –
Violation of Riparian, Underwater, and Bottom Rights in North and South Bay)

98. TILT repeats, reiterates, and realleges each and every allegation that is set forth in paragraphs "1" through "97" of this Amended Complaint with the same force and effect as though fully set forth at length herein.

99. As the owner of the TILT Property, the owner of the Fort Haldimand Preserve, and the grantee of the Conservation Easement, TILT holds riparian rights, underwater rights, and bottom rights in the areas adjacent to the Villa Property and the Villa Property.

100. Defendants Development Plan and Development Efforts threaten to interfere with, impair, and violate TILT's riparian rights, underwater rights, and bottom rights

through the expansion of the beach, construction of a boat dock, and by anchoring the floating dock to the bottom of the St. Lawrence River as outline in Defendants' Site Plan.

101. TILT is entitled to protect its riparian rights, underwater rights, and bottom rights from infringement by Defendants.

102. Defendants' Development Plan and Development Efforts, including the proposed dredging, filling, installation of structures on the riverbed, and drastically heightened use of the waters in North Bay and South Bay would further violate and interfere with the exclusive bottom rights recognized in the *Kernan* Memorandum Decision and Order and Judgment.

103. Defendants' proposed activities would constitute a trespass and a nuisance and would impair the conservation features and values protected by the Conservation Easement and the Declaration.

104. TILT has no adequate remedy at law because the Conservation Property cannot be fully restored to exactly the same condition it was in prior to Defendants' violations, thereby causing a loss of the above-mentioned conservation and ecological features and values of that property cannot be quantified with a monetary value.

105. The equities weigh in TILT's favor given the irreparable loss of the above-mentioned conservation and ecological features and values of the Conservation Property and infringement of statutorily acknowledged public policies, while Defendants purchased the Villa Property subject to the Conservation Easement and the Declaration.

106. Accordingly, TILT is entitled to a declaratory judgment that Defendants' proposed activities would violate TILT's riparian rights, underwater rights, and bottom rights in the North Bay and South Bay and to a permanent injunction prohibiting Defendants from undertaking any such activities without the permission of TILT and the other holders of the bottom rights.

WHEREFORE, TILT demands a judgment against Defendants as follows:

- a. For a declaratory judgment that the Development Plan would violate the Conservation Easement and/or the Declaration;
- b. For an injunction enjoining Defendants from undertaking any work or other Development Efforts in furtherance of Defendants' Development Plan;
- c. For a monetary amount that is sufficient to cure the violations of the Conservation Easement and the Declaration, to restore the Property as closely as possible to its condition prior to those violations, and to otherwise mitigate any damage to the Villa Property;
- d. In the alternative to (c), for an injunction compelling Defendants to cure Defendants' violations of the Conservation Easement and the Declaration by restoring the Villa Property as closely as possible to its condition prior to the violations, and otherwise mitigating and/or curing any damage to the Villa Property resulting therefrom;
- e. For a monetary amount that is sufficient to compensate TILT for the lost conservation value of the Villa Property that is a direct and proximate result of Defendants' violations of the Conservation Easement and the Declaration;
- f. For a monetary amount that is sufficient to reimburse TILT for reasonable expenses, including attorneys' fees, that have been and that will be incurred in connection with this action and that have been and that will be otherwise incurred to address and to cure Defendants' violations of the Conservation Easement; and/or such additional and further relief that the Court and/or jury deems just and proper;
- g. For a declaratory judgment that the Development Plan would violate TILT's riparian rights, underwater rights, and bottom rights;

- h. For an injunction enjoining Defendants from undertaking any work or other Development Efforts in violation of TILT's riparian rights, underwater rights, and bottom rights;
- i. For punitive damages in an amount to be determined at trial, based on Defendants' willful, wanton, and reckless disregard and violations of the Conservation Easement and Declaration, as well as their willful, wanton, and reckless disregard and destruction of the conservation and ecological features and values protected by those instruments; and
- j. For such other and further relief that this Court deems just and proper.

Dated: June 6, 2024
Saratoga Springs, NY

RUPP PFALZGRAF LLC
Attorneys for Plaintiff

By: 

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Verification

STATE OF NEW YORK)
) ss.:
COUNTY OF Jefferson)

I, Spencer Busler, being duly sworn, state:

I am the Assistant Director and Director of Land Conservation for the Plaintiff, Thousand Islands Land Trust, Inc., and I hereby state that I have read the foregoing Verified Amended Complaint and know the contents thereof; and that the same are true to my own knowledge, except as to the matters therein alleged on information and belief and as to those matters I believe it to be true. The grounds of my belief as to all matters in the Verified Amended Complaint not stated upon my own knowledge are investigations which I have caused to be made concerning the subject matter of this Verified Amended Complaint and information that I have acquired in the course of my duties as a representative of Thousand Islands Land Trust, Inc. and from books and papers of the same.



Spencer Busler

Sworn to before me this
5th day of June 2024


Notary Public

TORI JEAN KLOCK
Notary Public, State of New York
No. 01KL6244943
Qualified in Jefferson County
Commission Expires 07/11/2027