



Guide to Equestrian-Friendly Conservation Easements

Revised Edition

Advancing the conservation of land for horse-related activities.



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Guide to Equestrian Friendly Conservation Easements

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The Equestrian Land Conservation Resource

Wished to thank all of those who have provided easement language and assisted with the development of this publication.

Our thanks as well to all of the supporters that make the work of ELCR possible.



All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

EQUESTRIAN LAND CONSERVATION RESOURCE
GUIDE TO EQUESTRIAN FRIENDLY CONSERVATION
EASEMENTS

TABLE OF CONTENTS

Introduction	5
Connecticut, Bethany Land Trust	8
Connecticut, New Haven	14
Florida	22
Illinois, Kane County	29
Illinois, Horizon Farms	35
Illinois, Jo Daviess-Woodruff Grant	44
Illinois, Liberty Prairie	50
Illinois, Jo Davies Agricultural Trust Easement	58
Illinois, Wayne Dupage Hunt	67
Kentucky Model Donation Easement	70
Maryland	80
New York, Dutchess Land Conservancy	85
New York, Tanrackin Farm	94
New York, Westchester Land Trust	99
North Carolina, Catawba	106
North Carolina, Tar River	114
Pennsylvania	121
Pennsylvania, Radnor Hunt	133
Pennsylvania, Willistown	138
Virginia	146
Wisconsin	150
Sample Easement, American Farmland Trust	155
APPENDIX	163
INDEX.....	173

**EQUESTRIAN LAND CONSERVATION RESOURCE
GUIDE TO EQUESTRIAN FRIENDLY
CONSERVATION EASEMENTS**

APPENDIX TABLE OF CONTENTS

Appendix.....163
Partnerships in Protection: Preserving Horizon Farms.....164
Matching Equestrian and Conservation Interests.....169
Index.....173

Guide for Equestrian Friendly Conservation Easements

Introduction

The Guide for Equestrian Friendly Conservation Easements has been developed by the Equestrian Land Conservation Resource (ELCR) to assist landowners and land trusts who desire to create conservation easements that permit various equestrian-related activities. Initially, though, it is critical for interested parties to become thoroughly familiar with the concepts and intricacies of conservation easements. The most comprehensive information on conservation easements is available through the Land Trust Alliance. The Alliance provides exceptionally valuable resources and helpful information on its web site www.lta.org. Particularly informative material can be found in the publication entitled The Conservation Easement Handbook and at the links titled "The Learning Center," "Conserve Your Land," "Frequently Asked Questions," and "Land Trust Locator," which provides contact information for more than 1600 local land trusts established throughout the United States. The documents included in the ELCR Guide provide a supplement to the Land Trust Alliance's resources because they demonstrate legal language in conservation easement documents that specifically permit equestrian use.

ELCR defines a model equestrian friendly conservation easement as one which:

- 1) has language that protects significant natural resources
 - 2) has language that protects intended equestrian activity
 - 3) is held by a qualified recipient organization
 - 4) provides potential tax benefits to the owner (grantor)
- The information presented is strictly a reference guide to assist interested parties and not intended to provide legal advice. It is ELCR's recommendation that the grantor from the onset engage an attorney experienced in conservation law.

The documents included in this publication are sample conservation easements that permit various equestrian activities desired by the individual landowner (grantor). They do not provide an enforceable right of the land trust (grantee) to participate in equestrian activity, but rather they emphasize the grantor's permission to include such use on the land while adhering to the preservation of the specific conservation values described in the easement documents. In other words, the conservation easements presented do not provide an enforceable right of the land trust to have equestrian activity, but rather they permit such use as to the desire of the landowner. The texts excerpted provide examples of language employed to protect various equestrian activities as used by certain drafters who have provided copies of conservation easement agreements to the Equestrian Land Conservation Resource for distribution to interested parties.

As used in this context, the recipient (grantee) of a conservation easement must be a "qualified organization" that has legal standing (i.e., 501(c) (3) organization or public agency) to hold the conservation easement and which must be committed to protecting its conservation purposes. It should also have the necessary resources to enforce the restrictions of the encumbered property, although a "qualified organization" is not required by law to set aside funds to enforce the easement. Most federal, state (e.g., Department of Natural Resources), or local government units (e.g. town/county park districts) and "public" charitable organizations (e.g. land trusts) qualify. Note that private foundations are

specifically disqualified.

In order to qualify for a potential tax deduction, above all, a conservation easement must satisfy the relevant requirements established by the Internal Revenue Service (IRS) under the federal Internal Revenue Code #170(f)(3)(b)(iii) namely:

- 1) The preservation of land areas for outdoor recreation by, or the education of the general public
- 2) The protection of relatively natural wildlife habitat
- 3) The preservation of farmland, forests or other open space where such preservation will yield significant public benefit
- 4) The preservation of farmland, forests or other open space where such preservation is pursuant to a clearly delineated federal, state or local government conservation policy that will yield a significant public benefit
- 5) The preservation of an historically important land area

Although an extended discussion of tax regulations is beyond the scope of this publication, following is a list of general considerations:

A. Federal income tax deduction

- The conservation easement must be given in perpetuity.
- The requirement that the restrictions must be perpetual cannot be satisfied unless any mortgage holder subordinates its rights to the easement interest.
- The IRS regulations preclude any tax deduction if the permitted (e.g., equestrian) uses might significantly diminish the conservation purposes of the easement. However, this preclusion does not prohibit permitted uses such as trails and appropriate farming practices as long as they do not significantly diminish the primary conservation purposes of the easement.
- In accordance with the deductibility of other charitable gifts, the donor of a conservation easement will generally be entitled to deduct the decrease in the “fair market value” of the property resulting from the encumbrances described in the conservation easement.
- To avail oneself to an income tax deduction, the donor is required to obtain a “qualified appraisal” of the easement interest prepared by a “qualified appraiser” within 60 days of the signing of the conservation easement.
- Following this, the donor, donee, and appraiser must sign an “appraisal summary” and complete IRS Form 8283, which then must be filed with the IRS together with the donor’s income tax returns.

B. Estate tax reductions:

- Because of the probable decreased value of the encumbered property, the estate taxes of the donor and his or her spouse may be diminished.

C. Several states offer certain specific optional tax benefits, which appear in their respective tax regulations.

D. Local real estate taxes may be decreased depending on the particular county and/or state regulations.

Although the donor (grantor) of a conservation easement with permitted equestrian uses may receive various tax benefits, it must be emphasized that they are not automatically guaranteed. The easement must adhere to all relevant federal, state, and local tax laws. ELCR strongly recommends that a landowner interested in donating such an easement consult an attorney who is experienced in conservation law. ELCR also recommends that the interested parties review “The Conservation Easement Handbook,” published by the Land Trust Alliance (www.lta.org) which provides a checklist of provisions relating to the IRS requirements as well as the format for conservation easement documents.

The information offered by Equestrian Land Conservation Resource in this publication is intended to assist landowners and land trusts in drafting equestrian friendly conservation easements, as a solution to advancing conservation to sustain equestrian activities. ELCR is not engaged in rendering legal, tax, or accounting services. However, the organization is poised to provide guidance through this process. Interested parties should feel free to contact ELCR for further assistance.

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All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**CONNECTICUT CONSERVATION EASEMENT
COMMISSION BETHANY LAND TRUST**

COMMENTARY: As with all exemplary documents found in this “Easement Guide for Equestrian Use”, the Commission Bethany Land Trust Conservation Easement Agreement appears to be intended to provide tax benefits to the donor. The evident intent by the respective drafters, of all exemplary Conservation Easement Agreements published herein, to achieve this broad criterion of ELCR’s Model Equestrian Easement may, therefore, be reasonably inferred from their appearance in this publication.

The express language of this Agreement does not create legal standing in a third party to enforce either the restrictions or the uses set forth in this Agreement.

This Easement Agreement expressly protects equestrian, i.e. “Horseback Activities”. However, it also expressly forbids hunting. This easement also provides for public access for specified purposes and allows the grantee the right to relocate within a defined area, close or limit access to trails depending on the conditions.

**CONSERVATION EASEMENT
COMMISSION BETHANY LAND TRUST
Linda Francois, Esq.
Cooper, Whitney, Cochran & Francois
Exemplary Purposes Only**

This DEED OF CONSERVATION EASEMENT made this ____ day of _____, _____ by and between _____ and _____ Hereinafter called the Grantors, and THE BETHANY LAND TRUST, INC., hereinafter called the Grantee.

WITNESSETH:

WHEREAS, the Grantors, are the owners in fee simple of certain real property, hereinafter called the “Protected Property,” which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development, which property is located in the town of Bethany, County of New Haven, and State of Connecticut. This Protected Property is made up of three connected parcels totaling 110.8346 acres as set forth in a survey entitled “Property Survey prepared for, to be placed on file in the Bethany Land Records. The Protected Property is more particularly described in Exhibit A attached hereto and incorporated by this reference.

WHEREAS, THE BETHANY LAND TRUST, INC., hereinafter called the Grantee, is a non-profit organization incorporated under the laws of the State of Connecticut as a tax exempt public charity under Section 501 (c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended, hereinafter called the Code, and is qualified under section 170(h) of the Code to receive qualified conservation contributions, and having its address at _____, Bethany, Connecticut 06524, whose purpose is to preserve natural areas for scientific, charitable, educational and aesthetic purposes; and

WHEREAS, New Haven County has in recent years come under increasing development pressure, and such development destroys or otherwise seriously impacts the natural resources, scenic beauty, agricultural and open and wooded character of the area; and

WHEREAS, the loss of open and agricultural lands has been particularly prevalent in recent years in New Haven County; and

WHEREAS, the Protected Property possesses significant natural, scenic, agricultural and open space values of great importance to Grantors and the People of Bethany, County of New Haven, and State of Connecticut; and

WHEREAS, the Protected Property provides land areas for outdoor recreation by, or for the education of, the general public, specifically recreational trails for pedestrians and equestrians; and

WHEREAS, the Protected Property lies adjacent to property owned by the South Central Connecticut Regional Water Authority which contains a continuous natural habitat with that of the Protected Property and which contains pedestrian and equestrian trails connecting to those of the Protected Property; and

WHEREAS, because of the integrated nature of the habitat and the recreational trails system, the use of the Protected Property will affect not only the conservation values of the Protected Property but those of other properties as well; and

WHEREAS, preservation of the Protected Property is for the scenic enjoyment by the general public and will yield a significant public benefit, specifically, the Protected Property is situated on and prominently visible from several towns roads and public areas, to with: _____ Road, _____ Road and _____ Road, and from the adjacent open space land of the South Central Connecticut Regional Water Authority;

WHEREAS, preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit, specifically, in recognition of the importance of the Protected Property as an ecologic, scenic and recreational resource, and

WHEREAS, the Property has been designated on the Draft Open Space Plan of the Conservation Commission of the Town of Bethany as a parcel for which it is desirable to purchase the development rights; and

WHEREAS, the specific conservation values of the Property are documented in an Easement Documentation Report, prepared by Grantee and signed and acknowledged by the Grantors, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation; and

WHEREAS, the Grantors and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity; and

WHEREAS, the State of Connecticut has authorized the creation of Conservation Easements pursuant to Connecticut General Statutes, Sections 47-42a through 47-42c and Grantor and Grantee wish to avail themselves of that law;

NOW THEREFORE, the Grantors, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and easements herein contained and as an absolute and unconditional gift, do hereby give, grant, bargain and convey unto the Grantee a Conservation Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. **Purpose.** It is the purpose of this Conservation Easement to assure that the Protected Property will be retained forever predominantly in its natural, scenic, forested, meadowed, and open space condition and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above. Grantors intend that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Conservation Easement.
2. **Prohibited Uses.** Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in paragraph 3 below:

4.1 **Prohibition of Earth Altering Activities:** There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal to topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in topography of the land in any manner except as Grantee shall deem necessary, after consultation with the Grantors pursuant to Paragraph 4.2 hereof, for the construction and maintenance of trails or as necessary for proper drainage or soil conservation of the Protected Property, and then only in a manner which does not impair the purposes of this Conservation Easement. In no event shall **trails** [Emphasis added] be paved.

4. **Grantee's Rights and Responsibilities.** To accomplish the purpose of this Conservation Easement, the following rights are conveyed to Grantee by this Conservation Easement:

4.1 The right and responsibility to preserve and protect the conservation values of the Protected Property.

4.2 **Trails.** The right to maintain and manage and, as provided in this Paragraph 3.2, relocate multiple purpose **trails** [Emphasis added] for pedestrian and **equestrian** [Emphasis added] use on the Protected Property. At the time of this conveyance, there exists on the Protected Property, an extensive system of such joint use trails, with the major **trails** [Emphasis added] and access points shown in the Easement Documentation Report. It is the intention of the Grantors and Grantee that such joint use is consistent with the purpose of this Conservation Easement and shall continue.

The Grantee shall have the right and responsibility of regulating access to the trail system to assure continued compliance and consistency with such purposes, including but not limited to the seasonal closing of trails to protect against erosion or the temporary closing of trails in need of repair. Such regulation of access shall include the right to limit the numbers of users and the timing of such use on the trail system or any portion thereof in order to ensure such conservation purposes.

Should the Grantee determine that existing **trails** [Emphasis added] should be relocated or closed, as a result of such factors as, but not limited to, development of adjacent lands retained by the Grantor or by fencing of any open **fields** [Emphasis added] within the Protected Property under Section ____, then the Grantee shall consult with and request the approval of the original Grantor or the successor Grantor of the particular portion of the Protected Property directly affected thereby, as the case may be, on procedures regulating access previously described in this paragraph.

4.3 Right of Entry. The right to enter the Protected Property at all reasonable times for the purposes of: (a) inspecting the Protected Property; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; (d) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantors; and (e) monitoring and management as described below.

4.6 Enforcement. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to paragraph ____ through ____ inclusive.

7. Title. The Grantors covenant and represent that the Grantors are sole owners and are seized of the Protected Property in fee simple and have good right to grant and convey the aforesaid Conservation Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

9. Grantee's Remedies. In the event that the Grantee becomes aware of a violation of the terms of this Conservation Easement, the Grantee shall give notice to the Grantors, at Grantors' last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition at the time of this grant. Grantor agrees that the Easement Documentation Report shall be deemed to provide objective

information concerning the Protected Property's condition at the time of this grant. Failure by the Grantors to cause discontinuance, abatement of such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the property to its previous condition; to enjoin such non-compliance by *ex parte* temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by the Grantee, in its sole discretion, to corrective action on the Protected Property. If such court determines that the Grantors have failed to comply with this Conservation Easement, Grantors shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court.

9.1 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period for cure to expire.

9.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and Grantors hereby waive any defense of laches with respect to any delay by the grantee, its successors or assigns, in acting to enforce any easement or exercise any rights under this Conservation Easement.

9.3 Violations Due to Causes Beyond Grantors' Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantors for any changes to the Protected Property due to causes beyond the Grantors' control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by unauthorized wrongful acts of third persons, at Grantee's option, Grantors agree to assign its right of action to Grantee, to join in any suit, and/or to appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

14. Assignment. The parties hereto recognize and agree that the benefits of this easement are in gross and assignable, and the Grantee hereby covenants and agrees that in the event it transfers or assigns the easement it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Code (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes specified in Section 170 (h)(4)(A) of the Code. The Grantee also covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be

required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance. The Grantee further covenants and agrees that pursuant to this paragraph it will select the Nature Conservancy of Connecticut with offices currently in Middletown, Connecticut as its first choice for any such transfer or assignment.

15. **Extinguishment.** The Grantors hereby agree that at the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee. The measure of the fair market value of this Conservation Easement for the purpose of calculating relative compensation in the event of extinguishment is the fair market value of the whole property including the Conservation Easement and the underlying fee retained by the Grantors, less the fair market value of said retained underlying fee, as of the time of this conveyance.

The relative percentage of value that the Easement and the underlying fee each bear to the value of the entire property are to remain constant over time. When a change in conditions takes place which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, and the easements contained herein are extinguished by judicial proceeding, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to its fixed relative percentage of value of the entire property. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth in its founding document.

- 17.3 **Re-recording.** The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement; for such purpose, the Grantors appoint the Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantors agree to execute any such instruments upon request.

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CONNECTICUT EASEMENT
Provided for exemplary purposes only

COMMENTARY: This Agreement conveys to the Grantee, which could be a “qualified organization” of **equestrians**, “the right to establish, maintain, and manage a multiple purpose passive recreational trails.... Any such trails shall not exclude **equestrians** [Emphasis added].”

In view of the express specific language clearly intended to benefit **equestrians**, an **equestrian** organization as a third party beneficiary, would have legal standing to enforce the contractual benefits conferred on “**equestrians**” by the Conservation Agreement.

Likewise, it would appear that an **equestrian** group may have legal standing in some states to enforce these specific rights on behalf of the larger public, should the Grantees’ their successors, et.al., fail to enforce the right to trail use set out in the Agreement.

At 3.0, Grantor’s Reserved Rights “[t]he Grantors hereby reserve the following rights: 3.1 Reserved Rights...The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Restriction and not inconsistent with the Purpose of the Conservation Restriction...”

3.4 **Trails**...The right to create, maintain and use unpaved woods, roads and **horse...trails** with permeable materials, including but not limited to sand, gravel, shell, rock, or crushed stone and including...**equestrian** bridges, culverts and conduits on or over wetlands and watercourses and jumps for **equestrian** use, in furtherance of the limited activities and uses reserved to the Grantors herein. All such activity shall be conducted in a manner designed to minimize erosion or sedimentation of the Protected Property... 3.7 Farm, Agricultural and Wildlife, Management Activities. The right to perform agriculture activities...The term ‘agriculture’ or ‘agricultural activities’ means animal products for domestic or commercial purposes, including animal husbandry...the private or commercial **stabling of animals**, maintaining a **riding stable** including **indoor and outdoor riding rings**...3.8 Outdoor Recreational Activities. The right to engage in outdoor recreational activities including, by way of example and not limitation,...**horseback** riding...

Copious language excerpted immediately above is employed to protect specific intended **equestrian** activities, as well as through employment of general provisions to protect **equestrian** activities.

The Easement was purchased by the town and co-held by the town and land trust together. It allows for particular multi-purpose trails in particular locations (see section 5.2) shown in the documentation report. All Easements should be accompanied by baseline documentation. This is for exemplary purposes only, to show how flexible Easements may be. Competent legal counsel should be obtained to prepare any Easement. This Easement is intended to meet IRS requirements for charitable donations.

CONNECTICUT CONSERVATION RESTRICTION

This **DEED OF CONSERVATION RESTRICTION** made this ____ day of Connecticut, hereinafter called the "Grantors", and **The Town of _____** and **The _____ Land Conservation Trust**, and their respective successors and assigns, hereinafter called the "Grantees" as tenants in common.

WITNESSETH:

WHEREAS, the Grantors are the owners in fee simple of certain real property, hereinafter called the "Protected Property," which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development, which property is located in the Town of _____, County of _____, and State of Connecticut. The Protected Property is comprised of 70 acres, more or less and is more particularly described in Schedule A attached hereto and incorporated by this reference.

WHEREAS, The Town of _____, hereinafter individually called the "Town", is a governmental unit described in section 170(b)(1)(A)(v) of the Internal Revenue Code of 1986, as amended, hereinafter referred to as the "Code", and is a qualified organization under section 170 (h) of the Code to receive qualified conservation contributions; and

WHEREAS, The _____, Land Conservation Trust, having an address at P.O. Box 77, _____, Connecticut 06897, is a publicly-supported, tax-exempt non-profit organization and a qualified organization under 501(c)(3) and 170(h) of the Code, whose primary purpose is to retain land or water areas predominately in their natural, scenic or open condition or in agricultural, farming, forest or open use; and

WHEREAS, _____ County has in recent years come under increasing development pressure, and such development destroys or otherwise seriously impacts the natural resources, scenic beauty agricultural and open and wooded character of the area; and

WHEREAS, the Loss of open lands has been particularly prevalent in recent years in _____ County; and

WHEREAS, the Protected Property possesses significant natural, scenic and open space value of great importance to Grantors and the People of _____, County of _____, and State of Connecticut; and

WHEREAS, preservation of the Protected Property is for the scenic enjoyment by the general public and will yield a significant public benefit, specifically, the Protected Property is situated on and prominently visible from _____ Road, and _____ Lane, town roads, and provides 50% of the frontage on _____ Lane, and town designated scenic road;

WHEREAS, the preservation of the Protected Property is for outdoor recreation by, or the education of, the general public, more specifically, the Protected Property will contain public recreational trails;

WHEREAS, the Protected Property is directly across _____ Road, a town road from property currently owned and preserved by the _____ Land Conservation Trust as public open space land; and

WHEREAS, preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit, specifically in recognition of the importance of the Protected Property as an ecological, scenic and recreational resource, and

WHEREAS, the Property has been specifically designated on the _____ Town Plan of Conservation and Development as First Priority Open Space; and

WHEREAS, the specific conservation values of the Property are documented in a Baseline Documentation Report, prepared by Grantees and signed and acknowledged by the Grantors, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation; and

WHEREAS, the Grantors and Grantees have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity; and

WHEREAS, the State of Connecticut has authorized the creation of Conservation Restrictions pursuant to Connecticut General Statutes, Sections 47-42a through 47-42c and Grantors and Grantees wish to avail themselves of that law;

NOW, THEREFORE, the Grantors, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions, restrictions and easements herein contained and as an absolute and unconditional grant, do hereby give, grant, bargain and convey unto the Grantees a Conservation Restriction in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. **Purpose.** It is the purpose of this Conservation Restriction to assure that the Protected Property, other than those portions constituting Reserved Residential Areas, will be retained forever predominantly in its natural, scenic, forested, or open space condition, to encourage the use of the Protected Property for agricultural purposes and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interest of the Protected Property described above. Grantors intend that this Conservation Restriction will confine the use of the Protected Property to such activities as are consistent with the Purpose of this Conservation Restriction.
- 2.0 **Prohibited Uses.** The prohibited uses and reserved rights for the Protected Property are based on Grantees' evaluation of the conservation values of the Protected Property and Grantors' goals and objectives to continue limited private use and enjoyment of the Protected Property while ensuring that the conservation values of the Protected Property are protected in perpetuity.

The Grantors and the Grantees agree that the Reserved Residential Areas, (as defined in Paragraph 4.0). are located in an area of the Protected Property where future lawfully permitted activities. Any division of the Protected Property or any division of the title to the Protected Property in the form of condominium or

cooperative form of ownership is hereby prohibited except as follows:

Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Restriction is prohibited, in addition, except as provided in paragraphs 3, 4 and 5 below and without limiting the generality of the foregoing, the following activities, acts or uses are expressly prohibited on, over or under the Protected Property:

(b) **Prohibition of Earth Altering Activities:** There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the Non-Reserved Residential Area in any manner.

3.0 **Grantors' Reserved Rights.** The Grantors hereby reserve the following rights:

3.1 **Reserved Rights:** The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Restriction and not inconsistent with the Purpose of the Conservation Restriction. Grantees acknowledge having reviewed Grantors' reserved rights set forth in paragraph 3 and 4 hereof and agree that the exercise of such rights is not inconsistent with the purpose of this Conservation Restriction.

3.4 **Trails:** The right to create, maintain and use unpaved woods roads and horse or foot trails with permeable materials, including but not limited to sand, gravel, shell, rock, or crushed stone and including foot and equestrian bridges, culverts and conduits on or over wetlands and watercourses and "jumps" for **equestrian** [Emphasis added] use, in furtherance of the limited activities and uses reserved to the Grantors herein. All such activity shall be conducted in a manner designed to minimize erosion or sedimentation of the Protected Property.

3.7 **Farm, Agricultural and Wildlife Management Activities.** The right to perform agricultural activities, and to create, restore, and/or maintain fields, grasslands, pasture, coverts, or meadows for commercial and/or non-commercial farm, nursery, agricultural or wildlife management purposes including by way of example and not limitation, the right to: (i) except within wetland areas, clear forest trees and other growth for the purposes set forth above, provided that clearing shall be limited to areas of the Protected Property that are not severely sloped, as identified in the Baseline Report; (ii) prepare land for agricultural, pasture, garden, or open meadow use; (iii) plant, seed, and re-seed agricultural crops (including, by way of illustration, grasses, grains, orchards, grapevines, and nursery stock), but not species with known invasive characteristics (iv) trim and cut brush and trees in order to maintain clear borders around or paths within such areas; (v) construct or clear fences or walls in and around such areas; (vi) apply herbicides, pesticides, fungicides, and fertilizers for bona-fide agricultural purposes.

The term “agriculture” or “agricultural activities” means the production of plant and animal products for domestic or commercial purposes, including animal husbandry, floriculture and greenhouse products, raising of fruits and vegetables of all kinds, orchardry, aquaculture, bees and apiary products, nursery, silviculture, the private or commercial **stabling of animals**, [Emphasis added] maintaining a **riding stable** [Emphasis added] including **indoor and outdoor riding rings**, [Emphasis added] and the processing and storage of agricultural products predominantly grown, produced or raised on the Protected Property; but shall not include industrial processing or packaging.

3.8 **Outdoor Recreational Activities** The right to engage in outdoor recreational activities, including, by the way of example and not limitation, walking, **horseback** [Emphasis added] riding, cross country skiing, and camping, but not involving the recreational use of motorized vehicles.

5.0 **Grantees’ Rights and Responsibilities.** To accomplish the purpose of this Conservation Restriction, the following rights are conveyed to Grantees by this Conservation Restriction:

5.1 **Preserve and Protect.** The right and responsibility to preserve and protect the conservation values of the Protected Property.

5.2 **Public Access and Trails.** The right to establish, maintain, and manage a multiple purpose passive recreational trails up to 8 feet in width for pedestrian and **equestrian** [Emphasis added] use on the Protected Property after sunrise and prior to sunset. No motorized vehicles shall be permitted on said trail except as necessary for proper creation, management and maintenance thereof. Any such trail shall not exclude **equestrians**. [Emphasis added] One such trail (“Trail #1”) or relocated trail shall commence at _____ Road west of the existing house and proceed north and east to _____ Lane and shall not be in close proximity to Reserved Residential Areas. Said Trail #1 shall be located in a corridor delineated in the baseline report. Any relocation of said trail shall be within that corridor and shall be comparable in length and scenic quality. An additional trail (“Trail #2”) shall begin on _____ Road _____ of the main residence and proceed through the lower property along _____ Road. Such trail shall not preclude the use of the lower property along _____ Road as pasturage. The right to create and maintain a parking area designed for the parking of no more than six vehicles. Such parking area shall not be paved with any non-permeable materials.

5.3 **Right of Entry.** The right to enter the Protected Property at all reasonable times for the purposes of: (a) inspecting the Protected Property; (b) enforcing the terms of this Conservation Restriction; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; (d) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantors; and (e) monitoring and management as described

below.

- 5.4 **Enforcement.** The right to prevent any activity on or use of the Protected Property that is inconsistent with the Purpose of this Conservation Restriction and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 10 hereof.
- 8.0 **Title.** The Grantors covenant and represent that the Grantors are the sole owners and are seized of the Protected Property in fee simple and have good right to grant and convey the aforesaid Conservation Restriction; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Restriction, and that the Grantees shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Restriction.
- 10.0 **Grantees' Remedies.** In the event that the Grantees become aware of a violation of the terms of this Conservation Restriction, the Grantees shall give notice to the Grantors, at Grantors' last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition at the time of this grant. Grantees agree that the Baseline Documentation Report shall be deemed to provide objective information concerning the Protected Property's condition at the time of this grant. Failure by the Grantors to cause discontinuance, abatement or such other corrective action as may be requested by Grantees within thirty (30) days after receipt of such notice shall entitle Grantees to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Restriction; to require the restoration of the property to its previous condition; to enjoin such non-compliance by *ex-parte* temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by the Grantees, in their sole discretion, to corrective action on the Protected Property. If such court determines that the Grantors have failed to comply with this Conservation Restriction, Grantors shall reimburse Grantees for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court.
- 10.1 **Emergency Enforcement.** If Grantees, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantees may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period for cure to expire.
- 10.2 **Failure to Act or Delay.** The Grantees do not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Restriction by any prior failure to act and Grantors hereby waive any defense of laches with respect to any delay by the Grantees, their respective successors or assigns, in acting to enforce any Easement or exercise any

rights under this Conservation Restriction.

10.3 **Violations Due to Causes Beyond Grantors' Control.** Nothing herein shall be construed to entitle the Grantees to institute any enforcement proceedings against the Grantors for any changes to the Protected Property due to causes beyond the Grantors' control, such as changes caused by fire flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Restriction caused by unauthorized wrongful acts of third persons, at Grantees' option, Grantors agree to assign their right of action to Grantees, to join in any suit, and/or to appoint Grantees their attorney-in-fact for the purposes of pursuing enforcement action. No Grantor shall be liable for the acts of any other Grantor for violations relating to a separate part of the Protected Property held by the said violating Grantor.

15. **Assignment.** The parties hereto recognize and agree that the benefits of this Restriction are in gross and assignable, and the Grantees hereby covenant and agree that in the event they transfer or assign the Restriction they hold under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Code (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code. The Grantees also covenant and agree that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

16. **Extinguishment.** The Grantors hereby agree that at the time of the conveyance of this Conservation Restriction to the Grantees, this Conservation Restriction gives rise to a real property right, immediately vested in the Grantees. The measure of the fair market value of this Conservation Restriction for the purpose of calculating relative compensation in the event of extinguishment is the fair market value of the entire Protected Property including both the Conservation Restriction and the underlying fee retained by the Grantors, less the fair market value of the retained underlying fee only, as of the time of this conveyance.

The relative percentage of value that the Restriction and the underlying fee each bear to the value of the entire Protected Property are to remain constant over time. When a change in conditions takes place which makes impossible or impractical any continued protection of the Property for conservation purposes, and the Easements contained herein are extinguished by judicial proceeding, the Grantees, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to their fixed relative percentage of value of the entire Protected Property. The Grantees shall use their share of the proceeds in a manner consistent with the conservation purposes of the original contribution.

18.3 **Rerecording.** The Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; for such purpose, the Grantors appoint the Grantees its attorneys-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the forgoing, the Grantors agree to execute any such instruments upon request.

By: Linda P. Francois Cooper
Whitney, Cochran and Francois, Attorneys
51 Elm Street
New Haven, Connecticut 06508-1898

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

FLORIDA MODEL CONSERVATION EASEMENT
The Red Hills Conservation Committee

COMMENTARY: The Grantor did not convey any rights to Grantee to engage in any intended **equestrian** activities. This Agreement employed specific language to protect certain **equestrian** activities in addition to general language that could be construed to protect **equestrian** uses. It also includes a clause requiring mediation or arbitration prior to (or in lieu of) litigation.

At Article II PROHIBITED AND RESTRICTED ACTIVITIES, “[a]ny activity on, or use of, the Property not inconsistent with the purposes of this Conservation Easement, the Management Plan and not specifically prohibited is permitted. All rights reserved by Grantor are considered to be consistent with the Conservation Purposes of this Conservation Easement...” Specifically, expressly excepted from the prohibition of Industrial and Community use at Article II, paragraph A (3) is “the leasing of hunting in **horseback** riding rights, and other or “eco-tourist’ type recreational access to and uses of the Property ‘As’ shall include but not limited to animal husbandry...” Although not specifically protected, by reading together the exception permitting hunting and **horseback** riding, **fox hunting on horseback** may be reasonably implied. Eco-tourism is not defined; but it may be argued that this catch-all exception also protects intended **equestrian** activities on the Property as well as does the exception for animal husbandry and the exception at paragraph B, Agricultural and Horticultural use. “Existing agricultural, grazing...uses of the Property, may continue...” Of course, this language would turn on the unique facts of the Property to be burdened by the Easement.

At Article II, E, Hunting, Fishing, and other Recreational Activities, “Grantor reserves the right to lawfully hunt, shoot...and conduct field trials on the Property and the right to lease all or any portion of the Property for hunting, shooting...field trials, and other recreational activities permitted in the Conservation Easement or the Management plans.” This language’s breadth clearly is sufficient to protect intended equestrian activities.

The reservations and exceptions protect the intended **equestrian** activities of Grantor, his lessees, licensees, and invitees.

MODEL CONSERVATION EASEMENT
Prepared by Camilla M. Herlevich,
Attorney and The Red Hills Conservation Committee
September 25, 1996

THIS CONSERVATION EASEMENT (herein “Conservation Easement”) made this _____ day of _____, 200____, by and between _____, whose address is _____ and whose social security number is _____; (hereinafter “Grantor”) and TALL TIMBERS RESEARCH, INC., A Florida nonprofit corporation, with an address of Route 1, box 678 Tallahassee, Florida, 323129712 (hereinafter “Grantee”).

RECITALS

- A. Grantee is a nonprofit corporation established for the furtherance of knowledge, study, and appreciation of nature preserves, particularly “fire type” nature preserves, wildlife, the mutual relations between wildlife and its environment, and to preserve and conserve natural areas for aesthetic, scientific, charitable, and educational purposes. (The words “fire type,” as used herein, are intended to comprehend the maintenance, by prescribed burning, of pine forests in open, park-like condition with herbaceous ground vegetation.)
- B. Grantor owns in fee simple certain real property situated, lying, and being in _____ County, Florida/Georgia, and more particularly shown and described in Exhibit A attached hereto containing approximately _____ acres, more or less (hereinafter “Property”).
- C. Grantor is willing to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting the use of the land and contiguous water areas of the Property, on the terms and conditions and for the Conservation Purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. T
- D. The Conservation Easement hereby granted is granted for the following Conservation Purposes; to wit:
1. Preservation of the Property as a scenic, natural, cultural, and rural area that has not been subject to significant development and as a significant natural area that provides a “relatively natural habitat for fish, wildlife, plants, or similar ecosystem” as that phrase is used in Section 170(h)(4)(AS)(ii) of the Internal Revenue Code, including upland longleaf pine forest, both natural and old field pine stands, associated mesic hardwood forests, various wetlands including sinkholes, and natural and man-made ponds and lakes and _____.
 2. Preservation of the Property as productive farmland and forest land, which sustains for the long term both the economic and conservation values of the Property and its environs, which value is preserved through management guided by the following principles (hereinafter “Principles of Sustainable Conservation Management”):
 - protection of scenic and other distinctive rural character of the landscape;
 - maintenance of soil productivity and control of soil erosion;
 - maintenance and enhancement of wildlife and game habitat;
 - protection of unique and fragile natural areas and rare species habitats;
 - maintenance and/or creation of a healthy balance of uneven aged timber classes;
 - maintenance or improvement of the overall quality of the timber

- resource;
 - maintenance of the value of the resource in avoiding land fragmentation;
 - protection of surface water quality, the Floridan Aquifer, wetlands, and riparian areas.
3. Preservation of the Property as open space, including the scenic values of the Property, which can be enjoyed by the general public from (name, public road, river, lake, etc.) and productive farm and forest land characteristics of the Property. Preservation of these open space values yield significant public benefit as evidenced by _____ [SPECIFY PUBLIC/GOVERNMENTAL RECOGNITION OF VALUES OF OPEN SPACE PROTECTION IN RED HILLS REGION]; and
 4. Preservation of the Property as an historically important land area, development of which would lead to or contribute to degradation of the scenic, natural, rural, and historic character of the area.

These Conservation Purposes are consistent and are in accordance with the Section 170(h) of the United States Internal Revenue Code.

- E. The Conservation Purposes and the specific features and conservation values of the Property are described, documented, located, and mapped in the Conservation Easement Documentation Report for the Property, a copy of which is on file at the offices of the Grantee. The parties acknowledge that the Conservation Easement Documentation Report accurately establishes the uses, structures, condition, and values of the Property as of the date hereof.
- F. Grantee is a tax exempt public Charity under Section 501 (c)(3) and 509(a)(2) of the Internal Revenue Code, is authorized by the laws of the states of Georgia/Florida to accept, hold and administer Conservation Easements, possesses the authority to accept and is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a “qualified organization” and an “eligible donee” within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder.
- G. Grantor and Grantee recognize the traditional uses of the Property for wildlife, game management, and other naturalistic purposes. These traditional land uses include, but are not limited to forestry, agriculture, and game management.
- H. Preservation of the property as a habitat for wildlife for the long-term preservation and propagation of various species of animals and birds including migratory waterfowl, upland game birds, and a wide variety of song birds and to preserve the recreational uses to which the property has traditionally been devoted, such as shooting, hunting, and fishing, as well as agriculture and forestry and other uses which are compatible with the conservation and protection of the property.

NOW, THEREFORE, as an absolute gift of no monetary consideration but in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors, and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Property more particularly described in Exhibit A attached hereto together with the right to preserve and protect the conservation values of the Property.

The Conservation Purposes of this Conservation Easement are to preserve and protect the conservation values of the Property referenced in the Recitals above and to maintain permanently the open space value of the Property and the dominant woodland, scenic, historic, cultural, rural, agricultural, wildlife and game management, and natural character of the Property, including land and water resources.

To achieve these purposes, the following conditions and restrictions are set forth:

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by Grantee against Grantor, his/her personal representatives, heirs, successors and assigns, lessees, agents, and licensees.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property not inconsistent with the purposes of this Conservation Easement, the Management Plan and not specifically prohibited is permitted. The Property shall be maintained in its natural, scenic, agricultural, rural, and open condition and restricted from any development or use that would impair or interfere with 1) the Conservation Purposes of this Conservation Easement set forth in the Recitals above and 2) the purpose of encouraging the long term economic sustainability of the Property as a working landscape, producing income from activities that sustain or are otherwise consistent with said Conservation Purposes, including the production of forest and agricultural crops and active wildlife management practices with enhance hunting, shooting, and fishing.

All rights reserved by Grantor are considered to be consistent with the Conservation Purposes of this Conservation Easement and, except to the extent that prior written approval of Grantee is required by a paragraph of this Article, require no prior notification to or approval by Grantee. Notwithstanding the foregoing, the Grantor and Grantee have no right to agree to any activity that would result in the termination of this Conservation Easement or that would cause it to fail to qualify as a qualified conservation contribution as described in section 170(h) of the Internal Revenue Code or any regulations promulgated thereunder.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

Under ARTICLE II PROHIBITED AND RESTRICTED ACTIVITIES

D. Management Plan

- E. Hunting, Fishing, and Other Recreational Activities. Grantor reserves the right to lawfully hunt, shoot, fish, and conduct field trials on the Property and the right to lease all or any portion of the Property for hunting, shooting, fishing, field trials, and other recreational activities permitted in this Conservation Easement or the management Plans.
- H. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials, and no change in the topography of the land in any manner except a) as reasonable necessary for the purpose of combating erosion or flooding, b) as permitted pursuant to the Management Plan, or c) as necessary for construction and maintenance of roads permitted hereunder.
- L. Inconsistent Use. There may be no use or activity on the Property that, while consistent with one of the Conservation Purposes of this Conservation Easement, would permit destruction or impairment of other significant conservation Interests. An inconsistent use that is destructive of other conservation interests is permitted only if such use, in the opinion of the Grantee, is necessary for the protection of the Conservation Purposes of this Conservation Easement

ARTICLE III. ENFORCEMENT AND REMEDIES

- A. Upon any breach of the terms of this Conservation Easement by Grantor or by a third party that comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to undertake actions that are reasonably calculated to correct promptly the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may exercise any or all of the following remedies:
 - 1. institute suits to enjoin any breach or enforce any covenant by *ex parte*, temporary, and/or permanent injunction either prohibitive or mandatory, and/or to recover any damages from injury to any conservation values protected by this Conservation Easement, including damages for the loss of scenic, aesthetic, environmental values; and
 - 2. grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity.
- B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

- C. Grantee, its employees and agents, and its successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantor, his/her personal representatives, heirs, successors, or assigns are complying with the terms, conditions, and restrictions of this Conservation Easement.
- D. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property resulting from causes beyond the Grantor's control including without limitation, fire, flood, storm, earth movement, or unauthorized acts of third parties, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property, or harm to the Property resulting from such causes.
- E. In the event of a disagreement between the Grantor or the Grantee as to whether or not a use or activity violates the provisions hereof or whether either party has acted unreasonably in the exercise of any discretionary power, then the parties shall submit the issues(s) to either arbitration or mediation and shall participate in settlement negotiations and discussions in good faith. Any arbitration determination shall not be binding upon the parties unless they agree to be so bound. Neither party may commence any legal action with respect to any such issues(s) until good faith efforts at mediation or, if arbitration is elected in lieu of mediation, until an arbitration panel has made its determination. Any such arbitration shall be conducted by three (3) independent arbitrators qualified to act as such and knowledgeable about local conservation practices, one (1) selected by the Grantor, one (1) selected by the Grantee, and the third selected by the other two arbitrators. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit including without limitation, attorney's fees, shall be borne by Grantee.

ARTICLE IV. PUBLIC ACCESS AND ACCESS BY GRANTEE

The granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever and Grantee warrants that it will cooperate with Grantor in the enforcement of this prohibition.

In addition to the access provided to Grantee under ARTICLE III, the Grantee shall have the right of access to the Property 1) for periodic site visits to observe various land management techniques at such times as are agreed to by Grantor and Grantee, subject to Grantee's providing Grantor at least ____ days advance notice and 2) for scientific research with permission from the Grantor, provided that Grantee provides the Grantor with a written description of any such research proposed and a schedule of projected site visits at least thirty (30) days prior to such proposed activities.

ARTICLE V. EXHIBITS, DOCUMENTATION, AND TITLE

- A. Legal Description and Title. Exhibit A, Legal Description of the Property is attached hereto and made a part hereof by reference. The grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the Property is free and clear of any and all encumbrances.

- B. Easement Documentation Report. The parties acknowledge that the _____ Plantation Conservation Easement Documentation Report (Easement Documentation Report) dated _____, a copy of which is on file at the offices of the Grantee, accurately establishes the uses, structures, Conservation Purposes, and condition of the Property as of the date hereof.

ARTICLE VI. MISCELLANEOUS

- C. Conservation Purpose. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however; that the Grantee agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the Regulations promulgated thereunder, which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)94)(A) of the Internal Revenue Code. The proposed transferee shall also be subject to the approval of the Grantor, which approval may not be unreasonably withheld. Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance, set forth in the Recitals herein.

Recording Grantee shall record evidence of this instrument in the official records of _____ County, _____ and may be re-recorded at any time as may be required to preserve the rights of the Grantee or Grantor under this Conservation Easement.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

ILLINOIS
Conservation Foundation Right and Easement

COMMENTARY: The rights conveyed the Grantee do not guarantee equestrian activities. An exception appears in the language at 3(1)(ii) to the Prohibited uses which protects Grantors' right to engage in "[the use of Parcel B... [for] the keeping of not more than four (4) **horses**... [Emphasis added] (iv) uses...which are accessory to the foregoing permitted uses, including...**barns**...[Emphasis added] and other recreational uses." A further exception is found at 3(j), "[t]he **grazing** [Emphasis added] of any **horses** [Emphasis added] [is prohibited] on Parcel A, other than those permitted to be kept on Parcel B under the terms hereof."

At 5, "Grantors' reserve to themselves and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement, including the right to use the Property for recreational purposes not prohibited under the foregoing provisions..." This language affords protection generally for activities which expressly includes "recreational purposes" which could be reasonably construed to include traditional **equestrian** activities, as such activities are not generally regarded to be inconsistent *per se* with the Conservation Purposes set out in the Internal Revenue Code §170(h)(1)(c); nor are **equestrian** activities considered to be *per se* uses that impair significant conservation interests, " Treasury Regulation §1.170A14(e).

In addition, Grantors reserve the following specific rights: "(b) to keep up to four (4) **horses**... on Parcel B;... (e) to use and permit use by others of the **bridle trail** located on Parcel A for **equestrian** purposes..."

GRANT OF CONSERVATION RIGHT AND EASEMENT

THIS GRANT OF CONSERVATION RIGHT AND EASEMENT is made this 21st day of April, 1998, by _____ and _____, husband and wife, whose address is P.O. Box _____, Wayne, IL 60184 ("Grantors"), in favor of THE CONSERVATION FOUNDATION, an Illinois not-for-profit corporation, whose address is 703 Warrenville Road, Wheaton, IL 60187 ("Grantee").

WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property in Kane County, Illinois, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property");

WHEREAS, THE Property possesses natural and scenic values (collectively "conservation values") of great importance to Grantors, the people of Kane County and the people of the State of Illinois;

WHEREAS, the property consists of two parcels of land described as Parcel A and Parcel B on the attached Exhibit A;

WHEREAS, Parcel A consists of a tract of land 5,464 acres in size in a predominantly natural condition, consisting primarily of an oak-hickory forest and containing a portion of a stream (for many years called “Sleepy Creek” by Grantors) which is a tributary to Norton Creek, which, in turn, is a tributary to the Fox River;

WHEREAS, Parcel B consists of a parcel of land 3.788 acres in size containing a residence, horse barn, and accessory structures;

WHEREAS, the Property is adjacent to a tract of land (the “Village Preserve”) approximately 26.5 acres in size owned by the Village of Wayne and open to the public for nature study and other passive recreation, and the Property and the Village Preserve form a single ecosystem, and the Property is visible to persons using the Village Preserve;

WHEREAS, the use of the Village Preserve would be adversely impacted by the construction of a house or other improvements on the Property;

WHEREAS, the Village of Wayne has adopted Ordinance no. 90-25, captioned as Ordinance Authorizing the Acceptance of Donations or conveyances of land or Easements for the Wayne Historic and Rural Preservation Land Donation Program, which ordinance states in part that “it is the policy of the President and Board of Trustees [of the Village of Wayne] to accept, through gifts, donations, ...easements...for the purpose of preserving the special and historic character of the Village of Wayne...”

WHEREAS, the specific conservation values of the Property are documented in the materials attached hereto as Exhibit B and incorporated by this reference (“Baseline Documentation”), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which are intended to serve as an objective information baseline for monitoring compliance with the terms of this grant;

WHEREAS, Grantors intend to achieve certain purposes (the “conservation purposes”), including the preservation of the conservation values of the Property by the continuation of land use patterns existing at the time of this grant, and, in general, the preservation of natural plant and animal communities and scenic areas in the region in which the Property is located; and

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity;

WHEREAS, Grantee is a publicly supported, tax-exempt non-profit organization, qualified under Sections 501 (c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection or enhancement of land in its natural, scenic, and open space condition; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to endeavor to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Illinois and in particular 765 ILCS 120/1-120/6 (the "Statute"), Grantors hereby voluntarily grant and convey to Grantee a conservation right and easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Easement"), to have and to hold unto Grantee and its successful and assigns forever.

1. **Purpose.** It is the purpose of this Easement to assure that Parcel A will be retained forever predominantly in its natural, scenic, and open space condition and that any natural plant and animal communities located on Parcel A which are indigenous to northeastern Illinois will be preserved to the extent feasible, and that the uses on Parcel B shall be limited in scope and nature to those which are presently existing on Parcel B and to such other uses as are compatible with the preservation of natural, scenic and open space conditions on Parcel A
2. **Rights of Grantee.** To accomplish the purpose of this Easement the following
 - c. (To enter upon the Property (but not the interior of any structure located on Parcel B) at reasonable times to monitor Grantors; compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior notice to Grantors, and Grantee shall not unreasonably interfere with Grantors, use and quiet enjoyment of the Property in accordance with the terms of this Easement; rights are conveyed to Grantee by this Easement:
 - d. To enforce the terms of this Easement by appropriate legal proceedings so as to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged y any inconsistent activity or use.
3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses of the Property are expressly prohibited:
 - b. Any alteration of the surface topography and hydrology of the land on Parcel A (including, without limitation, grading or the excavation, removal or moving of soil, sand, gravel or vegetation, except as may be necessarily required in the course of any activity expressly permitted hereunder, and the construction or building of a pond anywhere on the Property);

The use of Parcel B for any purpose other than (i) a single family residence not exceed eight thousand square feet in size, (ii) the keeping of not more than four (4) horses, (iii) open space, or (iv) uses which are accessory to the foregoing permitted uses, including driveways, garages, tool sheds, barns, swimming pools, tennis courts, and other recreational uses. Parcel B may not be further subdivided.

- j) The grazing of any horses or other livestock on Parcel A, other than those permitted to be kept on Parcel B under the terms hereof.
5. **Reserved Rights.** Grantors reserve to themselves and to their personal their ownership of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement, including the right to use the Property for recreational purposes not prohibited under the foregoing provisions and which do not interfere with the preservation of plant and animal communities currently on the Property. Without limiting the foregoing, Grantors reserve the following specific rights:
- b) To keep up to four (4) horses (or the equivalent number of animal units in other livestock, as measured under the Illinois Livestock Management Facilities Act, 510 ILCS 77/1 *et seq*) on Parcel B.
 - e) To use and permit use by others of the **bridle trail** [Emphasis added] located on Parcel A for **equestrian** [Emphasis added] purposes (not including vehicular traffic).
6. **Grantee's Remedies.**
- a) In the event of a violation of any representation, warranty, covenant or other provision of this Easement, in addition to any remedies now or hereafter provided by law, Grantee may, following reasonable notice to Grantors, institute a suit to injunctive relief, specific performance or damages, enter upon the Property to correct any such violation, and hold Grantors and Grantors; successors, heirs and assigns in title responsible for the cost thereof, or expend such sums as may be necessary to satisfy any lien prohibited hereunder or to pay and discharge any delinquent taxes or assessments, or to redeem from any tax sale, and all funds so paid or expended by Grantee shall, until repaid, constitute a lien on the Property. In the event Grantors are adjudicated to have violated any of Grantors; obligations herein, Grantors shall reimburse Grantee for any costs or expenses incurred in connection with the enforcement of its rights, including court costs and attorneys' fees. The exercise by Grantee of one remedy shall not have the effect of waiving any other remedy and the failure to exercise any remedy shall not have the effect of waiving the use of such remedy at any other time. All damages, costs, and expenses awarded to Grantee hereunder shall constitute a lien against the Property until repaid by Grantors. Grantee shall have the right, but not the obligation, to record a notice of any lien which Grantee may claim to have against the Premises.
7. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the

same or any other term of this Easement of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver thereof.

8. **Waiver of Certain Defenses.** Grantors hereby waive any defense of laches, estoppel, or prescription.
9. **Access.** Except as may be otherwise expressly provided herein, no right of access by the general public to any portion of the Property is conveyed by this Easement.
10. **Inspection.** Representatives of Grantee may enter onto the Property at reasonable times upon reasonable notice for the purpose of determining Grantors, compliance with this Easement.
12. **Mechanics Liens.** Grantors shall keep the Property free from any mechanics liens. If any such liens are placed against the Property, Grantors shall promptly cause them to be released or, in the alternative, shall provide Grantee with title insurance reasonable acceptable to Grantee insuring over said liens. Grantee shall have the right to pay any lien if Grantors fail to provide Grantee with title insurance over the lien. Grantee shall have a lien on the Property in the amount of any funds paid by Grantee to discharge such mechanic's lien until such amount has been repaid by Grantor.
15. **Extinguishment.** If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, financing or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Illinois law at the time, in accordance with paragraph 9.1 hereof. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant, provided, however, that such use shall not be limited to the Property.

Proceeds. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements permitted under this Easement, if any) by a fraction of which the numerator shall be the value of the Easement at the time of this grant and the denominator shall be the value of the Property without deduction for the value of the Easement, at the time of this grant. The values at the time this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For

the purposes of this paragraph, the ratio of the value of the Easement to the value of the property unencumbered by the Easement shall remain constant, and the value of the Easement shall be equal to the difference in value between the Property, without diminution attributable to this Easement, and the value of the Property as encumbered by this Easement. If Grantors do not claim a charitable gift deduction for purposes of calculating federal income taxes and submit a qualified Appraisal value of the Easement shall be deemed to be fifty percent (50%) of the value of the Property unencumbered by this Easement.

16. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation rights under the Statute (or any successor provision then applicable). As a condition of such transfer, Grantee shall require the transferee to agree that the conservation purposes that this grant is intended to advance continue to be carried out. In the event that Grantee is unable to carry out and fulfill the obligations and purposes of the Grantee contained herein, Grantee shall offer to assign this Easement to the Village of Wayne.

20. **Recordation.** Grantee shall record this instrument in the official records of Kane County, Illinois and may re-record it at any time or times as Grantee may, in its sole discretion deem it advisable to preserve its rights in this Easement. Grantee may, prior to the fortieth anniversary of the date of this Easement and at such other times as Grantee deems necessary, record a claim pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/13-118, for the purpose of preserving the lien of this Easement in perpetuity. Nothing contained in this paragraph shall be deemed to constitute an acknowledgement that any such recording is necessary, however, and Grantors and Grantee expressly acknowledge that no such recording is necessary in order to perpetuate the validity or enforceability of this Easement.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**ILLINOIS HORIZON FARMS
CONSERVATION EASEMENT**

COMMENTARY: Horizon Farms, the land subject to the Conservation Easement, “has been operated for many years as a farm for the breeding and training of thoroughbred animals.”

Grantor expressly reserves ...at 5(a)(ii) “[t]he right to use the Property ... as a **horse** [Emphasis added] farm or other **equestrian** [Emphasis added] facility... (iv) [t]he right to continue traditional **equestrian** [Emphasis added] activities, such as **hunting with hounds, steeple chases, trail rides, polo, and horse shows** [Emphasis added]... (vi) The right to continue **equestrian** [Emphasis added] ... trails on the Property and grant easements therefore, provided that no new **equestrian trails** [Emphasis added] (not existing on the date hereof) shall be in any Natural area...” In addition to specific, express “Reserve[d] Rights” at 5, Grantor excepted from “Prohibited uses” at 3(b) “commercial farming or agricultural activities permitted hereunder” not exceeding de minimis use.”

**GRANT OF CONSERVATION RIGHT AND EASEMENT
Instrument prepared by George M. Covington
500 North Western Avenue, Suite 204
Lake Forest, IL 60045**

THIS GRANT OF CONSERVATION RIGHT AND EASEMENT is made this 10th day of November, 2003, by _____ FARMS, INC. (“_____”), and an Illinois corporation, not individually but as successor trustees of the Living Trust under a Trust Agreement dated September 18, 2001 (the “Trustees”) (Horizon and the Trustees being collectively referred to herein as “Grantor”), Grantor’s address being _____, Barrington Hills, Illinois 60010, in favor of THE CONSERVATION FOUNDATION (“Grantee”), an Illinois not-for-profit corporation whose address is 10 S. 404 Knock Knolls Road, Naperville, IL 60565 and BARRINGTON HILLS CONSERVATION TRUST, INC. (“BHCT”), An Illinois not-for-profit corporation, whose address is 17 Oakdene Road East, Barrington Hills, Illinois 60010;

W I T N E S S E T H:

WHEREAS, _____ is the sole owner in fee simple of certain real property in Cook County, Illinois, commonly known as “_____ Farms,” and more particularly described in Exhibit A-1 attached hereto and incorporated by this reference and the Trustees are the sole owners in fee simple of certain real property in Cook County, Illinois, more particularly described in Exhibit A-2 attached hereto and incorporated by this reference (both parcels being referred to herein together interchangeably as the “Property” or “Horizon Farms”).

WHEREAS, the Property possesses natural and scenic values (collectively “conservation values”) of great importance to Grantor, the people of Cook County, and the people of the State of Illinois.

WHEREAS, _____ Farms consists of two tracts of land approximately 416 acres in size located in the Village of Barrington Hills, Illinois, one tract being approximately 395 acres in size and bounded on the South by _____ Road (Illinois Route __) and on the West by _____ Road, both of which are public roads, and the second tract being approximately 21 acres in size also located in Barrington Hills, Illinois, with its eastern boundary being _____ Road and its southern boundary being _____ Road.

WHEREAS, _____ Farms has been operated for many years as a farm for the breeding and training of thoroughbred **horses**, [Emphasis added] and contains **pasture, hay fields, barns, paddocks, hay and feed storage buildings, a training track**, [Emphasis added] and office, and other facilities commonly used in farming and the breeding and training of **thoroughbred horses**, [Emphasis added] and residential buildings for farm employees, all as more fully described on the attached Exhibit B.

WHEREAS, the Property is situated on two public roads and provides a view of rolling farm fields and scenic enjoyment to travelers on those roads.

WHEREAS, the property is located between and in close proximity to two large units of the Cook County Forest Preserve system, Spring Creek Nature Preserve and Crabtree Nature Center. These tracts of land are owned by the Cook County Forest Preserve District, a government entity, are open to the public, and are managed for the primary purpose of preserving natural habitat for native plants and animals. _____ Farms serves as an open spaced corridor connecting these public lands, allowing birds and other animals to migrate between these two public preserves. Preservation of _____ Farms as an open space corridor will enhance the ecological viability of each preserve. _____ Farms also contains a pond, wetlands, seasonal and year around streams that are tributaries of Goose Lake and Spring Creek and shoreline along Goose Lake, and in and of itself provides significant and valuable wildlife habitat. Grantor has embarked upon a prairie restoration plan to enhance the ecological significance of the Property.

WHEREAS, the Village of Barrington Hills has adopted and has in effect a comprehensive plan (the "Comprehensive Plan"), which was first adopted in 1957 and has been periodically revised, the last revision being in 1995, and the preservation of _____ Farms by virtue of this Conservation Right and Easement is consistent with and in furtherance of the Comprehensive Plan.

WHEREAS, the Comprehensive Plan includes the following general goals and objectives;

- Encourage the continuation of appropriate agricultural land uses.
- Encourage the maintenance of the countryside environment by the private contribution of lands, development rights, or conservation easements to appropriate public or quasi-public organizations.
- Conserve and enhance native trees and plants, especially those in woodlands, prairies and wetlands, as well as other compatible vegetative cover.
- Nature desirable and endangered wildlife and aquatic species, especially waterfowl and enhance their habitats.
- Encourage safe and attractive systems of equestrian trails for horseback riding and pathways for walking, biking and cross-country skiing

WHEREAS, the Comprehensive Plan divides the lands within the corporate boundaries of the Village of Barrington Hills into eleven Planning Units, and _____ Farms is located in Planning Unit Five. The specific objectives of the Comprehensive Plan for Planning Unit Five include the following:

- Maintain Goose Lake and its adjacent wetlands as an integral element of the Spring Creek Environmental Corridor.
- Encourage the long-term continuation of agriculture throughout this planning unit, and permit other compatible uses incidental thereto.

WHEREAS, the Property includes certain significant natural habitats, denoted on the attached Exhibit B as “Natural Areas: that Grantor wishes to protect, which areas provide shelter for birds and other animals, native trees, prairie grasses, and other plants.

WHEREAS, the specific conservation values of the Property are documented in the materials attached hereto as Exhibit B and incorporated by this reference, which consists of maps, photographs, and other documentation that the parties agree provide, collectively, and accurate representation of the Property at the time of this grant and which are intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

WHEREAS, Grantor intends to achieve certain purposes (the “conservation purposes”), including the preservation of the conservation values of the Property by the continuation of land use patterns existing at the time of this grant, and in general, the preservation of natural plant and animal communities and scenic areas in the region in which the Property is located

WHEREAS, Grantor wishes to preserve the natural, open space, and scenic elements of _____ Farms and to ensure that it may continue to be used for farming purposes, including the cultivation of the soil, raising and harvesting agricultural commodities, and the raising, shearing, feeding, caring for, training, and management of animals.

WHEREAS, Grantor wishes to confine future development of the property primarily to those areas in which residential and/or farm buildings are presently located. Those areas containing residential buildings are denoted on the attached Exhibit B as “Residential Zones” (SHOWN ON Exhibit B as Residential Zones 1 through 8) and those areas containing only agricultural buildings (“Agricultural Buildings”) are denoted on the attached Exhibit B as “Agricultural Building Zones: (shown on Exhibit B as AZ 1 through 9).

WHEREAS, those areas of _____ Farms containing significant natural habitat or areas of ecological significance are denoted on the attached Exhibit B as “Natural Areas” (shown on Exhibit B as Natural Areas A through E) and consist of approximately 82 acres, and are intended to be preserved in a manner that protects their natural habitat or ecological significance .

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee and BHCT the right to preserve and protect the conservation values of the Property in perpetuity.

WHEREAS, Grantee and BHCT are each a publicly supported, tax-exempt non-profit organizations, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder (the "Code") whose primary purposes are the preservation, protection or enhancement of land in its natural, scenic, and open space condition, and Grantee and BHCT have the commitment and the resources to enforce their rights hereunder.

WHEREAS, Grantee and BHCT agree by accepting this grant to honor the intentions of Grantor stated herein and to endeavor to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come.

NOW THEREFORE, in consideration of the above and the mutual covenant, terms, conditions, and restrictions contained herein, and pursuant to the laws of Illinois and in particular 765 ILCS 120/1-120/6 (the "Statute"), Grantor hereby voluntarily grants and conveys to Grantee and BHCT a conservation right and easement (the "Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth to have and to hold unto Grantee and BHCT and their successors and permitted assigns forever, and Grantee and BHCT accept the Easement according to the terms hereof.

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its scenic and open space condition and that certain natural plant and animal communities located on the Property which are indigenous to northeastern Illinois will be preserved to the greatest possible extent, subject to the rights expressly reserved hereunder by Grantor
2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee and BHCT by this Easement:
 - a) To preserve and protect the native scenic appearance, flora, fauna, soils, and drainage patterns, and other conservation values of the Property;
 - b) To view the Property in its scenic and open condition at ground level from adjacent publicly-accessible land;
 - c) To enter upon the Property at reasonable times to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee reasonably determines that immediate entry is necessary to prevent, terminate or mitigate a violation of this Easement, such entry shall be upon reasonable prior notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property in accordance with the terms of this Easement; and
 - d) To enforce the terms of this Easement by appropriate legal proceedings so as to prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited, unless expressly permitted in Section 5 hereof. Without limiting the generality of the foregoing, unless expressly permitted in Section 5 hereof, the following activities on and uses of the Property are prohibited;
- b. Any alteration of the surface topography and hydrology of the land (including, without limitation, grading or the excavation, removal or moving of soil, sand, gravel, peat, or vegetation, except in the course of normal farming operations or as any be necessarily required in the course of residential development permitted under Section 5 hereof or any other activity expressly permitted hereunder;
 - g. Any industrial use of the Property or any commercial use (not including commercial farming or other agricultural activities permitted hereunder) of the Property exceeding de minimis use;
 - j. Within those areas of the Property denoted on the attached Exhibit B as “Natural Areas” the following additional restrictions shall apply:
 - k. Any alteration of the surface topography and hydrology of the land, except as may be required for conservation purposes and which has been approved in advance by Grantee;

5. Reserved Rights

- a) Grantor reserves to itself and to its grantees, successors, and assigns, all rights accruing from its ownership of the Property that are not expressly prohibited herein and are not inconstant with the purpose of this Easement, including the right to use the Property for recreational purposes not prohibited under the foregoing provisions, not exceeding, in any event, de minimis use for any commercial recreational activity, and which do not interfere with the preservation of plant and animal communities currently on the Property. Without limiting the generality of the foregoing, the following rights are expressly reserved:
 - ii) The right to continue to use the Property (including all structures in the Residential Zones and the Agricultural Building Zones) as a **horse farm** [Emphasis added] or other **equestrian** [Emphasis added] facility;
 - iii) The right to conduct other farming operation on the Property, including but not limited to cultivation and harvest of hay and row crops such as corn and soybeans and pasturing of livestock, but expressly prohibiting commercial feedlots, commercial hog confinements, commercial poultry operations, and other large-scale commercial livestock operations;
 - iv) The right to continue traditional **equestrian** [Emphasis added] activities, such as **hunting with hounds, steeplechases, trail rides, polo, and horse shows** [Emphasis added];

- v) The right to construct fences on the Property provided that all fences not located in the Residential Zones or Agricultural Building Zones must be dark-stained four-board fences with fence posts on the outside of the **pasture** [Emphasis added] (or other enclosed area), unless otherwise approved in writing by Grantee and further provided that no fences shall be allowed in any Natural Area unless approved in writing by Grantee;
- vi) The right to construct **equestrian** [Emphasis added] and pedestrian trails on the Property and grant easements therefore, provided that no new **equestrian** [Emphasis added] trails (not existing on the date hereof) shall be in any natural Area;
- d) No construction may occur in any Residential Zone unless plans have been previously submitted to and approved by Grantee. Grantee's right to approve shall be limited to determining that the proposed construction complies with the terms of this Easement. Grantee shall approve or disapprove any plan within fifteen days after submission of the plan to Grantee. If Grantee requests additional information before issuing its approval, Grantee shall have fifteen days after receipt of such information to approve or disapprove the plan. Failure by Grantee to approve, disapprove, or request additional information within the applicable fifteen-day period shall constitute approval.

6. Remedies.

- a) In the event of a violation or threatened violation of any representation, warranty, covenant or other provision of this Easement, in addition to any remedies now or hereafter provided by law, Grantee and/or BHCT may following reasonable notice to Grantor, (i) institute a suit for injunctive relief, specific performance or damages, (ii) enter upon the Property to correct any such Violation, and hold Grantor and Grantor's successors, heirs and assigns in title responsible for the cost thereof, or (iii) expend such sums as may be necessary to satisfy any lien prohibited hereunder or to pay and discharge any delinquent taxes or assessments, or to redeem from any tax sale, and all funds so paid or expended by Grantee shall, until repaid, constitute a lien on the Property. Grantor waives any bond requirement which may be applicable to injunctive relief. In the event Grantor is adjudicated to have violated any of Grantor's obligations herein, Grantor shall reimburse Grantee and/or BHCT for any costs or expenses incurred in connection with the enforcement of its rights, including court costs and attorneys' fees. Grantee's and BHCT's remedies hereunder shall be cumulative, and the exercise by Grantee and/or BHCT of one remedy shall not have the effect of waiving any other remedy and the failure to exercise any remedy shall not have the effect of waiving the use of such remedy at any other time. All damages, costs, and expenses awarded to Grantee and/or BHCT hereunder shall constitute a lien against the property until repaid by Grantor. Grantee and/or BHCT shall have the right, but not the obligation, to record a notice of any lien which Grantee and/or BHCT may claim to have against the Property.

- b) Grantor's sole remedy in the event of a failure by Grantee and/or BHCT to perform any of its covenants herein contained shall be, if such failure shall continue for ten (10) days after written notice thereof to Grantee and BHCT, to institute a suit for injunctive relief or specific performance. Grantor hereby waives any claim for damages resulting from such failure, and expressly acknowledges that any such failure by Grantee and/or BHCT shall in no way affect the validity of this Easement or any of the other covenants contained herein.
- c) Any lien conferred herein may be foreclosed by Grantee and/or BHCT in the manner provided by law for the foreclosure of judgment liens.
7. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee and/or BHCT, and any forbearance by Grantee and/or BHCT to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee and/or BHCT of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's or BHCT's rights under this Easement. No delay or omission by Grantee and/or BHCT in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver thereof.
8. **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.
12. **Mechanic Liens.** Grantor shall keep the Property free from any mechanics liens. If any such liens are placed against the Property, Grantor shall promptly cause them to be released or, in the alternative, shall provide Grantee with title insurance reasonable acceptable to Grantee insuring over said liens. Grantee shall have the right to pay any lien if Grantor fails to provide Grantee with title insurance over the lien, provided that Grantee has notified Grantor at least fifteen days in advance of Grantee's intention to do so. Grantee shall have a lien on the Property in the amount of any fund paid by Grantee to discharge such mechanic's lien until such amount has been repaid by Grantor.
15. **Extinguishment.** If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Upon such extinguishment, Grantee shall be entitled, after the satisfaction of prior claims, to its share of the proceeds from any sale, exchange, financing or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, equal to the value of this Easement. The value of this Easement at the time of such extinguishment, shall be determined in accordance with Paragraph 9.1 hereof. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant, provided, however, that such use shall not be limited to the Property.

15.1 **Proceeds.** This Easement constitutes a real property interest immediately vested in Grantee, which for the purposes of paragraph 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements permitted under this Easement, if any) by a fraction of which the numerator shall be the value of the Easement at the time of this grant and the denominator shall be the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values, as finally determined, used to calculate the deduction for federal estate tax purposes allowable by reason of this grant, pursuant to Sections 2031 © and 2055(f) of the Code. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the value of the Easement shall be equal to the difference in value between the Property, without diminution attributable to this Easement, and the value of the Property as encumbered by this Easement.

16. **Assignment.** This Easement is transferable in the manner provided herein. Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation rights under the Statute (or any successor provision then applicable). The transferee shall have the commitment to protect the conservation purposes of this Easement and the resources to enforce the terms hereof. As a condition of such transfer, Grantee shall require the transferee to assume in writing the obligations of Grantee under this Easement and to agree that the conservation purposes that this grant is intended to advance shall continue to be carried out in perpetuity. Without limiting the foregoing, Grantee may assign its interests under this Easement to BHCT provided that BNCT is an organization qualified under Section 170(h) of the Code to acquire and hold qualified conservation contributions and following such transfer BHCT shall be deemed the Grantee hereunder; prior to any such transfer all actions required hereunder to be taken by Grantee shall require only the action of The Conservation Foundation or its permitted assignee. Notwithstanding anything to the contrary herein, BHCT may assign its rights hereunder only to Grantee or to any permitted assignee of Grantee. Any assignment permitted hereunder shall be executed by the assignor and assignee and recorded with the Recorder of Deeds of Cook County, Illinois.

20. **Recordation.** Grantee shall record this instrument in the official records of Cook County, Illinois and may re-record it at any time or times as Grantee may, in its sole discretion, deem it advisable to preserve its rights in this Easement. Grantee may prior to the fortieth anniversary of the date of this Easement and at such other times as Grantee deems necessary, record a claim pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/13-118, for the purpose of preserving the lien of this

Easement in Perpetuity,. Nothing contained in this paragraph shall be deemed to constitute and acknowledgment that any such recording is necessary, however, and Grantor and Grantee expressly acknowledge that under Section 1 (b) of the Statute (765 ILCS 120/1(b) no such recording is necessary in order to perpetuate the validity or enforceability of this Easement.

24. General Provisions.

b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement, the charitable and perpetual nature of this grant, and the policy and purpose of the Statute. If any provision in this instrument is found to be ambiguous, and interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. It is Grantor's intention that this Easement shall qualify as a "qualified conservation contribution" under Sections 170(h) and 2055 of the Code and shall further qualify as a "qualified conservation easement" under Section 2031(c) of the Code. To that end, this Easement shall be construed in a manner that will entitle it to such qualification, and the parties hereto shall have the right to modify the Easement for the sole purpose of so qualifying.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**ILLINOIS
JO DAVIESS CONSERVATION FOUNDATION
WOODRUFF GRANT OF CONSERVATION RIGHT**

COMMENTARY: No third party standing was created to enforce the **equestrian uses** by the expressed language of the Conservation Easement Agreement.

At Section 4 **Reserved Rights**, Grantor specifically reserves the following rights:

- (d) To allow hunting...hunting with hounds on **horseback**
- (f) To use, maintain, and repair the existing network of ...**equestrian** [Emphasis added] trails..."

Care was taken by the drafters to protect through reservation **equestrian** interests in hunting on **horseback** and trail use

Grantee is conveyed no rights to engage in equestrian activities. "Grantor reserves to himself and to his successors and assigns, all rights accruing from his ownership of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement, including the right to use the Property for recreational and agricultural purposes not prohibited under the foregoing provisions and which do not unreasonably interfere with the presence of plant and animal communities currently on the Property."

At 4 **Reserved Rights**, Grantor specifically reserves the following rights:...

- (b) To continue the agricultural uses of the Property... including such uses as are set forth in the definition of 'agricultural' contained in Section 1 hereof...
- (d) To allow hunting during various legal hunting seasons, in accordance with all applicable hunting laws, including bow, rifle, and shotgun hunting and hunting with hounds on foot and **horseback**...[Emphasis added]
- (f) To use, maintain, and repair the existing network of pedestrian and **equestrian** [Emphasis added] trails, and such trails may be extended with the prior approval of the Grantee...
- (m) To construct fences, agricultural structures, and buildings for agricultural purpose not exceeding 400 square feet in size, such as livestock loafing sheds, where reasonably necessary to support permitted agricultural uses of the Property;

This agreement employs language, both generally and specifically, to protect intended equestrian activities for the benefit of Grantor, his lessees, licensees, and invitees.

GRANT OF CONSERVATION RIGHT AND EASEMENT

THIS GRANT OF CONSERVATION RIGHT AND EASEMENT is made this 15th day of December, 2000, by _____ as trustee under a trust agreement dated April 8, 1999 and known as the _____ Trust, whose address is _____, Elizabeth, Illinois 61028 ("Grantor"), in favor of JO DAVIESS CONSERVATION FOUNDATION, an Illinois not-for-profit corporation, whose address is P.O. Box 6, Scales Mound, Illinois 61075 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Jo Daviess County, Illinois, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property");

WHEREAS, the Property possesses natural and scenic values (collectively "conservation values") of great importance to Grantor, the people of Jo Daviess County and the people of the State of Illinois;

WHEREAS, the Property consists of approximately 265 acres of which approximately 190-acres are woodland and restored prairie and 75 acres are farm fields currently used for row crops or pasturage and farm buildings, as shown on the sketch attached hereto as part of Exhibit B;

WHEREAS, a portion of the Property approximately 15.15 acres in size, specifically described on the attached Exhibit A-1 (and referred to herein as the "Building Site"), is improved with residential and farm buildings and is an area in which Grantor may wish to construct such buildings in the future;

WHEREAS, the Property is bordered on the north by _____ Road, a public road, and may be viewed in its open space condition from the public traveling along that road;

WHEREAS, Jo Daviess County is one of the most scenic counties in the state of Illinois with a pattern of agricultural practices that preserves the scenic open space, wildlife habitat, and agricultural values of this area;

WHEREAS, Jo Daviess County is located approximately 150 miles west of the metropolitan Chicago region with a current population of approximately nine million persons, and Jo Daviess County is experiencing substantial development pressures from the Chicago metropolitan area;

WHEREAS, the specific conservation values of the Property are documented in the materials attached hereto as Exhibit B and incorporated by this reference, which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which are intended to serve as an objective information baseline for monitoring compliance with the terms of this grant;

WHEREAS, Grantor intends to achieve certain purposes (the "conservation purposes"), including the preservation of the conservation values of the Property by the continuation of agricultural and open space use of the land, and, in general, the preservation of agriculture, natural plant and animal communities and scenic areas in the region in which the Property is located;

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity;

WHEREAS, Grantee is publicly supported, tax-exempt non-profit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder (the "Code") whose primary purpose is the preservation, protection or enhancement of land in its natural scenic, and open space condition; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to endeavor to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Illinois and in particular 765 ILCS 120/1-120/6 (the "Statute"), Grantor hereby voluntarily grants and conveys to Grantee a conservation right and easement (the "Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth, to have and to hold unto Grantee and its successors and assigns forever.

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its agricultural, natural, scenic, and open space condition and that agricultural use and natural plant and animal communities located on the Property that are indigenous to Jo Daviess County, Illinois will be preserved to the extent feasible. For the purpose of this Easement the term "agricultural" shall be defined to mean substantially undeveloped land devoted to the production of horticultural, silvicultural and agricultural crops and animals, including fruits, nuts, vegetables, mushrooms, greenhouse plants, Christmas trees, timber, forages and sod crops, grains and feed crops dairy and dairy products, composting of agricultural plants, animal manures, and residential law materials, and the lying fallow or nonuse of the Property. "Open space" uses shall include agricultural uses as defined above, non-agricultural uses that conserve natural, scenic, or designated historic resources, and windbreaks and other vegetation.
2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
 - c) To enter upon the Property at reasonable times to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is necessary to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property in accordance with the terms of this Easement; and
 - d) To enforce the terms of this Easement by appropriate legal proceedings so as to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such area or features of the Property that may be damaged by any inconsistent activity or use.
3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the

foregoing, the following activities on and uses of the Property are expressly prohibited.

b) Other than in the Building Site and except as expressly permitted in Section 4 hereof, any alteration of the surface topography and hydrology of the land (including, without limitation, grading or the excavation, removal or moving of soil, sand, gravel, peat, or vegetation, except as may be reasonably required in the course of any activity expressly permitted hereunder), except as may be required to conduct the agricultural practices, trail construction and trail maintenance permitted hereunder in Section 4

4. **Reserved Rights.** Grantor reserves to himself and to his successors, and assigns, all rights accruing from this ownership of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement, including the right to use the Property for recreational and agricultural purposes not prohibited under the foregoing provisions and which do not unreasonably interfere with the preservation of plant and animal communities currently on the Property. Without limiting the foregoing, and notwithstanding any provision to the contrary in Section 3 hereof or elsewhere in this Easement, Grantor specifically reserves the following rights:

d) To allow hunting during the various legal hunting seasons, in accordance with all applicable hunting laws, including bow, rifle, and shotgun hunting and hunting with hounds on foot and **horseback**;[Emphasis added]

f) To use, maintain, and repair the existing network of pedestrian and equestrian trails, and such trails may be extended with the prior approval of the Grantee which shall not be withheld if the Grantee reasonably determines that such extension is appropriate and consistent with the purposes of this Easement, and that such extension will cause no material damage to natural flora or other significant natural features or impede the use of agricultural practices permitted hereunder, and further provided that Grantee may require that certain trails be permanently to temporarily closed or relocated if erosion or other injury to natural features is occurring.

5. **Grantee's Remedies.**

a) In the event of a violation or threatened violation of any representation, warranty, covenant or other provision of this Easement, in addition to any remedies now or hereafter provided by law, Grantee may, following reasonable notice to Grantor, (i) institute a suit for injunctive relief, specific performance or damages, (ii) enter upon the Property to correct any such violation, and hold Grantor and Grantor's successors, heirs and assigns in title responsible for the cost thereof, or (iii) expend such sums as may be necessary to satisfy any lien prohibited hereunder or to pay and discharge any delinquent taxes or assessments, or to redeem from any tax sale, and all funds so paid or expended by Grantee shall, until repaid, constitute a lien on the Property. Grantor waives any bond requirement which may be applicable to injunctive relief. In the event Grantor is adjudicated to have violated any of Grantor's obligations herein, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with the enforcement of its rights, including

court costs and attorneys' fees. Grantee's remedies hereunder shall be cumulative, and the exercise by Grantee of one remedy shall not have the effect of waiving any other remedy and the failure to exercise any remedy shall not have the effect of waiving the use of such remedy at any other time. All damages, costs, and expenses awarded to Grantee hereunder shall constitute a lien against the Property until repaid by Grantor. Grantee shall have the right, but not the obligation, to record a notice of any lien which Grantee may claim to have against the Property.

- b) Grantor's sole remedy in the event of a failure by Grantee to perform any of its covenants herein contained shall be, if such failure shall continue for ten (10) days after written notice thereof to Grantee, to institute a suit for injunctive relief or specific performance. Grantor hereby waives any claim for damages resulting from such failure, and expressly acknowledges that any such failure by Grantee shall in no way affect the validity of this Easement or any of the other covenants contained herein.
6. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver thereof.
7. **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.
11. **Mechanics Liens.** Grantor shall keep the Property free from any mechanics liens. If any such liens are placed against the Property, Grantor shall promptly cause them to be released or, in the alternative, shall provide Grantee with title insurance reasonably acceptable to Grantee insuring over said liens. Grantee shall have the right to pay any lien if Grantor fails to provide Grantee with title insurance over the lien. Grantee shall have a lien on the Property in the amount of any funds paid by Grantee to discharge such mechanic's lien until such amount has been repaid by Grantor.
14. **Extinguishment.** If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Upon such extinguishment, Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, financing, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, to the value of the Easement. The value of the Easement at the time of such extinguishment, shall be determined in accordance with Paragraph 14.1 hereof. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant, provided, however, that such use shall not be limited to the Property.

- 14.1 **Proceeds** The Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Section 14, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements permitted under this Easement, if any) by a fraction of which the numerator shall be the value of the Easement at the time of this grant and the denominator shall be the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this Grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1986
15. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation rights under the Statute (or any successor provision then applicable). As a condition of such transfer, Grantee shall require the transferee to agree that the conservation purposes that this grant is intended to advance shall continue to be carried out in perpetuity. In the event that Grantee shall cease to exist or shall become unable or unwilling to enforce the terms of this Easement, the rights of Grantee hereunder shall automatically transfer to Natural Land Institute, and Illinois not for profit corporation, whose principal place of business is in Rockford, Illinois, provided that at the time of such transfer Natural Land Institute is in existence and is willing and able to act as Grantee hereunder and is exempt from federal income taxation under Section 501(c)(3) of the Code or any successor provision then applicable.
19. **Recordation.** Grantee shall record this instrument in the official records of Jo Daviess County, Illinois and may re-record it at any time or times as Grantee may, in its sole discretion, deem it advisable to preserve its rights in this Easement. Grantee may, prior to the fortieth anniversary of the date of this Easement and at such other times as Grantee deems necessary, record a claim pursuant to the Illinois Code of Civil Procedure, 735ILCS 5/13-118, for the purpose of preserving the lien of this Easement in perpetuity. Nothing contained in this paragraph shall be deemed to constitute an acknowledgment that any such recording is necessary, however, and Grantor and Grantee expressly acknowledge that no such recording is necessary in order to perpetuate the validity or enforceability of this Easement.
22. **Subordination of Mortgages.** Grantor and Grantee agree that all mortgages and rights in the Property of all mortgagees and holders of other liens and encumbrances (collectively "lien holders") are subject and subordinate at all times to the rights of the Grantee to enforce the terms of this Easement.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**ILLINOIS
LIBERTY PRAIRIE CONSERVATION**

COMMENTARY: No third party legal standing to enforce any provisions of the Agreement are expressly set forth.

The “Nature of Conveyance” is treated extensively at paragraph 21.

The “Grantor reserves . . . all rights accruing from her ownership of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement, including the right to use the Property for recreational purposes not prohibited under the foregoing provisions and which do not interfere with the presence of plant and animal communities currently on the Property. Grantor expressly and specifically reserves the following rights: . . . (b) Construction of a **barn** or **stable** [Emphasis added]. . . Maintenance and replacement of **fences** [Emphasis added] . . . (g) Maintaining the **fenced pasture** [Emphasis added] . . . (j) Maintaining existing paths . . .”

Equestrian uses are not “expressly prohibited” by the Agreement; and would, therefore, be permissible except as to “interfere with the preservation of plant and animal communities currently on the Property.” No explicit **equestrian** uses are expressly set forth in the Agreement, but are implied by, e.g. use of words ‘**horse paddock**’ at Item E of Recitals.

ILLINOIS

George M. Covington, Esq.
Liberty Prairie Conservation

GRANT OF CONSERVATION RIGHT AND EASEMENT

THIS GRANT OF CONSERVATION RIGHT AND EASEMENT is made this _____ day of July, 2005, by _____, successor trustee under a trust agreement dated November 17, 1997, known at the _____ TRUST as to an undivided 50% and as successor trustee under a trust agreement dated November 17, 1997, known as the _____ TRUST as to an undivided 50% whose address is _____ Road, Libertyville, Illinois 60048 (“Grantor”), in favor of address is 32400 Harris, Grayslake, IL 40030 (“Grantee”).

W I T N E S S E T H:

RECITALS:

- A. Grantor is the sole owner in fee simple of certain real property in Lake County, Illinois, more particularly described in Exhibit A attached hereto and incorporated by this reference (the “Property”).
- B. The Property possesses natural and scenic values (collectively “conservation values”) of great importance to Grantor, the people of Lake County and the people of the State of Illinois.

- C. The entire Property consists of a tract of land approximately 17.1 acres in size fronting on Casey Road, a public road; and the Property has been divided in this Easement into two parcels referred to herein as the “Wetlands Zone” and the “Agricultural Zone.”
- D. The Wetlands Zone is approximately 6.5 acres in size and contains the Brook and wetlands described further herein.
- E. The Agricultural zone is approximately 8.5 acres in size and is currently used for the cultivation of row crops such as corn and soybeans and tree plantation (pines and walnuts) and **horse paddock**. [Emphasis added]
- F. The Property is adjacent to land owned by Libertyville Township which has been purchased by said Township for the purpose of preserving open space for the benefit of the citizens of Libertyville Township.
- G. The adjacent land owned by Libertyville Township is a part of the Liberty Prairie Reserve, a 5,800-acre tract of land in central Lake County, Illinois of which approximately 3,200 acres have been protected by public ownership by Libertyville Township and the Lake County Forest Preserve District and permanent protection by conservation easement, and substantial public funds have been expended by Libertyville Township and Lake County Forest Preserve District in acquiring land and preserving the natural and scenic resources of Liberty Prairie Reserve.
- H. Liberty Prairie Reserve is home to at least 29 threatened or endangered plant or animal species and includes three areas that have been dedicated as Illinois Nature Preserves pursuant to the Illinois Natural Areas Preservation Act (525 ILCS 30/1 *et. seq.*), and the protection of the Property will enhance the protection of these nature preserves.
- I. There are 98 species of plants that have been identified as growing on the Property, including the Queen of the Prairie (*Filipendula rubra*), which is listed as “state endangered,” a list of said plants being included herein as part of Exhibit B.
- J. Bull’s Brook (the “Brook”), a tributary of the Des Plaines River, traverses the Property in a generally northwest to southeast direction, and the Brook is of exceptionally high water quality and contains 14 species of fish that have been identified, including the Iowa Darter (*Etheostoma exile*) and Blackchin Shiner (*Nortropis heterodon*), both of which are listed as “state threatened,” a list of said fish being included herein as part of Exhibit B.

- K. A substantial portion of the Property contains wetlands identified by the United States Government as "ADID Wetlands," a map showing the location of the wetlands being included herein as part of Exhibit B, and approximately 7.4 acres of the Property is listed in the Illinois Natural Areas Inventory by reason of its significant natural features.
- L. The population of Lake County is expanding rapidly and is expected to increase by 22% from 2000 to 2020 (U.S. Census Bureau), and the protection of the Property as part of Liberty Prairie Reserve provides exceptional scenic open space to the public.
- M. The specific conservation values of the Property are further documented in the materials attached hereto as Exhibit B and incorporated by this reference, which consist of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which are intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.
- N. Grantor intends to achieve certain purposes (the "conservation purposes"), including the preservation of the conservation values of the Property and the Liberty Prairie Reserve by the continuation of land use patterns existing at the time of this grant, and, in general, the preservation of natural plant and animal communities and scenic areas in the region in which the Property is located.
- O. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.
- P. Grantee is a publicly supported, tax-exempt non-profit organization, qualified under Sections 501 (c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder (the "Code") whose primary purpose is the preservation, protection or enhancement of land in its natural, scenic, and open space condition.
- Q. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to endeavor to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Illinois and conveys to Grantee a conservation right and easement (the "Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth, to have and to hold unto Grantee and its successors and assigns forever.

GRANT AND COVENANTS:

1. **Purpose.** It is the purpose of this Easement to assure that (i) the Wetlands Zone will be retained forever predominantly in its natural, scenic, and open space condition and that any natural plant and animal communities located on the Wetlands Zone that are indigenous to Lake County, Illinois will be preserved to the greatest feasible extent; and (ii) the Agricultural Zone will be retained forever as open space devoted either to agriculture or restored as native prairie, or other natural landscape.
2. **Rights of Grantee.** To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:
 - c) To enter upon the Property at reasonable times to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is necessary to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior notice to Grantor, and Grantee shall not unreasonably interfere with Grantor' use and quiet enjoyment of the Property in accordance with the terms of this Easement; and
 - d) To enforce the terms of this Easement by appropriate legal proceedings against Grantor, parties acting under, through, or with the consent of Grantor, and other third parties, so as to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use,
3. **Prohibited Uses.**

Wetlands Zone and Agricultural Zone

Unless otherwise expressly permitted in Section 5 thereof, any activity on or use of the Wetlands Zone and Agricultural Zone inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities on and uses of the Wetlands Zone and Agricultural Zone are expressly prohibited, unless otherwise expressly and specifically reserved in Section 5 hereof:

- (b) any alteration of the surface topography and hydrology of the land (including, without limitation, grading or the excavation, removal or moving of soil, sand, gravel, peat, or vegetation), except as may be necessarily required in the course of any activity expressly permitted hereunder or as may be permitted in the Management Plan or expressly approved in advance by Grantee;
5. **Reserved Rights.** Grantor reserves to herself and to her personal representatives, heirs, successors, and assigns, all rights accruing from her ownership of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement, including the right

to use the Property for recreational purposes not prohibited under the foregoing provisions and which do not interfere with the preservation of plant and animal communities currently on the Property. Grantor expressly and specifically reserves the following rights:

- a) Harvesting of timber on the Agricultural Zone in accordance with a plan **approved in advance by Grantee;**
- b) Construction of a barn or stable (not to exceed 1,500 square feet in total floor area) in the Agricultural Zone, including a well serving the barn, which may be located inside or outside the barn;
- c) Maintenance and replacement of fences in the Agricultural Zone and the Wetlands Zone where fences are currently located and in such other locations as may have been **approved by Grantee in advance;**
- d) Installation of underground utilities in the Wetlands Zone for the sole purpose of serving any barn or stable constructed by Grantee in such location **as may be approved in advance in writing by Grantee** and otherwise in accordance with the requirements of this Easement;
- f) Removal of the pond and restoration of wetlands in accordance with a plan **approved in advance by Grantee;**
- g) Maintaining the existing fenced pasture in the Agricultural Zone and adding one additional fenced pasture, not exceeding 10,000 square feet in size, in the Wetlands Zone or Agricultural Zone, provided that no part of any fenced pasture shall be located in any wetland;
- h) Maintaining the existing gazebo and shed in the Wetlands Zone, and repairing and replacing each of such structures with a similar structure, provided that (i) no replacement shed shall be larger than the structure it replaces (ii) no replacement gazebo shall exceed 230 square feet in floor area, and (iii) no replacement structure shall be in any different location **without the prior written approval of Grantee;**
- j) Maintaining existing paths in the Wetlands and Agricultural Zones and, **to the extent approved by Grantee,** relocating such paths, provided that all paths shall be constructed of permeable materials such as dirt, wood chips, or gravel.

6. Grantee's Remedies.

- a) In the event of a violation or threatened violation of any

representation, warranty, covenant or other provision of this Easement, in addition to any remedies now or hereafter provided by law, Grantee may, following reasonable notice to Grantor, (i) institute a suit for injunctive relief, specific performance or damages, (ii) enter upon the Property to correct any such violation, and hold Grantor and Grantor' successors, heirs and assigns in title responsible for the cost thereof, or (iii) expend such sums as may be necessary to satisfy any lien prohibited hereunder or to pay and discharge any delinquent taxes or assessments, or to redeem from any tax sale, and all funds so paid or expended by Grantee shall, until repaid, constitute a lien on the Property. Grantor waives any bond requirement which may be applicable to injunctive relief. In the event Grantor is adjudicated to have violated any of Grantor's obligations herein, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with the enforcement of its rights, including court costs and attorneys' fees. Grantee's remedies hereunder shall be cumulative, and the exercise by Grantee of one remedy shall not have the effect of waiving any other remedy and the failure to exercise any remedy shall not have the effect of waiving the use of such remedy at any other time. All damages, costs, and expenses awarded to Grantee hereunder shall constitute a lien against the Property until repaid by the Grantor. Grantee shall have the right, but not the obligation, to record a notice of any lien which Grantee may claim to have against the Property.

- b) Grantor's sole remedy in the event of a failure by Grantee to perform any of its covenants herein contained shall be, if such failure shall continue for ten (10) days after written notice thereof to Grantee, to institute a suit for injunctive relief or specific performance. Grantor hereby waives any claim for damages resulting from such failure, and expressly acknowledges that any such failure by Grantee shall in no way affect the validity of this Easement or any of the other covenants contained herein.

- 7. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver thereof.
- 8. **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.
- 9. **Access.** No right of access by the general public to any portion of the

Property is conveyed by this Easement.

12. **Mechanics Liens.** Grantor shall keep the Property free from any mechanics liens. If any such liens are placed against the Property, Grantor shall promptly cause them to be released or, in the alternative, shall provide Grantee with title insurance reasonably acceptable to grantee insuring over said liens. Grantee shall have the right to pay any lien if Grantor fails to provide Grantee with title insurance over the lien. Grantee shall have a lien on the Property in the amount of any funds paid by Grantee to discharge such mechanic's lien until such amount has been repaid by Grantor.

15. **Extinguishment.** This Easement may only be terminated or extinguished if circumstances arise in the future that render the purposes of this easement impossible or impractical to accomplish, and, under such circumstances, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Upon such extinguishment, Grantee shall be entitled, after the satisfaction of prior claims, to its share of the proceeds from any sale, exchange, financing, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, equal to the value of the Easement. The value of the Easement at the time of such extinguishment, shall be determined in accordance with Paragraph 15.1 hereof. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant, provided, however, that such use shall not be limited to the Property. Amendments, modifications, or boundary line adjustments approved in writing by Grantor and Grantee and not resulting in any loss of land protected by this Easement shall not be deemed to constitute extinguishments.

- 15.1 **Proceeds.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 15, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements permitted under this Easement, if any) by a fraction of which the numerator shall be the value of the Easement at the time of this grant and the denominator shall be the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal estate or income tax purposes allowable by reason of this grant, pursuant to Sections 2055(f) or 170(h) of the Internal Revenue Code of 1986, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the value of the Easement shall be equal to the difference in value between the Property, without diminution attributable to this Easement, and the value of the Property as encumbered by this Easement.

16. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the

Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation rights under the Statute (or any successor provision then applicable). The transferee shall have the commitment to protect the conservation purposes of this Easement and the resources to enforce the terms hereof. As a condition of such transfer, Grantee shall require the transferee to assume the obligations of Grantee under this Easement and to agree that the conservation purposes that this grant is intended to advance shall continue to be carried out in perpetuity. If Grantee ceases to exist without having properly transferred this Easement, as provided above, this Easement shall automatically be transferred to Corporation for Open Lands ("Corlands"), an Illinois not for profit corporation whose principal office is in Chicago, Illinois, or to such other qualified organization (as defined in said Section 170(h)) as the then President of Corlands may designate, and if at such time Corlands no longer exists, to such qualified organization as may be designated by The Nature Conservancy, a nonprofit corporation of the District of Columbia.

20. **Recordation.** Grantee shall record this instrument in the official records of Lake County, Illinois and may re-record it at any time or times as Grantee may, in its sole discretion, deem it advisable to preserve its rights in this Easement. Grantee may, prior to the fortieth anniversary of the date of this Easement and at such other times as Grantee deems necessary, record a claim pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/13-118, for the purpose of preserving the lien of this Easement in perpetuity. Nothing contained in this paragraph shall be deemed to constitute an acknowledgment that any such recording is necessary, however, and Grantor and Grantee expressly acknowledge that no such recording is necessary in order to perpetuate the validity or enforceability of this Easement.

21. **Nature of Conveyance** The conveyance hereunder constitutes a perpetual conservation right under the Statute, charitable trust, a common law easement in gross, a public easement under 35 ILCS 200/9-145(e), a common law dedication, and an easement and covenant running with the land under 35 ILCS 200/22-70. If the Grantee ever becomes owner of fee simple interest in the Property, this Easement shall continue in full force and effect, and the doctrine of merger shall apply.

Instrument prepared by: George M. Covington
500 North Western Avenue Suite 204
Lake forest, IL 60045

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**ILLINOIS
JO DAVIESS AGRICULTURAL CONSERVATION EASEMENT**

COMMENTARY: No Right to engage in **equestrian** activities is conveyed to the Grantee. Enforcement of the terms of the Easement is vested in the Grantee and any successors to Grantee. Significant, detailed language affording protection to Grantor, its lessees, licensees, and invitees in the exercise of rights to engage in intended equestrian uses is set forth in the Agreement.

To wit: At Paragraph 19, “Grantor as trustee reserves for the benefit of the Trust as aforesaid...all rights accruing from the ownership of the Property, including the right to engage in ...all uses of the Property that are not expressly prohibited herein and are not inconsistent with the conservation purpose of this Easement without limiting the generality of the foregoing, the following rights are expressly reserved;

- a) **Agricultural use.** Grantor reserves the right to engage in any and all agricultural uses of the Property...For the purpose of this Easement, ‘agricultural use’ shall be defined as the breeding, raising, pasturing, and grazing of livestock of every nature and description including but not limited to ... **horses**”...[Emphasis added]
- b) **Equestrian** [Emphasis added] Uses. “Grantor reserves the right to engage in equestrian activities (including but not limited to **breeding, raising, training, pasturing, grazing, boarding and sale of horses, horseback riding** instruction, **equestrian husbandry** and other commercial **equestrian** activities [Emphasis added]) and **equestrian** [Emphasis added] sports (including but not limited to **cross-country, dressage, and hunting with hounds** [Emphasis added]).”
- c) **Rural Enterprises.** “Grantor reserves the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, **equestrian** [Emphasis added] **facility**...”
- d) **Fences.**...[Emphasis added] “Existing fences may be repaired, replaced, removed, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock provided that fences may not obscure or prevent the visibility of the Property from any public roadway.”
- e) **Recreational use...** “The Property may be used for low impact, non-commercial uses that are consistent with the purposes of the Easement such as **hunting**, fishing, hiking, nature observation, skiing, temporary camping, and **horseback riding** that adhere to all state and local laws and regulations and that require no surface alteration or other development of the land. Minor surfaces alternations for **equestrian uses**, such as **jumps**, are allowed with Grantee approval. Golf courses, driving ranges, soccer and other ball fields, commercial camping, and commercial recreational uses involving motorized vehicles (except as necessary to carry out agricultural activities) are prohibited on the property.”

JO DAVIESS DEED AGRICULTURAL CONSERVATION EASEMENT

This Deed of Agricultural Conservation Easement is made this 8th day of July, 2005, by _____, as Trustee of the _____ **Declaration of Trust dated March 10, 1993, and her successors in trust**, having an address at _____ Road, Stockton, Illinois 61085 (Grantor), in favor of the **Jo Daviess Conservation Foundation, a nonprofit Illinois corporation** having an address at 126 North Main Street, P.O. Box 216, Elizabeth, Illinois 61028 (Grantee).

Preamble

1. Grantor is the sole owner in fee simple of certain real property in Jo Daviess County, Illinois, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and
2. The Property possesses agricultural, natural, scenic, and open space values (collectively, "Conservation Values") of great importance to the Grantor, the residents of Jo Daviess County, and the citizens of Illinois; and
3. In particular the Property consists of:
 - a) Productive agricultural land and soils; and
 - b) Significant wildlife habitat and primarily undeveloped scenic open space
 - c) that are supported by the agricultural processes which this Easement will protect and sustain in perpetuity; and
4. Jo Daviess County adopted a Comprehensive Plan on September 14, 1999, designed to protect its agricultural, natural, and scenic resources. It is referred to herein as the "Plan." This Plan makes the qualities of the Property significant in the following ways:
 - a) The Plan states: "the Land Use Plan (Part XIII) delineates three types of agricultural areas. Areas with a high concentration of Prime Farmland have been designated as 'Agricultural Preservation Area 1,' concentrated areas of Important Farmland have been designated 'Agricultural Preservation Area 2,' and the remainder of the county is simply designated as 'Agricultural.'..... It is desired to preserve the most productive prime farmland to the fullest extent possible, while preserving large areas of important and other farmland as much as possible without being unduly restrictive."
 1. The Property is contiguous to the county's Agricultural Preservation Area 1;
 2. A portion of the Property is located in Agricultural Area 1;

3. The majority of the Property is located in Agricultural Preservation Area 2;
 - b) The Plan states: "The Land use Plan (Section XIII) identifies certain areas as environmental corridors. These areas, generally following the streambeds, are sensitive and should be preserved. (Goal VII)."
 1. The Property is located within a Primary Environmental Corridor;
 - c) The Plan states: "Any development of the county's elevated ridges, knobs, and mounds must be treated with great sensitivity...Because of these characteristics, elevated areas should be a high priority for conservation efforts in the county."
 1. The Property resides within an Elevated Area with the highest point of the Property being 1010 feet above sea level:
 - d) The Plan states: "Scenic vistas and scenic assets shall be protected and preserved. All development decisions should be made to protect and encourage.....scenic vistas from highways and roads and the pastoral/agricultural look of the county."
 1. The Property fronts for 0.69 miles on Masssbach Road and provides a highly scenic view to the public traveling along that road.
5. The Property possesses significant wildlife habitat that contains:
 - a) 0.2 miles of Rush Creek that flow through the Property of which the surrounding 6 acres are in the 100 year floodplain,
 - b) 3.75 acres of oak/hickory savanna including limestone outcroppings that are contiguous to the 100 year floodplain, and 27.3 acres of upland oak/hickory savanna; and
 - c) Habitat for numerous migratory grassland birds that is maintained by current livestock grazing practices; and
6. The current use of the Property for agricultural production and its related improvements are consistent with the conservation purposes. The agricultural, open space, scenic, and natural habitat resources of the Property are collectively referred to herein as the "Conservation Values" of the Property; and
7. The specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated July 8, 2005, on file

at the offices of the Grantee and incorporated by this reference (“Baseline Documentation”), and are also included in Exhibit B which is incorporated herein by reference and consists of a report, maps, and photographs that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective informative baseline for monitoring compliance with the terms of this grant; and

8. The prominent improved features of the Property, including any ponds, structures, roads, paths, and boundaries are further described in Exhibit B; and
9. The portions of the Property within which all existing structures are located and future structures may be constructed (“Building Envelopes”) are delineated in Exhibit B; and
10. Grantor intends that the Conservation Values of the Property be preserved and maintained by continuation of current land use patterns that do not significantly impair or interfere with those Conservation Values; and
11. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and
12. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified Sections 501(c)(3) and 170(h) of the Internal Revenue Code (the “Code”), whose primary purpose is to protect the natural heritage, spectacular scenery, and agricultural character of Jo Daviess County and the surrounding area; and
13. Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this and future generations; and
14. The protection and preservation of this parcel of land will be an excellent example for the area and will support viable agricultural and conservation practices within the community.

Grant and Acceptance

15. In consideration of the above and mutual covenants, terms, conditions, and restrictions contained herein and pursuant to the laws of the State of Illinois and in particular 765 ILCS 120/1-120/6 (the “Statute”), Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the “Easement”) and Grantee accepts the Conservation Easement on the terms set forth herein.

Covenants

16. **Purpose.** It is the purpose of this Easement to preserve in perpetuity the open space, natural, scenic, and agricultural values of the Property and to

prevent in perpetuity any uses of the Property that significantly impair or interfere with those values. This purpose, as further defined by the provisions of this Easement, is generally referred to collectively herein as “the conservation purpose of this Easement” or the “Purpose.” Grantor intends that this Easement will confine the use of the Property to the following, which are consistent with the purpose of this Easement: a) residential and other improvements associated therewith within the Building Envelopes; b) agricultural viability and productivity to the extent consistent with the conservation purpose and express provisions of this Easement; and c) conservation and management of natural resources.

17. **Rights of Grantee.** To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

- a) To preserve and protect the Conservation Values of the Property;
- b) To enter upon the Property at reasonable times in order to monitor Grantor’s compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably enter the Property or interfere with Grantor’s use and quiet enjoyment of the Property in accordance with the terms of this Easement; and
- c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement by enforcement of the terms hereof, including but not limited to requiring the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 22.

18. **Prohibited Uses.** All activities conducted on the Property shall be consistent with the conservation purpose of this Easement. Without limiting the generality of the foregoing, the following uses are expressly prohibited, unless expressly permitted in subparagraphs (a) through (n) of Paragraph 19 and except for use consistent with the Right of Way conveyance to Standard Oil Company recorded November 29, 1947 in Book M of Miscellaneous records on page 263:

- e) Any alteration of the surface topography and hydrology of the land, or significant soil degradation, erosion, or siltation or pollution of any surface or subsurface waters (including but not limited to grading, excavation, removal of soil, sand, gravel, rock, or vegetation except as may be necessarily required in the course of any activity expressly permitted hereunder.

19. **Reserved Rights.** Grantor as trustee reserves for the benefit of the Trust aforesaid, the successor trustees, beneficial owners, their personal representatives, heirs, successors, and assigns, all rights accruing from the ownership of the Property that are not expressly prohibited herein and

are not inconsistent with the conservation purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a) **Agricultural Use.** Grantor reserves the right to engage in any and all agricultural uses of the Property in accordance with sound generally accepted agricultural consistent with Paragraph 16 above. For the purpose of this Easement, “agricultural use” shall be defined as the breeding, raising, pasturing, and grazing of livestock of every nature and description including but not limited to cattle, sheep, goats, **horses**, [Emphasis added] fish, poultry, or bees; the right to establish, maintain, plant, raise, and harvest agricultural, horticultural, and forestry crops of every nature and description; and the primary processing, storage, and sale, including direct retail sale to the public of crops and produce harvested and produced on the Property. All agricultural uses shall be consistent with the Purpose of this Easement and conducted in a sustainable manner consistent with best management practices recommended by the U.S. Department of Agriculture Farm Service Agency, Natural Resource Conservation Service, Soil & Water Conservation District, Illinois Extension Office or other qualified agricultural consultant, that address soil and water conservation, pest management, nutrient management and habitat protection
- b) **Equestrian Uses.** Grantor reserves the right to engage in **equestrian** [Emphasis added] activities (including but not limited to breeding, raising, training, pasturing, grazing, boarding and sale of **horses**, **horseback** [Emphasis added] riding instruction, **equestrian** [Emphasis added] husbandry and other commercial **equestrian** [Emphasis added] activities) and **equestrian** [Emphasis added] sports (including but not limited to cross-country, dressage, and hunting with hounds).
- c) **Rural Enterprises.** Grantor reserves the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, farmer’s market, farm machinery repair, sawmills, firewood distribution, bed and breakfast, camp, agritourism, animal rescue, **equestrian** [Emphasis added] facility, boarding kennel, or education programs so long as such uses are confined to locations within the Building Envelopes as identified in Exhibit B. However, trailer parks, refuse storage, golf courses, vehicle dealership, motorized recreation vehicle facilities, and all other activities which are inconsistent with protection of the Conservation Values of the Easement are expressly prohibited. Conducting customary rural enterprises on any other part of the Property is not permitted without Grantee’s prior approval for each instance. Grantee shall not give such permission unless Grantee determines that the proposed use will not substantially diminish or impair the Conservation Values of the Property.

- i) **Fences...** [Emphasis added] “Existing fences may be repaired, replaced, removed, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock provided that fences may not obscure or prevent the visibility of the Property from any public roadway.
- n) **Recreational use...** “The Property may be used for low impact, non-commercial uses, that are consistent with the purposes of the Easement such as hunting, fishing, hiking, nature observation, skiing, temporary camping, and **horseback** [Emphasis added] riding that adhere to all state and local laws and regulations and that require no surface alteration or other development of the land. Minor surface alternations for equestrian uses, such as jumps, are allowed with Grantee approval. Golf courses, driving ranges, soccer and other ball fields, commercial camping, and commercial recreational uses involving motorized vehicles (except as necessary to carry out agricultural activities) are prohibited on the property.”

21. **Grantee’s Approval.** The purpose of requiring Grantee’s approval for activities described in Paragraphs 19 and 20 is to allow Grantee to ensure that the activities in question are consistent with the Purpose and Conservation Values of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing and shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose and Conservation Values of this Easement. Grantee shall respond to such request within sixty (60) days after receipt of Grantor’s request. Grantor may only undertake such action if Grantee fails to respond within such 60 day period or if Grantee approves the proposed action.

22. **Grantee’s Remedies.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within 60 days of receipt of notice thereof from Grantee, or under circumstances where the violation cannot be cured within a 60 day period, fails to begin curing such violation within the 60 day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor’s liability therefore, Grantee, in its sole discretion, may

apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or equity.

23. **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.
24. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
25. **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.
26. **Acts Beyond Grantor's Control.** Nothing contained in the Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
32. **Extinguishment.** This Easement may only be terminated or extinguished if circumstances arise in the future such as render the purpose of this Easement impossible or impractical to accomplish, and under such circumstances, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which

Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined unless otherwise provided by Illinois law at the time, in accordance with Paragraph 26. Grantee shall use all such proceeds in a manner consistent with the conservation purpose of this Easement provided, however, that such use shall not be limited to the Property. Amendments, modifications, or boundary line adjustments approved in writing by Grantor and Grantee and not resulting in any loss of land protected by this Easement shall not be deemed to constitute extinguishments.

33. **Proceeds.** This Easement constitutes a real property interest immediately vested in the Grantee, which, for the purpose of Paragraph 25, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code, as amended. For the purposes of this paragraph, the ratio of the value of this Easement to the value of the Property unencumbered by the Easement shall remain constant.
35. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold Conservation Easements under Illinois statute (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes of this Easement continue to be carried out.
40. **Recordation.** Grantee shall record this instrument in timely fashion in the official records of Jo Daviess County, Illinois and may re-record it at any time as may be required to preserve its rights in this Easement but the parties agree that under current law no such re-recording is necessary.

PREPARED BY: Mike Wiedel
8113 S.Krug Road
Elizabeth, IL 61028

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**ILLINOIS
WAYNE DUPAGE HUNT**

COMMENTARY: GRANTEES are specifically conveyed the right “[t]o enter upon the PROPERTY ... in connection with **equestrian** [Emphasis added] activities including **trail riding** and **trail riding with hounds, equestrian** [Emphasis added] education programs, **equestrian** [Emphasis added] competitions and **pony club** [Emphasis added] activities.”

At 2 (d) grantees are expressly conveyed the right “[t]o enforce the terms of this Easement by appropriate legal proceedings so as to prevent any activity or use of the PROPERTY that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the PROPERTY that may be damaged by any inconsistent activity or use.”

This language appears clearly to be intended to comply with Treasury Regulations § 1.170 A-14(g)(5); however, it does not expressly state that the grantees, possess the right to enforce access to the property by grantees “in connection with **equestrian** [Emphasis added] activities” set forth in this Agreement. The right to enforce must be implied as with all legally binding contracts however, or the **equestrian** use of this property by grantees would have been a nullity ab initio. Also general authority to enforce the “terms of this Easement” is expressed specifically at 4.

GRANT OF CONSERVATION RIGHT AND EASEMENT

This GRANT OF CONSERVATION RIGHT AND EASEMENT is made this _____ day of _____, 2003 by _____ having an address of P.O. Box ____ Wayne, IL 60184-0206 (“Grantor”) in favor of THE WAYNE DUPAGE HUNT, INC., an Illinois Not For Profit Corporation and the WAYNE AREA CONSERVANCY FOUNDATION whose addresses are c/o _____, P.O. Box _____, Wheaton, IL 60189-7900 (“GRANTEES”).

WITNESSETH:

WHEREAS, GRANTOR is the sole owner in fee simple of certain real property in Kane County, Illinois, more particularly described in Exhibit “A” attached hereto and incorporated by this reference (the “PROPERTY”); AND

WHEREAS, the PROPERTY possessed natural and scenic values (collectively “conservation values”) of great importance to GRANTOR, the people of the Village of Wayne, Illinois, members of the Wayne DuPage Hunt, Inc., the Wayne Area Conservancy Foundation and members of the Wayne Pony Club.

WHEREAS, the GRANTOR intends to preserve the conservation values of the PROPERTY by the continuation of land use patterns existing at the time of this grant and in general the preservation of natural plant and animal communities and scenic areas of the property; and

WHEREAS, GRANTOR intends to preserve the conservation values of the PROPERTY by the continuation of land use patterns existing at the time of this grant and in general the preservation of natural plant and animal communities and scenic areas of the property; and

WHEREAS, GRANTOR further intends as owner of the PROPERTY to convey to GRANTEES the right to preserve and protect the conservation values of the PROPERTY in perpetuity; and

WHEREAS, the WAYNE DUPAGE HUNT, INC. is an Illinois Not For Profit Corporation and the WAYNE AREA CONSERVANCY FOUNDATION is a publicly supported, tax-exempt non-profit organization, qualified under Section 502(c)(3) and 170 (h) of the Internal Revenue Code of 1986 as amended and the regulations issued there under (the "Code") whose primary purpose is the preservation, protection or enhancement of land in its natural, scenic and open space condition; and

WHEREAS, GRANTEE agrees by accepting this grant to honor the intentions of GRANTOR stated herein and to endeavor to preserve and protect in perpetuity the conservation values of the PROPERTY for the benefit of the present generation and the generations to come;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Illinois and in particular 765 ILCS 120/1-120/6 (the "Statute") GRANTOR hereby voluntarily grants and conveys to GRANTEES a conservation right and easement (the "Easement") in perpetuity over the PROPERTY of the nature and character and to the extent hereinafter set forth, to have and to hold unto GRANTEES and its successors and assigns forever

1. **PURPOSE:** It is the purpose of this Easement to assure that the PROPERTY will be retained forever predominantly in its natural scenic and open space condition.
2. **RIGHTS OF GRANTEES:** To accomplish the purpose of this Easement the following rights are conveyed to GRANTEES by this Easement.
 - a) To preserve and protect the native flora, fauna, soils, water table and drainage patterns, and other conservation values of the PROPERTY.
 - d) To enforce the terms of this Easement by appropriate legal proceedings so to prevent any activity on or use of the PROPERTY that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the PROEPRTY that may be damaged by any inconsistent activity or use.
3. **PROHIBITED USES:**
 - b) Any alteration of the surface topography and hydrology of the land (including, without limitation, grading or the excavation, removal or moving of soil, sand, gravel, peat or vegetation, except as may be necessarily required in the course of any

activity expressly permitted hereunder).

4. **GRANTEES' DISCRETION:** Enforcement of the terms of this Easement shall be at the discretion of the GRANTEES and any forbearance by GRANTEES to exercise their rights under this Easement in the event of any breach of any term of this Easement shall not be deemed or construed to be a waiver by GRANTEES of such term or of any subsequent breach of the same or any other term of this Easement or of any of GRANTEES' rights under this Easement. No delay or omission by GRANTEES in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver thereof

8. **EXINGUISHMENT:** If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which GRANTEES shall be entitled, after the satisfaction of prior claims, from any sale or exchange, financing, or involuntary conversion of all or any portion of the PROPERTY subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Illinois law at the time hereof. GRANTEES shall use all such proceeds in a manner consistent with the conservation purposes of this grant, provided, however, that such use shall not be limited to the PROPERTY.

12. **RECORDATION:** GRANTEES shall record this instrument in the office records of Kane County, Illinois and may re-record it at any time or times as GRANTEES may, in their sole discretion, deem it advisable to preserve its rights in this Easement. GRANTEES may, prior to the fortieth anniversary of the date of this Easement and at such other times as GRANTOR deems necessary, record a claim pursuant to the Illinois Code of Civil Procedure 735 ILCS 5/13-118, for the purpose of preserving the lien of this Easement in perpetuity. Nothing contain in this paragraph shall be deemed to constitute an acknowledgement that any such recording is necessary, however, and GRANTOR and GRANTEES expressly acknowledge that no such recording is necessary in order to perpetuate the validity or enforcement of this Easement.

13. **GENERAL PROVISIONS:**
 - i. **AUTHORITY:** GRANTOR represents and warrants that GRANTOR is the owner in fee simple of the PROPERTY, GRANTOR is fully authorized and empowered to execute and deliver this instrument and there is no lien, encumbrance, contract, or governmental prohibition against the execution and delivery of this instrument and the performance by GRANTOR of all of GRANTOR's obligations hereunder.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

KENTUCKY MODEL DONATION

COMMENTARY: Equestrian uses are not specifically denominated as such in this Agreement, but at 5 “Grantor reserves... all rights accruing from its ownership of the Property, including...all uses that are not expressly prohibited herein and are not inconsistent with the Purpose of this Easement.” These uses would include **equestrian** uses. Grantor, subject to “Prohibited Uses” expressly reserves “(a) the right to conduct farming or agricultural activities (as defined herein) for domestic or commercial purposes... (h) the right to create new trails...”

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT IS MADE THIS _____ day of _____, 200____, BY _____, having an address at _____, who with their successors in title to all or any portion of the Property as hereinafter defined are collectively referred to as “Grantor,” in favor of Fayette County Rural Land Management Board, Inc. (“Grantee”), a nonprofit Kentucky corporation incorporated, in good standing and qualified to do business under the laws of the Commonwealth of Kentucky, having a business address at the Lexington-Fayette Urban County Government Center, 200 East Main Street, Lexington, Kentucky, 40507.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain unencumbered real property known as _____ located in Fayette County, Kentucky; more particularly described in Exhibit A attached hereto and incorporated by this reference (the “Property”) containing _____ acres of land, more or less; and

WHEREAS, it is Grantor’s desire to restrict and protect the Property; and

WHEREAS, the Fayette County Comprehensive Plan, adopted on July 29, 1996 sets forth general community goals, which include the following: “promote land use which is sensitive to the natural and built environment”; “preserve, protect and enhance the natural and physical features that give the Bluegrass its unique identity”; “maintain and enhance the agricultural economy, and the rural character in the rural service area”, and “preserve, promote and enhance those aspects of our natural and built environment which encourage tourism”; and

WHEREAS, the Fayette County Comprehensive Plan, adopted on December 13, 2001, sets forth general community goals and objectives, which include the following: “preserve the agricultural core, the natural resources and the cultural landscape of the Bluegrass Region”, “protect and secure rural open space and scenic vistas, particularly in environmentally sensitive and physically unique areas”, “preserve protect and enhance...scenic vistas and corridors, places of historic and cultural significance, environmentally sensitive areas”, “preserve, protect and enhance the natural landscape that gives the Bluegrass Region its unique identity and image”, “protect, preserve and enhance the rural characteristics and agricultural productivity of agricultural land”, “preserve an adequate land basis for the **equine** [Emphasis added] industry”,

“Recognize various types of tourism...and encourage the preservation of the cultural, historic, ecological, and agricultural resources upon which they are based.”; and

WHEREAS, the Fayette County Zoning Ordinance, adopted on December 15, 1983, and amended January 6, 1997 identifies the Property as located in the Agricultural Rural (A-R) Zone which was established “to preserve the rural character of the agricultural service area by promoting agriculture and related uses, and by discouraging all forms of urban development except for a limited amount of conditional uses;” and

WHEREAS, the Fayette County Rural Land Management Plan, adopted on April 8, 1999 identifies the Property as located in the Core Agricultural and Rural Land Area which was established “for preservation and enhancement of the land for agricultural purposes in order to ensure the continues viability of the local agricultural economy” and identifies the Property as located in the _____ and identified the area as a focus area appropriate for conservation scenic easements; and

WHEREAS, the Purchase of Development Rights Ordinance places a priority on acquiring easements in designated focus areas such as _____, and

WHEREAS, the Fayette County Rural Land Management Board has purchased conservation easements on properties near the Property and the donation of a conservation easement on the Property will benefit the public by increasing the total number of protected acres in this location; and

WHEREAS, Grantor and Grantee have the common purpose of conserving and preserving the aforementioned conservation Values of the Property; and

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated _____ 200____, on file at the office of the Grantee and incorporated by this reference (“Baseline Documentation”), which consists of reports, maps, photographs, and other documentation that the Grantor and Grantee agree provide, collectively, and accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, the Property contains approximately _____ feet of frontage along _____ and _____; and

WHEREAS, the grant of this Easement will serve the clearly delineated governmental policies of the Farmland Policy Act, P.L. 9-98, 7 U.S.C. 4201 et seq. whose purpose is “to minimize the extent to which the federal programs contribute to the irreversible conversion of farmland to nonagricultural purposes;” and

WHEREAS, the Commonwealth of Kentucky, by Kentucky Revised Statues (“KRS”) Sections 382.800 through 382.860, effective July 15, 1988, has authorized the use of conservation easements “the purposes of which include retaining or protecting natural, scenic or open space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological,

or cultural aspects of real property” and has authorized Grantee, as a charitable corporation, to hold such conservation easements; and **WHEREAS**, it is the adopted policy of the Commonwealth of Kentucky, as stated in Kentucky Revised Statutes Sections 262.900 to 262.920, effective July 14, 1994, “to retain agriculture and enhance the contribution that agriculture makes to its economy,” and to that end “[a] program to retain and enhance agriculture is in the economic best interest of the Commonwealth and consequently, constitutes a public benefit that contributes to the health, safety, and general welfare of the residents of the Commonwealth and the nation”; and

WHEREAS, it is the declared policy of the Commonwealth of Kentucky, as stated in Kentucky Revised Statutes Section 262.850, effective July 15, 1994, “to conserve, protect and encourage development and improvement of its agricultural lands for the production of food and other agricultural products,” “to conserve and protect its agricultural land base as a valuable natural resource which is both fragile and finite,” and “to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state’s economy and as an important resource”; and

WHEREAS, the Lexington-Fayette Urban County Government has by adoption of Chapter 26 of its Code of Ordinances established a program for the preservation and management of agricultural, rural and natural lands in Fayette County, and has authorized the Grantee to acquire conservation easements for that purpose; and

WHEREAS, Chapter 26 of the Code of Ordinances of the Lexington-Fayette Urban County Government implements the Rural Service Area Land Management Plan (“the Plan”) which recommended that a program be established to preserve and manage agricultural, rural and natural lands in Fayette County; and

WHEREAS, implementation of the Plan will protect the health, safety and well-being of present and future residents of Fayette County by preserving and managing approximately fifty thousand (50,000) acres of agricultural, rural and natural lands in the rural service areas a viable sector of the county’s economy and as an environmental resource of major importance; and

WHEREAS, the grant of a conservation easement by Grantor to Grantee on the Property and the acceptance by Grantee will assist in preserving and maintaining the aforementioned Conservation Value of the Property; and

WHEREAS, the donation of this Easement is in addition to the goal of the Purchase of Development Rights Program which is to purchase conservation easements on fifty thousand (50,000) acres in the Rural Service Area.

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by this Easement, in perpetuity, by permitting only those land uses on the Property that do not significantly impair or interfere with those values, including without limitation, those land uses relating to existing at the time of this Easement; and

WHEREAS, Grantor further intends, as owner(s) of the Property, to convey to Grantee the right to preserve the conservation Values of the Property in perpetuity; intending the grant of such right to qualify as a “qualified conservation contribution: as that term is defined under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the “Code”); and

WHEREAS, Grantee has received a determination letter dated November 5, 2002 from the Internal Revenue Service, on file at the office of Grantee, to the effect that Grantee is a tax exempt nonprofit organization, qualified under Sections 501(c)(3) of the Code and further represents that it is a qualified organization under Section 170(h) of the Code, whose primary purpose is to acquire conservations easements over scenic, undeveloped land in Fayette County, Kentucky to preserve the character of the land for future generations in the context of the rapidly growing metropolitan area; and

WHEREAS, Grantee agrees by accepting this Easement that Grantee shall endeavor to honor the intentions of Grantor stated herein and endeavor to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and future generations; and

WHEREAS, Grantor desires to grant to Grantee and Grantee desires to accept from Grantor a conservation easement pursuant to the terms of this Easement;

NOW THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and the laws of the Commonwealth of Kentucky, in particular KRS Sections 382.800 through 382.860, Grantor hereby voluntarily, unconditionally, and absolutely grants and conveys to Grantee and its successors and permitted assigns a conservation easement (the “Easement” or “Conservation Easement”) in perpetuity over the Property of the nature and character and to the extent hereinafter set forth and to that end, Grantor covenants on behalf of themselves, and their successors and assigns, to Grantee and its successors and permitted assigns, that the Property shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, and easements hereinafter set forth, which covenants, conditions, restrictions, and easements shall constitute restrictive covenants and shall be deemed to run with the land in perpetuity and to burden the Property in perpetuity.

1. **Purpose.** It is the purpose (the “Purpose”) of this Easement to retain and Enhance the natural and agricultural uses of the Property by preserving and protecting its agricultural soils and agricultural viability and productivity; to preserve the natural, scenic and open space value of the Property; to preserve areas of structures of architectural or historical interest; to preserve areas of geologic significance; to restrict or prevent the development or improvement of the Property for purposes other than agricultural production; and to prevent any use of the property that is inconsistent with this Purpose or will impair or interfere with the Conservation Values of the Property. For purposes of clarification the term “Agricultural Production: as used herein is defined to include the production for commercial purposes of crops, livestock and livestock products, and nursery and greenhouse products, including the processing or retail marketing of these crops, livestock and livestock products, and nursery and greenhouse products, if more than fifty percent (50%) of those processed or merchandised products are produced by the farm operator and the raising and stabling of horses for

commercial purposes, and shall also include any of the following; dairying, pasturage, growing crops, bee keeping, horticulture, floriculture, orchards, plant nurseries, viticulture, silviculture, aquaculture, and animal and plant husbandry; the breeding, raising, training and general care of livestock for uses other than food, such as sport or show purposes; and construction and maintenance of barns and other agricultural-related structures, the use of farm machinery, the primary processing of agricultural products and the sale of agricultural products produced on the land where the sales are made.

2. **Rights of Grantee.** To accomplish the Purpose of this Easement the following rights are hereby conveyed to Grantee by this Easement:
 - a. to preserve and protect the Conservation Values of the Property;
 - b. to enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 7; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
 - c. to prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 7.

4. **Prohibited Uses.** In order to accomplish, safeguard and promote the conservation purposes of this Easement set forth in Section 1 above, Grantor hereby declares and covenants that the following restrictions are hereby imposed and shall apply forever to the use and enjoyment of the Property. Any activity on or use of the Property inconsistent with the Purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited on, over, or under the Property, except as provided in Section 5:
 - a. mining, excavating, quarrying, dredging, or removing from the Property of soil, loam, peat, gravel, sand, hydrocarbons, rocks, or other mineral resource or natural deposit except in connection with an activity or construction permitted herein;

5. **Reserved Rights.** The provisions of Section 4 notwithstanding, Grantor reserves to itself, and its successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the Purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of Section 4, the following rights are expressly reserved, subject to Section 17.12
 - a. the right to conduct farming or agricultural activities (as defined herein) for domestic or commercial purposes;

- h. The right to create new trails or footpaths using permeable materials (such as sand, gravel, wood shavings, mulch, or crushed stone);

6. Notice and Approval

6.1 Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Section 5, is to afford Grantee and adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the Purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

7. Grantee's Remedies

7.1 Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

7.2 Injunctive Relief. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty(30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by restraining order or temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury. In the event that Grantee seeks injunctive or other equitable relief, Grantee shall not be required to post a bond and shall not be required to demonstrate irreparable harm or injury.

7.3 Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic aesthetic, historic, agricultural, or geologic, open space, or environmental values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

7.4 Emergency Enforcement. If Grantee, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under Paragraphs 5.1 through 5.10 without prior notice to Grantors or without waiting for the period provided for cure to expire.

7.5 Scope of Relief. Grantee's rights under this Section 5 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 5.2 both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 5 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

Costs of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor without setoff, deduction, defense, abatement, suspension, deferment or reduction; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Grantor expressly agrees that Grantee shall have, is hereby granted, and shall be entitled to record a lien against the Property for any unpaid damages or costs of enforcement.

7.7 Forbearance. Forbearance by Grantee to exercise any of its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

7.8 Waiver of Certain Defenses. Grantor acknowledges that Grantor has read this Easement, its terms and requirements, and Grantor, in full knowledge of its provisions, hereby waives any defense of laches, estoppel, or prescription with respect to any enforcement action instituted by Grantee.

Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

7.10 Failure of Grantee to Enforce. If at any time Grantee shall fail to enforce the restrictions of this Easement, the Lexington-Fayette Urban County Government shall have the right to bring suit against Grantee or Grantor for specific performance or to otherwise enforce any or all of the provisions of this Easement.

8. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

10. Extinguishment and Condemnation.

Change in Economic Conditions. The fact that any use of the Property that is expressly prohibited by the terms of this Easement may become more economically valuable than uses permitted by the terms of this Easement, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by the terms of this Easement, has been considered by Grantor in granting this Easement. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the Public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to Section 7.2. In addition, the inability of Grantor, its successors or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Section 7.2.

Extinguishment. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with Section 7.3

Valuation. This easement constitutes a real property interest immediately vested in Grantee, which for the purposes of Section 7.2, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of the grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement at the time of this grant. The values shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. The parties shall include the ratio of those values with the Baseline Documentation of the Property (on file at Grantee's office) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or a court competent jurisdiction. For Purposes of this section, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the percentage interests of the Grantor and Grantee in the fair market value of the Property thereby determinable shall remain constant.

Condemnation. If all or any part of the Property is taken by exercise of

the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with an effort to prevent a taking or in an effort to recover the full value of their interest subject to a taking or in-lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ration set forth in Section 7.3

Application of Proceeds. Grantee shall use any proceeds received under the circumstances described in this Section 7 in a manner consistent with its conservation purposes, which are exemplified by this Easement.

11. **Mortgages.** Grantor represents and warrants that s of the date hereof, there are no liens, mortgages or encumbrances outstanding against the Property, [except any listed in Exhibit B, attached hereto and made a part hereof, which are subordinated to Grantee's right to enforce the restrictions of this Easement.] Upon request, Grantee agrees to subordinate its rights under this Easement to the valid claims of any future mortgage holders or beneficiaries of deeds of trust to the proceeds of any sale condemnation proceedings, or insurance involving the Property, or to the leases, rents, and profits thereof; provided that any such mortgage or deed of trust shall remain subordinated and junior to the Easement to the extent necessary to permit Grantee to enforce the Purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by exercise of any rights of such mortgage holder or trust deed beneficiary; and provided further that, in the unlikely event this Easement is terminated under circumstances described in Section 7, Grantee shall be entitled to compensation in accordance with the terms of Section 7. Grantee agrees to execute any documents required to effect a subordination pursuant to this paragraph.

12. **Assignment and Backup Grantee.**

9.1 **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easement under KRS Sections 382.800 through 382.860 (or any successor provision then applicable) or the laws of the United States, As a condition of such transfer, Grantee shall require that the Purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

9.2 Backup Grantee. In the event Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code (or any successor provision than applicable) its rights and duties hereunder shall become vested in and fall upon the Lexington-Fayette Urban County Government, or such other qualified organization, to the extent such entity shall evidence acceptance of and agree to fully enforce the terms herein

16. **Recordation.** Grantee shall record this instrument in timely fashion in the Office of the County Clerk of Fayette County, Kentucky and in the office of the Division of Building Inspection of the Lexington-Fayette Urban County Government, and may rerecord it at any time as may be required to preserve the right in this Easement.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**MARYLAND
DEED OF CONSERVATION EASEMENT
MARYLAND ENVIRONMENTAL TRUST**

COMMENTARY: No right to engage in equestrian activities is conveyed to Grantee.

Farming activities are expressly, specifically excepted from the Article II, Paragraph A prohibition on industrial or community activities. The community recreation exception, however, is limited to a de minimis amount of commercial recreation which is in accord with IRC §2031(c) (8) (B) relating to the estate tax exclusion.

Article II, paragraph L refers to “[a]ll rights reserved by Grantors...,” but no reservations are specifically set forth. Grantor’s rights are protected through exceptions to prohibited uses.

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Conservation Easement”) made this ____ day of _____, 200____, by and between _____, having an address at _____ (“Grantors”) and the MARYLAND ENVIRONMENTAL TRUST, having an address at 100 Community Place, First Floor, Crownsville, Maryland 21032 (“Grantee”).

W I T N E S S E T H

WHEREAS THE Maryland Environmental Trust is a charitable in nature and is created and exists pursuant to Subtitle 2 of Title 3 of the Natural Resources Article, Annotated Code of Maryland (1997 Replacement Volume as amended), to conserve the natural and scenic qualities of the environment;

WHEREAS Grantors own in fee simple ____ acres, more or less, of certain real property (“Property”) situate, lying and being in the ____ Election District of _____ County, Maryland, and more particularly described in Exhibit A attached hereto, which was conveyed to the Grantors by _____ by Deed dated _____ and recorded among the land records of _____ County, Maryland in Liber _____, Folio _____;

WHEREAS Grantors are willing to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting the use of the land and contiguous water areas of the Property, on the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement;

WHEREAS Grantors and Grantee recognize the open-space conservation value of the Property in its present state, as a natural and rural area that has not been subject to development, and have identified significant conservation features in Exhibit B attached hereto;

WHEREAS Grantors and Grantee have a common purpose in conserving the dominant scenic, cultural, rural, agricultural, woodland and wetland character of the Property, and,

except as hereinafter provided, preventing the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its open-space condition;

WHEREAS Grantee is authorized by the laws of Maryland to accept, hold and administer Conservation Easements, and possesses the authority to accept and is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a qualified organization: within the meaning of Section 170(h)(3) of the Internal Revenue Code;

NOW, THEREFORE, as an absolute gift of no monetary consideration (\$0.00) but in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantors unconditionally and irrevocably hereby grant and convey unto Grantee, its successors and assigns, forever in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, with respect to the Property.

The purpose of this Conservation Easement is to preserve and protect the environment of the Property and to maintain permanently the open-space values of the Property and the dominant scenic, historic, cultural, rural, agricultural, woodland and wetland character of the Property

To achieve these objectives, the following conditions and restriction are set forth:

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable in accordance with Article VI and runs with the land as an incorporeal interest in the property, enforceable with respect to the Property by Grantee against Grantors and their personal representatives, heirs, successors and assigns.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

- A. Industrial or commercial activities other than farming, silviculture and horticulture are prohibited on the Property, except for (1) such activities as can be conducted in existing structures without alteration of the external appearance thereof, and (2) the sale to the public of agriculture or forestry products produced on the Property. Notwithstanding the first sentence, commercial recreation, other than a de minimis amount, is prohibited
- D. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal, petroleum and other materials are prohibited, except (1) for the purpose of combating erosion or flooding, (2) for agriculture and silviculture on the Property, or (3) for the construction and/or maintenance of permitted structures, homesites, means of access and wildlife habitat.
- L. All rights reserved by Grantors or activities not prohibited by this conservation Easement shall be exercised so as to prevent or to minimize damage to water quality, air quality, land/soil stability and productivity, wildlife, scenic and cultural values, and the natural topographic and open-

space character of the Property.

- M. Except to the extent that prior written approval of Grantee is required by any paragraph of this Article, all rights reserved by Grantors or not prohibited by this Conservation Easement are considered to be consistent with the conservation purposes of this conservation Easement and require no prior notification or approval, except that, if Grantors believe or reasonably should believe that the exercise of a reserved right may have a significant adverse effect on the conservation interests associated with the Property, Grantors shall notify Grantee in writing before exercising such right.

ARTICLE III. ENFORCEMENT AND REMEDIES

- A. Upon any breach of the terms of this Conservation Easement by Grantors, Grantee may, after reasonable notice to Grantors, exercise any or all of the following remedies:
1. institute suits to enjoin any breach or enforce any covenant by ex parte temporary, and/or permanent injunction either prohibitive or mandatory; and
 2. require that the Property be restored promptly to the condition required by this Conservation Easement.

Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity. If Grantors are found to have breached any of Grantors' obligations under this Conservation Easement, Grantors shall reimburse Grantee for any costs or expenses incurred by Grantee, including court costs and reasonable attorney's fees.

- B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.
- C. Grantee, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantors, their personal representatives, heirs, successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement. This right of inspection does not include access to the interior of buildings and structures.

ARTICLE IV. PUBLIC ACCESS

The granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever.

ARTICLE V. EXHIBITS

The following Exhibits are hereby made a part of this Conservation Easement:

- A. **Exhibit A: Boundary Description and Property Reference** is attached hereto and made a part hereof. Exhibit A consists of ____ pages.
- B. **Exhibit B: Summary of Conservation Values** is attached hereto and made a part hereof. Exhibit B consists of ____ pages.
- C. **Exhibit C: Inventory of Existing Structures** is attached hereto and made a part hereof. Exhibit C consists of ____ pages.
- D. **Exhibit D: Color Slides of the Property with Description of Slides and Slide Index Numbers** is kept on file at the principal office of the Grantee and is fully and completely incorporated into this Conservation Easement as though attached hereto and made a part hereof. Exhibit D consists of ____ color slides and ____ pages.
- E. **Exhibit E: Annotated Aerial Photograph of the Property** is kept on file at the principal office of the Grantee and is fully and completely incorporated into this Conservation Easement as though attached hereto and made a part hereof. Exhibit E consists of one page.

These Exhibits reflect the existing uses, conservation values and structures on the property as of the date of this Conservation Easement.

ARTICLE VI. MISCELLANEOUS

- A. Grantee may assign, upon prior written notice to Grantors, its rights under this Conservation Easement to any "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code and only with assurances that the purposes of this Conservation Easement will be maintained; and, if any such assignee shall be dissolved or shall abandon this Conservation Easement or the right and duties of enforcement herein set forth, or if the proceedings are instituted for condemnation of the Conservation Easement, the easement and rights of enforcement shall revert to Grantee; and if Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then Grantors, their personal representatives, heirs, successors or assigns, shall institute in a court of competent jurisdiction a proceeding to appoint an appropriate successor as Grantee. Any such successor shall be a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code. No assignment may be made by Grantee of its rights under this Conservation Easement unless Grantee, as a condition of such assignment, requires the assignee to carry out the conservation purposes of this conservation Easement.
- C. Grantee agrees to hold this Conservation Easement exclusively for

conservation purposes, as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

- D. The donation of this Conservation Easement gives rise to a property right immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole.
- E. This Conservation Easement shall be construed to promote the purposes of the statutes creating and governing the Maryland Environmental Trust, the purposes of Section 2-118 of the Real Property Article of the Annotated Code of Maryland and the conservation purposes of this conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.
- H. Grantee shall record this instrument in timely fashion in the official records of _____ County, Maryland, and may re-record it at any time as may be required to preserve its rights under this Conservation Easement.
- I. Grantors and Grantee agree that all mortgages and deeds of trust affecting the property are subordinate to the rights of Grantee under this conservation Easement. Grantors have provided a copy of this Conservation Easement to all mortgagees and trustees of deeds of trust affecting the Property as of the date of this Conservation Easement, and each mortgagee and trustee has subordinated the mortgage or deed of trust to this Conservation Easement by signing a subordination clause at the end of this Conservation Easement, which shall be recorded in the land records at the time of recording of the remainder of this Conservation Easement.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**DUTCHESS LAND CONSERVANCY, INC.
MODEL CONSERVATION EASEMENT DEED**

COMMENTARY: A qualified organization of equestrians acting as Grantee can enforce the prohibition of obstructions of the existing trail system on the property.

The Language of this Agreement expressly protects numerous intended equestrian uses by the Grantor, and derivatively his lessees, licensees and invites respectively.

At 4.1 Use of Property, The Property shall be used for agricultural and non-commercial residential and recreational purposes....

As used in this Conservation Easement Deed, the term “agricultural purposes” or (‘agriculture uses’) shall mean...breeding, raising, training, pasturing, grazing, boarding and sale of **horses...equestrian** activities (including horseback riding instruction, husbandry and other commercial **equestrian** activities)...Permitted recreational uses shall include the right to shoot with or without dogs, mounted foxhunting with hounds in the traditional manner...**horseback** ride, conduct field trials and other outdoor recreational activities.”

At 4.15 Trail Maintenance, Construction and Management, the Landowners may construct, manage, use and maintain trails on the Property to support a regional trail system, for purposes of **equestrian** use...

The language at “10.1 Subordination of Prior Mortgage” is apparently intended to satisfy the Treasury Regulations requiring existing mortgagees to subordinate their rights to “the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity.” This mortgage subordination clause is useful in situations where the mortgagee is reluctant to agree to subordination.

In addition, as this agreement may be difficult to reach with an insecure mortgagee, this language appears to balance the economic interest of mortgagee with the Grantees necessity to assure that the Easement will not be extinguished through a foreclosure.

At 11.4 (b) relating to eminent domain the language sets forth an allocation between the landowners and the conservancy “unless the laws of N.Y. provide otherwise.” This qualification reflects the Internal Revenue Service exception to the requirement that proceeds be allocated upon extinguishment of the restrictions. Some states have adopted statutes which entitle the land owner to compensation of the full value of the land upon taking by eminent domain, notwithstanding the burden of the Easement. This language preserves the landowner’s claim to the full proceeds, if state law so provides. If the reader is a landowner this provision should be given careful consideration.

**DUTCHESS LAND CONSERVANCY
MODEL CONSERVATION EASEMENT DEED**

This **CONSERVATION EASEMENT DEED** is entered into this _____ day of _____, 200____, between _____, of _____, Grantors (the “Landowners”), and **DUTCHESS LAND CONSERVANCY, INC.**, a New York not-for-profit corporation with an office at

RR2, Box 13, Route 44, Millbrook, New York 12545, as Grantee (the "Conservancy").

Recitals

WHEREAS, the Landowners are the owners in fee of real property (the "Property") described in Exhibit A attached hereto and incorporated by reference:

1. The Property consists of approximately _____ acres, improved with in the Town of _____, Dutchess County, New York.
2. The Property is shown on the Conservation Easement Map [attached hereto as Exhibit B and incorporated by reference] [prepared by _____, Licensed Land Surveyor, dated _____, 200____, and filed simultaneously herewith in the Dutchess County Clerk's Office as Map No. _____ (the "Conservation Easement Map")].

WHEREAS, the Conservancy is a not-for-profit conservation organization within the meaning of Article 49, Title 3, of the Environmental Conservation law of the State of New York (the "Conservation Law") and is qualified to be the Grantee of tax-deductible Conservation Easements pursuant to Section 170(h) of the United States Internal Revenue Code of 1986, as amended.

WHEREAS, the parties recognize the following:

1. The Property is characterized by scenic views, open farmlands, woodlands, wetlands and natural beauty, and is highly visible from _____ Road, _____ Road and _____ Road, all public highways.
2. It is important to the conservation of the open, scenic and natural character and beauty of the area to maintain the Property's open fields and forest lands while restricting development so that it is compatible with natural surroundings.
3. [The Master Plan of the Town of _____, adopted by its Town Planning Board on _____, 200____ (the "Master Plan"), includes in its goals and objectives the preservation of the Town's natural beauty and rural character, the protection of the natural environment, and the preservation of prime and important agricultural lands.]
4. [The Master Plan includes the Property within a "Conservation" land use category, which "Conservation areas, include a mountain district, serve to protect areas with significant environmental features such as wetlands, flood plains, and steep slopes..."

The Master Plan states that the purpose of the Conservation land use category is as follows:

"To protect critical natural resources including but not limited to lakes, streams, wetlands, aquifers, scenic areas, and agricultural soils, as designated on town maps encourage recreational, agricultural, and open space uses.

- Allow residential uses at a density which does not adversely affect natural features
- Allow clustering of residences on the most suitable land to preserve important natural resources and scenic vistas and to maintain agricultural viability.”

The goals and objectives of the Master Plan include the following:

“Promote the use of Conservation Easements to preserve agricultural lands.”

5. The Property is enrolled under the Forest Tax Law, Section 480-a of the Real Property Tax Law, administered by the New York State Department of Environmental Conservation Forestry Division, to encourage the long-term ownership of woodlands for the production of forest crops following and approved management plan.
6. The Dutchess County legislature in the County master Plan, *Directions*, adopted by the Dutchess County Legislature in 19____, has identified the area in which the Property is located as an area in which steep slopes and agricultural lands should be preserved as open space to minimize erosion (Policy 5.19), and to encourage the conservation of agricultural land especially within agricultural lands (Policy 4.5); *Directions* recommends low density development to prevent degradation of the area’s rural, natural and scenic characteristics through subdivision and development; Policy 11.21 supports the use of Conservation Easements to preserve steep slopes and agricultural lands in rural areas.
7. The Property is included in Certified Agricultural District No. ____, established by Dutchess County pursuant to Article 25AA of the New York Agricultural and Markets Law, encouraging the continuation and protection of agriculture.
8. The Property [contains prime farmland soils and farmland soils of statewide importance, which are important for the production of food, feed, forage and fiber crops, as defined by the U.S. Department of Agriculture Natural Resources Conservation Service].
9. The Property is in the watershed of the _____Creek, a tributary of the _____River. _____[River] [Creek} passes through the Property, and the Property contains Freshwater Wetland No._____, designated pursuant to Article 24 of New yore Environmental Conservation Law, for the protection of water quality and for minimizing adverse impacts of adjacent development on fragile wetland ecosystems.
10. Subdivision and development pressure threaten the continued rural, scenic, ecological, forested, and open space character of the Property and the scenic view along _____Road.

WHEREAS, the Conservancy has determined that acquisition of a Conservation Easement on the Property will further its charitable purposes of protecting areas of rural, scenic and relatively natural character in Dutchess County.

WHEREAS, the Landowners share the land conservation goals of the Conservancy and desire to ensure that the rural, scenic and ecological characteristics of the Property will be preserved for the benefit of future generations.

WHEREAS, the parties desire to preserve the character of the Property in perpetuity by entering into this Conservation Easement Deed pursuant to the provisions of Article 49, Title 3 of the Conservation Law.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree as follows:

1. **Grant of Easement.** The Landowners grant to the Conservancy a perpetual Conservation Easement over the Property on the terms contained in this Deed (the "Conservation Easement"). The Conservation Easement shall encumber the Property.
2. **Purpose.** The purpose of the Easement granted hereby is to conserve the scenic, open, wooded and natural character of the Property and to protect the quality of its steep slopes, forest lands, agricultural lands, streams and wetlands by restricting development and use of the Property, especially the areas defined in this Conservation Easement Deed as "Preservation Areas".
4. **Restrictions Applicable to the Property.** By this Conservation Easement Deed the Landowners agree to restrictions that apply to the entire Property and additional restrictions that apply only to the Preservation Areas, as set forth in this Section 3. The Landowners may take certain actions relating to the Property only after giving the Conservancy prior notice or obtaining the Conservancy's prior consent, and the standards governing the Conservancy's decision whether to grant or withhold such consent, are set forth in section 5.
 - 4.1 **Use of Property.** The Property shall be used solely for agricultural and non-commercial residential and recreational purposes, including, without limitation, the occupancy and use by owners or tenants of permitted structures built upon the Property in accordance with this Conservation Easements Deed, and customary home occupations compatible with the rural and agricultural character of the Property.
 - 4.13 **Mining, Transmission Lines, Pipelines and Landfills.** There shall be no surface or subsurface mining or quarrying on the Property. This section shall not preclude excavation of materials for the construction of driveways and other improvements on the Property.
 - 4.15 **Trail Maintenance, Construction Management.** The Landowners may construct, manage, use and maintain trails on the Property to support a regional trail system, for purposes of equestrian use,

walking, cross-country skiing or other non-motorized recreational uses. Trails shall be constructed and maintained to minimize erosion and shall not be paved without the prior consent of the Conservancy upon a showing that paving is necessary to correct, control or prevent erosion. **Except with the Conservancy's consent, structures and fencing shall be sited so as not to obstruct the existing trail system on the property,** but this Conservation Easement Deed does not grant the general public any right to enter upon any part of the Property.

5. **Notice to Conservancy and Required Prior Consent.**

5.1 Conservation Easement Deed, the Landowner shall give the Conservancy at least 35 days' prior written notice prior to commencement of construction of any new structure or addition to an existing structure, or excavation or clearing for any new structure. Prior to clearing and construction, the Landowner shall submit survey information, or shall physically mark the boundaries of the proposed structure, to confirm that the structures proposed for construction and the locations of such structures are permitted by this Conservation Easement Deed.

5.2 **Improvements and Changes Requiring Conservancy's Prior Consent.** In lieu of the notice of construction required by section 5.1, if the proposed improvement or change is a substantial improvement or substantial change to the Property, then the improvement or change shall not be made, and no land shall be excavated or cleared or work commenced in connection therewith, until the Landowner has received the prior consent of the Conservancy. A substantial improvement or substantial change includes construction of a residence, or construction of a barn or accessory structure greater than 2,000 square feet in floor space, or an addition to an existing structure greater than 600 square feet in floor area, or a substantial change in the exterior of a structure. Section 3 specifies other actions that may require the prior consent of the Conservancy. The procedure for such consent is specified in section 4.3.

5.3 **Procedure for Requesting Consent.** To request a consent of the Conservancy that is required by this Conservation Easement Deed, the landowners shall submit plans or a description of their proposal. The Landowners shall reimburse the Conservancy for reasonable costs incurred in connection with review of any proposals. The Conservancy may waive review of and consent to any improvement, change or alteration which it deems to be insubstantial.

6. **Conservancy's Remedies for Violation of Easement**

6.1 **Notice of Violation; Corrective Action.** If the Conservancy determines that a violation of the terms of this Conservation Easement Deed has occurred or is threatened, the Conservancy shall give written notice to the Landowners of such violation and demand

corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Conservancy.

- 6.2 Injunctive Relief.** If the Landowners fail to cure the violations within 30 days after receipt of notice thereof from Conservancy, or under circumstances where the violation cannot reasonably be cured within the 30 day period, fail to begin curing such violation within the 30 day period, or fail to continue diligently to cure such violation until finally cured the Conservancy may bring an action at law or suit in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement Deed, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to an such injury.
- 6.3 Damages.** The Conservancy shall be entitled to recover damages for violation of the terms of this Conservation Easement Deed or injury to any conservation values protected by the Conservation Easement Deed, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values.
- 6.4 Emergency Enforcement.** If the Conservancy, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Conservancy may pursue its remedies under this section 5 without prior notice to the Landowners or without waiting for the period provided for cure to expire.
- 6.5 Costs of Enforcement.** All reasonable costs incurred by the Conservancy in enforcing the terms of this Conservation Easement Deed against the Landowners, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by the landowners' violation of the terms of this Conservation Easement Deed, shall be borne by the Landowners; *provided, however,* that if the Landowners ultimately prevail in a judicial enforcement action each party shall bear its own costs.
- 6.6 Scope of Relief.** The Conservancy's rights under this section 6 apply equally in the event of either or actual or threatened violations of the terms of this Conservation Easement Deed. The Landowners agree that the Conservancy's remedies at law for any violation of the terms of this Conservation Easement Deed are inadequate and that the Conservancy shall be entitled to the injunctive relief described in Section 5.2, both prohibitive and mandatory, in addition to such other relief to which the Conservancy shall be entitled, including specific performance of the terms of this Conservation Easement Deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Conservancy's remedies described in this section 5 shall be cumulative and shall be in addition to all remedies now or hereafter

existing at law or in equity or pursuant to the provisions of Article 49, Title 3 of the Conservation Law.

6.7 Forbearance. Forbearance by the Conservancy to exercise its rights under this Conservation Easement Deed in the event of any breach of any term by the Landowners shall not be deemed or construed to be a waiver by the Conservancy of such term or of any of the Conservancy's rights under this Conservation Easement Deed or at law or in equity. No delay or omission by the Conservancy in the exercise of any right or remedy upon a breach by the Landowners shall impair such right or remedy or be construed as a waiver.

6.8 Waiver of Certain Defenses. The Landowners hereby waive any defense of laches, estoppel or prescription.

6.9 Effect of Subdivision. After any subdivision of the Property into parcels having differing ownership, references in this section to the Landowners shall mean any or all of the owners of the parcel that is the subject of the violation, but the Conservancy shall use reasonable efforts to give notice of the violation to the owners of all of the parcels comprising the Property.

10. Miscellaneous Provisions.

10.1 Subordination of Prior Mortgage. At the time of conveyance of this Conservation Easement, the Property is subject to the mortgage, recorded _____, 200__ in the Dutchess County Clerk's Office in Liber _____ of Mortgages at Pare ____ (the "Mortgage") to secure a loan payable to _____ (the "Lender"). The Lender joins in the execution of this Conservation Easement Deed for the sole purpose of evidencing the Lender's agreement, for itself and its successors and assigns, that its rights in the property shall be subordinate to this Conservation Easement Deed to the extent necessary to permit the Conservancy and its successors and assigns to enforce the purpose of this Conservation Easement in Perpetuity and to prevent the exercise of any rights of the Lender from modifying or extinguishing such Easement. This Section shall not affect the priority of the related mortgage with respect to the proceeds of any sale, condemnation proceedings, or insurance or to the leases, rents and profits of the Property. Any lien that may be created by the exercise by the Conservancy (or by its permitted successors and assigns) of any of its rights under this Conservation Easement Deed shall be junior to the Mortgage. Upon request, the Conservancy agrees to subordinate its rights under this Conservation Easement Deed to the proceeds, leases, rents, and profits described above and likewise to subordinate its rights under any lien and to execute any documents required with respect to such subordination, except that the priority of its exercise of any of its rights under this Conservation Easement Deed prior to the creation of a mortgage shall not be affected thereby, nor shall this Conservation Easement Deed be subordinated in any other respect.

10.2 Assignment by Conservancy to Another Organization. This

Conservation Easement may be assigned by the Conservancy by a written instrument duly executed by the Conservancy and recorded in the Dutchess County Clerk's Office, *provided, however*, that an assignment may be made only after at least 20 days' prior written notice to the owner or owners of the Property and only to a not-for-profit conservation organization (or, with the consent of the Landowners, a public body) within the meaning of Article 49, Title 3 of the Conservation Law that is qualified to be the grantee of tax-deductible Conservation Easements pursuant to Section 170(h) of the United States Internal Revenue Code of 1986, as amended.

11. Qualified Conservation Contribution Covenants.

10.3 Continuity. The Conservancy agrees that it will assign this Conservation Easement only to an assignee which agrees to continue to carry out the conservation purposes of the Conservation Easement. This Conservation Easement may only be assigned to an assignee which is qualified organization as defined in Section 170(h) of the Code, or any successor provisions then in effect, and the regulations thereunder. Any assignee other than a governmental unit must be an entity authorized to acquire and hold Conservation Easements under New York law, able to enforce this Conservation Easement Deed, having purposes similar to those of the Conservancy with encompass those of this Conservation Easement.

11.3 Inspection. The Conservancy, by its duly authorized representatives, shall have the right to enter the Property at a reasonable times, in a reasonable manner, and, when practicable, after giving notice, to inspect for compliance with the terms of this Conservation Easement Deed.

11.4 Extinguishment.

11.4 (a) The Landowners and the Conservancy acknowledge that the granting of this Conservation Easement constitutes the donation to the Conservancy of a fully vested interest in the Property

11.4 (b) If and when the restrictions contained in this Conservation Easement Deed are involuntarily extinguished by eminent domain taking or otherwise, the Landowners and the Conservancy agree to divide the proceeds, if any, in proportion to the fair market values of their interests in the Property as of the date of the delivery of this Conservation Easement Deed, unless the laws of New York provide otherwise. For purposes of this section, the landowners and the Conservancy agree that the value of the Conservancy's interest on the date of delivery of this Conservation Easement Deed shall equal the amount by which the fair market value of the Property immediately prior to the delivery of this Conservation Easement Deed is reduced by the restrictions imposed by This Conservation Easement Deed. The Conservancy agrees to devote the proceeds it

receives in a manner consistent with the Conservation purposes inherent in this Conservation Easement Deed.

11.4 (c) If this Conservation Easement is extinguished pursuant to a judicial proceeding initiated by the Landowners or their successors, the Landowners shall pay to the Conservancy the greater of the amount specified in Section 7.4.2 and the fair market value of the Conservation Easement on the date of judicial extinguishment, as determined by independent appraisal, the cost of which shall be divided equally between the Landowners and the Conservancy.

11.5 **Existing Conditions.** This Conservation Easement is granted subject to any existing conditions shown on the Conservation Easement Map or on photographs or other materials agreed upon in writing as baseline documentation by the parties hereto.

The undersigned Lender joins in the execution of this Instrument to evidence its agreement as provided in Section 6.1 of this instrument.

[NAME OF LENDER]

By _____

**By: Hughes Hubbard and Reed LLP
One Battery Park Plaza
New York, NY 10004-4726**

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**NEW YORK CONSERVATION EASEMENT
TANRACKIN FARM**

COMMENTARY: No third party standing to enforce any restrictions or uses is expressed in the Agreement.

Grantor did not specifically reserve any equestrian uses of the Property; however, hunting is expressly prohibited at 3(F).

Note the useful "saving clause" at 19 in the event the recited language fails to comply with IRS requirements.

**CONSERVATION EASEMENT
NEW YORK TANRACKIN FARM**

This Conservation Easement agreement is made this 31st day of May, 2001, between _____, residing at _____ Farm, _____ Road, Bedford, New York, hereinafter referred to as the "Grantor", and the Westchester Land Trust, Inc., a New York not-for-profit corporation with its offices located at 31 Main Street, Bedford Hills, New York 10507, hereinafter referred to as the "Grantee".

WHEREAS the Grantor is the owner in fee of real property located in the Town of Bedford, Westchester County, New York, known and designated on the tax map of the Town of Bedford as Section 72.14 block 1, lots 2 and 3, and Section 72.18, block 1, lot 2, comprising approximately 63.7 acres, more particularly described in Schedule A attached hereto and incorporated herein by reference, hereinafter referred to as the "Property"; and

WHEREAS the Grantee is a publicly supported tax exempt nonprofit organization, and qualified organization under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and is a New York not-for-profit corporation within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of New York, organized for the purpose, among others, of conserving real property, and is thereby qualified to be the grantee of Conservation Easements; and

WHEREAS the Property consists of wooded hillsides and stream corridors, open fields and buildings used for farming activities and residential structures which provide a scenic vista from _____ Road and from _____ Road, which is representative of the historic farm character of Bedford; and

WHEREAS the Property's open fields and woodland protect the water quality of tributaries of Broad Brook, including a stream and a wetland system running through the Property, which are within the watershed of the Cross River Reservoir, a part of the drinking water supply for New York City and surrounding areas; and

WHEREAS the Properties open fields and undeveloped open spaces provide valuable wildlife habitat; and

WHEREAS development pressure is threatening the agricultural lands, open spaces, scenic vistas, wildlife habitat and water resources of Bedford and Westchester County; and

WHEREAS the Grantor desires to donate a Conservation Easement prohibiting use or development of the Property in any manner inconsistent with continued use for agricultural purposes or with its scenic character or natural resource values; and

WHEREAS the conservation values of the Property are documented in a Baseline Data Report dated May, 2001, which is on file in the office of the Westchester Land Trust, and is incorporated herein by reference, and which includes an inventory of the relevant conservation values, maps, photographs, reports and other documents that the parties agree provide an accurate representation of the Property at the time of the execution of this Conservation Easement, and which is intended to provide objective baseline information for purposes of future monitoring and enforcement; and

WHEREAS conservation of the Property, subject to the terms of this Easement, will preserve the natural resource, scenic and agricultural values of the property, promoting the public interest as stated in Article 14 of the New York State Constitution which provides that it shall be the policy of this state to conserve and protect its natural resources, scenic beauty and agricultural lands; and

WHEREAS the Grantor desires to convey to Grantee the right to preserve and protect the conservation values described herein by encumbering the Property with a Conservation Easement pursuant to the provisions of New York Conservation Law, Article 49, Title 3; and

WHEREAS the Grantor agrees to accept this Conservation Easement and to honor the intentions of the Grantor as stated herein and to preserve and protect the Property in perpetuity according to the terms of this Easement for the benefit of this and future generations.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants terms, conditions, and restrictions contained herein, the Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent set forth herein.

1. **Purpose.** It is the purpose of this Easement to preserve the agricultural use of the property and to preserve its scenic, agricultural, wildlife habitat and natural resource values.
2. **Rights Conveyed to Grantee.** To accomplish the purposes of this Easement, the following rights are conveyed to the Grantee by this Easement.
 - a. The right to preserve and protect the conservation values of the Property.
 - b. The right to enter upon the Property at reasonable times, and with prior notice to Grantor, in order to monitor compliance and otherwise enforce the terms of this Easement.
 - c. The right to prevent any activity on, incursion into, or use of the Property

that is inconsistent with the purposes of this Easement, and to require the restoration of such areas or features of the Property that are damaged by any inconsistent activity or use pursuant to the remedies set forth in Section 5 herein.

3. **Prohibited Uses and Restrictions.** Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing provision, the following restrictions specifically apply to the Property;

- f. There shall be no hunting or trapping allowed on the Property, and Grantor shall post the Property providing notice of these restrictions. Should Grantor fail to so post the Property, Grantee may do so.
- g. No quarry, gravel pit, surface or subsurface mining or drilling, or other mining or drilling activities prohibited under applicable provisions of Section 170(h) of the Internal Revenue Code shall be permitted on or under the Property.

5. **Enforcement.**

- a. **Notice.** If Grantee determines that a violation of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand that corrective action sufficient to cure the violation be taken. Where the violation involves injury to the Property resulting from any use inconsistent with the terms or the purpose of this Conservation Easement, Grantee shall demand that Grantor restore the Property to its prior condition in accordance with a plan approved by the Grantee.
- b. **Injunctive Relief.** If Grantor fails to cure the violation within 30 days after receipt of notice of violation from Grantee, or, where the violation cannot reasonably be cured within a 30 day period, Grantor fails to begin curing such violation within a 30 day period, or Grantor fails to diligently continue to cure such violation until it is cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement to enjoin the violation by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- c. **Damages.** Grantee shall be entitled to recover damages for a violation of the terms of this Easement or for injury to any of the conservation values protected by this Easement, including, without limitation, damages for loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefore, Grantee may, in its discretion, apply any damages recovered to the costs of undertaking any corrective action on the Property.
- d. **Emergency.** If Grantee determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation

values of the Property, Grantee may pursue its remedies under Section 5 without prior notice to Grantor or without waiting for the period for cure to expire.

- e. **Costs of Enforcement.** All reasonable costs of enforcing the terms of this Easement against Grantor, including but not limited to the costs and expenses of legal action, reasonable attorney's fees, and any costs involved in the restoration of the Property resulting from Grantor's violation of the terms of this Easement, shall be borne by Grantor unless Grantor ultimately prevails in judicial enforcement, in which case each party shall bear its own costs.
- f. **Forbearance.** Forbearance or delay by Grantee in the exercise of any of its rights to enforce this Easement or to exercise any right granted to it under this Easement shall not be deemed a waiver of such rights or of any of the terms of the Easement. Grantor hereby waives any defense of laches, estoppel or prescription.
- g. **Acts Beyond Grantor's Control.** Grantee shall have no cause of action under this Easement against Grantor for injury or damage to the Property which is beyond Grantor's control, including, without limitation, flood, fire, wind, storms, or earth movement, or from any prudent action taken by Grantor, under emergency conditions to prevent, abate, or mitigate significant injury to the Property or adjacent properties from such causes.
- 6. **Notices of Approvals.** Grantor agrees to give Grantee written notice before exercising any reserved right, the exercise of which may have an adverse impact on the conservation interests of this Conservation Easement. Any action requiring approval of Grantee shall be requested in writing by notice to grantee as provided herein. Grantee shall approve or disapprove such action within 15 days. Grantee's failure to disapprove such request within 15 days shall constitute Grantee's approval. Grantor further agrees to notify Grantee of any conveyance, lease or transfer of the Property, such notice to be given in writing at least twenty (20) days in advance of such conveyance, lease or transfer. The failure to give such notice shall not, however, invalidate the conveyance, lease or transfer. Any notice required by this Easement shall be deemed given when received or three days after being mailed by certified or registered mail, return receipt requested, postage prepaid, properly addressed as follows; (a) if to Grantee, at address set forth above; (b) if to Grantor, at the address set forth above; (c) if to any subsequent owner, at the address provided by notice to Grantee of transfer of the Property as required by this paragraph. Any party may change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this paragraph.
- 11. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Westchester County, New York State, and may re-record it at any time as may be required to preserve its rights in this easement.

12. Assignment. Grantee's rights and obligations under this Conservation Easement may be assigned only to an organization that is a qualified organization under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable) and is a not-for-profit conservation corporation or other entity authorized to take title to a Conservation Easement under New York Environmental Conservation Law, Article 49, Title 3, and which agrees to continue to carry out the conservation purposes of this Conservation Easement. Any assignee other than a governmental unit must be an entity able to enforce this Conservation Easement, having purposes similar to those of Grantee and which encompass those of this Conservation Easement. Grantee agrees to provide Grantor notice of any assignment, pursuant to paragraph 7 herein, 20 days prior to any assignment. Failure to provide such notice prior to assignment shall not affect the validity of the assignment, nor shall it impair the validity of this Easement or limit its enforceability in any way.

15. Extinguishment. If circumstances arise in the future that make the purpose of this Easement impossible to accomplish, and if this Easement or any of its restrictions are extinguished by judicial proceeding, then, upon any subsequent sale, exchange or involuntary conversion by the Grantor, the Grantee shall be entitled to that portion of the proceeds equal to the proportionate value of the conservation restrictions as provided immediately below. For such purposes only, Grantor agrees that the donation/conveyance of this Conservation Easement to Grantee gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the conservation restrictions hereby created at the date hereof bears to the value of the property as a whole at the date hereof (subject to reasonable adjustment to the extent permissible under Section 170(h) of the Internal Revenue Code for any improvements which may hereafter be made on the Property). Grantee agrees to use its share of such proceeds in a manner consistent with the conservation purposes of this Conservation Easement.

19. Interpretation. This instrument is intended to create a "qualified real property interest" for "conservation purposes," as defined in Section 170(h) of the Internal Revenue Code, and shall be interpreted consistently with such intention. In the event any provision has been omitted from this instrument which is necessary to qualify the interest hereby granted as such a "qualified real property interest" for "conservation purposes", such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**NEW YORK CONSERVATION EASEMENT
WESTCHESTER LAND TRUST**

COMMENTARY: With sharply limited exceptions that must be “consistent with the Internal Revenue Service Code Sections 170(h)(5) and(6) and with Treasury Regulations, Section 1.70A-14(g)(4)”, “[n]o **other** [Emphasis added] mining or drilling activities shall be allowed.” Language of this Conservation Easement Agreement carefully protects the intended equestrian uses of the Property.

At 20, notably appears the following useful “saving” language to wit:

“Interpretation. This instrument is intended to create a “qualified real property interest” for “conservation purposes” as defined in Section 170(h) of the Internal Revenue Code, and shall be interpreted consistently with such intention. In the event any provision has been omitted from this instrument which is necessary to qualify the interest hereby granted as such a “qualified real property interest” for “conservation purposes,” such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified.”

No third party standing is expressly created that would permit an equestrian “qualified organization” to enforce any of the restrictions placed on the Property, or any equestrian uses of the Property.

**NEW YORK
WESTCHESTER COUNTY PROPERTY**

This Conservation Easement agreement is made this 31st day of December, 1998, between _____, and _____, residing at _____ Road, Bedford, New York 10506, hereinafter called the Grantors, and the Westchester Land Trust, Inc., a New York not-for-profit corporation with its offices located at 31 Main Street, Bedford Hills, New York 10507, hereinafter called the Grantee.

WHEREAS the Grantor is the owner in fee of real property, known hereinafter as the Property, located in the Town of Bedford, Westchester County, New York consisting of four(4) tax lots known and designated on the tax map of the Town of Bedford as Section 74 block 13 lot 2.3 (81.2 acres), Section 74 block 14 lot 1.10 (17.40 acres), Section 74 block 10 lot 1...3 (.47 acre) and Section 74 block 10 lot 1.1 (4.3 acres); and

WHEREAS the Property consists of two areas, a partially developed area, hereinafter referred to as the Limited Development Area, developed as an equestrian facility with one primary single family house, more particularly described in Exhibit A, attached hereto and incorporated herein by reference, and an undeveloped area, hereinafter referred to as the Restricted Area, more particularly described in Exhibit B, attached hereto and incorporated herein by reference, which has one **fenced pasture** [Emphasis added] area, one sand bank used for extraction of sand for use on the property, and open fields; and

WHEREAS the Grantor desires to donate a Conservation Easement on the Property allowing no more than two new residences on the Limited Development Area, and prohibiting all further development of the Restricted Area; and

WHEREAS these Conservation Easement provisions, providing for continued agricultural and **equestrian** [Emphasis added] use of the Property and limiting residential development on the Limited Development Area, and maintaining the Restricted Area in its current undeveloped state, will protect the open scenic nature of the Property and protect the viewshed from _____ Road and from adjacent Town of Bedford parkland; and

WHEREAS this conservation easement will buffer and preserve the wetland areas adjacent to the Beaver Dam Creek and the Stone Hill River helping to preserve the water quality of the Stone Hill River and of the Beaver Dam Creek which flow directly into the Muscoot Reservoir, which is part of the drinking water supply for New York City and surrounding areas; and

WHEREAS preservation of the Restricted Area as provided for under this easement will provide wildlife habitat and contribute to a wildlife habitat corridor connecting adjoining Town of Bedford open space parkland; and

WHEREAS the Grantee is a publicly supported tax exempt nonprofit organization, and a qualified organization under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder, and is a New York not-for-profit corporation within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of new York, organized for the purpose, among others, of conserving real property, and is thereby qualified to be the grantee of Conservation Easements; and

WHEREAS the conservation values of the property are documented in a Baseline Data Report dated December 30, 1998, which is on file in the office of the Westchester Land Trust, and is incorporated herein by reference, and which includes an inventory of the relevant conservation values, maps, photographs, reports and other documents that the parties agree provide an accurate representation of the Property at the time of the execution of this Conservation Easement, and which is intended to provide objective baseline information for purposes of future monitoring and enforcement; and

WHEREAS the Grantor desires to convey to Grantee the right to preserve and protect the conservation values described herein by encumbering the Property with a Conservation Easement pursuant to the provision of new York Conservation law, Article 49, Title 3; and

WHEREAS the Grantee agrees to accept this Conservation Easement and to honor the intentions of the Grantee as stated herein and to preserve and protect the Property in perpetuity according to the terms of this Easement for the benefit of this and future generations.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent set forth herein

1. **Purpose.** It is the purpose of this Easement to protect the water quality of the Beaver Dam Creek. The Stone Hill River and the Muscoot Reservoir,

to preserve the open rural character of the Property, to continue the equestrian or agricultural use of the Property, to preserve the viewshed from _____ Road and adjacent Town of Bedford parkland and to preserve wildlife habitat. This Easement will accomplish these purposes by prohibiting all development of the Restricted Area and by limiting further subdivision and development of the Limited Development Area.

2. **Rights Conveyed to Grantee.** To accomplish the purposes of this Easement, the following rights are conveyed to the Grantee by this easement.
 - a. The right to preserve and protect the conservation values of the Property.
 - b. The right to enter upon the Property at reasonable times and with notice in order to monitor compliance with, and otherwise enforce the terms of, this Easement.
 - c. The right to prevent any activity on, incursion into, or use of the Property that is inconsistent with the purposes of this Easement, and to require the restoration of such areas or features of the Property that are damaged by any inconsistent activity or use pursuant to the remedies set forth in Section 6 herein.
3. **Prohibited Uses and Restrictions.** Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing provision, the following restrictions specifically apply to the Property;
 - d. No mining or extraction of soil, sand, gravel, rock or other mineral substance shall be allowed on the Property except for the removal of sand from the existing sand bank for use on the Property, and removal of sand, soil, rock or gravel necessary for the construction of the two residences allowed in the Limited Development Area along with such disturbance as is necessary to provide sanitary and utility services thereto. No other mining or drilling activities shall be allowed. Such activities shall be permitted only to the extent that they are consistent with the Internal Revenue Code Sections 170(h)(5) and (6) and with Treasury Regulation Section 1.170A-14(g)(4).
4. **Reserved Grantors Rights.** Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights accruing from its ownership of the Property, including, without limitation, the right to sell or transfer mortgage or encumber the Property, as owner, subject to the restrictions and covenants set forth in this Easement; and the right to engage in, or permit others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with this Easement.
 - a. Grantor specifically reserves the right to continue the existing uses of the Property, and to maintain and repair the existing structures on the

Limited Development Area, and to replace any existing structures on the limited Development Area with similar structures in the same location as the existing structures providing that replacement structures are similar in size and use to the structures that they replace.

- d. Grantor specifically reserves the right to construct and maintain trails for **equestrian** [Emphasis added] use throughout the Property, providing that such **trails** [Emphasis added] shall be constructed, maintained and used in a manner consistent with the prevention of erosion of soil or other material.
- g. Notwithstanding anything to the contrary contained herein, Grantor specifically reserves the right to continue the use of the Property as an **equestrian** [Emphasis added] facility for the boarding, training, riding, breeding and sale of **horses**, [Emphasis added] for the teaching of **equestrian** [Emphasis added] skills and for **horse** [Emphasis added] shows, to the extent allowed by applicable governmental laws, rules, ordinances and regulations.

6. Enforcement.

- b. **Notice.** If Grantee determines that a violation of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand that corrective action sufficient to cure the violation be taken. Where the violation involves injury to the property resulting from any use inconsistent with the terms or the purpose of this Conservation Easement, Grantee shall demand that Grantor restore the Property to its prior condition in accordance with a plan approved by the Grantee.
- c. **Injunctive Relief.** If Grantor fails to cure the violation within 30 days after receipt of notice of a violation from Grantee, or, where violation cannot reasonably be cured within a 30 day period, Grantor fails to begin curing such violation within a 30 day period, or Grantor fails to diligently continue to cure such violation until it is cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this easement, to enjoin the violation by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- d. **Damages.** Grantee shall be entitled to recover damages for a violation of the terms of this Easement or for injury to any of the conservation values protected by this Easement, including, without limitation, damages for loss of scenic, aesthetic, or environmental values. Without limiting Grantors liability therefore, Grantee may, in its discretion, apply any damages recovered to the costs of undertaking any corrective action on the Property.

- e. **Emergency Enforcement.** If Grantee determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under Section 6 without prior notice to Grantors or without waiting for the period for cure to expire.
 - f. **Forbearance.** Forbearance or delay by Grantee in the exercise of any of its rights to enforce this Easement or to exercise any right granted to it under this Easement shall not be deemed a waiver of such rights or of any of the terms of the Easement. Grantors hereby waive any defense of laches, estoppel or prescription
 - g. **Costs of Enforcement.** All reasonable costs of enforcing the terms of this Easement against Grantor, including but not limited to the costs and expenses of legal action, reasonable attorneys fees, and any costs involved in the restoration of the property resulting from Grantors violation of the terms of this Easement, shall be borne by Grantor unless Grantor ultimately prevails in judicial enforcement, in which case each party shall bear its own costs.
 - h. **Acts Beyond Grantors Control.** Grantee shall have no cause of action under this Easement against Grantor for injury or damage to the property which is beyond Grantors control, including, without limitation, flood, fire, wind, storms, or earth movement, from any prudent action taken by Grantor, under emergency conditions, to prevent, abate or mitigate significant injury to the Property or adjacent properties from such causes, or from actions taken by persons other than the Grantors, their assigns, agents or invitees.
7. **Notices and Approvals.** Grantor agrees to give Grantee written notice before exercising any reserved right, the exercise of which may have an adverse impact on the conservation interests of this Conservation Easement. Grantor further agrees to notify Grantee of any conveyance or transfer of the Property, such notice to be given in writing at least twenty (20) days in advance of such conveyance or transfer. The failure to give such notice shall not, however, invalidate the conveyance or transfer. When Grantees or Grantors approval is required for action or activity allowed by this Easement to be taken only with approval, such approval shall be in writing and signed by both parties to this Easement agreement or their successors. Any notice required by this Easement shall be deemed given when received or three days after being mailed by certified or registered mail, return receipt requested, postage prepaid, properly addressed as follows: (a) if to Grantee, at address set forth above; (b) if to Grantor, at the address set forth above; (c) if to any subsequent owner, at the address provided by notice to Grantee of transfer of the property as required by this paragraph. Any party may change the address to which notices are to be sent to him, her, or it by duly give notice pursuant to this paragraph.

12. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Westchester County, New York State, and may re-record it at any time as may be required to preserve its rights in this Easement.
13. **Assignment.** Grantee's rights and obligations under this Conservation Easement may be assigned only to an organization that is a qualified organization under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable) and is a not-for-profit conservation corporation or other entity authorized to take title to a Conservation Easement under New York Environmental Conservation Law, Article 49, Title 3, and which agrees to continue to carry out the conservation purposes of this Conservation Easement. Any assignee other than a governmental unit must be an entity able to enforce this Conservation Easement, having purposes similar to those of Grantee and which encompass those of this Conservation Easement. Grantee agrees to provide Grantor notice of any assignment pursuant to paragraph 6 herein 20 days prior to any assignment. Failure to provide such notice prior to assignment shall not affect the validity of the assignment, nor shall it impair the validity of this easement or limit its enforceability in any way.
16. **Extinguishment.** If circumstances arise in the future that make the purpose of this Easement impossible to accomplish, and if this Easement or any of its restrictions are extinguished by judicial proceeding, then, upon any subsequent sale, exchange or involuntary conversion by the Grantor, the Grantee shall be entitled to that portion of the proceeds equal to the proportionate value of the conservation restrictions as provided immediately below. For such purposes, Grantor agrees that the donation/conveyance of this Conservation Easement to Grantee gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the conservation restrictions hereby created at the date hereof bears to the value of the Property as a whole at the date hereof (subject to reasonable adjustment to the extent permissible under Section 170(h) of the Internal Revenue Code for any improvements which may hereafter be made on the Property). Grantee agrees to use its share of such proceeds in a manner consistent with the conservation purposes of this Conservation Easement.
18. **Further Acts.** Each party shall perform any further acts and execute and deliver any documents, including amendments to this Conservation Easement, which may be reasonably necessary to carry out its provisions or which are necessary to qualify this instrument as a Conservation Easement under Article 49, Title 3, of the Conservation Law or any regulations promulgated pursuant thereto.
20. **Interpretation.** This instrument is intended to create a "qualified real property interest" for "conservation purposes," as defined in Section 170(h) of the Internal Revenue Code, and shall be interpreted consistently with such intention. In the event any provision has been

omitted from this instrument which is necessary to qualify the interest hereby granted as such a 'qualified real property interest' for "conservation purposes", such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

CATAWBA/STEEPLECHASE EASEMENT

COMMENTARY: The Property subject to this Conservation Easement is the venue of The Queen’s Cup Annual Steeplechase. Extensive language is employed to protect the intended equestrian activities related to the venue both through specific express exceptions to prohibited uses at 3(b) and Reserved Rights at 4.

**STATE OF NORTH CAROLINA
COUNTY OF UNION**

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this 5th day of December, 2000, by _____ and _____, husband and wife, as Trustees of the _____. Trust dated 11/6/91, _____, _____, (hereinafter referred to as “Grantor”), and CATAWBA LANDA CONSERVANCY, a non-profit North Carolina Corporation having its principal office address at 105 West Morehead Street, Charlotte, North Carolina, 28202, (hereinafter referred to as “Grantee”).

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of the subject property, being approximately 201.55 acres located in Mineral Springs, Union County, North Carolina, known as “_____” which is more particularly described in “Exhibit A”, Legal Description, attached hereto and by this reference incorporated herein (“Property”); and,

WHEREAS, the Property possesses natural, scenic, open space, educational and recreational values (herein referred to collectively as “Conservation Values”) of great importance to Grantor, Grantee, the people of Union County, North Carolina, and the people of the State of North Carolina; and,

WHEREAS, the Property is a significant natural and farmland area that qualifies in its present condition as a “...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,” as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder; and,

WHEREAS, Grantee acknowledges the Property can provide an important habitat for a diversity of plant communities and wildlife species in the Piedmont of North Carolina including white tailed deer, migratory songbirds, wildflowers, ferns, mature hardwood trees and conifers; and

WHEREAS, the Property can provide a significant and substantial public benefit in the form of relief from urban closeness as the neighboring City of Charlotte and Mecklenburg County continue to expand and increase in population; and,

WHEREAS, the Property borders Bates Branch and Lee Brook, the topography changing from gentle floodplain to upland fields and forests, having a range of soil types as well as scenic vistas across the property and wetlands; and,

WHEREAS, the scenic and rural character along n.c. 75, ALSO KNOWN AS _____ Highway, the road contiguous to the Property, is enjoyed by the public, and the protection of the Property's Conservation Values will generally preserve the scenic view of the Property from _____ Highway for the benefit of the Public in accordance with Section 170(h)(4)(ii)(I) of the Code; and

WHEREAS, at its meeting on November 15, 2000, the Board of Directors of the Catawba Lands Conservancy approved acceptance of the Conservation Easement known as the _____ Conservation Easement, because it fulfills the requirements of the Conservancy's adopted Land Acquisition Criteria; and

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated November 27, 2000, on file at the offices of Grantor, said inventory consisting of reports, maps, photographs, and other documentation (hereinafter referred to as "Baseline Documentation"), which the parties agree provide an accurate representation of the Property at the time of this conveyance and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Deed of Conservation Easement; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those relating to its natural vegetation and limited uses existing at the time of this grant that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends, as owner of the property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

WHEREAS, Grantee is publicly supported, tax exempt non-profit organization, qualified under Section(s) 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection and enhancement of land in its natural, scenic or open space condition, and is authorized by the laws of the State of North Carolina to accept, hold and administer interest in land including conservation Easement; is willing to accept this Conservation Easement under the terms and conditions hereinafter described; and is a "qualified organization" and an "eligible donee" within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder " and,

WHEREAS, the conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. Section 4201, et seq., whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland;"

North Carolina General Statute 139-2 et seq. Which provides that "it is hereby declared ...that the farm, forest and grazing lands of the State of North Carolina are among the

basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people...it is hereby declared to be the policy of the legislature to provide for the conservation of the soil and resources of this State;"

North Carolina General Statute 106-583 et seq. Which states that "It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to maintenance of maximum prosperity;" and

WHEREAS, because the Property is located within twenty five (25) miles of the Charlotte-Gastonia-Rock Hill, NC-SC Metropolitan Statistical Area as defined by the Office of Management and Budget and therefore meets the requirements of Section 2031(2) of the Code (specifically subsection 2031(c)(8)(A)(i)(I) thereof) the Property qualifies for the benefits of said section 2031(c) as of the effective date of this grant; and

WHEREAS, the parties recognize that the loss of open land is a great and urgent threat to equestrian sport and recreation, and as such, the parties desire to preserve the equestrian character of the Property for generations to come.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of North Carolina and in particular the Historic Preservation and Conservation Agreements Act as set forth under N.C.G.S. Sections 121-34, et seq., Grantor hereby voluntarily grants and conveys to Grantee as an absolute and unconditional gift a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (hereinafter referred to as 'Conservation Easement").

1. **Purpose.** It is the purpose of this Deed of Conservation Easement to assure that the Property will be retained forever in its natural, undeveloped, scenic and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property.
2. **Rights of Grantee.** To accomplish the purpose(s) of this Deed of Conservation Easement the following rights are conveyed to Grantee:
 - b. To Preserve and protect the Conservation Values of the Property.
 - c. To enter upon the Property at reasonable times in order to use the Property as permitted herein, monitor Grantor's compliance with and otherwise enforce the terms of this Deed of Conservation Easement; provided however, that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property as long as such use does not interfere with Conservation Values.
 - d. To prevent any activity on or use of the Property that is inconsistent with the Purpose(s) of this Deed of Conservation Easement and to require the

restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, all pursuant to Paragraph 6 below.

3. **Prohibited Uses**. Any on or use of the Property inconsistent with the Purpose(s) of this Deed of Conservation Easement is prohibited by Grantor and Grantee. Without limiting the generality of the foregoing, the following activities on and uses of the Property are expressly prohibited:
 - b. Any commercial or industrial use of or activity on the Property other than those related to agriculture, silviculture, horticulture, education about Conservation Values, charitable events compatible with the Property Conservation Values, and passive recreation, including, but not limited to **horseback** [Emphasis added] riding, **equine** [Emphasis added] sporting and **racing** [Emphasis added] events, and all forms of **equestrian** [Emphasis added] related activities.
 - d. Any alteration of the surface of the land including, without limitation, the excavation or removal of soil, sand, gravel, rock or sod except as permitted in 3(c) above or for the purposes of combating erosion or incidental to any conservation management activities otherwise permitted in this Conservation Easement.
 - i. The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method that would impair or interfere with the Conservation Values of the Property.
4. **Reserved Rights**. Grantor reserves to itself, and to its heirs and assigns, all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the purposes(s) of this Deed of Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:
 - b. Grantor shall be permitted to engage in and permit others to engage in passive recreational uses of the Property, including without limitation, walking, hiking, fishing, hunting, **horseback riding**, [Emphasis added] bicycle riding, swimming and animal or plant observation.
 - c. To use, improve, build and maintain those existing roads and driveways on the Property described in Exhibit B hereof and such additional roads and driveways necessary to provide access to those residences and buildings permitted under the terms of this Conservation Easement. Any new driveway and road construction or improvement that involves construction of the traveled portion beyond twenty (20) feet in width requires approval by Grantee in accordance with Paragraphs 5 and 5.1.
 - d. Grantor is permitted to develop and construct trails for passive recreational use on the Property. Where feasible, **equestrian trails**, [Emphasis added] are permitted, provided their use does not negatively impact the natural and hydrologic features of the land and is consistent with maintaining the

Conservation Values of the Property. Only motorized vehicles which are used for management/maintenance purposes are permitted on the trails.

- e. On those portions of the Property that are currently in, or that may be restored by Grantor to pasture or field as shown on Exhibit B, attached hereto, Grantor may for domestic, commercial or educational purposes conduct agricultural, farming and **equestrian** [Emphasis added] activities. Within or immediately adjacent to those same areas, Grantor may construct, repair, and maintain sheds, fences, or other structures not for human habitation to enclose or house animals, equipment, tools, and agricultural products and may install, maintain and repair septic waste disposal systems and wells to service such agricultural, farming and **equestrian** [Emphasis added] activities. For the purposes hereof, "agricultural", "farming" and "**equestrian**" [Emphasis added] shall include animal husbandry, aquaculture, floriculture and horticulture; the use of motorized vehicles throughout the Property in connection therewith; and the production and sale of plant and animal products grown or produced on the Property (which product sales may be conducted anywhere on the Property). Agricultural, farming and **equestrian** [Emphasis added] activities shall be conducted in accordance with a soil and water conservation plan developed or revised by Grantor with the Natural Resources Conservation Service of the United States Department of Agriculture (or the successor federal governmental natural resources conservation and management agency then active) and shall be forwarded by Grantor whenever developed or revised to Grantee for inclusion in the Baseline Documentation.
- i. To engage in and permit others to engage in other uses of the Property which are not specifically prohibited in Section 3 above, and do not threaten the Conservation Values of the Property.
- j. In regard to maintaining the Conservation Values of the Property, to conduct no more than three (3) de minimus events, defined in excess of 1000 attendees, in any given calendar year consisting of 365 days on the Property.
- k. To use, occupy, repair, maintain, or replace all improvements now existing on the property, as set out in Exhibit B, including but not limited to:
 - (i) The **Stewards** [Emphasis added] Tower;
 - (ii) The **Paddock area**, [Emphasis added] as located in the infield before Turn 1;
 - (iii) The Maintenance barn located just outside of Turn 1;
 - (iv) Caretaker's residence located at the extreme northeast portion of the property;
 - (v) The tiered Viewing Berms and accompanying landscape hedge;
 - (vi) Wells and water lines to support (i) through (v) above;
 - (vii) Septic tanks and septic systems to support (i) through (v) above;
 - (viii) Fences, walls, gates, and bridges to support (i) through (v) above.
- l. To construct, use, occupy, repair, maintain, or replace the delineated

proposed improvements on the property, including and limited to:

- (i) The 1.75 acre non-residential Cabin area with parking and accompanying landscaping, located just outside of the backstretch, identified as Parcel A;
 - (ii) A one (1) acre septic field for the Cabin area identified as Parcel B;
 - (iii) A 3' x 5' concrete slab located within 50' of the Paddock area;
 - (iv) Linear extensions to the tiered Viewing Berms and accompanying landscape hedge, as well as viewing buildings, identified as Parcel D;
 - (v) Stable area and barns, bathrooms, and septic field with additional roadway access, identified as Parcel E;
 - (vi) Expansion of the Maintenance barn with run-in shed and septic field located just outside of Turn 1 and identified as Parcel F;
 - (vii) Expansion of caretaker's residence building envelope to 3.594 acres, including the addition of a maximum 2000 square foot, one story, single family residence identified as Parcel G;
 - (viii) Proposed one story, maximum 2000 square foot office with accompanying septic field and parking area identified as Parcel H, being one acre;
 - (ix) Proposed run-in sheds behind Member's Hill and the Meadow's area;
 - (x) Wells and water lines to support (i) through (xi) above;
 - (xi) Septic tanks and septic systems to support (i) through (vi) above; and
 - (xii) Fences, walls, gates, and bridges to support (i) through (vi) above.
- m. In such a manner as not to impair the Conservation Values of the Property, to cut and remove grass and bushes and to perform routine grounds and landscaping maintenance and upkeep; to make available water for grounds and landscape maintenance purposes; and to apply chemical or non-chemical based fertilizers, herbicides, pesticides and fungicides as long as such applications are in compliance with all applicable federal, state and local statutes and regulations and only to the extent such use does not have a demonstrable detrimental effect on the Conservation Values of the Property;
- n. In the infield area of the track, Grantor is permitted to plant, maintain and replace a naturalized prairie-like zone of native non-native plants and trees by and along the inside and outside rails of the racecourse.
5. **Notice of Intention to Undertake Certain Permitted Actions.** Grantor shall notify Grantee in writing, and receive Grantee's written approval before undertaking or permitting any use of the Property as described under Paragraphs 4(b), (h), (j) and (l) above, except for 4 (1) (xii) which requires no notice form Grantor . The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in the above paragraphs, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose(s) of this Conservation Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location,

timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose(s) of this Conservation Easement.

5.1 **Grantee's Approval**. Where Grantee approval is required, Grantee shall grant or withhold its approval in writing within fifteen (15) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose(s) of this Conservation Easement.

6. **Grantee's Remedies**. If Grantee determines that Grantor is in violation of the terms of this Deed of Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Deed of Conservation Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (3) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within said period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity to enforce the terms of this Deed of Conservation Easement, to enjoin the violation by temporary or permanent injunction or both, to recover any damages to which it may be entitled for violation of the terms of this Deed of Conservation Easement or injury to any Conservation Values protected by this Deed of Conservation Easement, including damages for the loss of scenic, aesthetic or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the property.

6.1 **Grantee's Discretion**. Enforcement of the terms of this Deed of Conservation Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any such term or of any subsequent breach of the same or any other term of this Deed of Conservation Easement or of any of Grantee's rights. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

7. **Access**. Grantor acknowledges and agrees Grantee shall be permitted to allow access to the Property for the purpose of easement monitoring, maintenance of the Property and any other purpose related to Grantee's primary effort to preserve and maintain the Property. As consideration for such access, Grantee and (to the extent Grantee can bind such parties) its members, directors, officers, agents and contractors and the heirs, personal representatives, successors and assigns of each of them, covenant not to seek legal relief from Grantor for any personal injury or property damage claims which they may have in the future related to or associated with gaining access to the Property for these purposes; and all such guests entering upon the Property shall assume sole risk for bodily injury or property loss.

10. **Extinguishment.** If circumstances arise in the future such as render the purpose(s) of this Deed of Conservation Easement impossible to accomplish, this Deed of Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by North Carolina law at the time, in accordance with Paragraph 8.1. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

10.1 **Proceeds.** This Deed of Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Paragraph 8, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of this Deed of Conservation Easement at the time of this grant to the value of the Property, without deduction for the value of the Deed of Conservation Easement, at the time of this grant. The values used to arrive at the fair market value of this Deed of Conservation Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by this Deed of Conservation Easement shall remain constant.

11. **Assignment.** This Deed of Conservation Easement and other rights and interests thereunder are transferable, but Grantee may assign its rights and obligations hereunder only to an organization that is a qualified organization at the time of the transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and applicable regulations promulgated thereunder and authorized to acquire and hold conservation easements under the Historic Preservation and Conservation Agreements Act as set forth under NCGS Section 121-34, et seq., or any successor provision thereto. As a condition of such transfer, Grantee shall require that the conservation purposes intended to be advanced hereunder shall be continued to be carried out.

16. **Recordation.** Grantee shall record this instrument in the office of the Register of Deeds for Union County, North Carolina, and may re-record it at any time as may be required to preserve its rights in the Easement

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**CONSERVATION EASEMENT
TAR RIVER/FLETCHER TRACT**

COMMENTARY: This Conservation Easement Agreement is between Grantor Fletcher Family Properties, LLC a developer, and North Carolina Coastal Land Trust, Grantee. A Pecuniary grant funded by the State of North Carolina provided the wherewithal to The Clean Water Management Trust Fund (“Fund”) to acquire the Conservation Easement from the Grantee Land Trust.

The language of the Agreement takes care to satisfy the internal Revenue Code requirements precedent to the deductibility of the donated Easement. Intended **equestrian** uses are treated extensively and expressly protected. There is no express language that creates legal standing for a third party **equestrian** “qualified organization” to enforce any of the uses or restrictions set out in this Agreement.

STATE OF NORTH CAROLINA
NO. _____

COUNTY OF PITT

**CONSERVATION EASEMENT
TAR RIVER TRACT**

THIS CONSERVATION EASEMENT (“Conservation Easement”) is made on this day of Month 2004 by and between _____, LLC with an address _____, Washington, North Carolina 27889 (**“Grantor”**) and the North Carolina Coastal Land Trust, a nonprofit corporation organized and existing under the laws of State of North Carolina with an address at 131 Racine Drive, Suite 101, Wilmington, North Carolina 28403 (**“Grantee”**).

RECITALS & CONSERVATION PURPOSES

- A. Grantor is the sole owner in fee simple of the property containing 225 acres more or less, located in Chimney Rock Township, Pitt County, North Carolina, and more particularly described in an instrument recorded in Book 736 Page 99, Pitt County Registry (hereinafter the “Property”) and further described in **Exhibit A** attached hereto and by this reference incorporated herein; and
- B. **WHEREAS**, Grantor and Grantee have agreed to set aside 210.2 acres of the Property (as described herein below and hereinafter referred to as the **“Easement Area”**), for the purpose of creating a Conservation Easement to preserve, enhance, restore, and maintain the natural features and resources of the Easement Area, to provide habitat for native plants and animals, to improve and maintain water quality, and to control runoff of sediment (hereinafter the **“Conservation Values”**).
- C. The Easement Area is depicted on a survey dated month day year, revised month day year, entitled “Name of Survey”, Mary Ann N. Dotson” prepared by Name of Surveyor, John M. Stollery, L.L.S. and further described in **Exhibit B** attached hereto and by this reference incorporated herein; and

- D. Grantee is a non-profit organization established for the purpose of promoting the preservation of ecologically valuable lands, natural and wildlife habitat, and lands with significant natural and open space value in the State of North Carolina for charitable, scientific, educational and aesthetic purposes.
- E. Grantor and Grantee recognize that the Easement Area is located adjacent to the Tar River and its tributaries, and the Easement Area has been deemed by the State of North Carolina to qualify as a riparian buffer, addressing, the cleanup and prevention of pollution of the State's surface waters, and the establishment of a network of riparian buffers. Moreover, Grantor and Grantee recognize that the Easement Area has other conservation values including fish and wildlife conservation, open space and scenic values.
- F. The Clean Water Management Trust Fund, ("Fund") with an address at 1651 Mail Service Center, Raleigh, North Carolina 27699-1651 is an agency of the State of north Carolina ("State"), with an address at c/o State Property Office, 1321, and is authorized by Article 13A, Chapter 113 of the General Statutes of North Carolina to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies; and
- G. Mountain Valleys Resource Conservation and Development Council ("Mountain Valley") Grantee has received a grant from the fund identified as Grant from the Fund to acquire conservation easements for the purposes of among other things, protecting water quality as more particularly described in Grant entered into between Mountain Valley and Fund and identified as Grant Agreement No. 1997B 801 ("Grant Agreement") for acquisition of a Conservation Easement in consideration of which Grantor has agreed that the Easement Area will be conserved and managed in a manner that will protect the quality of waters of the Tar River and otherwise promote the public purposes authorized by Article 13A, Chapter 113 of the North Carolina General Statutes ("N.C.G.S.") which Grant Agreement is incorporated herein by reference; and
- H. The Grantor, Grantee, State and Fund (collectively referred to herein as the "Parties") hereto intend that the conservation values of the Easement Area will be preserved and managed pursuant to the terms and conditions of said Grant Agreement entered into between the Grantee and the Fund on the day month year, incorporated herein by reference, and available for inspection in the office of the North Carolina Department of Environment and Natural Resources, the Grantor and Fund. The Parties further acknowledge and agree that Grantee will accept this Conservation Easement; and, that Grantor has received consideration for granting this Easement to the Grantee and restricting the uses of the Easement Area; and
- I. Grantor and Grantee acknowledge that the characteristics of the Easement Area, its current use and state of improvement are described in **Exhibit C**, **which** is the appropriate basis for monitoring compliance with the objectives of preserving the conservation and water quality values; and that the Exhibit

C is not intended to preclude the use of other evidence (e.g. surveys, appraisals) to establish the present condition of the Easement Area if there is a controversy over its use.

NOW THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Grantor hereby unconditionally and irrevocably gives, grants and conveys forever and in perpetuity to the Grantee, its successors and assigns, and the Grantee hereby accepts, a Deed of Conservation Easement of the nature and character and to the extent hereinafter set forth in, over, through and across the Easement Area, together with the right to preserve and protect the conservation values thereof as described in the Recitals herein. The purposes of this Conservation Easement are to provide environmental protection for surface waters and to protect the wildlife and natural heritage values and it shall be so held maintained, and used therefore. It is the further purpose of this Conservation Easement to prevent any use of the Easement Area that will significantly impair or interfere with the preservation of said conservation values. Grantor intends that this Conservation Easement will restrict use of the Easement Area to such activities as are consistent with the conservation values described in the Recitals herein.

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an Easement in gross, runs with the land, and is enforceable by Grantee against Grantor, its representatives, successors, assigns, lessees, agents and licensees.

ARTICLE II. RIGHTS RESERVED TO GRANTOR

2. **Equestrian Use.** [Emphasis added] Grantor reserves the right to manage the upland portion (32 acres) of the Easement as depicted on maps in Exhibit C for **equestrian** [Emphasis added] use. Grantor reserves the right to construct a **barn** [Emphasis added] for 16 **horses** [Emphasis added] not to exceed 5,000 square feet in size, 5-6 small **horse** [Emphasis added] walk-in sheds, impervious access roads, riding trails and paddocks/pastures. The total amount of impervious surfaces within the upland portion of the Easement area must be less than 1% of the total Easement Area. Additionally, Grantor reserves the right to maintain the upland area as pasture through appropriate pasture management practices pursuant to all applicable local, state and federal rules and regulations. Grantor reserves the right to lease the rights to use the **horse barn**, [Emphasis added] **paddocks**, [Emphasis added] and trails for **equestrian** [Emphasis added] use.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its natural, scenic, wooded and open condition and restricted from any development or use that would impair or interfere with the conservation purposes of this Conservation Easement set forth above.

Except for those rights specifically reserved to Grantor in Article II and without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

- E. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner except as necessary for the purpose of combating erosion or incidental to any conservation management activities otherwise permitted in the Easement Area.

ARTICLE IV. ENFORCEMENT AND REMEDIES

- A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement ;(b) to otherwise preserve or protect its interest in the Easement Area; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of all other rights and remedies available to Grantee in connection with this Conservation Easement, including, without limitation, those set forth in the Grant Agreement under which this Conservation Easement was obtained.

- 1. Right of Entry and Inspection. Grantee, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Property and Easement Area at reasonable times for the purpose of inspecting the Easement Area to determine whether the Grantor, Grantor's representatives, or assigns are complying with the terms, conditions and restrictions of this

Conservation Easement.

- D. Changed Conditions. When a change in conditions gives rise to the extinguishment of this Conservation Easement or a material term or provision hereof by judicial proceeding. Such portion shall be equal to the fair market value of the Grantee's, its successors and assigns, its interest in the property on the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Area, or any damages otherwise awarded as a result of judicial proceeding, *minus* the Grantor's expenses from such transaction or proceeding.
- E. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to Easement Area or harm to the Easement Area resulting from such causes.
- F. Cost of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement shall be borne by Grantor.
- G. No Waiver. Enforcement of this Conservation Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or of any other term of this Easement or of Grantee's rights. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

ARTICLE V. DOCUMENTATION AND TITLE

- A. Easement Area Condition. The parties acknowledge that the Easement Area is undeveloped, with no improvement other than as described in **Exhibit C** and easements and rights of way of record
- B. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Easement Area in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that there is legal access to the Property and the Easement Area, that the Easement Area is free and clear of any and all encumbrances, except

easements of record, none of which would nullify, impair or limit in any way the terms or effect of this Conservation Easement; Grantor shall defend its title against the claims of all persons whomsoever, and Grantor covenants that the Grantee, its successors and assigns, shall have the right to monitor and defend the terms of the aforesaid Conservation Easement.

ARTICLE VI. MISCELLANEOUS

- C. Subsequent Transfers of the Conservation Easement. The Parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable. The Parties hereby covenant and agree, that in the event this Conservation Easement is transferred or assigned, the transferee or assignee of the Conservation Easement will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, and the regulations promulgated thereunder (the "Internal Revenue Code") which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code. The Parties further covenant and agree that the terms of the transfer or the assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance as set forth in the Recital herein. Grantee, its successors or assigns, hereby covenants and agrees to monitor and observe the Easement Area in perpetuity for such purposes set forth by this Conservation Easement and Grant Agreement, and to report to the Fund and the State any observed violations on the Easement Area.
- D. Conservation Purpose.
1. Grantor and Grantee, for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for conservation purposes set forth by the Grant Agreement, this Conservation Easement and as specified in Section 170(h)(4)(A)
 2. Unless otherwise specifically set forth in this Conservation Easement, nothing herein shall convey to or establish for the public a right of access over the property a right of access over the Property and Easement Area.
 1. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. 121-34 et. Seq. which authorizes the creation of Conservation Easements for purposes including those set forth in the Recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.
- E. Recording: Grantee shall record this instrument and any amendment hereto in timely fashion in the official records of Pitt County, North Carolina, and my re-record it at any time as may be required to preserve Grantee's rights.

I, _____, a Notary Public of _____ County and State of _____, certify that Names of Grantor personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____, 2004.

This instrument prepared by Clean Water Management Trust Fund and by Name of Attorney or Agent for the Land Trust or Grantee.

EXHIBIT A

IF APPLICABLE: Together with the right of ingress, egress and regress as provided by that certain Access Agreement provided by and recorded in Book _____, Page _____, Name of County Registry.

EXHIBIT B

IF APPLICABLE: Together with the right of ingress, egress and regress over, upon and across the Property to and from the Easement Area.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

PENNSYLVANIA CONSERVATION EASEMENT

COMMENTARY: This document is based on the Pennsylvania Conservation Easement (Version 5.0) provided by the Pennsylvania Land Trust Association.” Specifically, the Pennsylvania Land Trust’s Disclaimer of legal advice is found at Paragraph 18 of said document, and is incorporated into this excerpt by reference as if fully contained herein.

At Section 1.07 of the “Pennsylvania Conservation Easement”, this document expressly, specifically makes provision for the designation of a “Beneficiary’ of this Conservation Easement”. The specific rights vested in each Beneficiary are described in Article V, Rights- “[t]o enforce the terms of this Conservation Easement in accordance with the provisions of Article VI...” Article VI sets forth the available remedies. In sum, this Conservation Easement Agreement expressly, specifically confers legal standing on a third party to enforce the rights granted in the agreement; and it does so with clarity and precision.

3.02 (c)(iv) specifically, expressly, permits trails without excluding **equestrians**.

Section 4.03... “The following activities and uses are permitted within the Highest Protection Area:... (d)(i)... **horseback riding** [Emphasis added] on trails....”

Section 4.04 “Permitted within Standard Protection Area, The following ...are permitted...

(a) Permitted under Preceding Sections

Activities and uses permitted under preceding sections of this Article are permitted within the Standard Protection Area.

(a) Agricultural and Forestry Uses: Disturbance of Resource

(i) Uses and activities that maintain continuous vegetative cover (other than Invasive Species) such as pasture and grazing use, meadow, turf or lawn.

(ii) Sustainable Agricultural uses that do not maintain continuous vegetative cover (such as plowing, tilling, planting and harvesting field crops, **equestrian** [Emphasis added], horticultural and nursery use) if conducted in accordance with a Soil Conservation Plan furnished to Holder.

(b) Recreational and Open-Space Uses

Non-commercial recreational and open-space uses that do not require Improvements other than those permitted within the Standard Protection Area; do not materially and adversely affect scenic views and other values described in the Conservation Objectives; and do not require vehicular use other than for resource management purposes.”

This does not expressly, specifically permit **equestrian** activities; but when read together with Sections 3.02 (c)(iv) and 4.03 (d)(i), **equestrian** activities of a non commercial recreational and open-space nature appear permissible on this area of the property.

4.05 Permitted Within Minimal Protection Area

The following activities and uses are permitted within the Minimal Protection Area:

(a) Permitted under Preceding Sections

Activities and uses permitted under preceding sections of this Article are permitted within the Minimal Protection Area.

Agricultural or Agriculture is defined at 8.04 (b) expressly as

“Agricultural or Agriculture

Any one or more of the following and the leasing of land for any of these purposes:

Equestrian Boarding, stabling, raising, feeding, grazing, exercising, riding and training horses and instructing riders. [Emphasis added]”

Finally, at 3.02 –

3.02 Permitted Within Highest Protection Area

The following Improvements are permitted within the Highest Protection Area:

(a) Existing Improvement

Any Existing Improvement may be maintained, repaired and replaced in its existing location. Existing Improvements may be expanded or relocated if the expanded or relocated Improvements complies with requires applicable to Additional Improvements of the same type set forth in this Article.

Existing improvements are permitted, which if they are of a nature to benefit or support an equestrian use, would protect “equestrian uses” of the Property burdened. Likewise in 3.02 (b)

3.02 (b) Existing Agreement

Improvements that Owners are required to allow under Existing Agreements are permitted.

These improvements could theoretically aid and support **equestrian** activities.

This Conservation Easement Agreement contains a plenitude of language to protect the permitted **equestrian** activities of the Grantor, his lessees, licensees, and invitees respectively.

PENNSYLVANIA CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT DATED AS OF _____ (the
“Easement Date”) is by and between

and _____ (“the undersigned Owner or Owners”)
_____ (the “Holder”).

ARTICLE I. BACKGROUND

1.01 Property The undersigned Owner or Owners are the sole owners in fee simple of the Property described in Exhibit “A” (the “Property”). The Property is also described as:

Street Address:

Municipality:

County:

Parcel Identifier:

1.02 Conservation Plan Attached as Exhibit “b” is a survey or other graphic depiction of the Property (the “Conservation Plan”) showing, among other details, the location of one or more of the following areas – the Highest Protection Area, the Standard Protection Area and the Minimal Protection Area.

1.03 Conservation Objectives This Conservation Easement provides different levels of protection for the areas shown on the Conservation Plan so as to achieve the goals and resource protection objectives (collectively, the “Conservation Objectives”) for the Property set forth below:

(a) Resource Protection Objectives

(i) **Water Resources.** This Conservation Easement seeks to protect the quality of water resources by maintaining buffer within the vicinity of streams, wetlands and other water resources described in the Baseline Documentation. Barnyard runoff controls and preservation of conservation cover on Steep Slopes are also implemented to protect water resources. These measures help to protect water resources from sediment and non-point pollution and promote the infiltration, detention and natural filtration of storm water. The restrictions also preserve habitat for Native Species dependent on water resources.

(ii) **Forest and Woodland Resources.** This Conservation Easement seeks to promote biological diversity and to perpetuate and foster the growth of a healthy and unfragmented forest or woodland. Features to be protected include Native Species; continuous canopy with multi-tiered under story of trees, shrubs, wildflowers and grasses; natural habitat, breeding sites and corridors for the migration of birds and wildlife. Species other than Native Species often negatively affect the survival of Native Species and disrupt the functioning of ecosystems. Trees store carbon, offsetting the harmful by-products of burning fossil fuels and trap air pollution particulates, cleaning air.

(iii) **Wildlife Resources.** This Conservation Easement seeks to protect large intact areas of wildlife habitat and connect patches of wildlife habitat. Large habitat patches typically support greater biodiversity and can maintain more ecosystem processes than small patches. Large intact habitats allow larger, healthier populations of a species to persist; thus, increasing the chance of survival over time. Fragmentation of large habitats often decreases the connectivity of systems, negatively affecting the movement of species necessary for fulfilling nutritional or reproductive requirements.

(iv) **Scenic Resources.** This Conservation Easement seeks to preserve the relationship of scenic resources within the Property to natural and scenic resources in its surrounds and to protect scenic vistas visible from public rights-of-way and other public access points in the vicinity of the Property.

(v) **Sustainable Land Uses.** This Conservation Easement seeks to ensure that Agriculture, Forestry, and other uses, to the extent that they are permitted, be conducted in a manner that will neither diminish the biological integrity of the Property nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes. Agricultural and Forestry activities are regulated so as to protect soils of high productivity; to ensure future availability for Sustainable uses; and to minimize adverse affects of Agricultural and Forestry uses on water resources described in the Conservation Objectives.

(vi) **Compatible Land Use and Development.** Certain areas have been sited within the Property to accommodate existing and future development taking into account the entirety of the natural potential of the Property as well as its scenic resources.

(b) Goals

(i) **Highest Protection Area.** The Conservation Easement seeks to protect natural resources within the Highest Protection Area so as to keep them in an undisturbed state except as required to promote and maintain a diverse community of predominantly Native Species.

(ii) **Standard Protection Area.** This Conservation Easement seeks to promote good stewardship of the Standard Protection Area so that its soil and other natural resources will always be able to support Sustainable Agriculture or Sustainable Forestry.

(iii) **Minimal Protection Area.** This Conservation Easement seeks to promote compatible land use and development within the Minimal Protection Area so that it will be available for a wide variety of activities uses and Additional Improvements subject to the minimal constraints necessary to achieve Conservation Objectives outside the Minimal Protection Area.

1.04 Baseline Documentation

As of the Easement Date, the undersigned Owner or Owners and Holder have signed for identification purposes the report (the "Baseline Documentation"), to be kept on file at the principal office of Holder, that contains an original, full-size version of the Conservation Plan and other information sufficient to identify on the ground the protection areas identified in this Article; that describes Existing Improvements on or about the Property as of the Easement Date; that identifies the natural resources, scenic views and other conservation values of the

Property described in the Conservation Objectives; and that includes, among other information, photographs depicting existing conditions of the Property as of the Easement Date.

1.05 Structure of Conservation Easement

This Conservation Easement is divided into eight Articles. Articles II, III and IV contain the restrictive covenants imposed by the undersigned Owner or Owners on the Property. Each Article begins with a general prohibition followed by a list of items that are permitted as a matter of right unless stated as being subject to Review. In Article V the undersigned Owner or Owners grant to Holder and Beneficiaries (if any) certain rights to enforce the restrictive covenants set forth in Articles II, III and IV in perpetuity against all Owners of the Property (“Enforcement Rights”). Article V also contains the procedure for Review applicable to those items permitted subject to Review under Articles II, III and IV. Article VI details the procedures for exercise of the Enforcements Rights. Article VII contains provisions generally applicable to both Owners and Holder. The last Article of this Conservation Easement entitled “Glossary “contains definitions of capitalized terms used in this Conservation Easement and not defined in this Article I.

1.06 Charitable Contribution

(a) This Conservation Easement has been donated in whole or in part to Holder by the undersigned Owner or Owners. This Conservation Easement is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code, a “Qualified Conservation Contribution”) to a qualified organization (as defined in §1.170(A-14(c)(1) of the Regulations, a “Qualified Organization”).

(b) Public Benefit

The Baseline Documentation identifies public policy statements and other factual information supporting the significant public benefit of this Conservation Easement as defined in §1.170A-14(d)(4)(iv) of the Regulations.

(c) Mineral Interests

No Person has retained a qualified mineral interest in the Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations.

(d) Baseline Documentation

On or prior to the Easement Date, Holder and the undersigned Owners have signed the Baseline Documentation for identification purposes. Holder will keep the Baseline Documentation on file at the Principal office of Holder.

(e) **Property Right** The Undersigned Owner or Owners agree that this Conservation Easement gives rise to a property right, immediately vested in the Holder, with a Market Value that is at least equal to the Proportionate Value of this Conservation Easement as of the Easement Date.

(f) Mortgage Subordination

The undersigned Owner or Owners have obtained and attached to this Conservation Easement as an exhibit the subordination of any mortgage or other lien upon the Property as of the Easement Date.

1.07 Beneficiaries

Each of the Persons identified below in this Section is a Beneficiary of this Conservation Easement. The specific rights vested in Each Beneficiary are described in Article V.

(a) _____, a Qualified Organization (the “Land Trust Beneficiary”) is a Beneficiary of this Conservation Easement.

ARTICLE III. IMPROVEMENTS

3.02 Permitted Within Highest Protection Area

(a) Existing Improvements

Any Existing Improvements may be maintained, repaired and replaced in its existing location. Existing Improvements may be expanded or relocated if the expanded or relocated Improvements complies with requirements applicable to Additional Improvements of the same type set forth in this Article.

(b) Existing Agreements

Improvements that Owners are required to allow under Existing Agreements are permitted.

(c) Additional Improvements

(iv) Trails covered (if at all) by woodchips, gravel, or other highly porous surface.

ARTICLE IV. ACTIVITIES; USES; DISTURBANCE OF RESOURCES

4.01 Prohibition

Activities and uses are limited to those permitted below in this Article and provided in any case that the intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.

4.03 Permitted Within Highest Protection Area

The following activities and uses are permitted within the Highest Protection Area:

(b) Disturbance of Resources

(i) Cutting trees, **Construction** [Emphasis added][*includes mining in the definition*] or other disturbance of resources, including removal of Invasive Species, to the extent reasonably prudent to remove, mitigate or

warn against an unreasonable risk of harm to Persons, property or health of Native Species on or about the Property. Owners must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.

(d) Nature Preserve and Trail Uses

(i) Walking, **horseback riding on trails,**][Emphasis added] cross-country skiing on trails, nature study, bird watching, fishing and hunting.

4.04 Permitted Within Standard Protection Area

The following activities and uses are permitted within the Standard Protection Area:

(a) Permitted under Preceding Sections

Activities and uses permitted under preceding sections of this Article are permitted within the Standard Protection Area.

(iii) Removal of vegetation and other **Construction** [Emphasis added] activities reasonably required to accommodate Improvements permitted within the Standard Protection Area.

(d) Recreational and Open-Space Uses

Non-commercial recreational and open-space uses that do not require Improvements other than those permitted within the Standard Protection Area; do not materially and adversely affect scenic views and other values described in the Conservation Objectives; and do not require vehicular use other than for resource management purposes.

4.05 Permitted Within Minimal Protection Area

The following activities and uses are permitted within the Minimal Protection Area:

(a) Permitted under Preceding Sections

Activities and uses permitted under preceding sections of this Article are permitted within the Minimal Protection Area.

(b) Disturbance of Resources

Disturbance of resources within the Minimal Protection Area is permitted for residential landscaping purposes and other purposes reasonably related to uses permitted within the Minimal Protection Area. Introduction of Invasive Species remains prohibited.

ARTICLE V. RIGHTS AND DUTIES OF HOLDER AND BENEFICIARIES

5.01 Grant to Holder

By signing this Conservation Easement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a conservation servitude over the Property in perpetuity for the purpose of administering and enforcing the restrictions and limitations set forth in Articles II, III, and IV in furtherance of the Conservation Objectives. The undersigned Owner or Owners warrant to Holder that the Property is, as of the Easement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Conservation Easement as an Exhibit the legally binding subordination of any Liens affecting the Property as of the Easement Date.

5.02 Rights and Duties of Holder

The grant to Holder under the preceding section gives Holder the right and duty to perform the tasks set forth below.

(a) Enforcement

To enforce the terms of this Conservation Easement in accordance with the provisions of Article VI including, in addition to other remedies, the right to enter the Property to investigate a suspected, alleged or threatened violation.

(b) Inspection

To enter and inspect the Property for compliance with the requirements of this Conservation Easement upon reasonable notice, in a reasonable manner and at reasonable times.

(c) Review

To exercise rights of Review in accordance with the requirements of this Article as and when required under applicable provision of this Conservation Easement.

(d) Interpretation

To interpret the terms of this Conservation Easement, apply the terms of this Conservation Easement to factual conditions on or about the Property, respond to requests for information from Persons having an interest in this Conservation Easement or the Property (such as requests for a certification of compliance), and apply the terms of this Conservation Easement to changes occurring or proposed within the Property.

ARTICLE VI. VIOLATION; REMEDIES

6.01 Breach of Duty

(a) Failure to Enforce

If Holder fails to enforce this Conservation Easement, or ceases to qualify as a Qualified Organization, then the rights and duties of Holder under this Conservation may be (i) exercised by a Beneficiary or a Qualified Organization designated by a Beneficiary; and /or (ii) transferred to another Qualified Organization by court of competent jurisdiction.

(b) Transferee

The transferee must be a Qualified Organization and must commit to hold this Conservation Easement exclusively for conservation purposes as defined in the Code.

6.02 Violation of Conservation Easement

If Holder determines that this Conservation Easement is being or has been violated or that a violations is threatened or imminent then the provisions of this Section will apply:

(c) Notice

Holder must notify Owners of the violation. Holder's notice may include its recommendations of measures to be taken by Owners to cure the violation and restore features of the Property damaged or altered as a result of the violation.

(d) Opportunity to Cure

Owners' cure period expires thirty (30) days after the date of Holder's notice to Owners subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:

- (i) Owners cease the activity constituting the violation promptly upon receipt of Holder's notice;
- (ii) Owners and Holder agree, within the initial thirty (30) day period, upon the measures Owners will take to cure the violation;
- (iii) Owners commence to cure within the initial thirty (30) day period; and
- (iv) Owners continue thereafter to use best efforts and due diligence to complete the agreed upon cure.

(e) Imminent Harm

No notice or cure period is required if circumstances to require prompt action to prevent or mitigate irreparable harm or alteration to any natural resource or other feature of the Property described in the Conservation Objectives.

6.03 Remedies

Upon expiration of the cure period (if any) described in the preceding Section, Holder may do any one or more of the following.

(a) Seek Coercive relief to specifically enforce the terms of this Conservation Easement; to restrain present or future violations of this Conservation Easement; and/or to compel restoration of natural resources destroyed or altered as a result of the violation.

(b) Civil Action

Recover from Owners or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Conservation Easement together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses.

(c) Self-Help

Enter the Property to prevent or mitigate further damage to or alteration of natural resources of the Property identified in the Conservation Objectives.

6.04 Modification or Termination

If this Conservation Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Holder the following provisions apply:

(a) Compensatory Damages

Holder is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount at least equal to the greater of (i) the increase in Market Value of the Property resulting from the modification or termination; and (ii) the Proportionate Value; plus, in either case, (iii) reimbursement of Litigation Expenses as if a violation had occurred.

(b) Restitution

Holder or any Beneficiary is entitled to recover from the Person seeking the modification or termination, (i) restitution of amounts paid for this Conservation Easement (if any) and any other sums invested in the Property for the benefit of the Public as a result of rights granted under this Conservation Easement plus (ii) reimbursement of Litigation Expenses as if a violation had occurred.

(c) Application of Proceeds

Holder must use the compensatory damages described in subsection (a) above in a manner consistent with the conservation purposes of this Conservation Easement.

6.05 Remedies Cumulative

The description of Holder's remedies in this Article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this Article or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other rights or remedies available to Holder at the same time or at any other time.

6.06 No Waiver

If Holder does not exercise any right or remedy when it is available to Holder, that is not to be interpreted as a waiver of any non-compliance with this Conservation Easement or a waiver of Holder's rights to exercise its rights or remedies at another time.

6.07 No Fault of Owners

Holder will waive its right to reimbursement under this Article as to Owners (but not other Persons who may be responsible for the violation) if Holder is reasonably satisfied that the violation was not the fault of Owners and could not have been anticipated or prevented by Owners by reasonable means.

6.08 Multiple Owners; Multiple Lots

If different Owners own Lots within the Property, only the Owners of the Lot in violation will be held responsible for the violation.

6.09 Multiple Owners; Single Lot

If more than one Owner owns the Lot in violation of this Conservation Easement, the Owners of the lot in violation are jointly and severally liable for the violation regardless of the form of ownership.

6.10 Continuing Liability

If a Lot subject to this Conservation Easement is transferred while a violation remains uncured. The transferor Owners remain liable for the violation jointly and severally with the transferee Owners. This provision does not apply if Holder has issued a certificate of compliance evidencing no violations within thirty (30) days prior to the transfer. It is the responsibility of the Owners to request a certificate of compliance to verify whether violations exist as of the date of transfer.

7.03 Assignment and Transfer

Neither Owners nor Holder may assign or otherwise transfer any of their respective rights or duties under this Conservation Easement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this Section is void.

(b) Holder

Holder may assign its rights and duties under this Conservation Easement, either in whole or in part, but only to a Qualified Organization that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Conservation Easement. The assigning Holder must deliver the Baseline Documentation to the assignee Holder as of the date of the assignment. Holder must assign its rights and duties under this Conservation Easement to another Qualified Organization if Holder becomes the owner of the Property.

8.04 Agricultural or Agriculture

Any one or more of the following and the leasing of land for any of these purposes:

Equestrian Boarding, stabling, raising, feeding, grazing, exercising, riding and training horses and instructing riders. [Emphasis added]

8.11 Construction

Any demolition, construction, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, **mining**, [Emphasis added] filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

PENNSYLVANIA RADNOR HUNT

COMMENTARY: Third party standing to enforce Grantee’s rights or duties is vested solely in local governmental units which by expressed language does not include any third party **equestrian** “qualified organization.” Grantor, Radnor Hunt, is however vested with coextensive authority with the local governmental units.

Specifically, at 2(D), “[a]ccess to the Conservation Area shall be allowed for the sports of hunting with a pack of hounds...”

At 3, (A),(i)-**Equestrian** activities are specifically excepted from the prohibition of industrial and community activities. At 4 (A) (i) Grantor specifically, expressly permits “[i]mprovements, normally associated with Radnor Hunt and **equestrian** [Emphasis added] activities...”.

This easement also provides for public access for specified purposes to specific trail areas.

PENNSYLVANIA – RADNOR HUNT

THIS GRANT OF EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, hereinafter referred to as “Easement” made the 10th day of October in the year of our Lord, One Thousand Nine hundred and ninety-one (1991).

BETWEEN, Radnor Hunt, a Pennsylvania not for profit corporation, having an address at Providence Road, Malvern, Pennsylvania, 19355, party of the first part, hereinafter called “Grantor”,

A N D

BRANDYWINE CONSERVANCY, INC., a corporation of the State of Delaware, party of the second part, hereinafter called “Grantee”,

WITNESSETH;

WHEREAS, Grantor is the owner of a certain tract of ground located in Willistown Township, Chester County, Commonwealth of Pennsylvania, containing approximately 103.9 acres of land, more or less, hereinafter called the “Property”, a parcel of which contains approximately 88.9 acres hereinafter called the “Conservation Easement Area”, as shown on a survey dated 6/21/91 and revised _____, prepared for Radnor Hunt by Yerkes Associates, Inc., attached hereto and made a part hereof as Exhibit “A” and as described by legal description attached hereto and made a part hereof as Exhibit “B”; and

WHEREAS, the Conservation Easement Area is further identified on a plan prepared by Grantee and attached hereto and made a part hereof as Exhibit “C”; and

WHEREAS, the specific conservation values of the Property are documented in a natural resources inventory on file at the office of Grantee and incorporated by this reference (“Baseline Documentation”) which is intended to provide Grantor and Grantee with an accurate representation of the Property at the time of the grant of this Easement and which will serve as an objective information baseline for this Easement; and

WHEREAS, the Property is worthy of conservation protection in that it includes gently rolling pasturelands, steeply sloping hillsides, alluvial floodplain, mature trees, and other important lands located in the Ridley Creek watershed; and

WHEREAS, the preservation of open space and natural resources is essential to the continuance of the recreational and **equestrian** [Emphasis added] activities which Radnor Hunt wishes to perpetuate; and

WHEREAS, Grantor by granting this Easement desires to recognize and support the efforts of many community landowners who have already preserved natural resources, open space and who have already preserved natural resources, open space and access to a permanent network of riding trails through the donation of conservation easements to Grantee and have thus directly benefited Radnor Hunt and its activities; and

WHEREAS, Grantor by granting this Easement wishes to encourage other landowners to similarly plan for the preservation of natural resources, open space, and the perpetual use of **riding trails** [Emphasis added] for Radnor Hunt activities in the neighboring countryside; and

WHEREAS, Grantee is a publicly-supported charity organized for the purpose of preserving open space, historic, scenic, water and other natural resources.

WHEREAS, Grantor and Grantee desire to preserve the recreational, natural, open space, agricultural, and scenic resources of the Property and further desire to conserve and protect the Property;

NOW THEREFORE, for and in consideration of the mutual promises herein contained and for the further consideration of the sum of Five Dollars (\$5.00), lawful money of the United States of America, in hand paid by Grantee to Grantor, the receipt of which is hereby acknowledged, the parties hereto intending to be legally bound, do hereby mutually agree, grant, convey, and declare as follows:

1. STATEMENT OF GRANT

Grantor hereby unconditionally and absolutely grants and conveys unto Grantee, its successors and assigns, in perpetuity, and Easement in Gross and a declaration of restrictive covenants with respect to the Conservation Easement Area, as more particularly hereinafter set forth, exclusively for the purposes of preserving and protecting the present recreational, scenic, natural, agricultural, open space, and water resource values of the Conservation Easement Area, subject, however, to the rights of the holders of certain ownership certificates with respect to a portion of the Conservation Easement Area containing eight (8) acres, more or less, identified as the "Dedicated Land" on Exhibits "A" and "C" attached hereto, Grantee hereby accepts the Easement and agrees to hold it exclusively for the foregoing purposes.

2. ACCESS

Access to the Conservation Easement Area shall be permitted only as

authorized by Grantor, except that access to the Conservation Easement Area shall be allowed for the recreational purposes described in sub-paragraphs A and D, subject to the limitations contained in subparagraphs B. and C. of this Paragraph 2.

A. The public shall be permitted access to the "Trail Easement Corridor", as shown on Exhibit "c" attached hereto, for the following activities, except to the extent that Grantee may determine that such activities are inconsistent with the conservation purposes for which this Easement is granted:

- (i) **Horseback riding** [Emphasis added]
- (ii) Cross-country Skiing; and
- (iii) Hiking and jogging.

B. Public access to the Conservation Easement Area shall be restricted to a twenty-five foot (25') wide trail corridor, the centerline of which is identified on Exhibit "C", attached hereto, as "Trail Easement Corridor," provided, however, that all or any portion of the Trail Easement Corridor may be relocated on the Conservation Easement Area upon mutual consent of the parties hereto, so long as the conservation purposes set forth in Paragraph 1 of this Easement are upheld, and provided further that nothing herein contained shall require the relocation by Grantor of fences in place as of the date hereof which may impinge on the width of the Trail Corridor.

C. The activities described in sub-paragraph A of this Paragraph 2 shall be conducted in such manner as to preserve and protect the natural, scenic, and open space resources of the Conservation Easement Area as set forth in Paragraph 1 above, and in this connection the following specific limitations shall apply with respect to the use of the Trail Easement Corridor by the public and shall be enforceable by Grantor and/or Grantee:

- (i) Use of any motorized recreational vehicle or similar mechanical means of locomotion, including snowmobiles, motorcycles, or other all terrain-vehicles shall be prohibited;
- (ii) Smoking of tobacco or other substances, or lighting of fires of any kind shall be prohibited;
- (iii) Consumption of alcoholic beverages or use of any other kind of stimulant or drug shall be prohibited;

D. Access to the Conservation Easement Area shall be allowed for the sports of hunting with a pack of hounds so long as such activity is conducted in a manner which is consistent with the conservation purposes of this Easement and subject to the following limitations:

- (i) The sport must be conducted under the auspices of and in accordance with the rules of a recognized fox hunting or foot hunting organization whose policies are to encourage the participation in and enjoyment of such sport.
- (ii) Grantor may require that the sport be conducted with due

consideration for the property of the Grantor, including without limitation residential areas, gardens, crops, livestock, fences and other structures.

3. RESTRICTIONS ON USE

In order to effectuate the purposes of the Easement, the following restrictions shall apply to the use of the Conservation Easement Area:

- A. No industrial or commercial activities shall be conducted or permitted on the Conservation Easement Area with the exception of:
 - (i) **equestrian** [Emphasis added] activities
- B. No quarrying, excavation, depositing, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials from the Conservation Easement Area shall occur, except in connection with an activity or construction permitted herein.
- C. No mining or removal of groundwater from the Conservation Easement Area shall occur, except as may be required for uses permitted hereunder.

4. PERMITTED USES

Grantor hereby declares and covenants that the following uses are hereby permitted on the Conservation Easement Area, subject to the limitations contained herein, and shall apply forever to the use and enjoyment of the Conservation Easement Area.

- A. To construct, repair, remodel, reconstruct, and maintain the following Improvements, on the Conservation Easement Area:
 - (i) Improvements, normally associated with Radnor Hunt and **equestrian** [Emphasis added] activities, including without limitation sheds, riding areas, race courses and cross country obstacles;

10. ENFORCEMENT RIGHTS OF GRANTEE

Grantee shall have the right to enter upon the Conservation Easement Area to determine compliance herewith, and may take such action with respect to the Conservation Easement Area, as may be necessary or appropriate, to enforce the provisions hereof.

In the event that Grantee learns of a breach of the restrictions hereunder, Grantee must notify Grantor in Writing of such a breach. Grantor shall promptly after receipt of such notice undertake appropriate remedial actions, failing which Grantee may at its discretion undertake such actions as may be necessary to restore the Conservation Easement Area

to its prior condition or otherwise remedy the breach, any costs incident thereto to be paid by Grantor, if Grantor is determined to be responsible for the breach.

15. EXTINGUISHMENT

Grantee and Grantor shall take all appropriate steps to preserve and protect the conservation purposes of this Easement, and Grantor shall cooperate with Grantee toward this end.

In the event that all or part of this Easement is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the conservation goals imposed by this Easement, Grantor and Grantee shall join in appropriate action at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by Grantor and Grantee in such actions to extinguish or terminate this Easement shall be paid on a shared basis out of any recovered proceeds.

Grantor recognizes that the grant of this Easement conveys to Grantee a property right equal to the ratio that the value of the Easement at the time of the grant bears to the total value of the Conservation Easement Area, and in the event of a taking or similar disposition of the Conservation Easement Area, including the Easement, Grantee shall be entitled to share in any value attributable to any improvements hereafter made by Grantor.

18. ASSIGNABILITY

Grantee shall have the right to assign its right, title, and interest hereunder only to an organization which has purposes similar to those of Grantee and the capability to administer them effectively including the purposes set forth in this Easement. Such an organization must at the time of the assignment be a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code and one which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code. Any assignment of benefits by Grantee must require the transferee to carry out the conservation purposes of this Easement.

19. EASEMENT IN PERPETUITY

The provisions hereof shall inure to and be binding upon the executors, administrators, devisees, successors, and assigns, as the case may be, of the parties hereto and shall be covenants running with the land in perpetuity.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

WILLISTOWN CONSERVATION TRUST

COMMENTARY: There is no express language contained in this Conservation Easement Agreement that confers legal standing on a third party to enforce the right of the public to enter upon the “Trail Easement Area” to ride **horseback**, but in most states an action should lie for enforcement of the public’s limited right of access to the “Trail Easement Area” by a person representing the public such as the state’s Attorney General. Of course, if the Grantee, who is the Holder of the Easement created by this Agreement, is a “qualified organization” of **equestrians**, then enforcement would lie with them initially, all things being equal.

2 (A) (ii) provides public access to the “Trail Easement Area” consistent with the Easement Conservation Purposes for **horseback** riding.

3 (A) excepts **equestrian** activities from prohibited activities.

At 4 (A) (ii), permitted improvements include Agricultural structures which are defined to include “barns, stables, shed, and silos” expressly.

The right to engage in intended **equestrian** activities by the Grantor, his lessees, licensees, and invitees respectively is protected by the express language of this Agreement.

WILLISTOWN CONSERVATION TRUST MODEL EASEMENT/OPERATIVE CLAUSES July 2, 1997

NOW THEREFORE, for and in consideration of the mutual promises herein contained and for the further consideration of the sum of Five Dollars (\$5.00), lawful money of the United States of America, in hand paid by Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged, the parties hereto intending to be legally bound do hereby mutually agree, grant, convey, and declare as follows:

1. STATE OF GRANT

Grantor hereby unconditionally and absolutely grants and conveys unto Grantee, its successors and assigns, in perpetuity, and Easement in Gross and a Declaration of Restrictive Covenants with respect to the Conservation Easement Area, as more particularly hereinafter set forth exclusively for the purposes of preserving and protecting the present scenic, recreational, educational, natural, agricultural, open space, and water resource values of the Conservation Easement Area (the “Conservation Purposes”). Grantee hereby accepts the Easement and agrees to hold it exclusively for such Conservation Purposes, subject to the provisions set forth herein.

2. ACCESS

In furtherance of the Conservation Purposes of this Easement set forth in Paragraph 1 above, Grantor hereby declares and covenants that the public shall have and be allowed access to the Conservation Easement Area for the specific recreational, and educational purposes described in sub-paragraph A and subject to the limitations contained in subparagraphs B, C, and D of this Paragraph 2.

- A. The public shall be permitted access to the “**Trail Easement Area**”, [Emphasis added] as shown on Exhibit “A: attached hereto, for the following activities, except to the extent that Grantee may determine that such activities are inconsistent with the Conservation Purposes for which this Easement is granted:
- i. Nature study and scientific research, including bird watching and the study of fauna and flora, supervised by an organization described in Section 170(h)(3) of the Internal Revenue Code upon prior notice to Grantee;
 - ii. **Horseback riding**; [Emphasis added]
 - iii. Cross-country skiing;
 - iv. Hiking and jogging; and
 - v. Painting sketching and photography.
- B. Public access to the Conservation Easement Area shall be restricted to a twenty foot (20’) wide trail corridor, the centerline of which is identified as the “**Trail Easement Area**” [Emphasis Added] on Exhibit “A”, attached hereto and made a part hereof. Provided however, upon mutual consent of Grantor and Grantee all of any portion of the Trail Easement Area may be relocated within the Conservation Easement Area so long as the Conservation Purposes set forth in Paragraph 1 of this Easement are upheld.
- C. The activities described in sub-paragraph A of this Paragraph 2 shall be conducted in such a manner as to preserve and protect the natural, scenic, agricultural, open space, and water resources of the Conservation Easement Area, as set forth in Paragraph 1 above, and in this connection the following specific limitations shall apply with respect to use of the Trail Easement Area by the public and shall be enforceable by Grantor and/or Grantee:
- i. Use of any motorized recreational vehicle or similar mechanical means of locomotion, snowmobiles, motorcycles, or other all-terrain vehicles shall be prohibited;
 - ii. Smoking of tobacco or other substances, or lighting of fires of any kind shall be prohibited;
 - iii. Consumption of alcoholic beverages or use of any other kind of stimulant or drug shall be prohibited;
 - iv. Trapping or hunting with firearms, bow and arrow, or any other form of arms or weapons shall be prohibited; and
 - v. Overnight camping or sleeping shall be prohibited.

Grantee shall have the right to impose any additional limitations upon the public with respect to the Trail Easement Area, as it deems necessary or appropriate in order to preserve and protect the Conservation Purposes for which the Easement is donated.

- D. Grantee shall have the right, but not the obligation, to require Grantor to keep the Trail Easement Area free from obstructions which prevent

reasonable pedestrian and **equestrian** [Emphasis added] access to and along the Trail Easement Area including but not limited to structures, fencing, or buildings. To the extent gates are provided, fences shall not be considered an obstruction of the Trail Easement Area.

3. RESTRICTIONS ON USE

In order to accomplish, safeguard, and promote the purposes of the Easement set forth in Paragraph 1 above, Grantor hereby declares and covenants that the following restrictions are hereby imposed and shall apply forever to the use and enjoyment of the Conservation Easement Area:

A. Industrial and Commercial Activities. No industrial or commercial activities shall be conducted on or permitted in the Conservation Easement Area, with the exception of agricultural, horticultural, forestry, farming, **equestrian**, [Emphasis added] and livestock activities which are operated in compliance with all of the following requirements:

C. Quarrying and Excavation. No quarrying, excavation, depositing, or depositing, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials from the Conservation Easement Area shall occur, except in connection with an activity or construction permitted by this Easement.

4. PERMITTED IMPROVEMENTS

Grantor and Grantee hereby declare and covenant that the following Improvements are permitted within the Conservation Easement Area, which Improvements are further subject to the limitations contained within this Easement:

A. Definitions. The following definitions apply to Improvements permitted by this Easement.

ii. Agricultural Structures. Improvements commonly used for traditional agricultural operations, including but not limited to barns, stables, sheds, and silos;

9. GRANTOR'S DUTY TO NOTIFY; GRANTEE'S APPROVAL

Grantor, prior to performing or permitting any activity under this Easement which requires prior written approval of Grantee, hereby agrees to submit to Grantee, for review and approval, the required information in writing. Grantee agrees in such cases to review Grantor's proposal and to acknowledge, execute, and deliver to Grantor a written instrument granting approval or stating the reason for denial within sixty (60) days of receipt of written request and the required information from Grantor. In the event that Grantee fails to respond to Grantor's written request within

sixty (60) days, approval shall be deemed granted on the sixtieth (60th) day after submission of the request. Following approval of the proposal, Grantor, his/her/their successors or assigns, shall have five (5) years from the date of approval to complete approved actions. If the previously approved action is not completed within five (5) years, Grantor must re-submit the request to Grantee for review and approval according to the procedures described herein.

12. ENFORCEMENT RIGHTS OF GRANTEE

- A. To accomplish the Conservation Purposes of this Easement, the following rights are conveyed to Grantee by this Easement:
- i. To Preserve and protect the Conservation Purposes of the Conservation Easement Area;
 - ii. To enter upon the Conservation Easement Area in order to monitor Grantor's compliance herewith and otherwise enforce the terms of this Easement, provided that Grantor's compliance herewith and otherwise enforce the terms of this Easement, provided that such entry shall be upon prior reasonable notice to Grantor and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Conservation Easement Area; and
 - iii. To prevent any activity on or use of the Conservation Easement Area that is inconsistent with the Conservation Purposes of this Easement and to require the restoration of such area or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use, pursuant to subparagraphs B, C, and D of this paragraph 12.
- B. In the event that a violation of the terms of this Easement by Grantor or by a third party comes to the attention of Grantee, Grantee shall notify Grantor in writing of such violation and demand corrective action sufficient to cure the violation. Where the violation involves injury to the Conservation Easement Area resulting from any use or activity inconsistent with the purposes of this Easement, Grantee shall demand restoration of the portion of the Conservation Easement Area so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of such notice thereof from Grantee, or where the violation cannot reasonably be cured within thirty (30) days and Grantor fails to commence action to cure such violation, or fails to continue diligent action to cure such violation, Grantee may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. Grantee may enjoin the violation *ex parte* as necessary by temporary or permanent injunction restore the Property to the condition that existed prior to any such injury. Grantee shall be further entitled to recover any damages to which it may be entitled for violations of the terms of this Easement, or for injury to any Conservation value protected by the terms of this Easement, including damages for the loss of scenic, aesthetic or environmental values and

to require the restoration of the Conservation Easement Area to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore or assuming responsibility therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective action on the Conservation Easement Area.

- C. Grantee's rights under this Paragraph 12 apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.
- D. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, the costs of investigation, assessment, suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor, provided that Grantor is determined to be responsible for violation of the terms of this Easement, or to have permitted others to violate this Easement.

17. CHANCE IN ECONOMIC CONDITION

The fact that any use of the Conservation Easement Area that is expressly prohibited by the terms of this Easement may become greatly more economically valuable than uses permitted by the terms of this Easement, or that neighboring properties may in the future be put entirely to uses that are not permitted by this Easement, has been considered by Grantor in granting this Easement. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to Paragraphs 7 and 8. In addition, the inability of Grantor, his/her/their successors or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Paragraphs 18 and 19.

18. STIPULATED VALUE OF GRANTEE'S INTEREST

- A. Grantor acknowledges that this Easement constitutes a real property interest in the Conservation Easement Area immediately vested in Grantee, and that such interest has a fair market value. For purposes of allocating net proceeds in an extinguishment of all or part of this Easement pursuant to Paragraph 8, the share of Grantee's interest

shall not be less than the percentage that the fair market value of this Easement on the date hereof bears to the fair market value of the Conservation Easement Area prior to considering the effects of this Easement (hereinafter called the "Easement Percentage").

The values for calculating the Easement Percentage shall be based upon a Qualified Appraisal obtained by Grantor for federal income tax purposes. Upon receipt of such Qualified Appraisal, Grantor shall provide a copy of the Qualified Appraisal to Grantee. In the event that Grantor does not claim a charitable gift deduction and, therefore, does not obtain a Qualified appraisal, or does not provide a Qualified Appraisal to Grantee, the Easement Percentage shall be thirty percent (30%).

- B. Grantor and Grantee, and any successors in interests, shall exhaust all legal remedies in order to preserve and protect the Conservation Purposes of this Easement. Grantor shall cooperate with Grantee in Grantee's performance of its obligations under this Paragraph 18.

19. EXTINGUISHMENT OF EASEMENT AND DISTRIBUTION OF NET PROCEEDS

- A. Involuntary Extinguishment. In the event that all or part of the Property interests subject to this Easement are involuntarily extinguished by;
- i. Eminent domain;
 - ii. Other judicial proceedings; or
 - iii. Settlement is reached between Grantor, Grantee, and condemner under threat of eminent domain, and Grantor joins with Grantee in accordance with Paragraph 7 B above, Grantee's share of any proceeds recovered from any compensation in eminent domain or judicial proceedings or from the first lawful sale of the Conservation Easement Area, after the restrictions within this Easement have been extinguished, shall equal the Easement Percentage, provided that a larger percentage has not been stipulated by agreement between Grantee and Grantor.
- B. Voluntary Extinguishment. In the event that all or part of the property interests subject to this Easement are extinguished by:
- i. Eminent domain
 - ii. Other judicial proceedings; or
 - iii. Settlement is reached between Grantor, Grantee, and condemner under threat of eminent domain, where such action is brought by or on behalf of Grantor or where Grantor does not join with Grantee in accordance with Paragraph 7 B above, the value of interests so taken shall be determined by an independent appraisal and the net proceeds recovered from any compensation in eminent domain or judicial proceedings or from the first lawful sale of the Conservation Easement Area after the restrictions

within this Easement have been extinguished shall be distributed between Grantor and Grantee in accordance with the findings of an independent appraisal of the interests taken. Provided, however, that in no event shall Grantee's share of said net proceeds be less than the Easement Percentage.

- C. Net Proceeds. Grantee shall use its share of any net proceeds recovered as described in this Paragraph 8 exclusively for the acquisition of interests in land for Conservation Purposes. For Purposes of this Paragraph, proceeds shall not include an amount equal to the fair market value of any Improvements or permitted additional Improvements on the Conservation Easement Area affected by the eminent domain or judicial proceedings.

22. ASSIGNABILITY/TRANSFER OF GRANTEE'S INTEREST

- A. Grantee and its successors and assigns shall have the right to assign either wholly or partially its right, title, and interest hereunder only to an organization able to enforce the restrictions contained herein which has purposes similar to those of Grantee, and which encompasses the purposes set forth in this Easement. Such an organization must at the time of the assignment be a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code of 1986 (or its successor provisions), hereinafter the "Code", and one which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code. Any transfer or assignment of benefits by Grantee or its successor must require the transferee or assignee to carry out the Conservation Purposes of this Easement.
- B. In the event Grantee shall cease to exist or to be a qualified organization as described in subparagraph 22A herein, its rights and duties hereunder shall become vested in and fall upon one of the following named entities to the extent such entity shall evidence acceptance of and agree to fully enforce same;
- i. Brandywine Conservancy;
 - ii. Natural Lands Trust;
 - iii. The Township of Willistown, a political subdivision of Chester County and the Commonwealth of Pennsylvania;
 - iv. Chester County, a political subdivision of the Commonwealth of Pennsylvania; or
 - v. Such other organizations as may be designated under the doctrine of *cy pres* by a court of competent jurisdiction; provided, however, that at the time of such designation, such entity shall be an organization as described in subparagraph 9 A of this Easement.

25. EASEMENT IN PERPETUITY

The provisions hereof shall inure to and be binding upon the heirs,

executors, administrators, devisees, successors, and assigns, as the case may be, of the parties hereto and shall be covenants running with the land in perpetuity.

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

VIRGINIA EASEMENT

COMMENTARY: No third party standing to enforce the terms of this Easement is conferred on any person or group by the expressed terms of the Easement Agreement.

At 7, Grantor expressly excepted “**equestrian** activities” from prohibited industrial or commercial activities. As well at 12, Grantor expressly reserves the right of “hunting with dogs, shooting....”

DEED OF GIFT OF EASEMENT

THIS **DEED OF GIFT OF EASEMENT**, made this 25th day of September, 2002, by and between _____, herein called the Grantor; and the **VIRGINIA OUTDOORS FOUNDATION**, an agency of the Commonwealth of Virginia, hereinafter referred to as Grantee, whose address is 203 Governor Street, Suite 316, Richmond, Virginia 23219; and **FIRST FINANCIAL BANK**, herein called the Noteholder;

W I T N E S S E T H:

WHEREAS, the Open-Space Land Act of 1966 (Chapter 17, Title 10.1, §§10.1-1700 to 10.1-1705 inclusive of the Code of Virginia, as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia, (§§10.1-1800-10.1-1804 inclusive), declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historical, scientific, open-space and recreational areas of the Commonwealth; and

WHEREAS, the property of the Grantor on the eastern slope of Snow Mountain is in an area of critical mountain slopes designated for protection by the Green County Board of Supervisors in its adoption on October 14, 1997 of the Comprehensive Plan for said County; and

WHEREAS, the property hereinafter described lies within the _____ Agricultural and Forestal District and adjacent to land enrolled in the Parker Mountain Agricultural and Forestal District designated by ordinance of the Board of Supervisors of Green County, pursuant to the Virginia Agricultural and Forestal Districts Act (Sections 15.1-1506 et. Seq. of the Code of Virginia); and

WHEREAS, the preservation of the property hereinafter described will further one of the goals of the Green County Comprehensive Plan adopted by the Board of Supervisors on October 14, 1997 to “Encourage participation in Agricultural and Forestal District, Conservation Easements or open space-preservation alternatives;”

WHEREAS, a portion of the property hereinafter described is located within area which is designated in said Comprehensive Plan for "Conservation"; and

WHEREAS, the preservation of the Grantor's property in its undeveloped state will further the goals of the agencies aforesaid and of the Green County Comprehensive Plan by preserving agricultural and forestall land, by protecting the County's natural and scenic resources, and by discouraging rural residential development; and

WHEREAS, THE CONSERVATION PURPOSE OF THIS Easement is the preservation of open-space (including farm and forest land) which is pursuant to a clearly delineated governmental conservation policy and which will yield significant public benefit within the meaning of Section 170(h) of the Internal Revenue Code: and

WHEREAS, the Grantor is the owner of the fee in the real property hereinafter described which she desires preserved as open-space land in the public interest;

NOW THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantor does hereby GIVE, GRANT and CONVEY unto the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of the real estate known as "_____," consisting of 190 acres, more or less situated on State Route ___ in the Monroe Magisterial District of Green County, Virginia, near Geer, and more particularly described in Schedule A attached hereto and hereinafter referred to as the "Property."

AND SUBJECT, HOWEVER, to the restriction that the Grantee or its successor and assigns may not transfer or convey the open-space easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restriction and conservation purposes set forth in the conveyance accomplished by this deed are to be continued in perpetuity, and (2) the transferee is an organization then qualifying as an eligible donee as defined by §170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder.

The following enumerated restrictions are hereby imposed on uses of the Property pursuant to the public policies set forth above. The acts which the Grantor, and her heirs, successors, personal representatives and assigns, covenant to do and not to do upon the Property, and the restrictions which the Grantee is hereby entitled to enforce, are and shall be as follows:

5. Grading, blasting or earth removal shall not materially alter the topography of the property except for dam construction to create private ponds, or as required in construction permitted buildings, connecting private roads, permitted trails and utilities described in Paragraph 6 below. Normal agricultural activities shall not constitute materials alteration. Mining or dredging on or from the Property is prohibited.

7. Industrial or commercial activities other than the following are prohibited: agriculture, including animal husbandry, viticulture, horticulture,

aquaculture and equestrian activities, (b) temporary or seasonal outdoor activities which do not permanently alter the physical appearance of the Property, and which are consistent with the conservation values herein protected and with the other provisions of this easement, (c) activities which can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary activities involving 100 people or more shall not exceed seven (7) days in duration unless approved by the Virginia Outdoors Foundation. No commercial recreational use (except for *de minimus* (sic) use of the Property for commercial recreation uses shall be permitted on the Property.

8. Notwithstanding the foregoing clauses, no act which would materially diminish or impair the conservation values protected by this easement shall be permitted on the Property.
9. Representatives of the Grantee may enter the Property from time to time for the purpose of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the owner or the owner's representative.
11. The Grantor hereby grants to the Grantee the right to enforce the conservation restrictions contained herein pursuant to applicable state law specifically including the right to require restoration of the Property to a condition of compliance with the terms hereof.
12. The Grantor hereby agrees that the donation of the perpetual conservation restrictions contained in this easement gives rise to a property right, immediately vested in the Grantee with a fair market value that is at least equal to the proportionate value that the perpetual conservation restrictions at the time of this gift bears to the value of the Property as a whole at such time. The open-space land affected by this easement shall not be converted or diverted other than as set forth in §10.1-1704 of the Code of Virginia.

If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remaining provisions of this Easement shall not be affected thereby.

Although this Easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to or use of the Property. The Grantor, and her heirs, personal representatives, successors and assigns hereby retain exclusive right to such access and use subject to the terms hereof. Nothing herein contained shall be construed to prohibit hunting with dogs, shooting, or fishing on or over the Property.

Acceptance of this conveyance by the Grantee is authorized by §10.1-1801 of the Code of Virginia and is evidenced by the signature below of its Executive Director. Assignment of this easement is governed by §10.1-1801 of the Code of Virginia. First

Financial Bank, the Noteholder, is the Noteholder under that Certain Deed of Trust originally in favor of Guaranty Bank, dated May 30, 2001, of recorded in the Clerk's Office of the Circuit Court of Green County, Virginia in Deed Book 592, page 221, which subjects a portion of the Property to the Noteholder's lien. The Noteholder hereby consents to the terms and intent of this Easement, and agrees that the lien represented by said Deed of Trust shall be held subject and subordinate to this Deed of Gift of Easement.

Prepared by:
Reback & Slayton Attorneys
710 East High Street
Charlottesville, Virginia
Exempted from recordation taxes under
Code of Virginia (1950) as amended §§ 58.1-811(A)(3), 58.1-811D and 10.1-1803
TMP 25-A-25A
TMP 25-A-A-25B

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

WISCONSIN CONSERVATION EASEMENT

COMMENTARY: No specific equestrian uses are expressed, however, “[t]he Donor retains all ownership rights which are not expressly restricted by this Conservation Easement.” Equestrian uses are not “expressly restricted...”

No third party is vested with legal standing to enforce the rights and restrictions set forth in this Agreement.

CALEDONIA WISCONSIN GENEVA LAKE CONSERVATION EASEMENT

DATE: Summer, 2000

DONOR:

DONEE: Geneva Lake Conservancy, Inc.
722 Main Street
Lake Geneva, WI 53147

PROPERTY: TAX KEY NO.

CONVEYANCE:

The DONOR conveys and warrants to the DONEE a perpetual Conservation Easement over the Conservation Zone within the Property. The scope of the Conservation Easement is set forth in this agreement. This conveyance is a gift from the DONOR to the DONEE.

CONSERVATION VALUES:

The Property, consisting of approximately 15 acres, possesses natural, scenic, open space and ecological values of prominent importance to the DONOR, the DONEE and the people of Walworth County and the State of Wisconsin. These values are referred to as the “Conservation Values” in this Conservation Easement.

PURPOSE OF THIS CONSERVATION EASEMENT:

- A. The DONOR is fee simple title owner of the Property, and is committed to preserving the Conservation Values of the Conservation Zone within the Property will be perpetually preserved in its predominately natural, scenic forested and open space condition. Specifically, this Conservation Easement will serve to protect the woodlands, wetlands and open space identified in the Baseline Documentation Report. Any use of the Property which may impair or interfere with the Conservation Values, unless expressly permitted in this Conservation Agreement, is expressly prohibited. The DONOR agrees to confine use of the Property to activities consistent with the purposes of this Conservation Easement and preservation of the Conservation Values.

- B. The Geneva Lake Conservancy is a Wisconsin nonstock corporation incorporated under Chapter 181 of the Wisconsin Statutes. The Conservancy is qualified under Internal Revenue Code Sections 501 (c) (3) and 170 (h) (3) as a tax-exempt entity and pursues activities described in the Uniform Conservation Easement Act, Section 700.40 of the Wisconsin Statutes. The Conservancy was established to preserve, maintain and enhance the ecological integrity of Geneva Lake, its shorelands, watershed and surrounding areas, where such protections are for the benefit of the general public or pursuant to clearly delineated governmental conservation policies and will yield a significant public benefit.
- C. The Conservation Zone within the Property has the following specific Conservation Values:
- i. Significant natural habitat in which wildlife and plants survive in a natural state.
 - ii. Natural areas which represent quality examples of terrestrial communities.
 - iii. A portion of the watershed drainage area which contributes to the ecological viability of and its shorelands.
 - iv. A scenic landscape and natural character which would be impaired by buildings and related structural modifications.
 - v. Scenic values visible from public ways which would be adversely affected by modification of the natural habitat.
 - vi. Relief from urban closeness.
 - vii. A mixed hardwood stand of high quality and woodland floor largely free of invasive non-native species.
- D. Specific Conservation Values of the Property have been documented in a natural resources inventory signed by the DONOR and DONEE. This "Baseline Documentation Report" consists of maps, photographs, reports and other materials which the parties acknowledge is an accurate representation of the Property at the time of this donation. The Baseline Documentation Report also identifies a Construction Zone within the Property that is exempt from the terms and conditions of this Conservation Easement.

THE PARTIES AGREE TO THE FOLLOWING TERMS OF THIS CONSERVATION EASEMENT:

1. PROHIBITED ACTIONS. Any activity on or use of the Conservation Zone within the Property inconsistent with the purposes of this Conservation Easement or detrimental to the Conservation Values is expressly prohibited. By way of example, the following activities and uses are explicitly prohibited.
 - e. Land Surface Alteration. Any mining or alteration of the land surface, other than pursuant to the Forest Stewardship Plan or for nature trails is prohibited.

2. RIGHTS OF THE DONEE. The DONOR confers the following rights upon the DONEE to perpetually maintain the Conservation Values of the Conservation Zone within the Property:
 - a. Right to Preserve. The DONEE has the right to require restoration of the areas or features of the Conservation Zone within the Property which are damaged by activity inconsistent with this Conservation Easement.
 - b. Right to Enter. The DONEE has the right to enter the Property at reasonable times to monitor or enforce compliance with this Conservation Easement. The DONOR may not, however, unreasonably interfere with the DONOR's use and quiet enjoyment of the Property. The DONEE has no right to permit others to enter the Property and the general public is not granted access to the Conservation Zone within the Property except on nature walks guided by the DONEE pursuant to an interpretive program approved by the DONOR.
 - c. Right to Require Restoration. The DONEE has the right to require restoration of the areas or features of the Conservation Zone within the Property which are damaged by activity inconsistent with this Conservation Easement.
 - e. Right to Engage in Ecological Restoration. The DONEE has the right to engage in activities that restore the biological and ecological integrity of the Conservation Zone within the Property. Possible activities include removal of harmful, non-native species and planting of native vegetation.
4. DONEE REMEDIES. This section addresses cumulative remedies of the DONEE and limitations on these remedies
 - a. Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of the DONEE's right to enforce the terms of this Conservation Easement.
 - c. Acts Beyond the DONOR's Control. The DONEE may not bring an action against the DONOR for modifications to the Conservation Zone within the Property resulting from causes beyond the DONOR's control. Examples are: unintentional fires, storms, natural earth movements, trespassers or even a DONOR's well-intentioned actions in response to an emergency resulting in changes to the Conservation Zone within the Property. The DONOR has no responsibility under this Conservation Easement for such unintended modifications. The DONEE may, however, bring an action against another party for modifications that impair the Conservation Values identified in this Conservation Easement.
 - d. Notice and Demand. If the DONEE determines that the DONOR is in violation of this Conservation Easement, or that a violation is threatened, the DONEE may provide written notice to the DONOR unless the violation constitutes immediate and irreparable harm. The written notice will identify the violation and request corrective action to cure the violation or

to restore the Conservation Zone within the Property.

- e. Failure to Act. If, for a 28-day period after the date of the written notice, the DONOR continues violating this Conservation Easement, or if the DONOR does not abate the violation and implement corrective measures requested by the DONEE, the DONEE may bring an action in law or in equity to enforce the terms of the Conservation Easement. The DONEE is also entitled to enjoin the violation through injunctive relief, or seek damages, specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Conservation Zone within the Property. If the court determines that the DONOR has failed to comply with this Conservation Easement then the DONOR also agrees to reimburse all reasonable costs and attorney fees incurred by the DONEE compelling such compliance.
 - f. Unreasonable Litigation. If the DONEE initiates litigation against the DONOR to enforce this Conservation Easement, and if the court determines that the litigation was without reasonable cause or in bad faith, the court may require the DONEE to reimburse the DONOR's reasonable costs and attorney fees in defending the action.
 - g. DONOR's Absence. If the DONEE determines that this Conservation Easement is, or is expected to be, violated, the DONEE will make good-faith efforts to notify the DONOR. If through reasonable efforts, the DONOR cannot be notified, and if the DONEE determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Values, the DONEE may pursue its lawful remedies without prior notice and without awaiting the DONOR's opportunity to cure. The DONOR agrees to reimburse all costs associated with this effort.
 - h. Actual or Threatened Non-Compliance. DONOR acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The DONEE is entitled to invoke the equitable jurisdiction of the court to enforce this Conservation Easement.
 - i. Cumulative Remedies. The preceding remedies of the DONEE are cumulative. Any, or all of the remedies may be invoked by the DONEE if there is an actual or threatened violation of this Conservation Easement.
6. ASSIGNMENT OR GRANTEE'S RIGHTS AND RESPONSIBILITIES. This Conservation Easement is transferable, but the GRANTEE may only assign its rights and responsibilities under this conservation easement to an entity that is a "qualified organization" under Internal Revenue Code Section 170(h)(3) and authorized to acquire and hold Conservation Easements under Section 700.40 of the Wisconsin Statutes, and shall require, as a condition of transfer, that the conservation purposes of this Conservation Easement are carried out.
8. TERMINATION. This Conservation Easement may be extinguished only by an

unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain.

- a. Unexpected Change in Conditions. If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The DONEE will then be entitled to compensation in accordance with applicable laws and in proportion to the DONEE's interest in the Property at the effective date of this Conservation Easement
- b. Eminent Domain. If the Property is taken, in whole or in part, by power of eminent domain, the DONEE will be entitled to compensation in accordance with applicable laws and in proportion to the DONEE's interest in the Property at the effective date of this Conservation Easement.

15. RECORDATION. The GRANTEE will record this Conservation Easement in the office of the Registrar of Deeds for Walworth County, Wisconsin. The GRANTOR and GRANTEE agree that this Conservation Easement will not be subject to the provisions of Section 893.33(6) of the Wisconsin Statutes.

Given to Caledonia Conservancy to use by:

Chris Goebel
Executive Director and Lawyer
P.O. Box 588
398 Mill Street
Fontana, Wisconsin 53125
Geneva Lakes Conservation
262-275-5700
262-275-0579 (fax)
Email GLC@genevaonline.com

All information offered by the Equestrian Land Conservation Resource, whether written or oral, is intended for the sole purpose of assisting landowners and equestrians in the identification of issues and solutions related to the advancement of land conservation to sustain horse related activities. ELCR is not engaged in rendering legal, tax, accounting or other professional service. No one should undertake any suggestion offered by ELCR without first consulting experienced professional advisors.

**SAMPLE EASEMENT
SAMPLE EASEMENT
AMERICAN FARMLAND TRUST
Revised May 1, 1999**

COMMENTARY: No express language vesting enforcement rights in any party other than the grantee is contained herein. This document does not employ any language for the express purpose of protecting any specific intended equestrian activities.

At paragraph 3, “Grantor reserves all customary rights and privileges of ownership...”

At paragraph 4, “Grantor retains the right to use the Property for agricultural purposes ...in accordance with applicable law”

At paragraph 6, “Grantor retains the right to use the Property for otherwise lawful and customary rural enterprises...”

At paragraph 8, “[e]xcept as otherwise provided herein, Grantor may undertake construction, reconstruction, or other improvements of the Property only as provided below...”

(a) Fences...

(h) Existing Recreational Improvements...”

Paragraph 15, Mining, provides thorough, well-organized language treating the issue of “subsurface” [Emphasis. In Original] mineral and hydrocarbon exploration, development and extraction activities.” Because the Property may contain potentially valuable mineral deposits, the donor should consider retention of these rights to the maximum extent that is consistent with Internal Revenue Service regulations.

Paragraph 26 reflects the Internal Revenue Service exception, to the requirement that the proceeds must be allocated between grantor and grantee, in the case of eminent domain where state law provides otherwise. Any reader who is a landowner should review this language with care.

**AMERICAN FARMLAND TRUST
Revised May 1, 1999**

Recording requested by:

American Farmland Trust
Herrick Mill
One Short Street
Northampton, MA 01060
Attn: Director of Land Protection

DEED OF AGRICULTURAL CONSERVATION EASEMENT

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT ("Easement") granted this _____ day of _____ 200____, by [NAME, husband and wife,] [a [state]corporation] having an address at [Street, City, State, Zip Code] ([collectively,] "Grantor"), to AMERICAN FARMLAND TRUST, a District of Columbia nonprofit corporation, with a principal place of business at 1200 18th Street, NW, Suite 800, Washington, DC 20036 ("Grantee").

WITNESSETH:

Grantor is the owner of certain agricultural real property in [County], [State] more particularly described in Exhibit A attached hereto (the "Property").

Grantee is an organization described in Sector 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a)(2) of the Code. Grantee is a "qualified organization," as such term is defined in Section 170(h)(3) of the Code, and is qualified to hold Conservation Easements under the laws of the State of _____/

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the use which may be made of the Property.

The Property consists primarily of productive agricultural land. The majority of the soils on the Property have been classified as ['prime'/'unique'/'farmland of statewide or local importance'] by the Natural Resources Conservation Service, U.S. Department of Agriculture. The primary purpose of this Easement is to protect the agricultural soils, agriculture viability, and agricultural productivity of the Property in perpetuity.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h)(4)(A) of the Code: [select applicable purposes only]

- The protection of a relative natural habitat for [describe fish, wildlife, or plants].
- The preservation of open space for the scenic enjoyment of the general public from [describe highway/other public location].
- The Preservation of open space pursuant to the following clearly delineated governmental conservation policies:

The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. Section 4201, *et seq.*, whose purpose is to "minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland;"

[State] Right to Farm Law [citation];

[State] Conservation Easement Law [citation];

[State] Preferential Tax Law for Agricultural Land [citation];

[Other State laws, Executive Orders, and/or state and local conservation/growth management policies.]

- The preservation of a land area of historic importance due to [describe historic importance].

The Current agricultural use of the Property and its current improvements are consistent with the conservation purposes of this Easement.

The agricultural, [natural habitat, scenic, open space, and historic] resources of the Property are collectively referred to herein as the “conservation values” of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Present Condition Report (the “Report”) prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

Grantor intends that the agricultural and other conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the agricultural and other conservation values of the Property in perpetuity.

NOW THEREFORE, In consideration of the foregoing and mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

1. *Grant of Agricultural Conservation Easement*

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Agricultural Conservation Easement, [terminology may vary with state—consult state statute.] and immediately vested interest in real property defined by [citation to state statute] of the nature and character described herein. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

2. *State of Purpose*

The primary purpose of this Easement is to enable the Property to remain in agricultural use by preserving and protecting its agricultural soils, agricultural viability and productivity. No activity which shall significantly impair the actual or potential agricultural use of the Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this

Easement is consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

3. *Rights and Responsibilities Retained by Grantor*

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease and devise the property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law.

4. *Right to Use Property for Agricultural Purposes*

Grantor retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law.

6. *Right to Use the Property for Customary Rural Enterprises*

Grantor retains the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products; farm machinery repair; sawmills; or firewood distribution, so long as such use are confined to locations within the "Farmstead Area" identified on the map attached as Exhibit B.

7. *Permission of Grantee*

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder

8. *Procedure to Construct Buildings and Other Improvements*

Except as otherwise provided herein, Grantor may undertake construction, reconstruction, or other improvement of the Property only as provided below. Grantor shall advise Grantee prior to undertaking any

construction, reconstruction or other improvement of single-family dwellings or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its records current.

- a. *Fences*—Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife
- e. *New Farm Support Housing*—New dwellings or structures to be used primarily to house farm tenants, employees or others engaged in agricultural production on the Property (“Farm Support Housing”) may be built on the Property, provided they are located within the area identified as “Farm Support Housing” on Exhibit B. New Farm Support Housing proposed for locations outside the area identified as “Farm Support Housing” on Exhibit B may be built only with the Permission of Grantee.
- h. *Existing Recreational Improvements*—All existing recreational improvements may be repaired, reasonably enlarged or replaced at their current locations, which are shown on Exhibit B.

15. *Mining*

Except as provided below, exploration for, or development and extraction of, minerals and hydrocarbons from the Property by any method is prohibited.

Grantor may undertake the subsurface mineral and hydrocarbon exploration, development and extraction activities which:

- a. have been approved by Grantee;
- b. are not inconsistent with the conservation purposes of this Easement;
- c. will have an impact on the Property that is limited and localized in nature; and
- d. will have an impact on the conservation values of the Property that is capable of being, and will be, mitigated, remedied and repaired in a manner satisfactory in all respects to Grantee.

To the extent permitted under Section 170(h)(5) of the Code and applicable Treasury Regulations, Grantor may remove sand and gravel for construction and maintenance of roads on the Property as permitted by this Easement, subject to the following conditions:

- a. no more than [two] acres of the surface of the Property shall be disturbed by said permitted extractive activities;
- b. Grantor shall use all practical means to mitigate any adverse effect on the conservation values of the Property in carrying out said permitted extractive activities; and
- c. Upon completion of said permitted extractive activities, Grantor shall promptly restore any portion of the Property affected thereby as nearly as possible to its condition existing prior to commencement of said permitted extractive activities.

[Note to Easement drafter: Where ownership of the surface estate and mineral interests is separated, Easement language should (a) describe the mineral interests so separated; (b) name the current owner of the mineral interests; (c) state that the owner of the mineral interests is not a person or entity in any way related to Grantor; and (d) state that the probability of removal of minerals from the Property by any surface mining method has been determined by a qualified professional geologist to be so remote as to be negligible, (e) cite the name of the geologist and the date of the geologist's report, and (f) state that a true and complete copy of the report has been provided to Grantee.]

20. *Enforcement*

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation.

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

- a. money damages, including damages for the loss of the conservation values protected by this Easement; and
- b. restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violations has occurred, each party shall bear its own costs.

21. *Transfer of Easement*

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under [applicable state Easement enabling statute], provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever ceases to exist or no longer qualifies under Section 170(h) of the Code, or applicable state law, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities

imposed by this Easement.

24. Extinguishment

A court with jurisdiction may, if it determines that conditions surrounding the Property have changed so much that it becomes impossible or impractical to fulfill the conservation purposes of this Easement, extinguish or modify this Easement in accordance with applicable state law, at the joint request of both Grantor and Grantee. If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

25. Proceeds

The donation of this Easement gives rise to a property right, immediately vested in Grantee, which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 7 above, shall have a value equal to percentage (the "Proportionate Share") of the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. [Provide the exact percentage if possible.] The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treasury Regulations, Section 1.170A-14(g)(6), Grantee shall be entitled to a portion of the proceeds from such sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

26. Procedure in the Event of Taking by Eminent Domain

If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

31. Grantor's Title Warranty

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except those set forth in Exhibit D, and hereby promises to defend the same against all claims that may be made against it. All holders of liens of other encumbrances arising from borrowing have agreed to subordinate their interests in the Property to this Easement, as indicated in Exhibit D.



ELCR

Equestrian Land
Conservation Resource

APPENDIX

Partnerships In Protection: Preserving Horizon Farm

Protecting 421 acres of Horizon Farm in Barrington Hills, Illinois created possibly the largest private land conservation easement in the state of Illinois. The easement was filed in November, 2003. This effort is the result of the joint efforts of the McGinley family, the Barrington Hills Conservation Trust (BHCTrust), The Conservation Foundation and the Equestrian Land Conservation Resource (ELCR). How this all came together is a clear illustration of what people dedicated to preserving land can accomplish. How did it happen? With desire, partnership and commitment on the part of all parties.

Partner #1: Horizon Farm & The McGinley Family

The village of Barrington Hills, Illinois has the largest land area, for the smallest population, in the State of Illinois. It is an almost completely residential area with five acre minimum zoning and numerous properties are far larger, comprised of parcels that are twenty to hundreds of acres each. There is an active equestrian community that maintains more than eighty miles of riding trails over both public (county forest preserve district) and private land. The natural tree canopy is extensive. The Barrington Hills area is blessed with open land, rural character, scenic vistas, and extensive recreational opportunities. The residents have a deep appreciation for this extraordinary community and the village government has actively worked to maintain and protect its rural values. Even with extremely high area land values per acre, development pressures are intense. To give an idea of these pressures on this area, it is located 39 miles northwest of downtown Chicago, 25 miles from O'Hare International Airport, and just minutes from a commuter train station and a major interstate highway. It is a developer's dream.

Horizon Farm was established in 1983 and has been owned and operated by William J. McGinley and his family since that time as an extensive and active Thoroughbred breeding and foaling farm. At one time seven stallions were standing and an average of eighty mares were foaled each year.

In 2001, Robert McGinley, the oldest son of the founder, began researching the possibility of conserving Horizon Farm so that it would always preserve open space and equestrian activities. "My parents did not leave specific direction for the future of the farm, but we children knew they would have wanted it kept as a farm. It was always Dad's vision that the farm would be a place to raise, have and enjoy horses. We all wanted to keep it that way and we also wanted to create a legacy of open space that sustains a quality of life that takes a stand against suburban encroachment. It was a matter of finding *the way*," states McGinley. "I recall coming home from college and getting into a discussion of what the farm's name should be. My comment that you could see the distant horizon struck the right note and it has been Horizon Farm since that weekend."

In July, 2002 McGinley's research led him to telephone the Equestrian Land Conservation Resource (ELCR). His conversation with their Executive Director, Kandee Haertel, led to a meeting at the farm. Bill Davis of The Conservation Foundation responded to Haertel's request to join her and Nancy Winter, an ELCR Board member who was very familiar with the Barrington Hills area, joined Haertel for an initial meeting and tour of the farm. At this meeting information regarding conservation easements was provided and McGinley was interested in the possibility even though at this time, McGinley was still researching the possible sale of Horizon Farm to a public agency. Both Haertel and Davis remained in periodic contact with him to assist him in any way possible.

Partner #2: Barrington Hills Conservation Trust

When Mary Bradford-White's husband was transferred to the Chicago area in 1997, it meant that their family would have to relocate from Villanova, PA. They chose Barrington Hills for its open space and equestrian community, as well as its proximity to Chicago.

While in Pennsylvania, Bradford-White had become aware of her local land trust, the Willistown Conservation Trust (WCT), through her friend and regular riding partner, Peter Somers. Somers was active with WCT and had been instrumental in much of the legal work on the conservation easements for them. Bradford-White was surprised to learn that there was no local land trust in Barrington Hills, but was lulled into the sense that "someone would do something if it was necessary" to preserve the beautiful area where she had moved even though Somers urged her to form a local land trust.

Time marched on. A major developer bought a large farm (approximately 600 acres) in the northwest corner of Barrington Hills and began legal proceedings to disconnect from the village limits and annex into an adjoining village where the zoning would allow high density housing.

That was the turning point for Bradford-White. She connected with Bonnie Van Alen, the executive director of WCT, and asked her how to begin. Bonnie said her best advice would be to join the Land Trust Alliance (LTA) because she considered them to be an excellent resource. Bradford-White joined LTA and was immediately connected to Jill Arango, LTA area representative, who in turn put her in touch with Bill Davis, then Director of Land Preservation at the Conservation Foundation in Naperville, IL. Bill gave her many names of people at various organizations in Illinois and Wisconsin. She proceeded to call all of them and ask how their organizations got started, what worked for them, what difficulties they face, and what advice they could give.

"It was Kandee Haertel at the Equestrian Land Conservation Resource who gave me the strong shove that I needed," states Bradford-White. "When I expressed my apprehension at taking on such a task, my fears and feelings of inadequacy, Kandee said, 'If you don't do it, nobody else will. Everyone will just keep saying 'someone should do something until it's too late, and there's nothing left to do.' As a final push, Kandee said, 'Commitment is what really counts. You don't have to be a genius, just do it!'"

arly on, Bradford-White was joined by her husband Lynn White and Julie Martens, who together formed the initial Board of Directors for the Barrington Hills Conservation Trust. The organization was incorporated in the State of Illinois in October, 2001 and received its 501(c)(3) tax designation in October of 2003. Bonnie Van Alen, Peter Sommers and Bill Davis continued to offer excellent advice and guidance to the fledgling organization all along the way. They became active with LTA and were awarded one of two mentoring grants in the Midwest. “It was wonderful timing – as a startup organization we’ve managed to avoid many mistakes because of input from these other land trusts,” continues Bradford-White.

BHCTrust worked hard to develop an excellent rapport with the Barrington Hills village government and added two more strong board members, Annamarie Lukes and Elizabeth Bramsen. They have also developed an advisory board.

Late in 2002, the discussion of conservation easements on Horizon Farm moved from The Conservation Foundation, a regional land trust, to the newly organized BHCTrust and work began on crafting the conservation easement to fit the family’s vision for the farm

Partner #3: The Conservation Foundation

“Kandee Haertel had worked with The Conservation Foundation when she lived in the area,” said Bill Davis, who was then Land Protection Specialist at TCF, “so I was not surprised to hear from her when the opportunity to preserve Horizon Farm presented itself. ELCR, where Kandee now works, is well aware of the importance of preserving equestrian farms and does not hesitate to bring in the local land trust as early as possible.”

“When we had our first meeting with Robert McGinley, BCHTrust was in the early stages of organization,” continues Davis, “but as the discussion continued, it became clear that they should be involved because of their dedication to the preservation of the local Barrington Hills area.

Davis was the one who initially told McGinley about The Barrington Hills Conservation Trust. McGinley was delighted to know of their existence. “My husband and I met with Robert to discuss Horizon and the Barrington Hills Conservation Trust in May of 2002,” states Bradford-White. It was going to be a major effort, “but the mentoring by the folks at The Conservation Fund made things go smoothly for us.”

Partner #4: The Equestrian Land Conservation Resource

“Horizon Farm is a wonderful place that deserved to be preserved on its own merit. When you add in the factor that it is also a major horse farm, it makes ELCR doubly delighted that it was saved,” says Kandee Haertel, Executive Director of ELCR. “This was a case where ELCR can do what it does best – Put the parties together and keep them focused on their goals. In this case the goal was preserving Horizon Farm.”

Haertel notes that the Horizon Farm easement states that it will “continue traditional equestrian activities, such as hunting with hounds, steeple chases, trail rides, polo, and horse shows” and grants “the right to construct equestrian and pedestrian trails on the Property and

grant easements therefore, provided that no new equestrian trails ... shall be in any Natural Areas.” The natural areas and open space, as well as the significant agricultural values, are all protected under the easement.

“As with any easement, it has been specifically crafted to suit the needs of *all* parties and expresses the family’s wishes as well as those of the land trusts,” states McGinley. “Horizon is, above all, *a farm*. Its agricultural integrity is preserved and its traditional use as a *horse farm* is provided for into the future.” McGinley continued, “ELCR’s contact network and reference materials were helpful to me as the family discussed what would be the most appropriate way to keep Horizon Farm the way we wanted it to be.”

The Easement Comes Together

As the months went on, McGinley continued his efforts to do an easement on Horizon Farm. He would discuss various issues and problems with his contacts at BCHTrust, TCF and ELCR.

“In July of 2003 he called and expressed his extreme frustration with the suggestions for handling the development of Horizon Farm. He was being bombarded with all sorts of ideas. I suggested to Robert that we bring Bonnie Van Alen out. Bonnie has years of experience with properties like Horizon as well as with the family and business issues involved in such a large property,” states Bradford-White. McGinley agreed and Van Alen accepted BHCTrust’s invitation. It was a turning point in the whole process.

As the lawyers and accountants beavered away all of the parties, but particularly Bradford-White, would hear encouraging, and then not so encouraging news on Horizon’s fate. Finally, in October, McGinley reported to Bradford-White that his family was all in agreement and that they would be putting a conservation easement on 421 acres of Horizon Farm. The easement allows construction of up to eight homes on the property, each on lots of at least five acres, but it prohibits any other development on the land. Eighty homes could have been built under existing ordinances. In addition to the majority of the existing pastures and farmland, more than eighty acres of wetlands, ponds, woodlands and prairies cannot be touched. “That’s what the family gave up to reserve the vision and natural values that are there,” said Dan Lobbes, Director of Land Protection for the Conservation Foundation. “Of course, the family still owns the land and has the right to sell it as they wish, but with the easement in place, it must be honored by any subsequent buyer.”

“We wanted to preserve what our parents initiated in terms of open space. I know this is something they would have wanted,” said McGinley.

“The farm will look pretty much the way it does now in perpetuity,” said Bradford-White. “People feel real pressure out here to maintain open space like this because of developers. It’s a real commitment by the McGinleys. They have created a wonderful living legacy for our community.”

McGinley invited Bradford-White and her husband Lynn White to join him at the Fox River Valley Hunt Ball on November 8, 2003 where he planned to publicly announce that Horizon

Farm would remain, in perpetuity, as it is today. McGinley wanted Mary and Lynn at the hunt ball so they would be able to inform local landowners about BHCTrust and the benefits of conservation easements. McGinley said that he would love to have BHCTrust to solely hold the easement on Horizon, but given its size and complexity, it was better to have a more experienced organization, such as TCF, co-hold the easement, so The Conservation Foundation had been chosen. The Conservation Foundation will cohold the easement with BHCTrust until BHCTrust is ready to hold the easement on its own.

At the Hunt Ball, Robert McGinley made his announcement. Horizon Farm would be forever protected by a conservation easement held jointly by the Conservation Foundation and Barrington Hills Conservation Trust. There was immediate applause, then a standing ovation with cheers.

Matching Equestrian and Conservation Interests Creates Triple Win

by Robin Underwood, Director, Open Space Collaborative

The loss of open land has been identified as the greatest threat to the future of all equestrian sport, recreation, and industry. All over the country, equestrians are facing the impending loss of their open land, but few know how to fight back. Bill and Carrington Price, founders of the Queen's Cup Steeplechase in North Carolina, learned how to fight – and how to win.

A tailgate party pushed Bill Price head first into the equestrian conservation movement. Price, a lifelong equestrian whose family had assembled a 260-acre tract south of Charlotte, N.C., in 1999, had an open house where 1,000 interested people came to tailgate on the land and look at the improvements he had put in to create the Queen's Cup Steeplechase course and grounds. As he had expected, it was a great party; but he never could have imaged what would happen next.

A realtor called representing a party guest who wanted to buy the property. The buyer's opening bid was "in excess of seven numbers." It was quick money in the bank. Bill and Carrington have two children. Their future would be solid and sealed -- if only the family would give up their dream and allow this lush green landscape to fill with parking lots, stores, roads and housing developments.

"We didn't have to think twice," he says. "I told him the land wasn't for sale. When I told him it wasn't about the money, he didn't understand. He said, 'Of course it's about the money. It's always about the money.' "I never could explain it to him. But it made me realize that I had to do something to protect this land, not just now, but forever."

Bill Price found his protection partner in the Catawba Lands Conservancy, a land conservation organization based in Charlotte but covering a broad area that includes the Queen's Cup grounds. Using the professional expertise of the conservancy and its team of finance and real estate experts, the Prices carved out a plan that protects the land with a permanent conservation easement, allows development in targeted areas, reduces property taxes, allows for generous state and federal tax incentives, and provides estate tax benefits that will come into play in the years to come.

With the guidance and expertise of the Equestrian Land Conservation Resource, the conservation restrictions outlined in the easement are compatible with the intended equestrian use of the land. Trail riding and equine sporting and racing events are specifically mentioned as activities on the property.

The Queen's Cup Steeplechase story is one that can serve as a template for equestrian landowners nationwide. It powerfully demonstrates how an equestrian landowner can preserve farms, pastures, trails, and hunting grounds, and also take advantage of a wide range of tax benefits.

It is the ultimate Triple Crown win – a win for the Prices, a win for the community where open space is fast disappearing and a win for future generations who will have a slice of pastoral heaven protected and preserved.

Finding a Steeplechase Venue

Bill Price, a native Marylander, began horseback riding at age four and bought his first thoroughbred gelding at age 14. He dreamed of becoming a trainer, but soon woke to the reality that it wasn't going to happen and went into the home security business. Carrington, who grew up playing on her grandparent's farm, married Bill in 1982. They frequently attended horse races in Maryland where they lived, and carried that interest south after he sold the Maryland business to Sonitrol Security and with family and friends invested in Sonitrol of Charlotte. Bill eventually took over the Charlotte-based security business, and as that business grew – and grew more successful – Bill once again veered toward racing, purchasing several racehorses. One of them, Break Clean, won six times, including a win at Saratoga Springs, and returned a comfortable \$90,000 on Bill's \$15,000 investment. As his involvement and interest in racing grew, he began toying with the idea of creating a steeplechase in Charlotte.

With Carrington as his partner, Bill created the non-profit Charlotte Steeplechase Association in 1994, leased a 285-acre site south of Charlotte in the southern section of neighboring Union County, created a 1.25-mile grassy oval track with brush jumps, and secured approvals in time to hold the first event in the fall of 1995.

For several years, the Charlotte Steeplechase ran on the leased property, and each year, the Prices became more convinced that they needed a permanent home for this growing event. They began searching for land, but it was not until just before the 1997 Steeplechase that the Prices found a prime 260-acre parcel with rolling hills and trees.

Jim and Midge Price, who live in Ocean Ridge, Florida, were in a position to buy the land, then lease it to The Charlotte Steeplechase Association for \$1 a year. Work began immediately on grading a one-and-one-sixteenth-mile course, with a hub rail, parking spaces for elegant tailgating along that rail, terraces suited for lawn boxes, a permanent stewards' tower and a higher infield perfect for picnicking and watching.

It was magnificent – but in Bill Price's mind, it was not secure. His father occasionally would talk about putting building lots around the perimeter of the racecourse. "It made my stomach turn," Bill now says. "It was understandable; Dad being an investment banker and the development pressures were all around us."

On a perfect early-autumn day, Bill invited his father to take a walk around the farm. The sun was setting, the leaves were turning, and he turned to his father and asked if he really wanted to put houses in the middle of that picture. No, said his father, we shouldn't do that. Bill then asked the question that would set everything in motion: "Dad, why don't we put all of this under conservation easement?"

Easement Creates Flexibility

A conservation easement – also called a conservation agreement -- is a legally binding commitment to extinguish development rights on a parcel. Those development rights are turned over to a “qualified” organization. This can be a land trust or a government entity such as a Parks Department or the U.S. Forestry Service.

Not all land qualifies; the property has to meet a test of providing public benefit. This is not the same as providing public access; land can remain private but qualify if it protects water or wildlife, protects historic property, or if it provides a scenic view or other “significant public benefit” pursuant to governmental policy.

There are more than 1,500 land trusts across the nation that accept conservation agreements and take on the responsibility of monitoring the land to ensure that it remains natural and unspoiled. While a landowner can sell or give property to a land trust, the more common practice is to maintain ownership and place a conservation easement on all or part of the land. Jim and Midge Price continue to own the land, but gave a conservation easement to the Catawba Land Conservancy (CLC). Because Bill and Carrington lived on the land and wanted to leave room for further building, they worked with the CLC to create “envelopes” of land within the property that would be exempt from the easement.

And finally, Jim and Midge looked at the tax credits and benefits and decided not to place all the targeted land under easement right away, but rather to stretch the process – and therefore the tax benefits – over a longer period. “Many people do not understand that when you put your land into a conservation program, you have great flexibility. You can create envelopes where you can build, or save a place for a child to own or live. Yes, you have restrictions, but if you go through the process carefully, you can create a situation where everybody benefits.”

Creating a Conservation Plan

The first step was for Bill to contact the CLC; the executive director came and walked the land with him and assured Bill that they could work well together. Through the Conservancy, Bill located a “qualified” appraiser to determine the value of the conservation agreement. Landowners need a special kind of double-sided appraisal to qualify for the tax deductions, and land trusts typically maintain a list of appraisers who must follow specific guidelines set by the federal government. It is the appraiser’s job to make two judgments:

- The value of the land with the conservation restrictions.
- The value of the land without the conservation agreement

The federal government and many state governments recognize the financial sacrifice made by those who place land under conservation easement and offer tax incentives that help to offset this potential loss. A number of states offer state tax credits: California, Connecticut, Colorado, Delaware, Maryland, Mississippi, New Mexico, North and South Carolina, and Virginia. For the federal government, easement donations qualify as charitable donations. The rules are complicated, for a full set of rules and requirements, consult your financial advisor and contact your local land trust.

Land trusts are local organizations working to preserve land in your community. They are familiar with the local real estate markets and often can pull together federal, state, or local grants and like-minded organizations to help you preserve equestrian land in your area. Land trusts work with a wide range of landowners – from farm families of modest means to wealthy land investors – who share a love of the land. The equestrian community is similarly diverse and similarly focused on preserving land, so the two are a comfortable fit. (To find a land trust near you, visit the website of the Land Trust Alliance, www.lta.org.)

Land Will be Saved Forever

With the help of his CPA, Jim Price determined that he could make good use of the tax incentives on 201 acres, but held 59 acres out to be placed under easement at a future time. The deal closed in December 2000, but the Prices and the CLC kept it confidential until the newly named Queen’s Cup Steeplechase in April of 2001. It was a special day in the life of the Price family – and for the generations that will follow.

Bill and Carrington are looking to the equestrian community to be leaders in land conservation nationwide. “Horse people understand that when you are riding, you can go through 260 acres real fast,” Bill said. We have done the right thing, but it isn’t enough. Horse people see that we are running out of space to ride, but it’s much more than that. “When this land is gone, it’s gone, and we will leave nothing to our children but houses, asphalt and parking lots. That’s not a legacy. That’s a travesty.”

The Queen’s Cup Steeplechase land is now worth much more than the original purchase price, and as development pushes further out of Charlotte, it will keep going up. Everyone in the Price family is sleeping well. “Not for even one moment have my parents, Carrington and I, or our son and daughter had any regrets about placing this land under easement,” Bill said. “It’s easy. It’s lasting. And nobody can ever take it away. It was a great deal financially, spiritually, emotionally.”



ELCR

Equestrian Land
Conservation Resource

INDEX

EQUESTRIAN LAND CONSERVATION RESOURCES

Guide to Equestrian Friendly Conservation Easements

INDEX

Agricultural Activities

Connecticut, New Haven, 14
Illinois Horizon Farms, 35
Illinois, Jo Daviess -Woodruff, 44
Illinois, Jo Daviess Agricultural Trust, 58
Kentucky Model Donation Easement, 70
Maryland Easement, 80
North Carolina, Catawba, 106
Virginia Easement, 146
American Farmland Trust, 155

Barns and Fences, building, keeping horses

Illinois Kane County, 29
Illinois Horizon Farms, 35
Illinois, Jo Daviess -Woodruff, 44
Illinois, Liberty Prairie, 50
Illinois, Jo Daviess Agricultural Trust, 58
New York Dutchess Land Conservancy, 85
New York, Winchester Land Trust, 99
Tar River Easement, 114
Pennsylvania Radnor Hunt, 133
Pennsylvania Willistown, 138
Virginia Easement, 146
Wisconsin Easement, 150
American Farmland Trust, 155

Fox hunting, Steeplechasing

Florida, 22
Illinois Horizon Farms, 35
Illinois, Jo Daviess Agricultural Trust, 58
Illinois, Wayne DuPage Hunt, 67
New York Dutchess Land Conservancy, 85
North Carolina, Catawba, 106
Pennsylvania Radnor Hunt, 133

Harvesting Timber

Illinois, Liberty Prairie, 50
Maryland Easement, 80
Pennsylvania, 121

Horse Shows

Illinois Horizon Farms, 35
New York, Winchester Land Trust, 99
North Carolina, Catawba, 106

Hunting

Florida, 22
Illinois, Jo Daviess -Woodruff, 44
Virginia Easement, 146

Public Access Trails

Connecticut, New Haven, 14
Pennsylvania, 121
Pennsylvania, Radnor Hunt, 133
Pennsylvania, Willistown, 138

Recreational Purposes

Connecticut, New Haven, 14
Illinois Horizon Farms, 35
Illinois, Liberty Prairie, 50
Illinois, Jo Daviess Agricultural Trust, 58
North Carolina, Catawba, 106
Pennsylvania, 121
Pennsylvania, Willistown, 138

Scenic Enjoyment

Connecticut, Bethany Land Trust, 8
Florida, 22

Town holding easement

Connecticut Conservation Restriction, 15
Pennsylvania Radnor Hunt, 133

Trails

Bethany Land Trust, 8
Connecticut, New Haven, 14
Illinois, Kane County, 29
Illinois, Horizon Farms, 35
Illinois, Jo Daviess -Woodruff, 44
Illinois, Wayne DuPage Hunt, 67
New York Dutchess Land Conservancy, 85
New York, Winchester Land Trust, 99
North Carolina, Tar River, 114
Pennsylvania, 121
Pennsylvania, Willistown, 138