

GENERAL CE TEMPLATE

Sample form with blanks and [with sample language and Drafter's Notes in brackets]

**Sycamore Land Trust, Inc.
DEED OF CONSERVATION EASEMENT
Template adopted on March 11, 2011**

Christian Freitag, Executive Director

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This document was prepared with the assistance of Prof. W. W. Weeks,
Director, Conservation Law Center, Indiana University,
and the Indiana University Environmental Law Clinic

THIS DEED OF CONSERVATION EASEMENT is conveyed by the Grantor identified herein to Sycamore Land Trust, Inc. an Indiana nonprofit corporation, with a principal place of business at Bloomington, Indiana ("Holder").

W I T N E S S E T H:

1. Real Estate affected.
 - 1.1. Cross-references:
 - 1.1.1. The original recorded plat of the real estate herein affected is identified in the _____ County Recorder's Office as follows:
[Here insert plat or deed recording information.]
 - 1.1.2. The most recent deed of record in the _____ County Recorder's Office conveying the real estate is identified as follows:
[Here insert plat or deed recording information.]
 - 1.2. Ownership. Grantor is the sole owner in fee simple of certain real property in _____ County, Indiana, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property").
 - 1.3. Grantor defined. "Grantor" is defined to be the current owner(s) as identified herein, and all subsequent owners, in accordance with property transfers described in Section 19. The Grantor is bound by all provisions herein.
2. General Conservation Values. The Property possesses values including [If a tax deduction is contemplated by Grantor, choose one (or rarely more) from A, B and C: A: a relatively natural habitat of fish, wildlife or plants, or similar ecosystem, or B: open space (including farmland and forest land) that creates significant public benefit for the scenic enjoyment of the general public or that creates significant public benefit that supports a clearly delineated Federal, State or local governmental conservation policy, {Note: if a working farm is the subject of the Conservation Easement it may be more appropriate to use the Agricultural Conservation Easement, available through Holder} or C: characteristics of value for outdoor recreation by, or the education of, the general public] (collectively, "conservation values") of

great importance to Grantor and Holder. If no tax deduction is contemplated, broader language from IC 32-23-5-2 might be used, allowing, (1) retaining or protecting natural, scenic, or open space values of real property; (2) assuring availability of the real property for agricultural, forest, recreational, or open space use; (3) protecting natural resources; or (4) maintaining or enhancing air or water quality.

3. **Specific Conservation Values.** Those conservation values are briefly described as follows: [describe the features of the land that contribute to the conservation values. For instance, this might include description of a lake, its wetlands, and surrounding lands that contribute to its water quality, and the plants and animals that live there. This description might be a paragraph or two].

4. **Baseline Documentation.** The specific conservation values of the Property are further documented in an inventory of relevant features of the Property, attached hereto as Exhibit B and incorporated by this reference (“Baseline Documentation”), which consists of reports, maps, photographs, and/or other documentation 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, though nonexclusive, information baseline for monitoring compliance with the terms of this grant.

5. **Preservation of Conservation Values.** Grantor intends that the conservation values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with them, including those land uses relating to [list current uses that will be allowed to continue, such as farming, ranching, sustainable timber harvesting, hunting, fishing, trapping, hiking, boating, etc.] existing at the time of this grant [Note: this must be consistent with Section 12, Reserved Rights], and such other uses as are not inconsistent with the purposes of this Conservation Easement.

6. **Conveyance Made and Accepted.** Grantor further intends, as owner of the Property, to convey to Holder the right to preserve and protect the conservation values of the Property in perpetuity, and by this Grant of Conservation Easement hereby makes such conveyance.

7. **Holder Nonprofit Corporation.** Holder is a publicly supported, tax-exempt nonprofit organization and a qualified organization under Sections 501(c)(3) and 170(h)(3), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the “Internal Revenue Code”), whose primary purpose is the preservation, protection, and enhancement of land in its natural, scenic, agricultural, forested, and/or open space condition.

7.1. Grantor and Holder recognize that Grantor may or may not be entitled to a charitable contribution deduction for state and/or federal income tax purposes as a result of Grantor’s gift of this conservation easement. Holder and Grantor agree that Grantor will rely solely on Grantor’s evaluation of Grantor’s entitlement to any such deduction, and on the advice of consultants retained by Grantor. Grantor will not rely on any information provided to Grantor by Holder concerning Grantor’s entitlement to a deduction as a result of this gift. Grantor agrees to hold Holder harmless from any claim of any sort related to Grantor’s

entitlement to a charitable deduction, with the sole exception being that Holder is qualified as a tax-exempt organization as set forth in this Section 7.

8. Consideration. In consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of Indiana and in particular the Indiana Uniform Conservation Easement Act, Indiana Code 32-23-5-1, et seq., Grantor hereby grants and conveys to Holder, and Holder hereby accepts as a gift, a perpetual conservation easement, an immediately vested interest in real property defined by Section 32-23-5-1, et seq., of the Indiana Code, and 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 Holder to enforce these covenants in the manner described below.

9. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in its [e.g., natural, scenic, agricultural, forested, and/or open space] condition and to prevent any use of the Property that will impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including those involving [e.g., farming, ranching, timber production, public recreation, or education, tracking Section 5], and such other uses as are not inconsistent with the purpose of this Easement.

10. Rights of Holder. To accomplish the purpose of this Easement the following rights are conveyed to Holder by this Easement:

- 10.1. To preserve and protect the conservation values of the Property;
- 10.2. 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 14; and
- 10.3. 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 14.
- 10.4. To post regulatory and other signs and notices consistent with the Conservation Easement for purposes of promoting the purposes of this Conservation Easement, and to survey, mark and monument the boundaries of the easement area.

11. 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 are expressly prohibited:

[The restrictions set forth below in Sections 11.1 to 11.15 are examples of previously used restrictions. Many other choices are available, which might permit logging, wildlife

ponds, etc. Individual terms are subject to negotiation with Sycamore Land Trust Inc. representatives.]

- 11.1. Removal, destruction, cutting, mowing, or other disturbance of any trees or other vegetation, living or dead, with the following exceptions:
 - 11.1.1. To control plants that are not native to the State of Indiana, or to maintain authorized fences or trails.
 - 11.1.2. To control destructive aspects of grape vines.
 - 11.1.3. Gathering mushrooms or other foods growing naturally on the Property for personal use of Grantor.
 - 11.1.4. Cultivation practices associated with planting of trees and other native plants, and practices otherwise associated with improving wild life habitat, any of which must be associated with enhancing the conservation values of the Property, such as digging holes, judicious use of mechanical or chemical weed control to further the growth of plants, the installation of birdhouses, etc.
 - 11.1.5. Use or maintenance of any easements across the Property for utilities or ingress and egress that exist or are created at the time of the granting of this Conservation Easements.
- 11.2. Planting or other purposeful introduction of plants that are not native to the State of Indiana.
- 11.3. Tilling; plowing; tiling, ditching; draining; diking; excavating; removal of topsoil, sand, rock, gravel or other such materials; or other disturbance of soil or changes in topography.
- 11.4. Road construction, other than as may reasonably required to implement any access easement authorized herein.
- 11.5. Construction or placement of any temporary or permanent structure or improvement of any kind, other than fences on the perimeter of the Property.
- 11.6. Motorized vehicles of any kind.
- 11.7. Horseback riding or the keeping or presence of any livestock.
- 11.8. Trails for horseback riding, bicycling, skiing, or any use other than walking.
- 11.9. Mineral extraction or mining.
- 11.10. Dumping.

- 11.11. Dredging, damming, or altering of any streambed.
- 11.12. Fence construction, other than on the perimeter of the Property.
- 11.13. Camping or campfires.
- 11.14. Subdivision. Regardless of the number of parcels included in the legal description of the Property, and regardless of their order of acquisition, Grantor shall maintain all of the parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel. Grantor will not apply for or otherwise seek recognition of additional legal parcels with the Property. Grantor shall not subdivide the existing legal parcel(s), record a subdivision plan, partition any said parcel(s), or undertake any other attempt to divide said parcel(s) into two or more legal parcels. [If the Property is a large tract, typically over 100 acres, subdivision into two or more large tracts might be negotiated as a term of the Conservation Easement. No permitted subdivision should allow any post-subdivision tract to be under 50 acres. Similarly, if there is a residential cut out, such as a 10 acre tract excluded from the CE, the CE might permit subdivision of that cut out.]

12. Reserved Rights. Grantor reserves to Grantor, and to Grantor’s personal representatives, heirs, successors, and assigns, all rights accruing from Grantor’s 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 which are not inconsistent with the purpose of this Easement. [Without limiting the generality of the foregoing, and subject to the terms of Section 11, the following rights are expressly reserved:]

[Insert Express Reservations, if desired. Examples of past reserved rights include: Erecting signs identifying the property and its features, memorials to donor family members, timbering in accordance with an approved “best practices” plan, planting food crops for wildlife, and installation of wildlife habitats or wildlife viewing areas. NOTE: “Prohibited Uses” in Section 11 must not conflict with “Reserved Rights” in this Section 12.]

[If timbering is permitted the “best practices” plan will require detailed specification of permitted and prohibited timber practices in the Conservation Easement. Holder will require that specification to meet the highest standards of sustainability and stewardship.]

13. Notice and Approval.

13.1. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Holder prior to undertaking certain permitted activities, as provided in Section 12, is to afford Holder an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Holder in writing not less than thirty 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 Holder to make an informed judgment as to its consistency with the purpose of this Easement.

- 13.2. Holder's Objection. If notice is required, the intended activity shall be prohibited if Holder objects to the activity. If Holder does not object to the intended activity in writing within 30 days of the notice of the intended activity, then it shall be presumed that Holder does not object to the activity. Holder may object to a proposed activity only upon a reasonable determination by Holder that the action as proposed would be inconsistent with the purposes of this Easement.
- 13.3. No Notice Required. No notice is required for entry onto the property by Grantor for noncommercial recreational purposes, such as social gatherings, bird watching or hiking, gathering mushrooms or other foods growing naturally on the Property for personal use of Grantor, or routine maintenance and enhancement activities, such as erecting or maintaining bird houses, installing or maintaining authorized fences, removing plants that are not native to the State of Indiana, planting and maintenance of appropriate plants, or use or maintenance of any easements across the Property for utilities or ingress and egress that exist or are created at the time of the granting of this Conservation Easement.
- 13.4. Notice Required. Notice shall be required for any permitted activity which, if done without sufficient care, could have a material adverse effect on the conservation purposes of this Conservation Easement. This includes, without limitation, [insert here activities requiring notice. Those might include cutting timber, erecting permanent structures which people will use, such as wild life viewing platforms, and building new trails. This will typically include reference by section number to permitted activities in Section 12.]

14. Enforcement and Remedies.

- 14.1. Holder, or its agents, shall have the right to enter upon the Property after reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement, subject to the following conditions:
 - 14.1.1. Holder shall give at least forty-eight (48) hours advance notice to Grantor before entering upon the Property ; however, in cases where Holder 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, or without notice if none can be practically effected. Holder shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property;
 - 14.1.2. Holder shall promptly reimburse Grantor for any damage arising out of or in connection with such entry to the extent that such damage

was the result of the negligent act of Holder or Holder's representative(s).

- 14.2. If Holder determines that a violation of this Easement has occurred, Holder shall so notify Grantor, giving Grantor thirty (30) days to cure the violation. If the violation cannot reasonably be cured within 30 days, then Grantor shall commence the cure within such 30 day period and shall be allotted such additional time, subject to Holder's approval which will not be unreasonably withheld, as shall be needed so that, that with reasonable diligence, Grantor can complete the cure.
- 14.3. Notwithstanding the foregoing, where Holder in Holder's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Holder may bring an action to enjoin the violation, *ex parte* if necessary, through temporary restraining order, preliminary injunction, and/or permanent injunction. In the event Holder seeks injunctive relief, it shall be irrebuttably presumed that money damages or other remedies at law are insufficient to protect Holder's interests.
- 14.4. Forbearance by Holder 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 Holder of such term or of any subsequent breach of the same or any other term of this Easement or of any of Holder's rights under this Easement. No delay or omission by Holder 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.
- 14.5. If the Holder elects to seek a judicial remedy, in addition to injunctive relief Holder shall be entitled to the following remedies, in the event of a violation:
 - 14.5.1. Money damages, including damages for the loss of the conservation values protected by this Easement; and
 - 14.5.2. Restoration of the Property to its condition existing prior to such violation.
 - 14.5.3. Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 14.6. Holder's rights under this Section 14 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Holder's remedies at law for any violation of the terms of this Easement are inadequate and that Holder shall be entitled to the injunctive relief described in Section 14.3, both prohibitive and mandatory, in addition to such other relief to which Holder 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. Holder's remedies described in this Section 14 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- 14.7. In any litigation or administrative proceeding enforcing this Easement, the Holder shall be entitled to be reimbursed for its expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, unless Holder was unsuccessful in establishing that any breach of this conservation easement had occurred. The failure of Holder to discover a violation or to take legal action when a violation is discovered shall not bar Holder from taking legal action at a later time.
- 14.8. Without expanding or limiting Grantor's liability therefore, the Holder shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical the Holder shall apply any and all damages recovered to furthering the Holder's mission, with primary emphasis on conservation easement acquisition, monitoring, enforcement, or defense.
- 14.9. Nothing contained in this Easement shall be construed to entitle Holder to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, but not limited to, 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 or bodily injury to any person resulting from such causes.

15. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement. [The gift of a conservation easement will not be tax deductible unless appropriate public access is provided if the conservation purpose is B, scenic preservation, or C, public recreation or education, as set forth in Section 2, describing "conservation values".]

16. Subordination, Costs, Liabilities, Taxes and Environmental Compliance.

- 16.1. Subordination. Grantor represents that as of the date of this grant, there are no liens or mortgages outstanding against the Property, except any listed in Exhibit C all of which are subordinated to Holder's rights under this Conservation Easement, as required under Treasury Regulations §1.170A-14. Grantor has the right to use the Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder's rights under this Conservation Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the recording, foreclosure, or any other action taken concerning any subsequent lien or other interest in the Property.
- 16.2. Costs, Legal Requirements, and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate

liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

- 16.3. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Holder with satisfactory evidence of payment upon request. Grantor may be entitled to have its property value assessed for real estate tax purposes to reflect the conservation easement, in accordance with Indiana Code 32-23-5-8.
- 16.4. Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor’s knowledge:
 - 16.4.1. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;
 - 16.4.2. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;
 - 16.4.3. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
 - 16.4.4. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
 - 16.4.5. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or

its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

- 16.4.6. Grantor's Title Warranty and title insurance. Prior to the signing of this Conservation Easement, Grantor has provided Holder with a commitment for a policy of title insurance which Grantor has examined and determined provides adequate proof of Grantor's title. Grantor represents and warrants that Grantor has good fee simple title to the Property, subject only to any liens, encumbrances or defects reflected in that commitment. To the best of Grantor's knowledge there are no off record liens or encumbrances affecting the Property not reflected in that commitment. If Grantor discovers at any time that any old or new interest in the land exists that is not disclosed herein, Grantor shall immediately notify Holder of the discovery of the interest, and shall take all necessary steps to assist Holder to make the discovered interest subject to this Easement.
- 16.5. Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Holder, in which case Holder shall be responsible therefore.
- 16.6. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Holder to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the Indiana Hazardous Substances Responsible Property Transfer Law, Indiana Code 13-25-3-1, et seq.
- 16.7. Hold Harmless. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Holder and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to

the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and Indiana Hazardous Substances Responsible Property Transfer Law, Indiana Code 13-25-3-1, et seq., by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of Sections 16.4.1 through 16.4.6.

17. Termination, Condemnation, Eminent Domain, and Division of Proceeds.

17.1. The following provisions of this Section 17 do not apply to partial termination or extinguishment of the Conservation Easement which might be permitted under the provisions of this Conservation Easement concerning amendment, as set forth in Section 23.

17.2. Unless terminated in whole or part by eminent domain, this Easement may only be terminated or extinguished, in whole or in part, by a court of competent jurisdiction upon a request to terminate made by the Grantor and Holder. The Easement shall be terminated only if there are circumstances so changed that each of the conservation purposes of this Agricultural Conservation Easement is manifestly impracticable to accomplish. Even if most conservation purposes are impracticable, so long as any conservation purpose remains, the Easement shall not be terminated. If the Easement is terminated, in whole or in part, whether by condemnation or other means, Holder is entitled to compensation that is to be used in a manner that accomplishes as closely as possible under the changed circumstances the purposes of this Easement. The grant of this Easement gives rise to a property right, immediately vested in Holder, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift, bears to the value of the property as a whole at that time.

17.3. Proceeds from whole or partial termination, condemnation, eminent domain, or a claim on a title insurance policy or an insurance policy involving casualty, damage, harm or compromise to the property interest conveyed through this Easement shall be divided between Holder and Grantor in accordance with the following method:

17.3.1. The fair market value of the Property subject to the event shall be determined, as of the time of the event.

- 17.3.2. The value attributable to allowable buildings, additions or improvements added to the condemned portion of the Property after the grant of this Easement shall be deducted from that fair market value and distributed to Grantor.
- 17.3.3. The remaining proceeds shall be divided between Grantor and Holder in proportion to the diminished value of Grantor's property attributable to this Conservation Easement at the time it was entered into.
- 17.3.3.1. If an income tax deduction was taken by Grantor with respect to the contribution, the proportions reflected in that tax return shall be binding on the parties.
- 17.3.3.2. If no such diminished value was determined at the time of the grant of this easement, or if it cannot be determined what value was then determined, then the proceeds will be divided evenly between Grantor and Holder.
- 17.3.4. For example, assume the condemnation proceeds from a partial condemnation are \$100,000. Assume the value of added improvements to the condemned portion of the Property is \$40,000. That \$40,000 would be paid to Grantor. Assume the reduction in value deducted by Grantor for federal tax purposes was 60%. Then Grantor would receive 40% of the remaining \$60,000, and Holder would receive 60% of the remaining \$60,000.
- 17.3.5. The percentage of diminished value attributable to the grant of this conservation easement at the time it was made was _____ per cent (____%).
- 17.3.6. Development Rights Dormant. The parties recognize that there is always a potential risk of condemnation of some or all of the Property by governmental or other authorized entities. In order to clarify their respective rights, in the event of such a condemnation, and to make clear their intentions, the parties agree that the development and other rights conveyed to Holder by this Easement are hereby rendered dormant, and will remain dormant as long as this Easement or an amended version of this Easement, or the Property, is held by the Holder or a successor Holder. The parties further agree that such rights may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for calculating permissible lot yield of the Property or any other property.

18. Assignment by Holder.

18.1. If the Holder should desire to transfer its interest in the Easement created by this Deed, said Holder may transfer the Easement to a qualifying organization under Section 170(h) of the Internal Revenue Code after providing a 30-day advance notice to the Grantor. Such a transfer may proceed only if the chosen, qualifying organization has a commitment to the conservation purposes of the easement, resources available to enforce the restrictions, and expressly agrees to assume the responsibility imposed on Holder by this Deed. The assignment and assumption agreement shall be duly recorded.

18.2. If the Holder, or its successors, ever ceases to exist or no longer qualifies under Section 170(h) of the Internal Revenue Code, or applicable state law, to hold this Easement, a court of competent jurisdiction shall transfer, upon consultation with Grantor, said Holder's interest in this Easement to another qualified organization that is committed to the conservation purposes of the easement, has resources available to enforce the restrictions, and agrees to assume the responsibilities imposed by this Easement.

19. Subsequent Transfers by Grantor. Subject to the restrictions herein, Grantor may transfer the Property or an interest therein, but each transferee, including without limitation a purchaser or lessee, shall take subject to, and be bound by, each and every term and provision of this Easement. All documents effectuating the transfer of an interest in the Property shall make explicit reference to being subject to this Easement, and the Easement shall be re-recorded along with the deed of transfer. No attempted transfer of the Property shall be effective before and until the Easement is re-recorded. Grantor shall notify Holder in writing at least thirty (30) days before conveying the Property to any third party. Failure of Grantor to do as provided in this Section 19 shall not impair the validity of this Easement or limit its enforceability in any way. Such reference shall be accomplished by placing the following statement into any conveyance of the subject real estate, inserting the appropriate signing and recording information:

This conveyance is subject to the terms of a Deed of Conservation Easement dated the _____ day of _____, 2_____, recorded in the Office of the Recorder of _____, County, Indiana on the _____ day of _____, 2_____, and identified as an instrument in those records as follows: _____

20. Estoppel Certificates. Upon request by Grantor, Holder shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Holder's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Holder's most recent inspection. If Grantor requests more current documentation, Holder shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request therefore.

21. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Holder:

Sycamore Land Trust, Inc.
P. O. Box 7801
Bloomington, IN 47407

or to such other address as either party from time to time shall designate by written notice to the other.

22. Recordation. Holder shall record this instrument in timely fashion in the official records of _____ County, Indiana, and may re-record it at any time as may be required to preserve its rights in this Easement.

23. Amendment.

23.1. Amendment policy. If circumstances arise under which an amendment to or modification of this Easement would be appropriate and would comply with this Section, Grantor and Holder may jointly amend this Easement. Holder shall only agree to an amendment that meets the standards required by this Section 23, and is under no obligation to agree to any proposed amendment, and cannot and shall not under any circumstances allow an amendment that would affect the qualifications of this Easement under any applicable laws including Section 32-23-5-1, et seq., of the Indiana Code and Section 170(h) of the Internal Revenue Code. Any amendment must be consistent with the conservation purpose of this Easement, must not affect its perpetual duration, must not result in any private benefit prohibited under the Internal Revenue Code, and must enhance or have no net adverse effect on the conservation values which are protected by this Easement. Any Easement amendment must be approved in advance by Sycamore Land Trust, Inc.'s Board of Directors, and must be in writing, signed by both parties, and recorded in the Public Records of the county in which this easement is recorded.

23.2. Standards for Approval of Conservation Easement Amendments:

23.2.1. Correction of an error or clarification of an ambiguity;

23.2.2. Modifications consistent with the conservation purpose(s), if:

23.2.2.1. The amendment creates a condition that strengthens or has no net effect on the protection of the conservation values identified in the Easement and

23.2.2.2. The amendment does not undermine the public's perception of reliability of conservation easements as a land conservation tool.

24. General Provisions.

24.1. Interpretation. This Easement shall be interpreted under the laws of the State of Indiana or federal law as appropriate, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes. References to authorities in this Easement shall be to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this easement becomes effective. No provision of this Easement shall constitute governmental approval of any improvements, construction, or other activities which may be permitted under this Easement.

24.2. 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 and the policy and purpose of Indiana Uniform Conservation Easement Act, Indiana Code 32-23-5-1, et seq, or its successor statutes. If any provision in this instrument is found to be ambiguous, an 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. There shall be no presumption that any ambiguity will be construed against Holder, even though Holder may be responsible for the drafting of this Easement.

24.3. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

24.4. Integration. This Easement, with respect to the subject matter hereof, is the final and complete expression of the agreement between the parties. Any and all prior or contemporaneous agreements with respect to the subject matter hereof, written or oral, are merged into this written instrument.

24.5. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

- 24.6. Joint Obligation. In the event that title to the Property is held by more than one entity, the responsibility for fulfilling the obligations imposed by this Easement upon Grantor shall be joint and several.
- 24.7. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Holder," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor, whether one or more individuals, and the Grantor's personal representatives, heirs, successors, and assigns, and the above-named Holder and its successors and assigns.
- 24.8. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 24.9. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 24.10. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 24.11. Authority:
- 24.11.1. Grantor states that the person signing on behalf of Grantor has full authority to sign this Conservation Easement.
- 24.11.2. Holder represents that the person signing on behalf of Holder has full authority to sign this Conservation Easement, and that the Board of Directors of the Sycamore Land Trust, Inc. has approved acceptance of a conservation easement on the Property.
- 24.12. Exhibits. All Exhibits attached hereto are hereby incorporated herein by this reference.

TO HAVE AND TO HOLD unto Holder, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Holder have signed this agreement, effective as of the date the latter party has signed this agreement.

Date: _____ Grantor _____
Grantor's name printed: _____

State of Indiana)
) SS:
County of _____)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Grantor _____, and acknowledged the execution of the foregoing instrument this _____ day of _____, 20____.

Witness my hand and official seal.
My commission expires: _____

_____, Notary Public
Resident of _____ County

Holder: Sycamore Land Trust, Inc.

Date: _____ By: _____
Title: _____

State of Indiana)
) SS:
County of _____)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Holder, Sycamore Land Trust, Inc. by _____, its _____, and acknowledged the execution of the foregoing instrument this _____ day of _____, 20____.

Witness my hand and official seal.
My commission expires: _____

_____, Notary Public
Resident of _____ County

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Guy R. Loftman

This document prepared for Sycamore Land Trust, Inc. by:

Guy R. Loftman
Attorney at Law
Atty # 8877-53
532 N. Walnut Street, Suite A
Bloomington, IN 47404-3804
(812) 339-4899

SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B. Baseline Documentation
- C. Mortgage Subordination Agreement