

CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted this ___ day of _____, 199_ by _____ (the "Grantor"), to THE NATURE CONSERVANCY, a non-profit corporation existing under and by virtue of the laws of the District of Columbia (the "Conservancy").

RECITALS:

A. PROTECTED PROPERTY. Grantor is the owner in fee simple of approximately _____ acres of real property in _____ County, _____, which is legally described in Exhibit A attached hereto and incorporated by reference herein ("Protected Property").

B. CONSERVATION VALUES. The Protected Property, in its present state, has significant natural, aesthetic, scientific and educational values as a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder (collectively, "Conservation Values").

In particular, the Protected Property consists of [describe natural characteristics, community types, species, etc.] and is habitat for [describe species].

[Modify above language if the Protected Property also provides recreational, educational, or scenic value.]

[Optional language if there are structures or existing uses:]

C. EXISTING USES AND IMPROVEMENTS. [Describe any uses of the property such as grazing, haying, limited forestry that will continue and any improvements on the property.]

The Conservation Values of the Protected Property have not been and are not likely to be adversely affected to any substantial extent by limited development of the Protected Property through the use and maintenance and/or construction of those structures, improvements and facilities which presently exist on the Protected Property or which are authorized under this Easement.

[OR]

The Conservation Values of the Protected Property have not been and are not likely to be adversely affected to any substantial extent by uses of the Protected Property for [grazing; cutting, baling or removing hay; limited cutting forestry - describe the existing or permitted uses] which presently exist on the Protected Property or which are authorized under this Easement.

D. **QUALIFIED ORGANIZATION.** The Conservancy is a non-profit corporation created to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes and is an organization qualified under Section 170(h) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder, to receive qualified conservation contributions.

GRANT OF CONSERVATION EASEMENT:

For and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions herein contained and pursuant to the laws of the State of ____ and in particular [specific state statutory authority], the Grantor hereby grants and conveys as an absolute and unconditional gift unto the Conservancy, its successors and assigns forever a Conservation Easement in perpetuity over the Protected Property consisting of the following terms and conditions (“Easement”):

1. **PURPOSE.** It is the purpose of this Easement to assure that the Protected Property will be retained forever substantially undisturbed in its natural

[scenic, agricultural, forested, and/or open space]

condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. Grantor intends that this Easement will confine the use of the Protected Property to activities that are consistent with the purpose of this Easement.

2. **PROHIBITED USES/RESTRICTIONS.** Any activity on or use of the Protected 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 except as provided in paragraph 3 below:

2.1. **Commercial Activity.** There shall be no industrial, commercial, agricultural or commercial recreational activity undertaken or allowed on the Protected Property. No right of passage shall be granted or retained across or upon the Protected Property if that right of passage is used in conjunction with such prohibited activities.

2.2. **Structures.** There shall be no construction or placing of any house, garage,

barn or other building, tennis or other recreational court, landing strip, mobile home, swimming pool, fence or sign (other than those permitted, required or allowed by the Conservancy for appropriate management, prevention of hunting or trespass, etc.), asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, sodium vapor light or any other temporary or permanent structure or facility on the Protected Property.

2.3. Subdivision. The Protected Property may not be divided, partitioned, subdivided or conveyed except in its current configuration as an entity.

2.4. Mining. There shall be no mining, drilling, exploring for or removal of minerals from the Protected Property.

2.5. Topography. There shall be no ditching; draining; diking; filling; excavating; removal of topsoil, sand, gravel, rock, or other materials; or any change in the topography of the land in any manner except in conjunction with activities otherwise specifically authorized herein.

2.6. Water. There shall be no manipulation or alteration of creeks, streams, surface or subsurface springs or other bodies of water or the shorelines thereof or any activities on or uses of the Protected Property detrimental to water purity or quality.

2.7. Dumping. There shall be no dumping of trash, noncompostable garbage, hazardous or toxic substance or other unsightly or offensive material.

2.8. Roads. There shall be no building of new roads or other rights of way except for paths and foot trails consistent with the preservation of the Protected Property. Existing roads may be maintained but shall not be widened or improved.

2.9. Vehicles. Except in emergency situations, there shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other types of motorized recreational vehicles.

Optional:

Notwithstanding the foregoing, cars, trucks and farm vehicles may be operated on existing roads in order to gain access to the Protected Property and in conjunction with activities otherwise specifically authorized herein.

2.10. Animals. There shall be no livestock, no domestic or non-native animals and no feedlots permitted on the Protected Property.

There shall be no hunting or trapping except as necessary to keep animal populations within numbers consistent with the ecological balance of the Protected Property as specifically approved by the Conservancy.

2.11. Vegetation. There shall be no removal, destruction, cutting, trimming or mowing of any trees or other vegetation, living or dead.

except to remove

hazardous trees for reasons of safety or to protect existing or authorized roads, fences, foot trails and paths or areas immediately adjacent to authorized structures.

OR

downed and dead timber for personal use as firewood.

OR

invasive, non-native vegetation.

No non-native species shall be introduced to the Protected Property.

2.12. Plowing. There shall be no tilling or plowing or use of the Protected Property for commercial cultivation of row crops.

2.13. Spraying. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides and herbicides.

except as may be necessary to eliminate non-native species and with the prior written approval of the Conservancy.

OR - If herbicide use is to be permitted:

There shall be no use of insecticides, fungicides or rodenticides. Herbicides may be used for the control of state designated noxious weeds and for the control of other invasive exotic plant species, provided that herbicides may be used only in those amounts and with a frequency of application that constitute the minimum necessary for control and in compliance with all government regulations.

2.14. Density. Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements under

otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other lands pursuant to a transferrable development rights scheme, cluster development arrangement or otherwise; provided, however, that with prior written consent of the Conservancy, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property.

3. GRANTOR'S RESERVED RIGHTS. The Grantor reserves for himself, his heirs, successors and assigns, all rights as owners of the Protected Property to use the Protected Property for all purposes that are not expressly prohibited herein and are not inconsistent with this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

3.1. Conveyance. Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is subject to this Easement and written notice is provided to the Conservancy in accordance with paragraph 6.5 below.

Optional provisions:

3.2. Agricultural or Limited Cutting Forestry Uses.

[Modify caption to describe actual uses permitted.]

Notwithstanding the foregoing, the portion of the Protected Property described on Exhibit ____ attached hereto and incorporated by reference herein may be used for

[e.g. grazing cattle; cutting, baling and removing hay; limited timbering - describe the permitted use]

and passage may be allowed across or upon the Protected Property in conjunction with this permitted activity.

3.3. Personal Residence. Grantor may to continue to use the personal residence that is located on the Protected Property at the time of the grant of this Easement. Grantor may maintain, repair and restore the existing house,

[garage, barn - describe existing buildings]

fences, driveways, paths, septic systems, utilities, underground pipes and wires or overhead wires in substantially their same locations. Grantor may improve the permitted residence and other structures; provided that the total square footage of the residence and

other structures may not exceed _____ square feet and the total footprint of the permitted buildings may not exceed _____ square feet. To the extent consistent with the purposes of this Easement, Grantor may perform routine maintenance, landscaping, and upkeep of the area immediately around any permitted building and may have flower or vegetable gardens for personal enjoyment or consumption in such area.

3.3. Personal Residence. Grantor may construct a new personal residence, one two car garage (either attached or detached) and small outbuildings such as a tool shed and may install fences, driveways, paths, septic systems, utilities, underground pipes and wires or overhead wires necessary for the use and enjoyment of the new residence. The total square footage of the residence and other permitted structures may not exceed _____ square feet and the total footprint of the permitted buildings may not exceed _____ square feet. Grantor may maintain, repair and restore the permitted buildings. To the extent consistent with the purposes of this Easement, Grantor may perform routine maintenance, landscaping, and upkeep of the area immediately around any permitted building and may have flower or vegetable gardens for personal enjoyment or consumption in such area.

3.4. Signs. Grantor may place interpretive signs and “no hunting,” “no trespassing” or similar signs on the Protected Property.

3.5. Native Species. Grantor may undertake to restore and enhance the native plant and animal communities on the Protected Property under an ecological management plan which has received the prior written approval of the Conservancy.

3.6. Fences. Grantor may, but shall not be obligated to, repair, replace, maintain, improve or remove any fence located on the Protected Property as of the date of this Easement. The Grantor may, but is not obligated to, construct, repair, replace, maintain, improve or remove additional fencing as the Grantor deems necessary to secure the Protected Property.

3.7. Preservation. Grantor may, but shall not be obligated to, undertake any activity reasonably necessary to maintain the Protected Property in the condition in which it exists on the date of this Conservation Easement.

4. NOTICE OF EXERCISE OF GRANTOR’S RESERVED RIGHTS.
Although the Grantor need not obtain approval of the Conservancy in order to exercise any reserved right, unless otherwise stated herein, the Grantor hereby agrees to notify the Conservancy in writing before exercising any reserved right which may have an adverse impact on the conservation interests associated with the Protected Property.

5. CONSERVANCY'S RIGHTS AND REMEDIES. In order to accomplish the conservation purposes of this Easement, the Conservancy shall have the following rights and remedies:

5.1. Remedies. The Conservancy shall have the right to enforce by proceedings at law or in equity the provisions of this Easement including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of this Easement, subject to the reserved rights of the Grantor set forth herein. The Conservancy, or its successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act.

Nothing herein shall be construed to entitle the Conservancy to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights or the unauthorized wrongful acts of third persons; provided, however, that the Grantor shall notify Conservancy of any occurrence which would adversely affect or interfere with the conservation purpose of the Easement, whether caused by the acts or omissions of the Grantor or third parties.

The Conservancy shall be entitled to seek expedited injunctive relief to enforce its rights with respect to the Protected Property, and the Grantor waives any bond requirement otherwise applicable to any petition for such relief. The Conservancy shall have the right to report to regulatory authorities any environmental conditions, or any potential or actual violations of environmental laws, with respect to the Protected Property.

All reasonable costs incurred by the Conservancy 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; provided, however, that if Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

5.2. Right of Entry. The Conservancy shall have the right to enter the Protected Property, in a reasonable manner and at reasonable times, but always upon prior notice to the Grantor, for the purposes of:

a. Inspecting the Protected Property to determine if the Grantor, or his heirs, successors or assigns, is complying with the provisions of this Easement;

b. Obtaining evidence for the purpose of seeking judicial enforcement of this Easement;

c. 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 Grantor;

d. Posting regulatory signs on selected portions of the Protected Property for purposes of promoting the provisions of this Easement;

Optional:

e. Monitoring and management as described below.

The Conservancy's rights do not include the right, in the absence of a judicial decree, to enter the Protected Property for the purpose of becoming an operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act.

5.3. Limitation of Conservancy Rights. Nothing contained herein shall give rise, in the absence of a judicial decree, to any right or ability of the Conservancy to become the operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act by exercising physical control over the day-to-day operations of the Grantor or becoming involved in management decisions of the Grantor regarding the generation, handling or disposal of hazardous substances.

Optional:

5.4. Monitoring and Management. The Conservancy shall have the right, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities, and natural habitats on the Protected Property, and to manage them, if necessary, to ensure their continued presence and viability on the Protected Property. Such activities shall be in accordance with management practices of the Conservancy and may include, but shall not be limited to, mowing, fencing, trapping, prescribed burning, etc. Any such management activities shall be set forth in a written management plan to be reviewed by Grantor.

5.5. Discretionary Consent. The Conservancy's consent for activities otherwise prohibited under paragraph 2 above or for any activities requiring the Conservancy's consent under paragraph 2 or 3 above may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities

listed in paragraph 2 are deemed desirable by Grantor and the Conservancy, the Conservancy may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and requests for permission for activities requiring the Conservancy's consent under paragraph 2 or 3, shall be in writing and shall describe the proposed activity in sufficient detail to allow the Conservancy to judge the consistency of the proposed activity with the purpose of this Easement. The Conservancy may give its permission only if it determines, in its sole discretion, that such activities (a) do not violate the purpose of this Easement and (b) either enhance or do not impair any significant Conservation Values of the Protected Property. Notwithstanding the foregoing, the Grantor and the Conservancy have no right or power to agree to any activities that would result in the termination of this Easement or to allow residential, commercial or industrial activities not provided for above.

6. GENERAL PROVISIONS.

6.1. Perpetual Burden. This Easement shall run with and burden the Protected Property in perpetuity and shall bind the Grantor, his heirs, successors and assigns.

6.2. Easement Documentation. The Grantor and the Conservancy agree that the natural characteristics, the ecological and aesthetic features, the physical condition and the Conservation Values of the Protected Property at the time of this grant are documented in an Easement Documentation Report, prepared by the Conservancy and signed and acknowledged by the Grantor and a representative of the Conservancy, establishing the condition of the Protected Property at the time of this grant and including reports, maps, photographs and other documentation.

6.3. Access. Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

6.4. Assignment. This Easement is in gross and may be assigned or transferred by the Conservancy. The Conservancy agrees that, if it transfers or assigns its interest in this Easement:

a. The organization or entity receiving this interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder; and

b. The transferee or assignee will be required to carry out in perpetuity the

conservation purposes which this Easement was originally intended to advance.

6.5. Subsequent Transfers by Grantor. Unless this Easement is extinguished, as set forth below, the Grantor agrees that the terms, conditions, restrictions and purposes of this Easement will either be referenced or inserted by the Grantor in any subsequent deed or other legal instrument by which the Grantor divests himself of any interest in all or part of the Protected Property. The Grantor agrees to notify the Conservancy, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.

6.6. Extinguishment. The Grantor agrees that this donation of a perpetual Easement gives rise to a property right, immediately vested in the Conservancy, with a fair market value that is at least equal to the proportionate value that the Easement, at the time of this conveyance, bears to the value of the Protected Property as a whole at that time. The proportionate value of the Conservancy's property rights shall remain constant.

If a subsequent unexpected change in the conditions of or surrounding the Protected Property makes impossible or impractical the continued use of the Protected Property for the conservation purposes described herein, and if the restrictions of this Easement are extinguished by judicial proceedings (including, but not limited to, eminent domain proceedings), then upon the sale, exchange or involuntary conversion of the Protected Property, the Conservancy shall be entitled to a portion of the proceeds at least equal to the proportionate value of the Easement described above. The Conservancy will use its share of any and all proceeds received for such sale, exchange or involuntary conversion in a manner consistent with the conservation purposes of this Easement or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that section may be amended from time to time, and in regulations promulgated thereunder.

6.7. Title Warranty. Grantor hereby warrants and represents that the Grantor is seized of the Protected Property in fee simple and have good right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances and that the Conservancy and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

6.8. Hazardous Waste. The Grantor represents and warrants that no hazardous substance or toxic waste exists or has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

Subject to the limitations of Grantor's liability contained in paragraph 5.1, Grantor,

his successors and assigns shall indemnify, defend and hold the Conservancy harmless from any liability related to Grantor's representations and warranties in this paragraph or related to the use, deposit or release of any hazardous substance or toxic waste on the Protected Property after the date of this Easement.

6.9. Real Estate Taxes. The Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Protected Property and that the Conservancy shall have no duty or responsibility to manage or maintain the Protected Property. The Grantor agrees that if any real property taxes or assessments are levied against the Conservancy as a result of this Easement for which exemption cannot be obtained, the Grantor agrees to donate a sum of money to the Conservancy equal to the amount of said taxes and the Conservancy shall pay the taxes.

6.10. Costs 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 Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Conservancy's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

6.11. Re-recording. The Conservancy is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, the Grantor appoints the Conservancy his attorney-in-fact to execute, acknowledge and deliver any necessary instrument on his behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

6.12. Definitions. The terms "Grantor" and "Conservancy" as used herein shall be deemed to include, respectively, the Grantor, his heirs, successors and assigns, and the Conservancy, its successors and assigns.

6.13. Notices. Any notices required by this Easement shall be sent by registered or certified mail, return receipt requested, to the following address or such address as may be hereafter specified in writing:

The Nature Conservancy
4245 North Fairfax Drive
Suite 100
Arlington, VA 22203-1606
ATTN: General Counsel

cc: The Nature Conservancy

Minneapolis Satellite Office
1313 Fifth Street S.E.
Minneapolis, MN 55414
ATTN: Legal Department

6.14. 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 the Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

6.15. 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 _____ Statutes sections _____. 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.

6.16. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussion, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

6.17. 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 Protected Property, except that liability for acts or omissions prior to transfer shall survive transfer.

TO HAVE AND TO HOLD the above-described Conservation Easement to the use, benefit, and behalf of the Conservancy, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed this Conservation Easement this _____ day of _____, 199_.

GRANTOR

STATE OF _____)
)ss

By: _____

Title: _____

STATE OF _____)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 199_ by _____, the _____ of The Nature Conservancy, a non-profit corporation under the laws of the District of Columbia, on behalf of said corporation.

Notary Public
My Commission Expires:

LEGAL DESCRIPTION

EXHIBIT A