

Generic Easement
Delaware Highlands Conservancy

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this _____ day of

_____,

by

of

hereinafter "Grantors"

to DELAWARE HIGHLANDS CONSERVANCY, a nonprofit Pennsylvania corporation qualified to do business in Pennsylvania, having a mailing address of Post Office Box 218, Hawley, Pennsylvania 18428-0218
hereinafter "Grantee"

WITNESSETH

WHEREAS, Grantors are the owners in fee simple of certain real property consisting of approximately acres and located in Township, County, Pennsylvania, more particularly described in County Deed Book at page and as depicted on the plan attached hereto and marked Exhibit A, hereinafter "Property"; and

WHEREAS, the Property possesses silvicultural, natural, scenic and Conservation Values (including) the protection of which is of great importance to Grantors and to the people of, and which furthers the governmental values of, the United State of America, the Commonwealth of Pennsylvania, County of and Township of (collective the "Conservation Values");

WHEREAS, the specific Conservation Values of the property are documented in an inventory of relevant features of the Property, dated , on file at the office of the Grantee and incorporated by this reference, which includes maps, photographs, reports and other documents that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant, this inventory to be hereinafter referred to as the "Baseline Documentation"; and

WHEREAS, Grantors intend that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those relating to single family residential use and agriculture uses existing at the time of this grant, which do not significantly impair or interfere with those Conservation Values; 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; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 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, historical, agricultural, forested, and/or open space condition; and

WHEREAS, 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 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 the Commonwealth of Pennsylvania and the Internal Revenue Code of 1986 as amended, Grantors hereby voluntarily grant and convey to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Purpose. *It is the Purpose of this Easement to assure that the Property will be forever natural habitat, and to insure the protection and sound management of natural resources including the protection of wildlife bio-diversity and habitat preservation; to preserve undeveloped open space; (identify any specific purposes here)*

2. 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 Grantors' compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors' 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 paragraph 6.

(d) To have the option, at its sole discretion, to enter upon the Property to restore and/or repair any features which may have been altered by natural forces if it is determined that the damage to such features impairs the Conservation Values of the Property *provided, however, that Grantee shall be solely responsible for the costs of such restoration and/or repairs, and provided, further, that Grantee's entry to commence such restoration and/or repairs shall be subject to fifteen (15) days' prior notice to Grantors.*

3. Prohibited Uses. *(Examples only)* 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:

- a) *Subdivision and/or land development of the property except as delineated in Paragraph 4 hereinbelow.*
- b) *Industrial or commercial uses of any kind, including commercial recreation, on the property except home occupations that do not involve more than two outside employees, and do not involve outside storage of materials or supplies, equipment or products.*
- c) *Mining or timber harvesting except as hereinafter provided. A primary purpose of this Easement is to maintain natural wildlife habitat for native fauna and a natural forest area. Therefore, any timber harvest must be to enhance natural habitat and must follow a forest management plan developed by a PA certified forester familiar with () County. Such plan shall be submitted to Grantee at least sixty (60) days prior to the implementation of the plan. Final approval of the plan shall be made by the Grantee. The proceeds of any timber harvested and sold pursuant to any such approved plan shall be retained by the Grantors.*
- d) *Mineral exploration or extraction, whether by surface or subsurface methods; provided however, that extraction of minerals by a method that will have only limited, localized impact on the Property and is not irremediably destructive of significant conservation interest is permitted.*
- e) *Dumping of municipal, construction, or hazardous waste or the accumulation or deposit outdoors of junk, including but not limited to: appliances, tires, scrap metal, wood, food, equipment, motor vehicles or parts thereof, which are no longer in use. For purposes of motor vehicles, a vehicle which does not have a current registration may be considered a junked vehicle.*
- f) *The introduction of non-indigenous species of plants or trees outside the building area described hereinbelow.*
- g) *The use of fences except within the Building Area.*
- h) *Temporary housing.*
- i) *Animal breeding or housing of animals except household pets. Household pets must be confined to the Building Area and dogs, when outside the Building Area, must be leashed. Hoofed animals are not permitted at any time.*
- * j) *Use of ATV's, snowmobiles, motorcycles, or motor vehicles for recreational purposes; provided, however, they may be stored inside the dwelling or permitted accessory structures, and may be operated on the Building Area and driveway to the residence for purposes of egress and ingress to and from the public highway.*
- k) *Hunting, other than deer hunting permitted under Paragraph 4 (____), or trapping on the property.*

4. **Reserved Rights.** (*Examples only*) Grantors reserve to themselves, and to their personal representative, heirs, successors, and assigns, all rights accruing from their 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, the following rights are expressly reserved:

- a) The improvement of the property with one (1) single family residence, subject to the following restrictions:
 - i) It may include a garage, attached or unattached, one accessory residential storage building, and residential recreational amenities, provided all improvements, and all cleared or landscaped areas for said residence are within a contiguous two (2) acre area (hereinafter referred to as the "Building Area" as further described hereinbelow). *Any new residential construction shall be limited to _____ square feet and exterior construction of the residence and other permitted improvements shall be limited to natural earth-toned colors and materials including, but not limited to, wood, stone and brick. (???) Only the on-site septic system, drainfield and service line for such system, well, and a driveway accessing said residence may be outside the two (2) acre area and shall not be included for purposes of measuring the Building Area. Such driveway shall not be paved and shall be constructed so as not to create further impervious surface outside the Building Area.*
 - ii) The two (2) acre Building Area shall be set back.....
The on-site septic system, drainfield, and service line for such system may be located within this "front yard" setback. Said area shall also be set back at least fifty (50') feet from any wetlands. (include any other specific setbacks)
 - iii) The residence shall be constructed on a permanent foundation and external construction must be completed within twelve (12) months of the issuance of a building permit; *provided, however, that Grantors may request an extension of time which shall not be unreasonably withheld by Grantee.*
 - iv) Site development plans must be submitted to Grantee for approval in keeping with the *Conservation Easement Purposes, at least forty-five (45) days* prior to applying for a building permit; approval shall not be unreasonably withheld by Grantee.
- b) The remaining _____ acres, more or less, of each property shall be used as follows:
 - i) The planting and maintaining of trees and plants indigenous to the area and based upon sound forest conservation management practices as recommended by a PA certified forester approved by the Grantee, which approval shall not be unreasonably withheld.
 - ii) Public access to the property shall be limited to those requesting and receiving permission of the Grantor. *Any dogs brought onto the property must remain on a leash. Grantor may restrict any use of the property by visitors which is considered, in the sole discretion of the Grantor and/or Grantee, to be dangerous to the visitors themselves or*

the Grantor, his family and guests, or is considered harmful to the property or the environment.

iii) *Grantors reserve the right to use the Property for non-commercial recreational purposes including, but not limited to, hiking, nature studies, fishing, deer hunting, cross country skiing, picnicking, (boating and swimming).*

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities not existing as of the date of this Deed, as provided in paragraphs 4a and 4b, 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 of this Easement. Whenever notice is required Grantors shall notify Grantee in writing not less than sixty (60) 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 the Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

5.1 Grantee's Approval. Where Grantee's approval is required, as set forth in paragraphs 4a and 4b, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantors' written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

5.2 Arbitration If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantors agree not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree upon the selection of a single arbitrator, then each party shall name one arbitrator, and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator within thirty (30) days, or if the two arbitrators selected by the parties fail to select the third arbitrator within fifteen (15) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be. The matter shall be settled in accordance with the Pennsylvania Arbitration Rules then in effect, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as to such arbitration, including, without limitation, the fees and expenses of the arbitrator(s) and attorneys' fees, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award.

6. Grantee's Remedies. If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors 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 Grantors fail 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 temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of 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 Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. 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 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 Grantors agree 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 the 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 in equity. Where appropriate, upon agreement of both parties, the Arbitration procedure set forth in Paragraph 5.2 may be utilized.

6.1 Costs of Enforcement. *If Grantee prevails in any action to enforce the terms of this Easement, any costs incurred by Grantee including, without limitation, costs of suit, expert witness fees and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action brought by Grantee to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, expert witness fees and attorneys' fees, shall be borne by Grantee. If an action is brought by Grantor against Grantee, the prevailing party shall be entitled to reimbursement by the other party for any cost incurred including, without limitation, cost of suit, expert witness fees and attorney fees.*

6.2 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 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 Grantors shall impair such right or remedy or be construed as a waiver.

6.3 Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription.

6.4

6.4 Acts Beyond Grantors' Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' 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.

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

8.

8. Costs and Liabilities. Grantors retain 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 comprehensive general liability insurance coverage. Grantors shall keep the Property free of any liens arising out of any work performed *for, materials furnished to, Grantors*.

8.1 Taxes. Grantors 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 Grantee with satisfactory evidence of payment upon request.

8.2 Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representative, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, 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 obligations specified in paragraphs 8 and 8.1; and (3) the existence or administration of this Easement.

9. Extinguishment. If circumstances arise in the future such as 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, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Pennsylvania law (or the Internal Revenue Code of 1986 as amended) at the time, in accordance with paragraph 9.1. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

9.1 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 *attributable to improvements after the date of this grant*) 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 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.

9.2 Condemnation. If the 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.

9.3 Future Mortgages. *Any future mortgage or deed of trust shall be 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 the exercise of any rights of such mortgage holder or trust deed beneficiary.*

10. Estoppel Certificates. Upon request by Grantors, Grantee shall, within thirty (30) days, execute and deliver to Grantors any document, including an estoppel certificate, which certifies Grantors' compliance with any obligation of Grantors contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantors.

11. 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 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

12. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least sixty (60) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

13. 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 Grantors:

To Grantee: Delaware Highlands Conservancy
Post Office Box 218
Hawley, Pennsylvania 18428-0218

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

14. Recordation. Grantee shall record this instrument in timely fashion in the official records of County, Pennsylvania and may record it at any time as may be required to preserve its rights in this Easement.

15. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Pennsylvania.

- (b) 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.
- (c) 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.
- (d) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.
- (e) Joint Obligation. The obligations imposed by this Easement upon Grantors shall be joint and several.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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.

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

IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

Witness:

by

Attest:

Secretary

STATE OF PENNSYLVANIA
COUNTY OF

On this, the day of , 1999 before me a notary public, the undersigned officer, personally appeared known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

STATE OF PENNSYLVANIA
COUNTY OF PIKE

ON THIS, the day of 1999, before me appeared who acknowledged herself/himself to be the of Delaware Highlands Conservancy, a Corporation, and that s/he as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

I hereby certify that the mailing address of the within named Grantee is:

Post Office Box 218
Hawley, PA 18428-0218