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 North American Land Trust
 P.O. Box 467
 Chadds Ford, PA 19317

**CONSERVATION EASEMENT
 AND DECLARATION OF RESTRICTIONS AND COVENANTS**

THIS CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS ("Conservation Easement") made DEC. 30, 2005 by and between **McLAIN BRANCH FARM, LLC**, a North Carolina Limited Liability Company ("Owner"), having an address of 27 W. Main Street, Brevard, NC 28712, and **NORTH AMERICAN LAND TRUST** ("Holder"), a Pennsylvania non-profit corporation having an address of Post Office Box 467, Chadds Ford, PA 19317,

WITNESSETH THAT:

WHEREAS, Owner is the owner of certain real property in Transylvania County, North Carolina that consists of approximately 40.22 acres (hereinafter called the "Conservation Area") being a portion of the parcel of real property described in a deed granted by Mabel O. Hogsed to Owner and recorded in the office of the Register of Deeds of Transylvania County at Document Book 263, page 784, EXCLUDING, however, the land conveyed by deed recorded at Document Book 315, page 157; and

WHEREAS, the Conservation Area is depicted as the 40.22 acre parcel on the Plat of Property for McLain Branch Farm LLC recorded in the Office of the Register of Deeds of Transylvania at Plat File 11, Slide 514, a reduced-size copy of which is attached to this Conservation Easement as Exhibit "A"; and

WHEREAS, Holder is a non-profit corporation, having a tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), which has been established as a public charity for the purpose of preserving and conserving natural habitats and environmentally sensitive areas and for other charitable, scientific

and educational purposes and which is a "qualified organization" under Section 170(h)(3) of the Code; and

WHEREAS, preservation of the Conservation Area shall serve the following purposes, (the "Conservation Purposes"):

Preservation of the Conservation Area as a relatively natural habitat of fish, wildlife, or plants or similar ecosystem; and

Preservation of the Conservation Area as open space which provides scenic enjoyment to the general public and yields a significant public benefit; and

Preservation of the Conservation Area as open space which, if preserved, will advance a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit; and

WHEREAS, the ecological and scenic significance of the Conservation Area (which may be hereinafter called the "Conservation Values") and the Conservation Purposes have been established in the reports, plans, photographs, documentation, and exhibits assembled by, and retained in the offices of, North American Land Trust (collectively called the "Baseline Documentation"), which describes, among others, the following Conservation Values of the Conservation Area:

The Conservation Area contains, and the Conservation Easement will protect, vegetated buffers along perennial and intermittent streams, including McLain Branch, under the jurisdiction of the NC Department of Water Quality;

The Conservation Area contains, and the Conservation Easement will protect, the integrity of two natural communities within the Conservation Area that are recognized by the NC Natural Heritage Program, namely, Acidic Cove Forest and Pine-Oak/Heath community types;

The Conservation Area contains, and the Conservation Easement will protect, a degraded Meadow Shrub Bog which as a community type represents less than 1% of the land area in the southern Appalachians and the protections contained in this Conservation Easement will promote the restoration of the bog that was previously degraded by agricultural activity;

A significant population of the rare plant, American marsh pennywort, is supported in the meadow bog and will be managed and protected through the protection of the Conservation Area through the Conservation Area;

Protection of the Conservation Area will maintain, for the scenic enjoyment of the general public, a pastoral view of agricultural and meadow areas, as well as a natural view of a forested slope, from Diamond Creek Road (NCSR 1322), a state road;

WHEREAS, the Conservation Easement serves to advance the following governmental conservation polices, among others:

Article XIV Section 5 of the Constitution of the State of North Carolina expressly states as follows: “It shall be the policy of the State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this state its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty”; and

The Clean Water Management Trust Fund, N.C. Gen. Stat. §§ 113-145.1 et seq., recognizes the importance of protecting riparian buffers to promote and preserve clean surface water; and

The North Carolina Conservation Tax Credit Program encourages contributions of land that provide a habitat for fish and wildlife and for other land conservation purposes as set forth in N.C. Gen. Stat. §§ 105-130.34 and 105-151.12 et seq.; and

The Conservation, Farmland and Open Space Protection and Coordination Act, commonly known as the “Million Acre Initiative,” N.C. Gen. Stat. §§ 113A-240-241 et seq., states as follows: “The State of North Carolina shall encourage, facilitate, plan, coordinate and support appropriate federal, State, local and private land protection efforts so that an additional one million acres of farmland, open space and conservations lands in the State are permanently protected by December 31, 2009”; and

North Carolina created an award-winning national model for wetlands (and stream) mitigation through the Ecosystem Enhancement Program (EEP) to “restore, enhance, preserve and protect the functions associated with wetlands, streams and riparian areas, including but not limited to those necessary for the restoration, maintenance and protection of water quality and riparian habitats throughout North Carolina” by facilitating responsible economic growth while providing high-quality ecosystem enhancement to offset impacts from development, and the protection of streams within the Conservation Easement will support this policies objectives at no expense to North Carolina taxpayers; and

WHEREAS, Owner and Holder desire to perpetually conserve the natural, scientific, educational, open space, scenic and historical resources of the Conservation Area to accomplish the Conservation Purposes; and

WHEREAS, Owner intends to grant the easement and impose the restrictive covenants on the Conservation Area as set forth in this Conservation Easement to accomplish the Conservation Purposes; and

WHEREAS, Owner and Holder intend that this document be a "conservation agreement" as defined in Chapter 121, Article 4, Section 121-34 et seq. of the General Statutes of North Carolina, known as the Historic Preservation and Conservation Agreement Act (the "Act").

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained in this Conservation Easement, and intending to be legally bound hereby, Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Holder, its successors and assigns, the easements, covenants, prohibitions and restrictions set forth in this Conservation Easement, in perpetuity, to accomplish the Conservation Purposes. Holder hereby accepts the grant of such easements and agrees to hold such easements exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Conservation Easement.

ARTICLE 1. GRANT OF EASEMENTS

Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Holder, its successors and assigns, a perpetual easement in gross over the Conservation Area for the purpose of preserving and protecting the Conservation Purposes and enforcing the restrictive covenants set forth below. In addition, Owner hereby grants and conveys unto Holder, its successors and assigns the easement and right of Holder and its agents to enter upon and inspect the Conservation Area for compliance with this Conservation Easement at any time and from time to time. Holder shall give Owner notice of any such entry and inspection at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement where no notice shall be required.

ARTICLE 2. OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS

Owner, for Owner and Owner's successors and assigns, covenants and declares that the Conservation Area shall be, and hereby is, bound by and made subject to the following covenants and restrictions in perpetuity, subject to and excepting only the Reserved Rights set forth in Article 3 of this Conservation Easement:

- 2.1. Use Restrictions. The Conservation Area shall not be used for a residence or for any commercial, institutional, or industrial purpose or purposes. Among the uses prohibited by the preceding sentence are, without limiting the meaning or interpretation of the preceding sentence, any of the following: (1) construction or occupancy of any dwellings; (2) manufacture or assembly of any products, goods, equipment, chemicals, materials or substances of any kind or nature whatsoever; (3) sale of any products, goods equipment, chemicals, materials, substances or services of any kind or nature whatsoever; (4) storage of any products, goods, equipment, chemicals, materials or substances of any kind or nature, except if stored for use upon the Conservation Area in connection with activities not prohibited by this Conservation Easement; and (5) offices for persons involved in the sale, manufacture or assembly of goods or services or for the performance of services

- 2.2. Structures Prohibited. No Structure (hereinafter defined) of any kind shall be built, erected, installed, placed, affixed or assembled within or upon the Conservation Area or upon any trees or other natural features upon the Conservation Area. "Structure" shall mean any assembly of material forming a construction for occupancy or use for any purpose and erected upon or attached to the ground including, for example but not to limit the foregoing definition, the following: building, platform, shed, bin, shelter, dam, dike, tower, tank, antenna, and bulkhead, but excluding fences or gates up to six feet in height above ground level.
- 2.3. Limitation on Recreational Activities. No recreational activities shall occur within the Conservation Area except for recreational activities that, by their nature, are likely to have no material adverse effect on the Conservation Values of the Conservation Area. Examples of such activities which are included here for illustration and not for limitation of the foregoing, include walking, jogging, bicycling, hunting, fishing, wildlife observation, photography, primitive tent camping, and horseback riding. Notwithstanding the foregoing, all recreational activities within the Conservation Area must be conducted at all times in a manner that, in Holder's judgment, (a) shall have no material adverse effect upon the Conservation Purposes or Conservation Values and (b) are otherwise in conformance with this Conservation Easement.
- 2.4. Limitations on Agricultural Activities. The Conservation Area may be used for agricultural activities if used in accordance with the following covenants and restrictions:
- 2.4.1. The term "agricultural activity" as used in this Section shall include, without limitation, the following: breeding and raising livestock and other animals, and growing and harvesting crops.
- 2.4.2. Agricultural activity shall not be located within: (a) forested areas (except for planting, cultivating and harvesting forest herbs, mushrooms and plants, excluding shrubs or trees, that are not considered endangered by any state or federal agency); (b) areas where the agricultural activity will interfere with natural forest succession of partially forested areas; and (c) bogs, wetlands and Riparian Buffer.
- 2.4.3. Agricultural activity shall be conducted in accordance with soil conservation practices as described in Section 2.14.
- 2.4.4. Tree removal for the purpose of conducting agricultural activity shall not be permitted except to the extent otherwise permitted in Article 3.
- 2.5. Removal of Ground or Surface Water from Conservation Area. No ground or surface water from the Conservation Area shall be removed, collected, impounded, stored, transported, diverted or otherwise used for any purpose or use outside the boundaries

of the Conservation Area nor for any purpose or use within the boundaries of the Conservation Area that is prohibited by this Conservation Easement.

- 2.6. Roads, Driveways, Etc. There shall not be constructed, cut, created or placed on the Conservation Area any road, driveway, cartway, path or other means or right of passage across or upon the Conservation Area nor may any road, driveway, cartway, path or other means or right of passage located on the Conservation Area be used, for access to any use (whether or not upon the Conservation Area) which is prohibited by this Conservation Easement.
- 2.7. Live or Dead Trees. No cutting, removal or destruction of live or dead trees shall be permitted upon or within the Conservation Area. Dead trees that have fallen shall be allowed to remain where they have fallen unless a dead tree blocks a road or trail, threatens the safety of persons or property or would block agricultural activity, in which case it may be moved to the extent necessary to prevent such blockage or threat.
- 2.8. Signs and Similar Structures. No signs, billboards or outdoor advertising structures shall be placed, erected or maintained within the Conservation Area.
- 2.9. Land Disturbance. There shall be no filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, rock, peat, minerals or other materials, upon or from the Conservation Area.
- 2.10. Dumping. There shall be no dumping or disposal of ashes, trash, garbage, or any other unsightly or offensive materials at any place on, under or within the Conservation Area. Neither composting of natural materials cut or collected from within the Conservation Area, if contained within a confined area or within an agriculture or garden area, nor piling and burning brush during routine property maintenance shall be considered dumping or disposal as such terms are used in this Section.
- 2.11. Change of Topography. There shall be no material change in the topography of the Conservation Area in any manner.
- 2.12. Water Courses. There shall be no dredging, channelizing or other manipulation of natural water courses or any water courses existing within the Conservation Area as of the date of this Conservation Easement. There shall be no discharge of chemicals, waste water or other pollutants into any permanent or intermittent water course.
- 2.13. Riparian Buffer. There shall be no clearing, cutting or removal of live or dead trees, other clearing or removal of vegetation (except for invasive or exotic species), clearing or removal of leaf litter or other natural detritus, or digging, earth movement or other alteration of the earth surface or topography within any part of the Conservation Area that lies within, or within 50 feet of, the area between the banks of

any permanent or intermittent watercourse (excluding manmade storm water swales not fed by a spring, pond or other natural source), any area that is a governmentally regulated wetland or identified as a meadow bog in the Baseline Documentation (such area being hereinafter called a "Riparian Buffer"). Roads or Structures existing at the time of granting this Conservation Easement shall not be considered a part of the Riparian Buffer. If the banks of a water course are not clearly defined then Holder shall, in its reasonable discretion, establish a line to substitute for that purpose upon request by Owner, relying on available topographic and other maps and information. Owner shall be responsible for ascertaining the boundaries of the Riparian Buffer, at Owner's expense, in consultation with Holder before undertaking any action that may be prohibited in a Riparian Buffer.

- 2.14. Soil Erosion and Sedimentation Control. All activity on the Conservation Area shall be conducted so as to avoid the occurrence of soil erosion and sedimentation of streams or other water courses. Without limitation of the foregoing, Owner and Holder shall, in identifying practices that will prevent soil erosion and sedimentation, refer to the soil conservation practices as then established or recommended by the Natural Resources Conservation Service of the United States Department of Agriculture or any successor governmental office or organization performing the same function within the United States government, as approved by Holder.
- 2.15. Non-Native Plant Species. There shall be no introduction of plant species within the Conservation Area except those that are native to the area in which the Conservation Area is located or that are recognized as non-invasive horticultural or agricultural varieties.
- 2.16. Transfers of Development Rights or Development Density Credits. The Conservation Area may not be used as open space for purposes of obtaining or qualifying for governmental approval of any subdivision or development on lands outside the boundaries of the Conservation Area nor, without limitation of the foregoing, may the Conservation Area be used in the calculation of the amount or density of housing units or other construction for development on lands outside the boundaries of the Conservation Area or for sale by Owner.
- 2.17. No Subdivision. There shall be no subdivision or other division of the Conservation Area into one or more lots, tracts or parcels of land under separate ownership without the prior written approval of Holder and subject to the requirements of Section 3.19.
- 2.18. Preservation of Conservation Area. The parties recognize that this Conservation Easement cannot address every circumstance that may arise in the future, and the parties agree that the purpose of this Conservation Easement is to preserve the Conservation Area predominantly in its present condition, protect or enhance the Conservation Area's rare, threatened, or exemplary natural communities, usefulness to rare or threatened species, and contributions to improved water quality. Without limiting the preceding covenants and restrictions, any use or activity which is not

reserved in Article 3 of this Conservation Easement and which is inconsistent with the Conservation Purposes or which materially threatens the Conservation Purposes is prohibited.

- 2.19. Restrictions Cumulative. The prohibitions and restrictions in this Conservation Easement shall be considered cumulative. No prohibition or restriction contained herein shall be interpreted as a limitation on the meaning, effect, interpretation or enforceability of another prohibitive or restrictive provision.

ARTICLE 3. RESERVED RIGHTS

Owner reserves for Owner and Owner's successors and assigns who may now or hereafter be owner of all or part of the Conservation Area the rights set forth in this Article 3 (the "Reserved Rights"). Owner and Holder intend that these Reserved Rights and the activities and uses which are described below as the Reserved Rights are narrow exceptions to the prohibitions and restrictions set forth in Article 2 and, hence, may be conducted as described below notwithstanding the prohibitions and restrictions of Article 2 without having an adverse effect on the Conservation Purposes.

- 3.1. Agricultural Uses of a Commercial Nature. Owner may process, package, store and sell crops, livestock and other agricultural products produced within the Conservation Area.
- 3.2. Farm Shelters. Owner may construct and maintain a roofed shelter or shelters, enclosed or not enclosed on the sides, for storage of maintenance or agricultural equipment and materials or processing, packaging, storing, or selling crops, livestock and other agricultural products or greenhouses for growing plants, up to an aggregate of 5,000 square feet of covered area for all such shelters. The location and appearance of such Structures shall be subject to the prior approval of Holder. It is the intention of this Section that any Structures shall be consistent in appearance with Structures on scenic rural farms in the County in which the Conservation Area is located.
- 3.3. Farmhouse Area. Owner reserves the right to identify one area within the Conservation Area, which shall not exceed one (1) acre, for the construction and use of a farmhouse and related accessory residential structures (the "Farmhouse Area"). The boundaries of the Farmhouse Area shall be initially surveyed and proposed by Owner but shall be subject to the prior review and approval of Holder. The location and configuration of the Farmhouse Area shall not be approved by Holder if, in Holder's judgment, it would directly or indirectly result in any material adverse effect on any of the Conservation Purposes and, without limitation of the foregoing, the Farmhouse Area shall not be located within the meadow bog, Riparian Buffer or other area of habitat or ecological condition that is recognized as endangered, rare, threatened or significant by state or federal agencies. The Farmhouse Area shall be described by metes and bounds and the description as well as Owner's and Holder's

consent to the location and configuration of the Farmhouse Area shall be set forth in a written amendment to this Conservation Easement signed by duly authorized officers of Holder and by the legal owner or owners of the portion of the Conservation Area which is the location of the Farmhouse Area at that time. The amendment shall be recorded in the same place of public record in which this Conservation Easement was recorded. The land area within the Farmhouse Area shall, once established by approval of Owner and Holder and by recording the amendment, as aforesaid in accordance with this Section, be free of any of the restrictions and covenants of this Conservation Easement.

- 3.4. Driveway. Owner may construct and maintain a driveway for access to the Farmhouse Area and any permitted farm Structure. Owner may also construct and maintain a driveway to serve land lying to the west of the Conservation Area owned, at the time of granting this Conservation Easement, by Jerry J. Brokaw, John H. and Betty S. Dunn, John Marshall Fisher. The width of any driveway and any area of land disturbance, grading or tree removal for such driveway shall be substantially the same as the width of driveways existing on the Conservation Area at the time of granting this Conservation Area and, without limitation of the foregoing, no greater than the minimum necessary to meet any legal requirements or, to the extent no legal requirements apply or are lawfully waived, the minimum practicable consistent with sound engineering techniques and methods.
- 3.5. Well. Owner may install a well, related water lines and necessary appurtenances to serve the residence in the Farmhouse Area or any other uses permitted in the Conservation Area.
- 3.6. Recreational Structures. Owner may install benches, picnic tables and a picnic shelter (not exceeding 1,000 square feet in ground coverage area for the picnic shelter).
- 3.7. Trails and Paths. Owner may construct and maintain trails or paths for nature education, outdoor recreation and maintenance purposes, including within the Riparian Buffer, provided that: the surface of such trails shall remain pervious (such as dirt, wood chips or gravel); such trails shall be located, to the extent possible, in the path of trails or forestry roads existing on the date of this Conservation Easement; the width of the area cleared and improved for such trails shall not exceed that which is necessary for pedestrian, equestrian or off-road maintenance vehicle use; and such trails shall be otherwise installed in a manner to avoid unnecessary tree removal, grading and other land disturbance.
- 3.8. Raised Walkways. Owner may construct raised walkways (also commonly known as a footbridge) for access to any or all of the land within the Conservation Area if the following requirements and conditions are satisfied: (a) it can be demonstrated to Holder that it is not feasible to use any existing walkway or pathway or to improve any existing walkway or pathway for such access purpose; (b) Owner shall comply

with all other covenants and restrictions of this Conservation Easement; and (c) Holder approves the proposed walkway based on the foregoing requirements.

- 3.9. Existing Structures. Structures existing on the Conservation Area on the date of this Conservation Easement, whether or not such Structure would be permitted to be erected or installed on the Conservation Area under these Reserved Rights, may, nevertheless, be repaired or restored to the condition and dimensions in which the Structure existed on date of this Conservation Easement.
- 3.10. Stands and Blinds. Owner may construct and maintain a reasonable number of hunting and wildlife observation tree-mounted or built stands and ground “blinds”, including within the Riparian Buffer; provided that, in the installation or construction of any such Structure, Owner shall comply with all other covenants and restrictions of this Conservation Easement.
- 3.11. Forest Management. Timber thinning, harvesting or salvaging shall be permitted upon or within the Conservation Area, and such trees may be sold and removed from the Conservation Area, only if the following conditions are first satisfied:
- 3.11.1. The Owner submits for the Holder's approval, and receives Holder's approval in its reasonable discretion of, a timber harvest or management plan, prepared by qualified natural resource personnel at the Owner's expense.
- 3.11.2. Owner contacts Holder prior to preparation of the timber harvest or management plan to obtain the required information to be included in any such plan. At a minimum, the timber harvest or management plan must address and provide detailed information regarding harvesting plans and protocols, road locations and design standards, and erosion control measures.
- 3.11.3. Such forest management activities do not adversely affect either the long term existence of the forest or any rare, threatened or exemplary natural communities as determined by Holder in its discretion or otherwise adversely affect any of the Conservation Purposes. All tree removal and harvesting must be conducted in a manner that will minimize damage or injury to the forest floor and other species of flora and fauna within the Conservation Area.
- 3.12. Tree Cutting. In addition to the rights of forest management set forth in the preceding Section, cutting, removal or destruction of trees shall be permitted upon or within the Conservation Area as follows:
- 3.12.1. A live tree that has been damaged or disturbed by forces of nature or a dead tree may be cut if such tree presents a threat of injury to persons or property or blocks a trail, road or other means of access to any part of the Conservation Area. Once cut, the tree shall be allowed to remain in its fallen location unless such location presents a threat of injury to persons or property or blocks

a trail, road or other means of access to any part of the Conservation Area. All tree removal must be conducted in a manner that will minimize damage or injury to the forest floor and other species of flora and fauna within the Conservation Area.

- 3.12.2. Sapling trees may be removed in order to maintain meadows and areas of agricultural activity existing on the date of this Conservation Easement.
 - 3.12.3. Horticultural tree species not native to the area in which the Conservation Area is located or orchard trees may be cut and removed.
 - 3.12.4. Owner may cut and remove sapling trees in areas of former meadow for the purpose of establishing agricultural activities, but not within the Riparian Buffer.
 - 3.12.5. Trees may be trimmed, but not cut down, removed or materially damaged or destroyed, in order to allow for limited improvement of views into or through woodland areas.
- 3.13. Signs. Owner may install a reasonable number of signs of the following types:
- 3.13.1. regulatory or directional signs including, for example but not for limitation of the foregoing, "no trespassing" signs, "no gunning" signs, or "no hunting" signs;
 - 3.13.2. signs stating the common name of the Conservation Area, the names and addresses of the occupants or both;
 - 3.13.3. signs advertising or directing participants to an activity permitted under the provisions of this Conservation Easement;
 - 3.13.4. signs identifying the interest of Owner or Holder in the Conservation Area; and
 - 3.13.5. signs educating the public as to the ecology of the area.
 - 3.13.6. Notwithstanding the foregoing, any sign that is greater than six square feet in surface area and visible from Diamond Creek Road shall be prohibited unless such sign shall have no material adverse effect upon the Conservation Purposes and such sign is approved in writing by Holder.
- 3.14. Water Courses and Wetland Restoration. Owner may, with the approval of Holder:
- 3.14.1. engage in earth movement in order to restore the natural morphology of, or may construct Structures designed to improve water quality of, a stream or

other naturally occurring wetland or water course, whether intermittent or permanent; and

- 3.14.2. construct Structures necessary for drainage control of the Conservation Area provided that such Structures are designed for the purpose of preserving or restoring natural water courses or wetland areas.
 - 3.14.3. Owner shall be responsible for obtaining all necessary government permits and approvals for of the aforesaid activities and Holder shall have the right, but not the obligation, to require that such permits and approvals be produced for inspection by Holder before Holder' s approval is granted.
- 3.15. Waste Water Disposal. Owner may use the Conservation Area for the underground disposal of waste water for service to the Farmhouse Area or to any barn or other farm shelter permitted under Section 3.2; provided, however, that this Reserved Right shall only be exercised if the following conditions are first satisfied:
- 3.15.1. With respect to a waste water disposal area to serve the Farmhouse Area, Owner shall obtain Holder' s approval, in the reasonable exercise of its discretion, that it is not possible, for reasons beyond the control the prospective user of the waste water disposal area, to utilize the Farmhouse Area for such waste water disposal purpose.
 - 3.15.2. Holder has approved the design of the system of waste water treatment, the location of the area of disposal, and the standards of design, treatment, waste water quality, waste water quantity, loading, maintenance, operation and other relevant features of the proposed system based on its sufficiency, whether or not consistent with or sufficient to satisfy governmental requirements, to prevent any surface or ground water contamination, damage to or degradation of habitat for flora or fauna or adverse effect on any of the Conservation Purposes or Conservation Values.
 - 3.15.3. Owner shall be responsible for obtaining all necessary government permits and approvals for such activity and Holder shall have the right, but not the obligation, to require that such permits and approvals be produced for inspection by Holder before Holder' s approval is granted.
 - 3.15.4. The installation and maintenance of the waste water disposal system and appurtenances, including underground transmission lines, shall not require the removal of any live trees having a diameter of greater than 10" at a point four feet above ground level.
- 3.16. Environmental Restoration and Limited Recreation Within the Riparian Buffer. Owner may conduct, within the Riparian Buffer, (a) projects and activities intended to restore or protect the Conservation Values or exceptional habitat for flora or fauna

within the Conservation Area; and (b) limited recreational activities if any such project or activity has been approved by Holder in its discretion, including but not limited to trails and paths which may be constructed in accordance with this Article 3.

- 3.17. Utility Installations. Owner may construct and maintain facilities normally used in connection with supplying utility services such as electricity, telephone, television, and water, and for controlling storm water runoff, provided that: such facilities may only be constructed and used to serve the uses, Structures and improvements permitted under the terms of this Conservation Easement or which may hereafter be constructed on the abutting land lying to the south of the Conservation Area consisting of 10 acres and owned, at the time of granting this Conservation Easement by PPW, LLC, and land lying to the west of the Conservation Area owned, at the time of granting this Conservation Easement, by Jerry J. Brokaw, John H. and Betty S. Dunn, John Marshall Fisher; all such facilities be located underground to the extent feasible; all such facilities shall be located along existing driveways, to the extent feasible; all such facilities shall be located outside the Riparian Buffer unless Holder approves the location of the utility facility on the basis that it will have no adverse effect upon a water course or wetland within the Riparian Buffer; and all such construction and maintenance is conducted in a manner designed to produce no material adverse effect on the Conservation Purposes.
- 3.18. Maintenance of Roads, Trails, Etc.. Owner may maintain in passable condition any driveways, trails or walkways either existing within the Conservation Area at the date of this Conservation Easement or permitted by this Conservation Easement. Included within this right of maintenance, without limitation, are: the right to pave or otherwise resurface, without material change of width, any driveway; the right to prune trees or other vegetation which threaten the safety of persons who may use or maintain the road, trail or walkway; the right to install or apply materials necessary to correct or impede erosion; grading of earth to maintain a passable condition or to control or impede erosion; addition of culverts to direct storm water off of the road and prevent erosion or destruction of the road; replacement of existing or added culverts; replacement of existing water control structures and bridges; and maintenance of roadside ditches. There is an existing driveway on the Conservation Area heretofore depicted on a recorded plat that serves abutting land lying to the south of the Conservation Area consisting of 10 acres and owned, at the time of granting this Conservation Easement by PPW, LLC, which driveway may, with the Owner's approval, continue to be used to serve such land and land lying to the west of the Conservation Area owned, at the time of granting this Conservation Easement, by Jerry J. Brokaw, John H. and Betty S. Dunn, John Marshall Fisher.
- 3.19. Subdivision and Allocation of Reserved Rights. Owner may create up to four subdivided parcels from the Conservation Area, all of which shall be and remain subject to the covenants, easements and restrictions of this Conservation Easement.

Owner acknowledges that, if the Conservation Area is subdivided the Reserved Rights pertaining to Farm Shelters and Recreational Structures must be allocated between the parcels resulting from such subdivision. In connection with any subdivision or partition of the Conservation Area by any means, Owner shall allocate such rights between or among the parcels resulting from such subdivision and such allocation shall be set forth in a written amendment to this Conservation Easement which shall be subject to review and approval by Holder and which shall be recorded in the Office of the Recorder of Deeds in and for the county in which the Conservation Area is located before any conveyance of an interest in the parcels resulting from such subdivision. If Owner fails to make such allocation and enter into an amendment to this Conservation Easement for such purpose before conveying title to or any beneficial interest in any of the parcels resulting from such subdivision, then the Reserved Rights shall be allocated automatically pro rata for each lot, based on the relative size of the resulting parcels, or otherwise as Holder deems appropriate. Subsequent to any subdivision of the Conservation Area and conveyance of one or more parcels resulting from such subdivision, and subject to Holder's prior approval thereof (such approval not to be unreasonably withheld), the grantors of such respective parcels may mutually agree among themselves to re-allocate such Reserved Rights in a manner different from the original allocation thereof as determined by Owner pursuant to this Section or from the automatic allocation of such Reserved Rights as determined above, provided that such allocation or re-allocation of Reserved Rights as among such parcels is reflected in an amendment to this Conservation Easement that is signed by all grantors of such parcels and by Holder and is recorded in the office of public records in which this Conservation Easement was recorded. The form of any such amendment to this Conservation Easement shall be subject to Holder's prior review and approval.

- 3.20. Notice of Exercise of Reserved Rights. As required by 26 C.F.R. § 1.170A-14(g)(5)(ii), Owner shall notify Holder in writing before exercising any Reserved Right that may impair the conservation interests associated with the Conservation Area. If notice of a continuing exercise of a Reserved Right is given, Holder may agree that no subsequent notice is required.
- 3.21. Notice and Approval Before Exercise of Certain Reserved Rights. None of the Reserved Rights for which the approval of Holder is expressly required under this Conservation Easement or other activities for which the approval of Holder is expressly required under this Conservation Easement (hereinafter collectively called "Reserved Rights") may be exercised without Owner first satisfying the following conditions and requirements:
- 3.21.1. Owner shall notify Holder in writing before exercising any of such Reserved Rights.
 - 3.21.2. Holder must be satisfied, as evidenced by its prior written approval of Owner's proposed exercise of a Reserved Right, that any use or activity done

in the exercise of the Reserved Right will have no material adverse effect on the Conservation Purposes or on the significant environmental features of the Conservation Area described in the Baseline Documentation.

- 3.22. Procedure for Obtaining Approval. Holder's prior written approval of the exercise of Reserved Rights for which approval of the Holder is required shall be obtained, conditionally obtained or declined according to the procedure provided in this Section. At least forty five (45) days before Owner begins, or allows, any exercise of Reserved Rights on the Conservation Area, Owner must notify Holder in writing of Owner's intentions to do so. Such notice must include plans depicting, in such detail as Holder requests, the construction or other use or activity, and location thereof, which Owner intends to undertake. Owner may also be required to present to Holder for review any applications to, and approvals or permits issued by, any governmental entity that is required for the exercise of the Reserved Right for which Holder's approval is sought. Holder may request additional information or details not provided by Owner regarding Owner's proposed exercise of Reserved Rights as Holder reasonably believes necessary to determine compliance with this Article. Holder shall have thirty (30) days from receipt of the notice or, if later, any additional information regarding the proposed use or activity requested by Holder, in which to make one of the of the following determinations:
- 3.22.1. Approve Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by Owner. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right solely in accordance with the notice and other information submitted to Holder; which covenant shall be enforceable by Holder as fully as if set forth in this Conservation Easement.
 - 3.22.2. Approve Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by Owner but subject, however, to such qualifications and conditions as Holder may impose in its notice of approval. Such qualifications and conditions shall be limited to those which Holder deems necessary to: assure compliance by Owner with any of the express covenants or restrictions of this Conservation Easement, preserve and protect the Conservation Purposes or restrict Owner's exercise of the Reserved Rights to that which Owner has represented to Holder. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right, if at all, only in accordance with the notice and other information submitted to Holder, as modified or supplemented by the qualifications and conditions that Holder imposed; which covenant shall be enforceable by Holder as fully as if set forth in this Conservation Easement.
 - 3.22.3. Decline to grant approval of Owner's proposed exercise of a Reserved Right on the basis of the notice and other materials submitted. Should Holder decline to grant approval Holder shall set forth in writing its reasons.

If Holder receives a request for approval and is provided with all information requested or required and Holder fails to render a decision as provided above within thirty (30) days after receipt of the request for approval and all such information then Holder shall be deemed to have approved Owner's request, unless the request is to conduct an activity or undertake an action that is plainly in violation of the covenants and restrictions in this Conservation Easement.

- 3.23. Limits on Time To Exercise Approved Reserved Right. Unless a longer period is expressly provided in writing by Holder, any activity involving the exercise of any of the Reserved Rights approved by Holder as aforesaid shall be completed within five years after Holder's written determination of approval of the activity. If such approved activity has not been completed within such five year period then Owner must reapply for approval by Holder according to the procedure set forth in this Article. Owner may request Holder's approval of a period longer than five years and so long as such request is not, in Holder's sole judgment, inconsistent with the Conservation Purposes, such approval shall not be unreasonably withheld.
- 3.24. Repeated Requests. Owner shall be free to make further requests for approval of the exercise of Reserved Rights; provided, however, that Holder may decline to accept repetitive submissions not materially modified from prior submissions not accepted by Holder.
- 3.25. Costs and Expenses of Review and Approval. Owner shall be responsible, as a condition of the right to exercise the Reserved Rights, for payment of Holder's reasonable costs and expenses, including legal and consultant fees, associated with review of Owner's request for approval. Holder may condition consideration of a proposal for exercise of Reserved Rights upon the deposit of a sum of money with Holder to secure payment of Holder's reasonable costs of review. The time period for Holder's consideration of Owner's request shall not run until such deposit is made.
- 3.26. Limitation of Liability. No assurance is given that any of the above Reserved Rights may be exercised, in such manner as Owner might propose, without having an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area. The foregoing procedure is established for the purpose of making that determination. The Reserved Rights may not be exercised unless and until Holder is satisfied that the exercise of the Reserved Right for which approval is sought, and in the manner proposed by Owner, can be done without an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area. Owner hereby waives, for Owner, and Owner's successors, legal representatives, and assigns, to the fullest extent allowed by law, any and all right to seek or recover damages from Holder in any litigation or other legal action arising from a dispute over Holder's exercise of its rights, obligations or interpretations

under this Article 3 and agrees that the sole remedy or legal right to seek redress arising from any decision of Holder pursuant to this Article 3 shall be to seek a declaratory judgment or other legal declaration by a court of competent jurisdiction as to the rights of Owner hereunder.

ARTICLE 4. HOLDER'S COVENANTS

- 4.1. Best Efforts to Enforce. Holder shall use its best efforts to enforce both the rights granted to it and the restrictions imposed upon the Conservation Area under this Conservation Easement.
- 4.2. Inability to Enforce: Procedure. If at any time Holder or any successor or assignee is unable to enforce this Conservation Easement or if Holder or any successor or assignee of Holder's rights under this Conservation Easement ceases to exist or ceases to be a "qualified organization" (as defined in the Code) and if, within a reasonable period of time after the occurrence of any of these events, Holder or any successor or assignee fails to assign all of its rights and responsibilities under this Conservation Easement to a "qualified organization" and "holder", then the rights and responsibilities under this Conservation Easement shall become vested in and fall upon another qualified organization in accordance with a proceeding before, and the order of, any court of competent jurisdiction.
- 4.3. Assignment by Holder. Notwithstanding the foregoing or anything else in this Conservation Easement to the contrary, Holder and its successors and assigns shall have the right to assign, either wholly or partially, its right, title and interest hereunder provided that the assignee is a "qualified organization" under the Code and provided that the assignee shall hold the Conservation Easement exclusively for the Conservation Purposes. Holder shall consult with Owner before committing to assign the Conservation Easement to another holder. The term "Holder" as used in this Conservation Easement shall mean the above-named Holder and any of its successors and assigns during such period as any such entity is the holder of the rights granted to Holder in this Conservation Easement.

ARTICLE 5. REMEDIES AND ENFORCEMENT

- 5.1. Remedies Generally. Holder shall have the right to enforce by proceedings at law or in equity each and every one of the covenants and restrictions set forth in this Conservation Easement. The foregoing shall not limit any of the rights or remedies available to Holder as specifically set forth in any law or in this Conservation Easement. Holder's remedies described in this Article shall be cumulative and concurrent and shall be in addition to all remedies now or hereafter available or existing at law or in equity.

- 5.2. Remedy of Specific Performance. Without limitation of any other rights of Holder in this Conservation Easement, Holder's right of enforcement of this Conservation Easement shall include the right to seek specific performance by Owner of the restoration of the Conservation Area to its original condition as established in the Baseline Documentation or to its condition prior to any activity that violates this Conservation Easement or as otherwise may be necessary to remedy any violation of any easement, covenant, prohibition or restriction in this Conservation Easement, as Holder may elect.
- 5.3. Remedy of Damages. If Owner violates this Conservation Easement in such a manner as to cause damage to, extract or remove any trees, mineral resources, pond, wetland, stream, or other natural resource protected by this Conservation Easement, including violation resulting from failure to obtain Holder's approval, Holder shall be entitled to payment of damages in the amount of the value of the protected natural resource. Holder may seek payment and recovery of such damages by any means available at law. The value of the protected natural resource shall be the greater of (a) the market value of the resource or, (b) the cost of immediate restoration of the Conservation Area and all resources to its condition prior to the violation. If such immediate restoration is not reasonably possible then the market value of the resource shall be the amount of damages. If the resource does not have a readily determinable market value then the amount of damages shall be the amount which a court having jurisdiction may determine, taking into account the importance of the resource to the fulfillment of the Conservation Purposes.
- 5.4. Rights and Remedies in Relation to Third Parties. As the owner of a real property interest under this Conservation Easement, Holder shall have the right, without limitation of any rights herein as against Owner, to assert and enforce any of the rights and remedies in this Conservation Easement against any person or entity other than Owner that engages in any action upon the Conservation Area that constitutes a violation of any of the covenants or restrictions of this Conservation Easement, whether such person or entity enters upon the Conservation Area as a tenant, guest or invitee of Owner, by an act of trespass or by any claim of right and Owner shall cooperate with Holder by joining in any action or proceeding commenced by Holder for such purpose.
- 5.5. Remedy: Failure to Pay Certain Taxes. If Owner fails to pay taxes or other governmental assessments which may become a lien on the Conservation Area or upon this Conservation Easement or the rights it represents or that it grants to Holder, Holder may, but shall have no obligation to, pay such taxes or assessments or any part thereof upon ten (10) days after sending written notice to Owner, according to any bill, statement, or estimate procured from the appropriate public office. Payment made by Holder shall become a lien on the Conservation Area in favor of Holder upon payment by Holder and shall bear interest until Holder is paid by Owner at the rate of twelve percent (12%) per annum or at the highest rate of interest per annum as is allowed by applicable law, whichever is less.

- 5.6. No Third Party Rights of Enforcement. This Conservation Easement may only be enforced by Owner and Holder and no third party beneficiary rights, rights of enforcement or other rights are created or intended to be created or granted by this Conservation Easement in or to any other person or entity, the public generally or any governmental authority except to the limited extent necessary to undertake an action under Section 4.2.
- 5.7. Reimbursement of Expenses of Enforcement. In the event that Holder acts, after notice to Owner, to enforce this Conservation Easement or any obligation hereunder as a result of a violation of this Conservation Easement, all reasonable expenses incurred by Holder shall be charged to and paid by Owner, including reasonable attorneys' fees regardless of whether an action or proceeding is commenced. All such expenses, together with costs of collection (including reasonable attorneys' fees), shall be recoverable by Holder and be subject to collection by all lawful means for the collection of a debt under the law of the state in which the Conservation Area is located and shall be liens upon the Conservation Area, and collection thereof may be enforced by foreclosure and sale of the Conservation Area.
- 5.8. No Merger of Title. Notwithstanding anything to the contrary in this Conservation Easement, should Holder become an Owner of any portion of the Conservation Area, this Conservation Easement shall not merge with any interest in the Conservation Area upon conveyance to Holder and title shall be transferred subject to the continued validity and enforceability of this Conservation Easement in accordance with the laws of the State in which the Conservation Area is located. In such event the rights of Holder under this Conservation Easement as to the portion of the Conservation Area owned by Holder shall forthwith be transferred to a "qualified organization" in accordance with Section 4.3. or, if necessary, 4.2.
- 5.9. Reimbursement of Expenses of Litigation. Should Owner or anyone acting by, through, under or on behalf of Owner, commence litigation against Holder to enforce any rights hereunder or to dispute any actions or inaction of Holder, to enforce any alleged duty or obligation of Holder hereunder or to seek damages or specific performance against Holder then unless Holder is finally determined by a court of competent jurisdiction, beyond right of appeal, to have acted in an arbitrary or capricious manner and contrary to the terms of this Conservation Easement, then Owner shall reimburse Holder on demand for all costs and expenses, including attorneys fees, reasonably incurred by Holder in its defense in such litigation. Holder shall not be considered to have acted in an arbitrary or capricious manner solely based on the fact that Holder did not or does not prevail in legal proceedings or that Holder is determined to have acted contrary to the terms of this Conservation Easement.
- 5.10. No Waiver of Rights of Enforcement. The failure of Holder to exercise any of its rights under this Conservation Easement on any occasion shall not be deemed a waiver of said rights and Holder retains the right in perpetuity to require full

compliance by Owner of the covenants and restrictions in this Conservation Easement.

ARTICLE 6. GENERAL PROVISIONS

- 6.1. Vesting of Real Property Interest. This Conservation Easement gives rise to a real property right and interest immediately vested in Holder. For purposes of this Conservation Easement, the fair market value of Holder's right and interest shall be equal to the difference between (a) the fair market value of the Conservation Area as if not burdened by this Conservation Easement and (b) the fair market value of the Conservation Area burdened by this Conservation Easement.
- 6.2. Rules of Construction and Interpretation. The parties recognize the environmental, scenic, and natural values of the Conservation Area and have the common purpose of preserving these values. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to promote, protect and fulfill the Conservation Purposes and the policies and purposes of Holder. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the Conservation Purposes that would render the provision valid should be favored over any interpretation that would render it invalid. If any provision of this Conservation Easement is determined by final judgment of a court having competent jurisdiction to be invalid, such determination shall not have the effect of rendering the remaining provisions of this Conservation Easement invalid. The parties intend that this Conservation Easement, which is by nature and character primarily prohibitive (in that Owner has restricted and limited the rights inherent in ownership of the Conservation Area), shall be construed at all times and by all parties to promote, protect and fulfill the Conservation Purposes.
- 6.3. Indemnification. Owner covenants and agrees to indemnify, defend, reimburse, and hold harmless Holder, its directors, officers and employees from, for and against any Loss (hereinafter defined) to the extent such Loss arose from an Indemnified Cause (hereinafter defined). A "Loss" shall mean any loss, cost, liability, penalty, fine, or damage of any kind or nature whatsoever which Holder or any of its directors, officers or employees may reasonably be concluded to have suffered, paid or incurred. The term "cost" shall include, but shall not be limited to, reasonable attorneys' fees and witness and court fees. An "Indemnified Cause" shall mean any of the following: the violation or alleged violation of any law in, upon or involving the Conservation Area by Owner or anyone acting by, for, through or under the direction of Owner, including but not limited to any tenant, contractor, agent, licensee or invitee of Owner; any breach of covenants and restrictions in this Conservation Easement by Owner or anyone acting by, for, through or under the direction of Owner, including but not limited to any tenant, contractor, agent, licensee or invitee of Owner; any tax or assessment upon the Conservation Area or upon this Conservation Easement or the rights it represents or that it grants to Holder; any death or injury to any person

occurring on or about the Conservation Area; any lien or attempts to enforce a lien asserted against the Conservation Area; the costs of performing any work on the Conservation Area; any loss or damage to any property on or about the Conservation Area; any dispute involving Owner and Holder regarding the interpretation or enforcement of this Conservation Easement as to which the interpretation or enforcement of Holder is upheld; or any lawsuit (even if initiated by Owner or Holder) or governmental administrative or law enforcement action which is commenced or threatened against Holder or any of its directors, officers or employees or to which any of the foregoing are made a party or called as a witness; but "Indemnified Cause" shall not include any cause which results from Holder's own acts which are finally determined by a court to have been the result of bad faith, negligence or willful misconduct of Holder. It is further agreed that no person shall have an indemnification obligation or liability under this Section as to any Indemnified Cause which arises entirely and solely from events which occurred after such person is no longer the legal or equitable owner of the Conservation Area or any part thereof and is no longer in possession of the Conservation Area or any part thereof (it being understood that one or more subsequent Owners shall have such indemnification, defense, reimbursement, and holding harmless obligation).

- 6.4. Responsibilities and Liabilities of Owner. Without limitation of anything herein to the contrary, Owner shall (a) retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operations, upkeep, and maintenance of the Conservation Area, including the general liability insurance coverage and obligation to comply with applicable law and (b) pay all taxes, levies and assessments and other governmental or municipal charges which may become a lien on the Conservation Area or upon this Conservation Easement or the rights it represents or that it grants to Holder, including any taxes or levies imposed to make those payments.
- 6.5. Allocating Proceeds Following Extinguishment of Conservation Easement. It is the intention of the parties that no change in conditions, including for example but not for limitation of the foregoing changes in the use of properties adjoining or in the vicinity of the Conservation Area, will at any time or in any event result in the extinguishment of any of the covenants, restrictions or easements contained in this Conservation Easement. If, however, notwithstanding the foregoing intention, any cause or circumstance gives rise to the extinguishment of this Conservation Easement or a material term or provision hereof by judicial proceeding then Holder, on any subsequent sale, exchange or involuntary conversion of the Conservation Area, shall be entitled to a portion of the proceeds of sale equal to the greater of: (a) the Fair Market Value of this Conservation Easement (hereinafter defined) on or about the date of this Conservation Easement; or (b) Holder's Proportionate Share (hereinafter defined) of the proceeds of sale, exchange or involuntary conversion of the Conservation Area. "Fair Market Value of this Conservation Easement" shall mean the difference between (i) the fair market value of the Conservation Area as if not

burdened by this Conservation Easement and (ii) the fair market value of the Conservation Area burdened by this Conservation Easement. "Holder's Proportionate Share" shall mean the fraction derived from (x) the Fair Market Value of this Conservation Easement on or about the date hereof, as a numerator, and (y) the fair market value of the Conservation Area if not burdened by this Conservation Easement, on or about the date hereof, as a denominator. "Proceeds of sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of, the Conservation Area minus the actual bona fide expenses of such transaction and an amount attributable to the improvements constructed upon the Conservation Area pursuant to the Reserved Rights hereunder, if any. All such proceeds received by Holder shall be used in a manner consistent with the purposes of this grant.

- 6.6. Allocating Proceeds of Condemnation. Whenever all or part of the Conservation Area is taken by exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Owner and Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by Owner and Holder, including reasonable attorneys' fees, in any such action shall be paid out of the recovered proceeds. Holder shall be entitled to Holder's Proportionate Share of the recovered proceeds and shall use such proceeds in a manner consistent with the purposes of this grant. The respective rights of the Owner and Holder set forth in Section 6.5 and this Section 6.6 shall be in addition to and not in limitation of, any rights they may have in common law with respect to a modification or termination of this Conservation Easement by reason of changed conditions or the exercise of powers of eminent domain as aforesaid.
- 6.7. Amendment or Modification of Conservation Easement. Owner and Holder recognize that circumstances could arise which would justify the modification of certain of the restrictions contained in this Conservation Easement. To this end, Holder and the legal owner or owners of the Conservation Area or, if the Conservation Area has been legally subdivided, the Owner of that portion of the Conservation Area affected by such amendment at the time of amendment shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the Conservation Purposes; provided, however, that Holder shall have no right or power to agree to any amendments hereto that would result in this Conservation Easement failing to qualify as a valid conservation agreement under the "Act", as the same may be hereafter amended, or as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code and applicable regulations.
- 6.8. Covenants, Etc. Run With The Land. This Conservation Easement and all of the covenants, indemnifications, releases, easements, Reserved Rights, and restrictions

set forth in this Conservation Easement shall run with the land and be binding upon Owner and Owner's successors and assigns, unless otherwise expressly provided in this Conservation Easement. The term "Owner" used in this Conservation Easement shall mean and include the above-named Owner and any of Owner's successors or assigns that are the legal owners of the Conservation Area or any part thereof. The term "Holder" used in this Conservation Easement shall mean and include the above-named Holder and its successors and assigns, it being understood and agreed that any assignee of the rights of Holder hereunder must be a "qualified organization" as defined in Section 170 (h) of the Code, as amended, and shall carry out the obligations of Holder and the intent of this Conservation Easement.

- 6.9. Limitation on Owner Liability. Owner shall be and remain liable for any breach or violation of this Conservation Easement only if such breach or violation occurs during such time as Owner is the legal or equitable owner of the Conservation Area or any part thereof or is in possession of the Conservation Area or any part thereof.
- 6.10. Effect On Mortgages and Other Liens. All mortgages, deeds of trust and other liens or encumbrances upon all or any part of the Conservation Area which either come into existence or are recorded in the place for the recording of such liens or encumbrances after the date of this Conservation Easement will be subject to and subordinate to this Conservation Easement.
- 6.11. Right of Conveyance Retained; Notice Required. Nothing in this Conservation Easement shall limit the right of Owner, its successors or assigns to grant or convey the Conservation Area, provided that any such grant or conveyance shall be under and subject to this Conservation Easement. Owner shall notify Holder in writing of any sale, transfer, lease or other disposition of the Conservation Area or any part thereof, whether by operation of law or otherwise, not later than 30 days after such disposition, such notice shall include a copy of the deed, lease, or other declaration of transfer, the date of transfer, and the name or names and addresses for notices of the transferee.
- 6.12. Managerial Control Retained by Owner. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability of Holder to exercise physical or managerial control over day-to-day operations of the Conservation Area, or any of Owner's activities on the Conservation Area, or otherwise to become an operator with respect to the Conservation Area within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- 6.13. Compliance With Law. Notwithstanding provisions hereof to the contrary, if any, Owner shall be solely responsible for complying with all federal, state and local laws and regulations in connection with the conduct of any use of the Conservation Area or the erection of any Structure permitted hereunder, and Owner shall be solely

responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.

- 6.14. Notices. All notices required of Owner under the terms of this Conservation Easement, and all requests for the consent or approval of Holder, shall be in writing shall be deemed to have been given when either served personally or sent by certified mail, with return receipt requested and postage prepaid, addressed to Holder at the address set forth on the first page of this Conservation Easement or such other address provided by notice from Holder or Owner to the other for the purpose.
- 6.15. Headings. The underlined headings preceding the Sections in this Conservation Easement are intended for convenience of reference only and shall not be applied in the construction or interpretation of the substance of this Conservation Easement nor shall any such headings be construed to add to, detract from or otherwise alter the substance, meaning, force or effect of any of the Sections in this Conservation Easement.
- 6.16. Availability or Amount Of Tax Benefits. Holder makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to Owner or any other person or entity under United States or any state, local or other tax law to be derived from the donation of this Conservation Easement or other transaction associated with the donation of this Conservation Easement. This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. Holder makes no warranty, representation or other assurance regarding the value of this Conservation Easement or of the Conservation Area. As to all of the foregoing, Owner is relying upon Owner's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon Holder or any legal counsel, accountant, financial advisor, appraiser or other consultant of Holder. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs involving Owner or Owner's successors or assigns or other similar matter then Holder shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Holder in responding or replying thereto.
- 6.17. Warranties and Representations of Owner. By signing this Conservation Easement, Owner acknowledges, warrants and represents to Holder that:
- 6.17.1. Owner has received and fully reviewed the Baseline Documentation in its entirety.
- 6.17.2. The Baseline Documentation includes, among other things:
- Naturalist's Report on the Conservation Area.
 - Environmental Conditions Map of the Conservation Area.
 - Photographs of current site conditions on the Conservation Area.

- Narrative description of the significant ecological and other conservation values and characteristics of the Conservation Area.
- Topographic map of the Conservation Area

- 6.17.3. The Baseline Documentation is an accurate representation of the condition of the Conservation Area.
- 6.17.4. Owner has been represented by counsel of Owner's selection, and fully understands that Owner is hereby permanently relinquishing property rights which would otherwise permit Owner to have a fuller use and enjoyment of the Conservation Area.
- 6.17.5. The undersigned individual or individuals signing as or on behalf of Owner has all legal authority to enter into this Conservation Easement and perform all of the obligations of Owner hereunder, as the binding act of Owner.
- 6.17.6. Owner is seized of the Conservation Area in fee simple title. Owner has the right to grant and convey this Conservation Easement. The Conservation Area is free and clear of any and all liens and encumbrances except liens for taxes not yet due and payable.
- 6.18. Applicable Law. This Conservation Easement shall be governed by and construed under the law of the state in which the Conservation Area is located.

TO HAVE AND TO HOLD the easements and rights set forth in this Conservation Easement unto Holder, its successors and assigns, for its own use and benefit forever.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owner and Holder have executed this Conservation Easement as of the day and year first above written:

McLAIN BRANCH FARM, LLC, a North Carolina limited liability company

By: Conservation Advisors of North Carolina, Inc.,
Manager

By: *John F. Witherspoon* [Seal]
John F. Witherspoon
Assistant Vice President

NORTH AMERICAN LAND TRUST
a non-profit corporation

Attest: *George Asimos*
George Asimos, Secretary

By: *Andrew L. Johnson*
Andrew L. Johnson, President

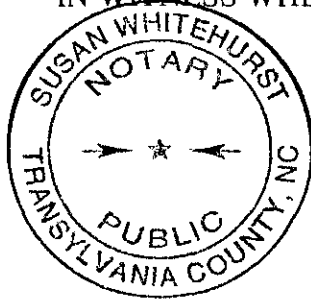


STATE OF NORTH CAROLINA :

COUNTY OF TRANSYLVANIA:

I, the undersigned Notary Public of the County and State aforesaid, certify that JOHN F. WITHERSPOON personally appeared before me this day and acknowledged that he is the Assistant Vice President of CONSERVATION ADVISORS OF NORTH CAROLINA, INC., a North Carolina corporation, described in and which executed the foregoing instrument, that said corporation is the Manager of McLAIN BRANCH FARM, LLC, a North Carolina limited liability company, that the foregoing instrument was duly executed by said corporation on behalf of said limited liability company, and that by authority duly given and as the act of such entities, he signed the foregoing instrument in the name of said entities on their behalf as their act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this the 30th day of December 2005.



(Seal)

Susan Whitehurst
Notary Public
My commission expires: 12/30/2007

STATE OF PENNSYLVANIA :
: COUNTY OF CHESTER :

On this, the 23rd day of DECEMBER, 2005, before me, a Notary Public in and for the State of Pennsylvania, the undersigned officer, personally appeared Andrew L. Johnson, who acknowledged himself to be the President of North American Land Trust, a Pennsylvania Non-Profit Corporation, and that he as such officer, being authorized to do so, executed the foregoing conservation easement for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Seal)

Karen M. Mazza
Notary Public
My commission expires: AUG. 22, 2006

