

Model Easement for a Trail

Source: Brandywine Conservancy

THIS GRANT OF EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, hereinafter referred to as the "Easement" made the day of in the year of our Lord One Thousand Nine Hundred and Ninety-_____ (199_).

BETWEEN _____, (husband and wife) (single man) (single woman), having an address of _____ party of the first part, hereinafter called "Grantor," _____

AND

TOWNSHIP OF _____, party

WITNESSETH;

WHEREAS, Grantor is the owner of certain tracts of ground located in Township, County, Commonwealth of Pennsylvania, containing acres of land, more or less, hereinafter called the "Trail Easement Area", which includes the following parcels; as shown on a plan entitled dated _____, 199__, last revised _____ 199__, prepared for _____ by _____, and further revised on _____, attached hereto and made a part hereof as Exhibit "A", and as described by legal descriptions, attached hereto and made a pan hereof as Exhibit "B"; and

WHEREAS, the trail easement area contains _____ feet/miles of public trail(s) which, by this Easement, will be available for outdoor recreation and transportation by and the education of the general public; and

WHEREAS, the Trail Easement Area contains greater than _____ miles of frontage along _____ Road, and _____ Road, and the public traveling these roads are afforded scenic views of the forestlands, grasslands, farm fields, and wetlands, whose beauty and open character shall be available for outdoor recreation and transportation by and the education of the general public by this Easement; and

WHEREAS, the _____ Township Comprehensive Plan, adopted in 19__, sets forth general community goals, which include ... [Indicate here any goal which would directly or indirectly relate to the development of the trails system]; and

WHEREAS, the _____ Township Zoning Ordinance, adopted in 19__, defines community objectives which include "Securing and protecting pedestrian and non-motorized transportation facilities consistent with the transportation plan and trails map..." and to this end the township requires dedication of land for transportation and recreation purposes; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Recreation and Transportation values of the Trail Easement Area in perpetuity; and

WHEREAS, Grantee is a publicly-supported, tax-exempt non-profit organization, qualified under Section 501(c)3 and 170(h) of the Internal Revenue Code, whose primary purpose is the.... ; and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Recreation and Transportation Values of the Trail Easement Area for the benefit of this generation and generations to come.

NOW THEREFORE, for and in consideration of the above and the mutual covenants, terms, conditions, restrictions, and promises Herein contained, pursuant to the laws of _____ [state] _____ and in particular _____ [specific statutory authority] _____, and for the further consideration of the sum of Five Dollars (\$5.00), lawful money of the United States of America, in hand paid by Grantee to Grantor, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby mutually agree, grant, convey, and declare as follows:

1. STATEMENT OF GRANT

Grantor hereby voluntarily, unconditionally and absolutely grants and conveys unto Grantee, its successors and assigns, an Easement in Gross and a Declaration of Restrictive Covenants, in perpetuity, over the Trail Easement Area, as more particularly hereinafter set forth exclusively for the purposes of preserving and protecting . the present natural, scenic, open space, educational, and recreation and transportation values of the Trail Easement Area.(such purposes hereinafter referred to as the "Recreation and Transportation Purposes"). Grantee hereby accepts the Easement and agrees to hold it exclusively for such Recreation and Transportation Purposes.

2. PUBLIC ACCESS

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

As used herein, Trail is defined as: A corridor of at least ten (10) feet in width through which passes, or will pass, a trail as part of the _____ Township Comprehensive Trail System or as otherwise authorized by the Township.

A trail is to serve transportation and recreation functions for one or more of the following: walkers, runners, bicyclists, horseback riders, and cross-country skiers; trails shall exclude all motorized vehicles except as authorized by the Township for maintenance, management and emergency purposes. Trail Easement Area is defined as: the area (a minimum of twenty (20) feet wide) that contains the trail and is restricted from development, which would inhibit the use of the trail.

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

- (i) Nature study and scientific research, including bird watching and the study of fauna and flora, supervised by an organization described in Section 170(h)(3) of the Internal Revenue Code
- (ii) Horseback riding;
- (iii) Cross-country skiing;
- (iv) Hiking, biking and jogging; and
- (v) Painting, sketching, and photography.

B. Public access to the Trail Easement Area shall be restricted to the "Trail Easement Area" as shown on Exhibit "A": Grantee retains the right, as it may deem necessary, in order to preserve and protect the Transportation and Recreation Values of the Trail Easement Area and the Transportation and Recreation Purposes to repair the Trail Easement Area, relocate 60 the Trail within the Trail Easement Area, or temporarily prohibit public access to the Trail Easement Area.

C. The activities described in sub-paragraph A of this Paragraph 2 shall be conducted in such a manner as to preserve and protect the Transportation and Recreation Values of the Trail Easement Area, and in this connection the following specific limitations shall apply with respect to use of the Trail Easement Area by the general public and shall be enforceable by Grantor and/or Grantee:

(i) Use of any motorized vehicle or similar mechanical means of locomotion, including automobiles, motorcycles, snowmobiles, or other all-terrain vehicles shall be prohibited;

(ii) Smoking of tobacco or other substances, or lighting of fires of any kind shall be prohibited;

(iii) Consumption of alcoholic beverages or use of any kind of stimulant or drug shall be prohibited;

(iv) Trapping or hunting with firearms, bow and arrow, or any other form of arms or weapons shall be prohibited; and

(v) Overnight camping or sleeping shall be prohibited. Grantee shall have the right to impose any additional limitations with respect to the Trail Easement Area, as it deems necessary or appropriate in order to preserve and protect the Transportation and Recreation Values of the Trail Easement Area and the Transportation and Recreation Purposes for which this Easement is donated.

D. Grantee shall have the right to require Grantor to keep the Trail Easement Area free from obstructions which prevent reasonable pedestrian (and equestrian) access to and along the Trail Easement Area including but not limited to structures, fences and fallen trees.

3. NOTICE

All notices, consents, approvals, or other communication hereunder shall be in writing and shall be deemed properly given if sent by US. certified mail, return receipt requested, addressed to the appropriate party or successor in interest, at the address most recently provided

4. PROHIBITION OF PUBLIC ACCESS

Nothing herein shall be construed as a grant to the general public, or to a person or persons, the right to enter upon any part of the Grantor's property other than as described in Paragraphs 2, herein. Grantor reserves unto themselves and its successors in title to the Trail Easement Area, all rights, privileges, powers, and immunities, including the right of exclusive; possession and enjoyment, subject only to the terms and covenants of this Easement.

5. ENFORCEMENT RIGHTS OF GRANTEE

A. To accomplish the purposes of this Easement the following rights are conveyed to Grantee by this Easement:

(i) To preserve and protect the Transportation and Recreation Values of the Trail Easement Area;

(ii) To prevent any activity on or use of the Trail Easement Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Trail Easement Area that may be damaged by any inconsistent activity or use, pursuant to subparagraphs B, C, and D of this Paragraph 5.

B. In the event that a violation of the terms of this Easement by Grantor or by a third party comes to the attention of Grantee, Grantee shall notify Grantor in writing of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Trail Easement Area resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Trail Easement Area so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of such notice thereof from Grantee, or under circumstance where the violation cannot reasonably be assured within the 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 parse as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Transportation and Recreation Values protected by the terms of this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Trail Easement Area to the condition that existing prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Trail Easement Area. If Grantee, in its sole discretion, determines that circumstance require immediate action to prevent or mitigate significant damage to the Recreation and Transportation Values of the Trail Easement Area, Grantee may pursue its remedies under this Paragraph 5 without prior notice to Grantor or without waiting for the period provided for cure to expire.

C. Grantee's rights under this Paragraph 5 apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled

including specific performance of the terms of this Easement, without necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

D. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs or restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.

6. MAINTENANCE AND ASSESSMENT OBLIGATIONS OF GRANTEE

Note: Obligations may vary depending on whether the municipality holds the Trail Easement Area by easement or by ownership. If it holds the area by ownership or if it agrees through the easement to accept responsibilities, it is responsible for maintenance and assessment. In general, the municipality should be prepared to accept maintenance responsibilities except where the trail is on high traffic-generating properties such as commercial higher density residential or institutional properties for example municipally owned trails are generally not assessed taxes. Where trail easement areas remain in private ownership, the municipality should support waiver of assessment by county assessment offices.

Grantee shall be [if trail is to be publicly owned and maintained] under no obligation to maintain the Trail Easement Area, or any portion thereof, or pay taxes or assessments thereon. Any action by Grantee such as maintenance of the Trail Easement Area or any other act by Grantor [Grantee-if privately held] to protect the Trail Easement Area shall be deemed merely a gratuitous act, which shall create no obligation on the part of Grantor [Grantee].

7. SUCCESSORS IN INTEREST

Except where the context requires otherwise, the term "Grantor" and "Grantee", as used in this instrument, and any pronouns used in place thereof, shall mean and include, respectively, Grantor and his personal representatives, heirs, successors in title, and assigns, and Grantee and its successors and assigns.

8. STATEMENT OF COMPLIANCE

Grantor hereby agrees to request in writing at least thirty (30) days prior to the sale, transfer, or long term [ten (10) years or more] lease of the property containing the Trail Easement Area, or any portion thereof, a written instrument from Grantee stating that Grantor is in compliance with the terms and conditions of this Easement, or if Grantor is not in compliance with the terms and conditions of this Easement, stating what violations of this Easement exist Grantee agrees in such cases or at any other time to acknowledge, execute, and deliver to Grantor or to any mortgagee, transferee, purchaser, or lessee such written instrument concerning compliance within thirty (30) days of written request from Grantor. Grantor shall provide a copy of Grantee's compliance statement to any purchaser, mortgagee, lessee, or assignee and shall advise Grantee in writing at least ten (10) days in advance of any transfer, long-term lease, or sale of the Trail Easement Area, or any portion thereof.

Any costs incurred by Grantee in determining compliance and advising Grantor as to compliance or costs incurred as a result of Grantor's failure to notify Grantee of transfer, sale,

assignment, or long term lease of the Trail Easement Area, or any portion thereof, shall be paid by Grantor, [if the municipality does not agree to absorb such costs] his successors or assigns.

9. LIMITATION OF GRANTOR LIABILITY

Grantor, and each subsequent owner of the Trail Easement Area, shall have no personal liability for the observance or performance of the covenants and obligations of Grantor hereunder after such party has conveyed his, her, its, or their interest in the Trail Easement Area, provided that the provisions of Paragraph 8, above, have been fulfilled and all obligations thereunder discharged.

10. HOLD HARMLESS

Grantee, and each subsequent holder of the Trail Easement Area, shall hold harmless, indemnify, and defend Grantor and its heirs, personal representatives, successors, and assigns from and against all liability, 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 Trail Easement Area, regardless of cause, unless due solely to the gross negligence or willful misconduct of the Grantor and its heirs, personal representatives, successors, and assigns; (2) the obligations specified in Paragraph 6, herein; and (3) the existence or administration of this Easement.

11. STIPULATED VALUE OF GRANTEE'S INTEREST

A. Grantor acknowledges that this Easement constitutes a real property interest in the Trail Easement Area immediately vested in Grantee, and that such interest has a fair market value. For purposes of allocating net proceeds in an extinguishment of all or part of this Easement pursuant to Paragraph 12 herein, the share of Grantee's interest shall not be less than the percentage that the fair market value of this Easement on the date hereof bears to the fair market value of the Trail Easement Area prior to considering the effects of this Easement (hereinafter called the "Easement Percentage")

The values for calculating the Easement Percentage shall be based upon a Qualified Appraisal obtained by Grantor for federal income tax purposes. Upon receipt of such Qualified Appraisal, Grantor shall provide a copy of the Qualified Appraisal to Grantee. In the event that Grantor does not obtain a Qualified Appraisal, the Easement Percentage shall be thirty five (35) percent of fair market value.

B. Grantor and Grantee, and any successors in interests, shall exhaust all legal remedies in order to preserve and protect the Transportation and Recreation Purposes of this Easement. Grantor shall cooperate with Grantee in Grantee's performance of its obligations under this Paragraph 11.

C. In the event that all or part of this Easement is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the transportation and recreation goals imposed by this Easement, Grantor and Grantee shall join in appropriate action at the time of such taking to

recover the full value of the taking and all incidental or direct damages resulting from the taking. All reasonable expenses incurred by Grantor and Grantee in an effort to prevent a taking or in an effort to recover the full value of a taking shall be shared on an equal basis out of any recovered proceeds except in the event that (i) Grantor and Grantee agree in writing to an alternative means for sharing such expenses, or (ii) all or pan of this Easement is extinguished as a result of a judicial proceeding brought by or on behalf of Grantor which, in that event, then all expenses shall be paid by Grantor.

12. EXTINGUISHMENT OF EASEMENT AND DISTRIBUTION OF NET PROCEEDS

A. In the event that all or part of the Trail Easement Area interests subject to this Easement are involuntarily extinguished by (i) an action in eminent domain, (ii) other judicial proceedings, or (iii) settlement is reached between Grantor, Grantee, and condemner under threat of condemnation, and Grantor joins with Grantee in accordance with Paragraph 11.B. and 11. C. above, Grantee's share of any proceeds recovered from any compensation in eminent domain or judicial proceedings or from the first lawful sale of the Trail Easement Area, after the restrictions within this Easement have been extinguished, shall equal the Easement Percentage, provided that a larger percentage has not been stipulated by agreement between Grantee and Grantor.

B. In the event that all or pan of the Trail Easement Area interests subject to this Easement are extinguished by (i) an action in eminent domain, (ii) other judicial proceedings, or (iii) settlement is reached between Grantor, Grantee, and condemner under threat of condemnation, where such action is brought by or on behalf of Grantor or where Grantor does not join with Grantee in accordance with Paragraph 11.B. and 11.C. above, the value of the interests so taken shall be determined by an independent appraisal and the net proceeds recovered from any compensation in eminent domain or judicial proceedings or from the first lawful sale of the Trail Easement Area after the restrictions within this Easement have been extinguished, shall be distributed between Grantor and Grantee in accordance with the findings of an independent appraisal of the interests taken which has been conducted by a Qualified Appraiser. Provided, however, that in no event shall Grantee's share of said net proceeds be less than the Easement Percentage.

C. Grantee shall use its share of any net proceeds recovered, as described in this Paragraph 12, exclusively for the protection or acquisition of interests in land or for Transportation and Recreation Purposes or for improvement to the trails system. For purposes of this Paragraph, proceeds shall not include an amount equal to the fair market value of any Improvements by the Grantor to the Trail Easement Area affected by the condemnation or judicial action or any improvements to the Trail Easement Area by the Grantee,

which were not included in the calculations by which the Easement Percentage was established.

13. FAILURE OF GRANTEE TO ENFORCE

If at any time any organization, agency, or person having rights or duties hereunder as Grantee shall fail to enforce -the restrictions set forth in this Easement, Grantor, or any governmental unit of _____ County, shall have the right to bring suit against Grantee for specific performance.

14. TRANSFER OF GRANTEE'S INTEREST

A. Grantee, its successors and assigns, shall have the right to assign either wholly or partially its right, title, and interest hereunder only to an organization able to enforce - the restrictions contained herein which has purposes similar to: those of Grantee, and which encompasses the _____ - purposes set forth in this Easement. Such an organization must at the time of the assignment be a governmental unit qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code of 1986 (or its successor provisions), hereinafter the "Code", and one which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code. Any transfer or assignment of benefits by Grantee, its successors or assigns, must require the transferee or assignee to carry out the Transportation and Recreation Purposes of this Easement.

B. In the event Grantee shall cease to exist or to be a qualified organization as described in Subparagraph 14 A., herein, its rights and duties hereunder shall become vested in and fall upon one of the following named entities, or such other qualified organization as may then be determined, to the extent such entity shall evidence acceptance of and agree to fully enforce same:

- (i) _____ Land Trust;
- (ii) _____ Valley Association;
- (iii) The Nature Conservancy;
- (iv) _____ Watershed Association;
- (v) The Township(s) of _____, political subdivisions) of _____ County and the Commonwealth of Pennsylvania;
- (vi) _____ County, a political subdivision of the Commonwealth of Pennsylvania; or

(vii) Such other organizations as may be designated under the doctrine of cy pres by a court of competent jurisdiction; provided, however, that at the time of such designation, such entity shall be an organization as described in Subparagraph 14.A. herein.

[Use the following paragraph only if funds were received by a private organization or a municipality as Grantee.]

C. Upon the occurrence of any transfer or assignment of this Easement, Grantee shall also transfer to the transferee or assignee the then-value of any endowment funds received by Grantee from Grantor to support Grantee's obligation to monitor and enforce of this Easement, and the transferee shall hold such funds for such purposes and be subject to the provisions of this subparagraph C.

15. EASEMENT IN PERPETUITY

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

16. SEVERABILITY

This Easement shall be construed in its entirety, however, in the event that any provision or restriction of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions and restrictions of this Easement, and the application of such provision or restriction to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

17. ACKNOWLEDGEMENTS

A. Grantor attests that Grantor is the owner of the Trail Easement Area and that the Trail Easement Area is not subject to a mortgage as of the date of this Easement. [Alternatively, a subordination agreement from the mortgagor for the Trail Easement Area must be obtained. Most mortgage companies will do so if the mortgage is for less than property value.]

IN WITNESS WHEREOF, and again stating their intention to be legally bound hereby, the said parties have hereunto set their hands and respective seals on the day and year first above written.

WITNESS _____
WITNESS _____

BY _____

(SEAL)

ATTEST _____

BE IT REMEMBERED that on this day of _____, 199__, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, _____, party to this Indenture, known to me personally to be such, and severally acknowledged this Indenture to be their deed.

GIVEN under my hand and seal of office, the day and year aforesaid.

Notary Public

BE IT REMEMBERED that on this day of _____ 199__, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, _____, President of Brandywine Conservancy, Inc., a corporation existing under the laws of the State of Delaware, party to this Agreement, and acknowledge this Indenture to be his act and deed and the act and deed of said corporation; that the signature of the President thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Notary Public