

## APPENDIX B

### Conservation Easement Example

*Note: This model Conservation Easement contains all of the paragraphs or sections that should be included in every conservation easement as recommended in Chapter 2. However, some language was tailored for a specific parcel contained in the Rhode Island Conservation Development Manual (DEM 2003) and is also used in a workshop on the RI Conservation Easement Guidance Manual. Appendix C is a Property Management Plan example for the parcel used in Appendix B. Appendix D is a checklist of what should be contained in all Property Management Plans. A checklist for what should be contained in the Baseline Documentation Report is in Appendix E.*

#### **1 Title: BLACKACRE ESTATES CONSERVATION EASEMENT**

**2. Introduction:** **THIS GRANT OF CONSERVATION EASEMENT** is made this day of \_\_\_\_\_, 20\_\_\_\_, by and between the ABC DEVELOPERS, INC. of 123 Main Street, Quahog, Rhode Island (hereinafter referred to as "Grantor"), the TOWN of QUAHOG, Rhode Island, a Rhode Island municipal corporation with offices at 123 Oceanview Road, Quahog, Rhode Island, the WE LIKE TREES LAND TRUST, a Rhode Island non-business corporation having its principal office at 123 Easy Street, Quahog, Rhode Island, and the BLACKACRE ESTATES HOMEOWNERS ASSOCIATION, INC., a Rhode Island non-business corporation with its principal office at 1 Blackacre Drive, Quahog, Rhode Island (hereinafter collectively referred to as "Grantees").

**3. Whereas and Now Therefore Clauses:** **WHEREAS**, Grantor is the owner in fee simple of certain real property consisting of 175 acres of land located on the northerly side of Blackacre Road, in the Town of Quahog, County of Bliss, State of Rhode Island, more particularly described in Exhibit "A" attached hereto and made a part hereof and as shown on the plan of survey entitled "Perimeter Survey of Blackacre Estates" prepared by Quahog Survey Group, Inc, dated \_\_\_\_\_, 20\_\_ (hereinafter referred to as the "Premises"); and

**WHEREAS**, the Premises possesses certain open, natural, scenic, agricultural, ecological, archeological, historic and educational characteristics of particular public value; and

**WHEREAS**, Grantor and Grantees recognize the value and special character of the Premises and acknowledge a common purpose to conserve these special values of the Premises, and to conserve and protect the special plant and animal populations on the Premises, as well as subsurface and surface water resources and to prevent the use or development of the Premises for any purpose or in any manner that would conflict with the maintenance and preservation of the Premises in its current, natural, scenic and open condition; and

**WHEREAS**, Grantor as owner of the Premises, on behalf of its successors and assigns, intends to convey to Grantees the right to preserve and protect the special conservation values of the Premises in perpetuity.

**NOW THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein and in consideration of TEN DOLLARS (\$10.00) paid by Grantees to Grantor, the receipt and sufficiency of which is hereby acknowledged and pursuant to the laws of the State of Rhode Island, and in particular Title 34, Chapter 39 and Title 45, Chapter 36 of the General Laws of Rhode Island, as amended, Grantor hereby voluntarily grants and conveys unto Grantees a

Conservation Easement in perpetuity over the Premises which is intended to run with the land as a real covenant and is not personal in nature or in interest, of the nature and character, and to the extent hereinafter set forth.

**4. Purpose:** It is the purpose of this Conservation Easement to assure that the Premises will be retained forever in its open, natural, scenic, agricultural, ecological, or educational condition and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. Grantor intends that this Conservation Easement will confine the use of the Premises as are consistent with the purpose of this Conservation Easement and the Management Plan for Blackacre Estates developed by Grantees (hereinafter referred to as the "Management Plan"), which sets forth specific procedures by which the Premises shall be maintained, including, but not limited to, the adequate maintenance of the Premises to preserve the natural values, public access and other matters as may be required for the preservation of the Premises. Grantor shall have the right from time to time to request an amendment of the Management Plan by the Grantees in accordance with the amendment procedure set forth in the Management Plan. The original Management Plan and any amendments thereto are subject to the approval by the Grantees in writing.

**5. Rights of Grantees:** To accomplish the purpose of this Conservation Easement, the following rights are conveyed to the Grantees by this Conservation Easement:

- a. To preserve and protect the conservation values of the Premises;
- b. To enter upon the Premises at all reasonable times with notice to the Grantor and, if necessary, across other lands owned by Grantor adjacent to the Premises in order to: (i) monitor and inspect Grantor's, or its successors or assigns, compliance with the covenants and purposes of this Conservation Easement, (ii) enforce the terms of this Conservation Easement, (iii) take any and all actions as may be necessary or appropriate, with or without order of court, to remedy or abate violation hereof; and (iv) after prior notice to Grantor, or its successors or assigns, to observe and study nature, make scientific and educational observations and studies in such manner as will not disturb the quiet enjoyment of the Premises by Grantor.
- c. To prevent any activity or use of the Premises that is inconsistent with the purpose of this Conservation Easement and the Management Plan.
- d. To require restoration of such areas or features of the Premises that may be damaged by any inconsistent activity of use, pursuant to Section 5 hereof.
- e. To allow public access to the parcel for passive recreational uses, including hiking, and for educational purposes as set forth in the Management Plan.

**6. Rights of Grantor:** Grantor reserves for itself, its heirs, successors and assigns, the following reserved rights provided, however, that the exercise of such rights will not interfere with or have an adverse impact on the essential natural, open and scenic quality of the Premises:

- a. To use the Premises for all purposes not inconsistent with this Conservation Easement and the Management Plan.
- b. To sell, give or otherwise convey the Premises or any interest in the Premises, provided such conveyance is subject to the terms of this Conservation Easement and the Management Plan.
- c. To continue to use Area One of the Premises, as identified on Exhibit B, for agricultural purposes that are consistent with this Conservation Easement and Management Plan.

- d. The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values.
- e. Such other non-prohibited activities requested by the Grantor and expressly approved in writing by the Grantee, in its sole and exclusive discretion, which permission may only be given if the Grantee expressly finds that the activity is consistent with, and does not materially impair, the purposes or conservation values of the Premises.

**7. Restrictive Covenants/Conservation Values Protected:**

- a. The scenic vista from Blackacre Road into the premises shall not be obstructed or impaired in any way. The scenic vista as identified on Exhibit B shall be protected and preserved by activities permitted in the Management Plan and any amendments thereto.

**8. Prohibited Activities and Uses:** Any activity on or use of the Premises inconsistent with the purpose of this Conservation Easement and/or the Management Plan is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited on, above, and below the premises:

- a. The subdivision of the Premises or the disturbance or change in the natural habitat that would be inconsistent with the conservation values.
- b. The placement or construction of any buildings, structures, or other improvements of any kind including, without limitation, camping accommodations or mobile homes, fences, signs, billboards or other advertising material, tennis courts, swimming pools, asphalt driveways, roads, parking lots, utility poles, towers, conduits, or lines or other structures, other than those structures currently on the Premises and as may be permitted pursuant to the Management Plan. No commercial or industrial activity of any kind shall be permitted on the Premises, except as set forth in the Management Plan.
- c. Any ditching, draining, digging, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, or any building of roads or change in the topography of the land in any manner except the maintenance of existing foot trails and as may be allowed in the Management Plan for Area One, the Farm, as identified on Exhibit B.
- d. Any removal, destruction or cutting of trees or plants or planting of trees or plants (except as is necessary to maintain the Premises and to construct foot trails), use of fertilizers, spraying with biocides, introduction of non-native plants and animals, except as may be set forth in the Management Plan.
- e. The dumping or storing of ashes, trash, garbage, wastes, refuse, debris, or other unsightly or offensive material, and the changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall any activities be conducted directly on the Premises, or on adjacent property which could cause erosion or siltation on the Premises.
- f. The manipulation or alteration of natural ponds, water courses, lake shores, marshes or other surface or subsurface water bodies, or activities which would be detrimental to water purity or to the protection of the watershed, which includes the subject property, or which could alter natural water level and/or flow.
- g. The operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles, except such motorized vehicles as are

necessary for the maintenance of the Premises or to protect the Premises during an emergency.

- h. The hunting or trapping of animals except as set forth in the Management Plan.
- i. No portion of the Premises may be used toward building or development requirements on this or any other parcel.
- j. Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except as specified in the Management Plan for Area One, the Farm.
- k. The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises.
- l. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation.
- m. Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Easement or which would materially impair its conservation interests.

**9. Grantees' Remedies:** If any Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, the Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or injury to any conservation values protected by this Conservation Easement, including damages for the loss of scenic, aesthetic, water resource protection or environmental values, and to require the restoration of the Premises to the condition that existed prior to any such injury, costs incurred and reasonable attorney fees to prosecute any such actions to enforce. 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 Premises. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Premises, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement, and Grantor agrees that if Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate, 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 Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from any causes beyond Grantor's control, including, without limitation, fire, flood, storm, or earth movement.

- a. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs

- of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement, shall be borne by Grantor.
- b. Grantee's Discretion. Enforcement of the terms of this Conservation Easement shall be at the sole discretion of Grantee, and any forbearance or delay by Grantee to exercise its rights under this Conservation Easement, in the event of any breach of any term of this Conservation Easement by Grantor, shall not be deemed or construed to be a waiver by Grantee of such terms or of any subsequent breach of the same of any other term of this Conservation Easement or any of Grantee's rights under this Conservation Easement.
  - c. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

#### **10. Formal Provisions:**

- a. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Premises, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Premises free of any liens arising out of any work performed for, materials, furnished to, or obligations incurred by Grantor.
- b. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Premises by competent authority, and shall furnish Grantee with satisfactory evidence of payment upon request.
- c. Hold Harmless. Grantor shall defend, hold harmless, indemnify, and defend Grantee and its directors, officers, employees, agents, contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, including bodily injury or death, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with bodily 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 Premises, regardless of cause.
- d. Condemnation. If the Premises is taken in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to fifty (50%) percent of any such condemnation award paid to Grantor.

#### **11. General Provisions:**

- a. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Premises.
- b. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- c. Rhode Island law. This Conservation Easement shall be and is deemed to be a conservation restriction under the laws of the State of Rhode Island only, and shall be construed and given effect in accordance with the laws of the State of Rhode Island and not otherwise.

- d. Severability. If any provision of this Conservation Easement or the application hereof to any person or circumstance shall be to any extent invalid or unenforceable, the remainder of this Conservation Easement and the application to persons or circumstances other than those as to which it is invalid or unenforceable shall not be effected thereby, and each term and provision of this Conservation Easement shall be valid and enforceable to the fullest extent permitted by law.
- e. Waiver. No consent or waiver, expressed or implied by either party to or of any breach in the performance by the other party of its agreements hereunder shall be construed as a consent or waiver to or of any breach in the performance by such party of the same or any other agreement. The failure on the part of either party to complain of any such action or inaction on the part of the other or to declare the other in default, no matter how long such failure may continue, shall not be deemed to be a waiver by either party of any of its rights hereunder.
- f. Construction. This Conservation Easement shall not be construed, without regard to any presumption or other rule requiring construction, against the party causing this Conservation Easement to be drafted.

**12. Amendments, Assigns and Transfers:**

- a. Amendment. This Conservation Easement may only be amended if in writing and by unanimous agreement of all Grantors and all Grantees. Any party seeking an amendment to this Conservation Easement must provide notice to all other parties and if any party files a written objection within ten (10) days of receipt of said notice the request for amendment shall be deemed denied. If no such objection is timely filed, then the parties shall arrange to meet at a reasonable date, time and place and discuss the movant's request. No party is bound to agree to any request for an amendment by merely attending a meeting or meetings to discuss such amendments. The parties shall endeavor to act in good faith and judiciously act on the movant's request. Any amendments to this Conservation Easement must be signed by all parties and recorded in the Quahog Land Evidence Records to be valid and enforceable.
- b. Assignment. This Conservation Easement is transferable, but Grantee may assign its rights and obligations under this Conservation Easement only to an organization authorized to acquire and hold Conservation Easements under R.I. General Laws 34-39-1 et seq. (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.
- c. Subsequent Transfers. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including, without limitation, a leasehold interest.

**13. Signatory, Witness and Notary Clauses:**

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

**WITNESS:**

\_\_\_\_\_ By: \_\_\_\_\_  
 Conrad Conserver, President  
 ABC Developers, Inc

\_\_\_\_\_ By: \_\_\_\_\_  
President  
Quahog Town Council

\_\_\_\_\_ By: \_\_\_\_\_  
President  
Blackacre Homeowners Association, Inc.

\_\_\_\_\_ By: \_\_\_\_\_  
President  
We Like Trees Land Trust

<p><b>STATE OF RHODE ISLAND</b> <b>COUNTY OF _____</b></p> <p>In _____, in said County and State, on the _____ day of _____, 20____, before me personally appeared CONRAD CONSERVER, President of ABC DEVELOPERS, INC., to me known and known by me to be the party executing the foregoing, and he acknowledged said instrument by him executed to be his free act and deed, as President of and on behalf of said corporation and individually.</p> <p style="text-align: right;">_____ Notary Public My Commission</p> <p>Expires: _____</p>
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<p><b>STATE OF RHODE ISLAND</b> <b>COUNTY OF _____</b></p> <p>In _____, in said County and State, on the _____ day of _____, 20____, before me personally appeared _____, the President of the WE LIKE TREES LAND TRUST, to me known and known by me to be the party executing the foregoing instrument for and on behalf of the WE LIKE TREES LAND TRUST and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of the WE LIKE TREES LAND TRUST.</p> <p style="text-align: right;">_____ Notary Public My Commission</p> <p>Expires: _____</p>
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**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, the President of the TOWN COUNCIL of the TOWN OF OUAHOG, to me known and known by me to be the party executing the foregoing instrument for and on behalf of the TOWN OF QUAHOG and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of the TOWN COUNCIL.

\_\_\_\_\_  
Notary Public  
MCE: \_\_\_\_\_

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, the President of the BLACKACRE HOMEOWNERS ASSOCIATION, INC., to me known and known by me to be the party executing the foregoing instrument for and on behalf of the BLACKACRE HOMEOWNERS ASSOCIATION, INC. and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of the BLACKACRES HOMEOWNERS ASSOCIATION, INC.

\_\_\_\_\_  
Notary Public  
MCE: \_\_\_\_\_

**Return original Conservation Easement to:**

We Like Trees Land Trust  
123 Easy Street  
Quahog, RI 02827

**14. Exhibits:**

- a. legal description of property
- b. survey
- c. baseline documentation report
- d. property management plan
- e. other relevant documents