

Wallace Easement

CERTIFIED PROPERTY IDENTIFICATION NUMBER

MUNICIPALITY Union Twp

PIN MAT L4 BLOCK A LOT 006

TRANSFER _____ DIVISION _____

DATE 12-30-04 EXP
Mapping Clerk

Notice of Conveyance Required
See Section 6.11

CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS

THIS CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS ("Conservation Easement") made 29 Dec, 2004 by and between WILLIAM L. DITTMAR, MICHAEL L. WORTHY, and JAMES M. CORL (together, "Owner"), having an address of P.O. Box 308, West Milton, Pennsylvania 17886, and NORTH BRANCH LAND TRUST ("Holder"), a Pennsylvania non-profit corporation having an address of 11 Carverton Road, Trucksville, PA 18708,

WITNESSETH THAT:

WHEREAS, Owner is the owner of certain real property in Union Township, Luzerne County, Pennsylvania that consists of 223.94 acres, more or less, (hereinafter called the "Conservation Area") being a portion of the land most recently described in a deed to Owner dated September 16, 2004 from Lanning A. Anselmi, Jane Wallace and Ellen Goetz recorded in the Office of the Recorder of Deeds of Luzerne County on Book 3004, page 232832 and being specifically described on Exhibit "A" attached to this Conservation Easement and incorporated herein; 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"):

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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 Branch Land Trust (collectively, and as hereafter amended in accordance with Paragraph 6.17.3, called the "Baseline Documentation"), which describes, among others, the following Conservation Values of the Conservation Area:

The Conservation Area provides wildlife corridors, breeding habitat, foraging habitat and shelter for at least one eighty-two species of animals;

The Conservation Area provides the natural ecological requirements for at least one hundred thirty-five species of plants;

The Conservation Area provides the natural ecological requirements for one Federally Endangered species;

The Conservation Area provides the natural ecological requirements for at least three animal Species of Special Concern in Pennsylvania;

The Conservation Area is within the watershed the North Branch of the Susquehanna River, a portion of which has been designated by the President of the United States as an American Heritage River because of its cultural, historical, economic and environmental values;

The Susquehanna River is the dominant source of fresh water to the Chesapeake Bay, of which the protection and restoration is a multi-state priority;

The Conservation Area includes steeply sloped woodlands within the watershed of Shickshinny Creek (classified as a Cold Water Fishery) and the Susquehanna River classified as a (Warm Water Fisheries) by the Department of Environmental Protection, which serve as a source of potable water for downstream communities;

The aforementioned forests, fields and wetlands and are in close proximity to Shickshinny Creek and the Susquehanna River, which would be highly susceptible to erosion damage and an increase in storm water runoff which could adversely affect

stream water quality and flood patterns if the trees or other vegetation were improvidently removed;

The Pennsylvania General Assembly, in enacting the Conservation and Preservation Easements Act, has recognized the importance and significant public and economic benefit of conservation easements in its ongoing efforts to protect, conserve or manage the use of the natural, open-space and scenic resources of the Commonwealth;

The Conservation Area borders lands of the Pennsylvania Game Commission, State Game Land 260, and therefore the preservation of the Conservation Area in a substantially natural, forested condition will promote governmental policies by enlarging the area of wildlife habitat for forest dwelling species already protected by the Game Commission, protecting wildlife corridors, providing a scenic woodland buffer for the members of the public who use the Game Commission land;

The Conservation Area, being a mountainside, is highly visible from Township Road 445, State Route 239, State Route 4010 and US Route 11, and Shickshinny Creek, thus providing a natural scenic view to the general public;

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 easement" as defined in the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, (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, provided that Owner is first given notice of any such visit, at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement. Holder is granted the right to place signs on the Conservation Area identifying the interest of Holder in the Conservation Area pursuant to this Conservation Easement.

ARTICLE 2 OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS

Owner, for Owner and Owner's heirs 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, including a stone wall used as a fence, 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 low impact recreational activities such as walking, jogging, wildlife observation, photography, hunting, fishing, and horseback riding so long as any recreational activities are conducted at all times in a manner that, in Holder's judgment, (a) shall have no material adverse effect upon the Conservation Purposes and (b) are otherwise in conformance with this Conservation Easement.

2.4. Limitations on Agricultural Activities. Agricultural activities within the Conservation Area shall be conducted only 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. All agricultural activity shall be located only in the following areas, except with the prior written permission of Holder, in its discretion: (a) outside forested areas, (b) in areas where the agricultural activity will not interfere with natural forest succession of partially forested areas or areas of previous tree harvesting and (c) outside the Riparian Buffer.

2.4.3. Agricultural activity shall, with respect to soil conservation and the application of pesticides, fertilizer and herbicides, be conducted at all times in accordance with the best management practices prevailing in agriculture. Soil conservation practices shall, as a minimum, conform to the standards 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, unless otherwise approved by Holder.

2.5. Ground or Surface Water. 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. No chemicals, waste water or other pollutants shall be discharged into any ground or surface water.

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 or threatens the safety of persons or property, 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 of trash, garbage, or any other unsightly or offensive materials at any place on, under or within the Conservation Area.
- 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.
- 2.13. Riparian Buffer. There shall be no clearing, cutting or removal of live or dead trees, other clearing or removal of vegetation (other than non-native, invasive plant 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 , or within 50 feet of the banks of, any permanent or intermittent watercourse (excluding manmade storm water swales not fed by a spring, pond or other natural source) or any governmentally regulated wetland (such area being herein called a "Riparian Buffer"). The boundaries of the Riparian Buffer must be determined by the Owner, at Owner's expense, prior to undertaking any activity that might be a violation of this section if conducted in the 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 specimens.
- 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 or development on lands outside the boundaries of the Conservation Area.

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 permission of the Holder, which permission may be given or denied in the Holder's discretion.

2.18. Notice Required. Owner shall notify Holder prior to taking any action which may have an adverse effect on any of the Conservation Purposes.

2.19. 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.

2.20. 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, heirs 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. Single Family Dwelling and Accessory Structures in Building Area. Owner may, upon satisfaction of the conditions set forth below, construct one (1) single family dwelling, as well as other Structures customarily accessory to a single family dwelling, including but not limited to a shed, garage, gazebo, or pool, within a five (5) acre area (the "Building Area") to be defined within the Conservation Area according to the procedures in this Section. There shall be no residential use of the Building Area nor any construction of any single family dwelling or any other Structure in the Building Area nor removal of any trees in the Building Area for either of the foregoing purposes until each and every one of the following conditions is satisfied:

3.1.1. The location and dimensions of the Building Area shall be subjected to the review and approval of Holder. The location of the Building Area must not, in Holder's judgment, directly or indirectly result in any

material adverse effect on any of the Conservation Purposes or the restoration and management plan prepared in accordance with this Section.

3.1.2. The location and dimensions of the driveway to serve the Building Area shall be subjected to the review and approval of Holder. The location of the driveway must not, in Holder's judgment, directly or indirectly result in any material adverse effect on any of the Conservation Purposes or the restoration and management plan prepared in accordance with this Section.

3.1.3. The location of the Building Area and the driveway to serve the Building Area shall be identified and surveyed by Owner, and such survey information shall be provided to Holder in the form Holder requires, at the sole expense of Owner.

3.1.4. The description of the Building Area and the review and approval of the Building Area by Holder shall be set forth in a written amendment to this Conservation Easement signed by duly authorized officers of Holder and by Owner. The amendment shall be recorded in the same place of public record in which this Conservation Easement was recorded.

3.1.5. All of Holder's expenses incurred in the review, approval and oversight of the Reserved Rights in this Section 3.1. shall be paid by Owner and deposited with Holder before recording of the amendment and commencement of any construction, earth movement or tree clearing.

3.1.6. Owner, and not Holder, shall bear all responsibility for obtaining permits or other approval of any state, county or municipal government for the location of the Building Area, dwelling, road or other Structure the location of which is to be reviewed by Holder under this Section 3.1. Holder may require Owner to present evidence of any such permit or approval having been validly issued as a condition of Holder's approval under this Section 3.1.

3.1.7. Holder shall not be obligated to accept any request for approval of the Building Area if the Baseline Documentation has not been supplemented and thereby completed by Holder and approved by Owner in accordance with Section 6.17.3 or if Owner is then in violation of this Conservation Easement.

3.2. Trails. Owner may construct trails for nature education and outdoor recreation purposes 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 for such trails shall not exceed that which is necessary for pedestrian or equestrian use; such trails shall be otherwise installed in a manner to avoid unnecessary tree removal and land disturbance. In addition, such trails shall be subject to, and the use thereof may be conditioned upon compliance with, rules and regulations established from time to time by Holder in order to

prevent the adverse effects upon the Conservation Purposes or other natural conditions protected by this Conservation Easement.

3.3. Raised Walkways. Owner may construct raised walkways for access to any or all of the land within the Conservation Area, with approval of the Holder and subject to the following limitations and conditions: (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) construction of the raised pathway shall not, as determined by Holder, produce any material adverse effect on any of the Conservation Purposes; (c) no materials which may have an adverse effect upon the wetland or other natural features of the Conservation Area shall be used in the construction of the walkway; and (d) Owner shall comply with all other covenants and restrictions of this Conservation Easement.

3.4. Utility Installations. Owner may construct facilities normally used in connection with supplying utilities, removing sanitary sewage effluent and controlling storm water runoff; provided that such facilities may only be constructed and used to serve the uses, Structures and improvements permitted in the Conservation Area under the terms of this Conservation Easement and that all such construction and maintenance is conducted in a manner designed to produce no material adverse effect on the Conservation Purposes.

3.5. Wildlife Stands, Nests and "Blinds". Owner may construct a reasonable number of wildlife hunting or observation stands and "blinds" and houses, nests or perches for birds or other wildlife; provided that in the installation or construction of any such Structure Owner shall comply with all other covenants and restrictions of this Conservation Easement.

3.6. Tree Cutting. Cutting, removal or destruction of trees shall be permitted upon or within the Conservation Area only under the following conditions:

3.6.1. Owner may selectively remove early successional tree species using good meadow management.

3.6.2. Owner may selectively harvest and sell trees commercially, but only if done in accordance with good forest management practices, according to a plan prepared by a professional forester, arborist, landscape architect or similarly qualified professional and approved in advance by Holder.

3.6.3. Owner may cut or fell a live or dead tree for the supply of firewood to be used only within the single family dwelling or other Structures to be located in the Building Area.

3.6.4. Owner may cut or fell trees in the Building Area in order to exercise Owner's rights under Section 3.1.

3.7. Signs. Owner may install a reasonable number of signs of the following types:

3.7.1. regulatory or directional signs including, for example but not for limitation of the foregoing, "no trespassing" signs, "no gunning" signs, or "no hunting" signs;

3.7.2. signs stating the common name of the Conservation Area, the names and addresses of the occupants or both;

3.7.3. signs advertising or directing participants to an activity permitted under the provisions of this Conservation Easement;

3.7.4. signs identifying the interest of Owner or Holder in the Conservation Area; and

3.7.5. signs educating the public as to the ecology of the area.

3.7.6. Notwithstanding the foregoing, any sign that is greater than four square feet in surface area and visible from any public road or waterway accessible to the public 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.

3.8. Maintenance of Structures Roads, Trails, Etc. Owner may maintain in passable condition the Structures, roads, trails or walkways existing within the Conservation Area and not prohibited by this Conservation Easement. Included within this right of maintenance, without limitation, are: 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; replacement of existing culverts, water control structures and bridges; and maintenance of roadside ditches.

3.9. Notice of Exercise of Reserved Rights. Owner shall notify Holder in writing before exercising any Reserved Right unless such Reserved Right is being exercised at the date of this Conservation Easement and is described in the Baseline Documentation or Holder agrees in writing that notice is not required.

3.10. Notice and Approval Before Exercise of Certain Reserved Rights. Reserved Rights which expressly require the approval by Holder may not be exercised without first satisfying the following conditions and requirements:

3.10.1. Owner shall notify Holder in writing before exercising any of such Reserved Rights.

3.10.2. 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.

3.10.3. Notwithstanding anything in this Conservation Easement to the contrary, if Owner undertakes to exercise a Reserved Right or other action, without prior approval of Holder, where such approval is expressly required under this Conservation Easement, then (a) such exercise of the Reserved Right by Owner may be treated by Holder, in Holder's sole discretion, as an action that was prohibited by this Conservation Easement as fully as if the Reserved Right or other right was not contained in, or reserved to Owner under, this Conservation Easement and (b) Holder may decline to accept or consider any request for approval of an action that has already been commenced. Owner may, but shall not be obligated to, accept and consider a request for approval after a Reserved Right has been commenced or exercised by Owner. Should Holder elect, in its discretion, to decline to assert this prohibition and to waive a violation of the Conservation Easement arising solely from Owner's failure to seek and obtain Holder's approval before exercising a Reserved Rights or other right where such approval is required, Holder shall not be thereby obligated to do so in any future circumstance or event and Holder's waiver shall not be construed to require any waiver in a subsequent instance.

3.11. Procedure for Obtaining Approval. Holder's prior written approval of the exercise of Reserved Rights shall, where approval is required in this Article, be obtained, conditionally obtained or declined according to the procedure provided in this Section. At least sixty (60) 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 forty five (45) 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:

3.11.1. 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.

3.11.2. 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.

3.11.3. 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.

3.12. 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.

3.13. 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.

3.14. Conditions Upon 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.

3.15. 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.

3.16. 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 heirs, 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. Failure to Enforce: Procedure. If at any time Holder or any successor or assignee is unable to enforce this Conservation Easement in full or persistently fails to do so, or if Holder or any successor or assignee 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 cy pres proceeding in 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. 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. 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.

5.5. No Third Party Rights of Enforcement. This Conservation Easement may only be enforced by the parties hereto, and their respective heirs and assigns, and no third party beneficiary rights, including but not limited to third party rights of enforcement, are created hereby.

5.6. Reimbursement of Expenses of Enforcement. In the event that Holder acts, after notice to Owner, to enforce this Conservation Easement or any obligation hereunder, 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.

5.7. 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 Pennsylvania. 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.

5.8. 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.

5.9. 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.