

## Sample Conservation Easement with Equestrian Language

This document provides sample language from an actual conservation easement recorded in the state of Illinois on an equestrian property. This document is provided to show what an equestrian friendly conservation easement is and what types of equestrian/equine language can and should be negotiated into the final agreement. The grantee in this case is the Jo Daviess Conservation Foundation as the property owner (grantor) has transferred the rights to develop the property to the Conservation Foundation. Below you will find legal commentary and then relevant sections of the actual conservation easement. Used with permission of the land owner. Land owner's identity information and property location were removed to protect the privacy of the land owner.

### JO DAVIESS AGRICULTURAL CONSERVATION EASEMENT

**LEGAL COMMENTARY:** No Right to engage in **equestrian** activities is conveyed to the Grantee. Enforcement of the terms of the Easement is vested in the Grantee and any successors to Grantee. Significant, detailed language affording protection to Grantor, its lessees, licensees, and invitees in the exercise of rights to engage in intended equestrian uses is set forth in the Agreement.

To wit: At Paragraph 19, "Grantor as trustee reserves for the benefit of the Trust as aforesaid...all rights accruing from the ownership of the Property, including the right to engage in ...all uses of the Property that are not expressly prohibited herein and are not inconsistent with the conservation purpose of this Easement without limiting the generality of the foregoing, the following rights are expressly reserved;

- a) **Agricultural use.** Grantor reserves the right to engage in any and all agricultural uses of the Property...For the purpose of this Easement, 'agricultural use' shall be defined as the breeding, raising, pasturing, and grazing of livestock of every nature and description including but not limited to ... **horses**" ...[Emphasis added]
- b) **Equestrian** [Emphasis added] Uses. "Grantor reserves the right to engage in equestrian activities (including but not limited to **breeding, raising, training, pasturing, grazing, boarding and sale of horses, horseback riding** instruction, **equestrian husbandry** and other commercial **equestrian** activities [Emphasis added] ) and **equestrian** [Emphasis added] sports (including but not limited to **cross-country, dressage, and hunting with hounds** [Emphasis added] )."
- c) **Rural Enterprises.** "Grantor reserves the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, **equestrian** [Emphasis added] **facility**..."

- d) **Fences**...[Emphasis added] “Existing fences may be repaired, replaced, removed, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock provided that fences may not obscure or prevent the visibility of the Property from any public roadway.”
  
- e) **Recreational use**... “The Property may be used for low impact, non-commercial uses that are consistent with the purposes of the Easement such as **hunting**, fishing, hiking, nature observation, skiing, temporary camping, and **horseback riding** that adhere to all state and local laws and regulations and that require no surface alteration or other development of the land. Minor surfaces alternations for **equestrian uses**, such as **jumps**, are allowed with Grantee approval. Golf courses, driving ranges, soccer and other ball fields, commercial camping, and commercial recreational uses involving motorized vehicles (except as necessary to carry out agricultural activities) are prohibited on the property.” (End Legal Commentary)

### **JO DAVIESS DEED AGRICULTURAL CONSERVATION EASEMENT**

This Deed of Agricultural Conservation Easement is made this 8<sup>th</sup> day of July, 2005, by \_\_\_\_\_, **as Trustee of the \_\_\_\_\_ Declaration of Trust dated March 10, 1993, and her successors in trust**, having an address at \_\_\_\_\_ Road, Town, Illinois 61085 (Grantor), in favor of the **Jo Daviess Conservation Foundation, a nonprofit Illinois corporation** having an address at 126 North Main Street, P.O. Box 216, Elizabeth, Illinois 61028 (Grantee).

#### **Preamble**

1. Grantor is the sole owner in fee simple of certain real property in Jo Daviess County, Illinois, more particularly described in Exhibit A attached hereto and incorporated by this reference (the “Property”); and
2. The Property possesses agricultural, natural, scenic, and open space values (collectively, “Conservation Values”) of great importance to the Grantor, the residents of Jo Daviess County, and the citizens of Illinois; and
3. In particular the Property consists of:
  - a) Productive agricultural land and soils; and
  - b) Significant wildlife habitat and primarily undeveloped scenic open space
  - c) that are supported by the agricultural processes which this Easement will protect and sustain in perpetuity; and
4. Jo Daviess County adopted a Comprehensive Plan on September 14, 1999,

designed to protect its agricultural, natural, and scenic resources. It is referred to herein as the "Plan." This Plan makes the qualities of the Property significant in the following ways:

- a) The Plan states: "the Land Use Plan (Part XIII) delineates three types of agricultural areas. Areas with a high concentration of Prime Farmland have been designated as 'Agricultural Preservation Area 1,' concentrated areas of Important Farmland have been designated 'Agricultural Preservation Area 2,' and the remainder of the county is simply designated as 'Agricultural.'..... It is desired to preserve the most productive prime farmland to the fullest extent possible, while preserving large areas of important and other farmland as much as possible without being unduly restrictive."
  1. The Property is contiguous to the county's Agricultural Preservation Area 1;
  2. A portion of the Property is located in Agricultural Area 1;
3. The majority of the Property is located in Agricultural Preservation Area 2;
  - b) The Plan states: "The Land use Plan (Section XIII) identifies certain areas as environmental corridors. These areas, generally following the streambeds, are sensitive and should be preserved. (Goal VII)."
    1. The Property is located within a Primary Environmental Corridor;
  - c) The Plan states: "Any development of the county's elevated ridges, knobs, and mounds must be treated with great sensitivity...Because of these characteristics, elevated areas should be a high priority for conservation efforts in the county."
    1. The Property resides within an Elevated Area with the highest point of the Property being 1010 feet above sea level:
  - d) The Plan states: "Scenic vistas and scenic assets shall be protected and preserved. All development decisions should be made to protect and encourage.....scenic vistas from highways and roads and the pastoral/agricultural look of the county."
    1. The Property fronts for 0.69 miles on XYZ Road and provides a highly scenic view to the public traveling along that road.
5. The Property possesses significant wildlife habitat that contains:
  - a) 0.2 miles of Rush Creek that flow through the Property of which the surrounding 6 acres are in the 100 year floodplain,
  - b) 3.75 acres of oak/hickory savanna including limestone outcroppings that are contiguous to the 100 year floodplain, and 27.3 acres of upland

oak/hickory savanna; and

- c) Habitat for numerous migratory grassland birds that is maintained by current livestock grazing practices; and
6. The current use of the Property for agricultural production and its related improvements are consistent with the conservation purposes. The agricultural, open space, scenic, and natural habitat resources of the Property are collectively referred to herein as the "Conservation Values" of the Property; and
7. The specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated July 8, 2005, on file at the offices of the Grantee and incorporated by this reference ("Baseline Documentation"), and are also included in Exhibit B which is incorporated herein by reference and consists of a report, maps, and photographs that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective informative baseline for monitoring compliance with the terms of this grant; and
8. The prominent improved features of the Property, including any ponds, structures, roads, paths, and boundaries are further described in Exhibit B; and
9. The portions of the Property within which all existing structures are located and future structures may be constructed ("Building Envelopes") are delineated in Exhibit B; and
10. Grantor intends that the Conservation Values of the Property be preserved and maintained by continuation of current land use patterns that do not significantly impair or interfere with those Conservation Values; and
11. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and
12. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified Sections 501(c)(3) and 170(h) of the Internal Revenue Code (the "Code"), whose primary purpose is to protect the natural heritage, spectacular scenery, and agricultural character of Jo Daviess County and the surrounding area; and
13. Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this and future generations; and
14. The protection and preservation of this parcel of land will be an excellent example for the area and will support viable agricultural and conservation practices within the community.

#### **Grant and Acceptance**

15. In consideration of the above and mutual covenants, terms, conditions, and restrictions contained herein and pursuant to the laws of the State of Illinois and in particular 765 ILCS 120/1-120/6 (the "Statute"), Grantor hereby voluntarily

grants and conveys to Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Easement") and Grantee accepts the Conservation Easement on the terms set forth herein.

### **Covenants**

16. **Purpose.** It is the purpose of this Easement to preserve in perpetuity the open space, natural, scenic, and agricultural values of the Property and to prevent in perpetuity any uses of the Property that significantly impair or interfere with those values. This purpose, as further defined by the provisions of this Easement, is generally referred to collectively herein as "the conservation purpose of this Easement" or the "Purpose." Grantor intends that this Easement will confine the use of the Property to the following, which are consistent with the purpose of this Easement: a) residential and other improvements associated therewith within the Building Envelopes; b) agricultural viability and productivity to the extent consistent with the conservation purpose and express provisions of this Easement; and c) conservation and management of natural resources.
17. **Rights of Grantee.** To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:
  - a) To preserve and protect the Conservation Values of the Property;
  - b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably enter the Property or interfere with Grantor's use and quiet enjoyment of the Property in accordance with the terms of this Easement; and
  - c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement by enforcement of the terms hereof, including but not limited to requiring the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 22.
18. **Prohibited Uses.** All activities conducted on the Property shall be consistent with the conservation purpose of this Easement. Without limiting the generality of the foregoing, the following uses are expressly prohibited, unless expressly permitted in subparagraphs (a) through (n) of Paragraph 19 and except for use consistent with the Right of Way conveyance to Standard Oil Company recorded November 29, 1947 in Book M of Miscellaneous records on page 263:
  - e) Any alteration of the surface topography and hydrology of the land, or significant soil degradation, erosion, or siltation or pollution of any surface or subsurface waters (including but not limited to grading, excavation, removal of soil, sand, gravel, rock, or vegetation except as may be necessarily required in the course of any activity expressly permitted hereunder.
19. **Reserved Rights.** Grantor as trustee reserves for the benefit of the Trust

aforesaid, the successor trustees, beneficial owners, their personal representatives, heirs, successors, and assigns, all rights accruing from the ownership of the Property that are not expressly prohibited herein and are not inconsistent with the conservation purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a) **Agricultural Use.** Grantor reserves the right to engage in any and all agricultural uses of the Property in accordance with sound generally accepted agricultural consistent with Paragraph 16 above. For the purpose of this Easement, “agricultural use” shall be defined as the breeding, raising, pasturing, and grazing of livestock of every nature and description including but not limited to cattle, sheep, goats, **horses**, [Emphasis added] fish, poultry, or bees; the right to establish, maintain, plant, raise, and harvest agricultural, horticultural, and forestry crops of every nature and description; and the primary processing, storage, and sale, including direct retail sale to the public of crops and produce harvested and produced on the Property. All agricultural uses shall be consistent with the Purpose of this Easement and conducted in a sustainable manner consistent with best management practices recommended by the U.S. Department of Agriculture Farm Service Agency, Natural Resource Conservation Service, Soil & Water Conservation District, Illinois Extension Office or other qualified agricultural consultant, that address soil and water conservation, pest management, nutrient management and habitat protection
- b) **Equestrian Uses.** Grantor reserves the right to engage in **equestrian** [Emphasis added] activities (including but not limited to breeding, raising, training, pasturing, grazing, boarding and sale of **horses**, **horseback** [Emphasis added] riding instruction, **equestrian** [Emphasis added] husbandry and other commercial **equestrian** [Emphasis added] activities) and **equestrian** [Emphasis added] sports (including but not limited to cross-country, dressage, and hunting with hounds).
- c) **Rural Enterprises.** Grantor reserves the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, farmer’s market, farm machinery repair, sawmills, firewood distribution, bed and breakfast, camp, agritourism, animal rescue, **equestrian** [Emphasis added] facility, boarding kennel, or education programs so long as such uses are confined to locations within the Building Envelopes as identified in Exhibit B. However, trailer parks, refuse storage, golf courses, vehicle dealership, motorized recreation vehicle facilities, and all other activities which are inconsistent with protection of the Conservation Values of the Easement are expressly prohibited. Conducting customary rural enterprises on any other part of the Property is not permitted without Grantee’s prior approval for each instance. Grantee shall not give such permission unless Grantee determines that the proposed use will not substantially diminish or impair the Conservation Values of the Property.
- l) **Fences...** [Emphasis added] “Existing fences may be repaired, replaced, removed, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of

livestock provided that fences may not obscure or prevent the visibility of the Property from any public roadway.

- n) **Recreational use...** “The Property may be used for low impact, non-commercial uses, that are consistent with the purposes of the Easement such as hunting, fishing, hiking, nature observation, skiing, temporary camping, and **horseback** [Emphasis added] riding that adhere to all state and local laws and regulations and that require no surface alteration or other development of the land. Minor surfaces alternations for equestrian uses, such as jumps, are allowed with Grantee approval. Golf courses, driving ranges, soccer and other ball fields, commercial camping, and commercial recreational uses involving motorized vehicles (except as necessary to carry out agricultural activities) are prohibited on the property.”

21. **Grantee’s Approval.** The purpose of requiring Grantee’s approval for activities described in Paragraphs 19 and 20 is to allow Grantee to ensure that the activities in question are consistent with the Purpose and Conservation Values of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing and shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose and Conservation Values of this Easement. Grantee shall respond to such request within sixty (60) days after receipt of Grantor’s request. Grantor may only undertake such action if Grantee fails to respond within such 60 day period or if Grantee approves the proposed action.

22. **Grantee’s Remedies.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within 60 days of receipt of notice thereof from Grantee, or under circumstances where the violation cannot be cured within a 60 day period, fails to begin curing such violation within the 60 day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor’s liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to 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

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. 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 equity.

23. **Costs of Enforcement.** 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 of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.
24. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
25. **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.
26. **Acts Beyond Grantor's Control.** Nothing contained in the Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
32. **Extinguishment.** This Easement may only be terminated or extinguished if circumstances arise in the future such as render the purpose of this Easement impossible or impractical to accomplish, and under such circumstances, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined unless otherwise provided by Illinois law at the time, in accordance with Paragraph 26. Grantee shall use all such proceeds in a manner consistent with the conservation purpose of this Easement provided, however, that such use shall not be limited to the Property. Amendments, modifications, or boundary line adjustments approved in writing by Grantor and Grantee and not resulting in any loss of land protected by this Easement shall not be deemed to constitute extinguishments.
33. **Proceeds.** This Easement constitutes a real property interest immediately vested in the Grantee, which, for the purpose of Paragraph 25, the parties stipulate to



have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code, as amended. For the purposes of this paragraph, the ratio of the value of this Easement to the value of the Property unencumbered by the Easement shall remain constant.

35. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold Conservation Easements under Illinois statute (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes of this Easement continue to be carried out.
40. **Recordation.** Grantee shall record this instrument in timely fashion in the official records of Jo Daviess County, Illinois and may re-record it at any time as may be required to preserve its rights in this Easement but the parties agree that under current law no such re-recording is necessary.

**PREPARED BY: Mike Wiedel**  
**8113 S.Krug Road**  
**Elizabeth, IL 61028**

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