

CONSERVATION EASEMENT

THIS INDENTURE, made this 31 day of December, 1990,

WITNESSETH:

WHEREAS, Noah Ames Pennewell and Milton Henry Alfred Pennewell, residing on Pennewell Road, Snow Hill, Maryland 21863, hereinafter called the Grantor, are the owners in fee simple of certain real property, hereinafter called the "Protected Property", which has ecological, scientific; educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation, which property is described as follows:

ALL THAT AREA of land lying in the Second Election District, Worcester County, State of Maryland on the Southwesterly side of, but not binding upon Pennewell Road, and located on the Northerly side of and binding upon Nassawango Creek, and described as follows: Beginning at an iron pipe placed at a point located S 58 degrees 35 minutes 56 seconds West a distance of 50.00 feet from an iron pipe found at the most Northerly corner of the lands of Noah A. Pennewell, thence running with the other lands of Noah A. Pennewell the following courses: (1) South 58 degrees 35'56" W, 1,245' more or less to a point on the mean high water line of Nassawango Creek, thence running with the same (2) in a Northwesterly direction 4,275', more or less to a point, thence running with the lands of William C. Dykes (3) North 58 degrees 53'37" E, 1,025', more or less, to an iron pipe placed on the edge of the creek swamp, thence running with the lands of William C. Dykes and the edge of the creek swamp (4) South 21 degrees 53'37" W, 330.00' to an iron pipe placed, thence (5) South 38 degrees 06'23" E, 132.00' to a Marked Holly tree found, thence (6) South 58 degrees 58'57" E, 196.38' to an iron pipe placed, thence (7) S 37 degrees 19'04" E, 213.04' to an iron pipe placed, thence (8) North 62 degrees 33'30" E, 229.58' to an iron pipe placed, thence running by and with the lands of the said William C. Dykes, in part and

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the other lands of Milton H. Pennewell, (9) South 74 degrees 06'34" E, 310.84' to an iron pipe placed, thence running with the other lands of Milton H. Pennewell and the edge of the creek swamp, the following twenty-six courses (10) S 85 degrees 12'10" E, 81.82' to a Marked Holly Tree found, thence (11) S 17 degrees 22'17" E, 132.17' to an iron pipe placed, thence (12) S 07 degrees 04'06" W, 228.05' to an iron pipe placed, thence (13) S 07 degrees 55'56" E, 126.51' to an iron pipe placed, thence (14) S 00 degrees 29'41" W, 125.10' to an iron pipe placed, thence (15) S 53 degrees 15'37" E, 317.41' to an iron pipe placed, thence (16) S 11 degrees 37'43" E, 186.13' to an iron pipe placed, thence (17) S 26 degrees 48'57" W, 115.50' to an iron pipe placed, thence (18) S 49 degrees 49'00" W, 94.55' to an iron pipe placed, thence (19) S 44 degrees 48'27" E, 156.28' to an iron pipe placed, thence (20) S 66 degrees 40'04" E, 156.21' to an iron pipe placed, thence (21) S 80 degrees 05'46" E, 246.35' to an iron pipe placed, thence (22) S 51 degrees 37'20" E, 40.86' to an iron pipe placed, thence (23) S 27 degrees 29'14" E, 111.94' to an iron pipe placed, thence (24) N 78 degrees 50'46" E, 48.00' to an iron pipe placed, thence (25) N 25 degrees 44'14" E, 101.83' to an iron pipe placed, thence (26) N 02 degrees 17'39" W, 84.66' to an iron pipe placed, thence (27) N 83 degrees 42'32" E, 57.03' to an iron pipe placed, thence (28) N 64 degrees 59'56" E, 159.58' to an iron pipe placed, thence (29) N 72 degrees 28'13" E, 139.66' to an iron pipe placed, thence (30) S 82 degrees 56'36" E, 164.49' to an iron pipe placed, thence (31) S 65 degrees 45'50" E, 284.01' to an iron pipe placed, thence (32) S 64 degrees 16'48" E, 62.27' to an iron pipe placed, thence (33) N 82 degrees 05'04" E, 78.45' to an iron pipe placed, thence (34) S 70 degrees 18'36" E, 109.49' to an iron pipe placed, thence (35) S 32 degrees 21'27" E, 72.27' to the point and place of beginning; containing 67.26 acres of land, more or less, as surveyed by Philip Parker and Associates, Inc., July 19, 1988, a Professional Land Surveyor of the State of Maryland, No. 10713 and BEING A PART OF

all that real estate which was conveyed unto Noah Ames Pennewell for and during the term of his natural life and no longer, and at his death unto his son, Milton Henry Alfred Pennewell, by Deed from Noah Ames Pennewell, Personal Representative of the Estate of Milton H. Pennewell, deceased, dated July 27, 1989, and recorded among the Land Records of Worcester County, Maryland, in Liber R.H.O. No. 1576, folio 146, et seq.

WHEREAS, THE NATURE CONSERVANCY, hereinafter called the Grantee, is a non-profit corporation incorporated under the laws of the District of Columbia whose purpose is to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Protected Property is a natural area which provides significant habitat for fish, wildlife and plants and has substantial value as a natural, scenic and educational resource; and

WHEREAS, preservation of the Protected Property is for the scenic enjoyment of the general public and will yield a significant public benefit; and

WHEREAS, the Grantor and Grantee recognize the natural, scenic, aesthetic, and special character of the Protected Property and have the common purpose of conserving the natural values of the Protected Property by the conveyance to the Grantee of a Conservation Easement on, over and across the Protected Property which shall conserve the natural values of the Protected Property, conserve and protect the special animal and plant populations on, and prevent the use or development of that property for any purpose or in any manner which would conflict with the maintenance of the Protected Property in its current natural, scenic and open condition for this generation and future generations; and

WHEREAS, Grantor and Grantee have the common purpose of conserving and protecting in perpetuity the Protected Property as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem", as that phrase is used in P.L. 96-541, 26

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USC 170 (h) (4) (A) (ii), as amended and in regulations promulgated thereunder; and

WHEREAS, "ecological, scientific, educational and aesthetic value", "natural, scenic and open condition" and "natural values" as used herein shall, without limiting the generality of the terms, mean the condition of the Protected Property at the time of this grant evidenced by reports, photographs, maps and scientific documentation possessed (at present or in the future) by the Grantee and which the Grantee shall make available on any reasonable request to the Grantor, his successors and assigns, and which more particularly may include, but are not limited to, the following described items:

1. the appropriate survey maps from the United States Geological Survey, showing the property lines and other contiguous or nearby protected areas;
2. a map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);
3. an aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made;
4. on-site photographs taken at appropriate locations on the property; and
5. an easement documentation report including, among other things, an owner acknowledgement of condition, background information, legal information, ecological features information, and land-use and man-made features information.

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, does hereby give, grant, bargain sell and convey unto the Grantee, its successors and assigns forever a Conservation Easement in perpetuity over the Protected Property consisting of the following:

1. The right of visual access to and view of the Protected Property in its natural, scenic and open condition.
2. The right of the Grantee, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity

the covenants hereinafter set forth, including but not limited to the right to require the restoration of the Protected Property to the condition at the time of this grant. The Grantee, or its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, floods, storm or the unauthorized wrongful acts of third persons. In the event that the Grantee becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, the Grantee shall give notice to the Grantor, his successors or assigns, at his last known post office address, or such event or circumstance of non-compliance via certified mail, return receipt requested, and request corrective action sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition. Failure by the Grantor to cause discontinuance, abatement or such other corrective action may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this agreement; to require the restoration of the property to its prior condition; to enjoin such non-compliance by ex parte temporary or permanent injunction in a court competent jurisdiction to enforce the terms of this agreement; and/or to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by the Grantee, in its discretion, to corrective action on the Protected Property, if necessary. If such court determines that the Grantor has failed to comply with this agreement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration or court costs and reasonable attorneys fee , in

addition to any other payments ordered by such court. Grantor hereby waives any defense of laches with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Easement.

3. The right to enter the Protected Property at all reasonable times, by obtaining upland access to the protected property by proceeding southwesterly from Pennewell Road down the access road to N. Ames Pennewell property (Stephen Collins Place), turning northwest at the northwestern corner of the N. Ames Pennewell property which is adjacent to the swamp (an old road still exists there), for the purposes of (a) inspecting the Protected Property to determine if the Grantor, or his successors or assigns, is complying with the covenants and purposes of this grant; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; and (d) observing and studying nature and making scientific and educational observations and studies and taking samples in such manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor, his successors and assigns.

4. The right, but not the obligation, to monitor the condition of the rare plant and animal populations and plant communities on the Protected Property, and to manage them, if necessary, for their continued survival and quality on the Protected Property.

And in furtherance of the foregoing affirmative rights, the Grantor makes the following covenants, on behalf of himself, his successors and assigns, which covenants shall run with and bind the Protected Property in perpetuity:

COVENANTS

Without prior express written consent from the Grantee, on the Protected Property:

1. There shall be no construction or maintenance of buildings, camping accommodations or mobile homes, fences,

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billboards or other advertising material, or other structures, other than those structures which currently exist.

2. There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the land in any manner excepting the maintenance of existing foot trails.

3. There shall be no removal, destruction or cutting of trees or plants (except as is necessary to construct and maintain foot trails), planting of trees or plants, use of fertilizers, spraying with biocides, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat in any manner.

4. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Protected Property or on adjacent property which could cause erosion or siltation on the Protected Property.

5. There shall be no manipulation or alteration of natural water courses, lake shores, marshes or other water bodies, nor shall there be activities conducted on the Protected Property which would be detrimental to water purity, or which could alter natural water level and/or flow.

6. There shall be no operation of snowmobiles, dunebuggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles.

7. There shall be no hunting or trapping except to the extent specifically approved by the Grantee as necessary to keep the animal population within the numbers consistent with the ecological balance of the area.

8. Prior to undertaking any changes in the use of the property the Grantor shall consult with the Grantee regarding the proposed changes to determine the effect of such changes on the natural values being protected on the property. Grantee shall have the right to approve such changes in use, such approval not to be unreasonably withheld.

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary and as expressly limited herein, the Grantor reserves for himself, his heirs, successors and assigns the following reserved rights, which may be exercised after providing written notice to the Grantee; 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 or the conservation interest associated with the Protected Property:

RESERVED RIGHTS

1. The right to use the property for all purposes not inconsistent with this grant.

2. The right to sell, give or otherwise convey the Protected Property or any portion or portions of the Protected Property, provided such conveyance is subject to the terms of this easement.

3. The right to maintain views from established overlooks or to maintain existing foot trails on the Protected Property.

Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement.

The Grantor, for himself and on behalf of his successors and assigns, agrees to pay any real estate taxes or other assessments levied by competent authorities on the Protected Property and to relieve the Grantee from any duty or responsibility to maintain the Protected Property. If the Grantor or his successors and assigns, becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Grantee, at its option, shall have the right to purchase and acquire the Grantor's, or his successor's or assign's, interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take other actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement.

The Grantor agrees with the terms, conditions, restrictions and purposes of this grant will be inserted by him in any subsequent deed or other legal instrument by which the Grantor divests himself of either the fee simple title to or his possessory interest in the Protected Property.

Any notices required in this Conservation Easement shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing:
Grantor: Milton Henry Alfred Pennewell, Route 2, Pennewell Road, Snow Hill, Maryland 21863; Grantee: The Nature Conservancy, 1800 North Kent Street, Arlington, Virginia 22209.

If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

The covenant agreed to and the terms, conditions, restrictions and purposes imposed with this grant shall not only be binding upon the Grantor but also his lessees, agents, personal representatives, successors and assigns, and all other successors to him in interest and shall continue as a servitude running in perpetuity with the Protected Property.

And the Grantor does further covenant and represent that the Grantor is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement, and that the Protected Property is free and clear of any and all encumbrances, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

The parties hereto recognize and agree that the benefits of this easement are in gross and assignable, and the Grantee hereby covenants and agrees, that in the event it transfers or assigns the easement it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)A of the Internal Revenue Code, and further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

For purposes of compliance with Treasury Regulations Section 1.170A-14(g)(6)(ii), the Grantor hereby agrees that at the time of the conveyance of this conservation easement to the Grantee, the donation of this conservation easement by the Grantor gives rise to a real property right, immediately vested in the Grantee, with a fair market value of said conservation easement as of the date of contribution that is at least equal to the proportionate value that this conservation easement at the time of the contribution bears to the fair market value of the property as a whole at that time.

That proportionate value of the Grantee's property rights shall remain constant. When a change in conditions which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the Conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem", as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(ii), as amended and in regulations promulgated thereunder.

Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests as specified above; all expenses incurred by

the Grantor and the Grantee in this action shall be paid out of the recovered proceeds.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed and sealed this document the day and year first above written.

WITNESS:

Lois Marie Fry
As to N.A.P.

Noah Ames Pennewell (SEAL)
Noah Ames Pennewell

Lois Marie Fry
As to M.H.A.P.

Milton Henry Alfred Pennewell (SEAL)
Milton Henry Alfred Pennewell

STATE OF MARYLAND, COUNTY OF WORCESTER, TO WIT:

I HEREBY CERTIFY on this 31st day of December, 1990, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Noah Ames Pennewell and Milton Henry Alfred Pennewell known to me, who being by me duly sworn, did depose and say that they are the persons named in the foregoing instrument, and acknowledged said instrument to be their free act and deed.

IN WITNESS WHEREOF I hereunto set my hand and affix my Notary Seal.

Lois Marie Fry
Notary Public

My commission expires:
October 1, 1992

19 Jan 2 The foregoing Easement filed
for record and is accordingly recorded among the land records of
Worcester County, Md. in Liber, R.H.O. No. 1702 folios 466 thru 476
Richard H. Cutton Clerk