

PREPARED BY: LANCASTER FARMLAND TRUST  
RETURN TO: LANCASTER FARMLAND TRUST  
125 LANCASTER AVENUE  
STRASBURG, PA 17579  
TELEPHONE: (717) 687-8484

UPI#: 600-J9999-9-9999

## DECLARATION OF RESTRICTION OF DEVELOPMENT

This grant of easement in the nature of a restriction on the use of land for the purpose of preserving productive agricultural land is made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and among \_\_\_\_\_ and \_\_\_\_\_, of \_\_\_\_\_, Lancaster, Pennsylvania \_\_\_\_\_, hereinafter called the "Grantors"; TOWNSHIP OF WARWICK, Lancaster County, Pennsylvania, a Pennsylvania municipal corporation with its municipal offices at 315 Clay Road, Lititz, Pennsylvania 17543, hereinafter called the "Township"; and LANCASTER FARMLAND TRUST, a qualified non-profit corporation created and organized under the laws of the Commonwealth of Pennsylvania and being tax exempt under Section 501(c)(3) of the Internal Revenue Code, with an address at 125 Lancaster Avenue, Strasburg, Pennsylvania 17579, hereinafter called "LFT".

WHEREAS, a tract of land located on the \_\_\_\_\_ side of \_\_\_\_\_ Road in the Township of Warwick, Lancaster County, Pennsylvania, containing approximately \_\_\_\_\_ acres (the "Property"), was conveyed to the Grantors, by deed recorded \_\_\_\_\_, 2007 in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania, at Document ID \_\_\_\_\_ ("Property Deed"). The Property is more fully described in Exhibit "A" which is attached hereto and made a part hereof.

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania, by Act 170 of 1988, authorized municipalities as a part of zoning ordinances to establish a program of transferable development rights and to permit landowners to sell and purchase such development rights. The Township of Warwick has, through the enactment of the Warwick Township Zoning Ordinance, codified as Chapter 27 of the Code of Ordinances (the "Zoning Ordinance"), established a program of transferable development rights ("TDRs") in the Township in accordance with the authorization and requirements of the Pennsylvania Municipalities Planning Code. Section 1502(a) of the Second Class Township Code authorizes the Board of Supervisors to "purchase . . . any real and personal property it judges to be to the best interest of the township", and Section 619.1(a) of the Pennsylvania Municipalities Planning Code provides that TDRs are an interest in real estate. Section 321 of the Zoning Ordinance authorizes the Township to acquire TDRs.

WHEREAS, as part of its regulations regarding transferable developments rights established by the Zoning Ordinance, landowners who donate transferable development rights must totally and permanently restrict future development of the tract from which the rights are

donated or transferred. Grantors desire to convey all of the \_\_\_\_\_ ( ) transferable development rights associated with the Property, and this restriction of development rights is granted in compliance with the Township's regulations and to insure the preservation of the Property for agricultural use. Grantors, by a Deed of Transferable Development Rights dated as of even date herewith, have transferred \_\_\_\_\_ ( ) transferable development rights associated with the Property to LFT.

NOW, THEREFORE, in consideration of the foregoing and intending to be legally bound, the undersigned Grantors grant and convey to LFT a conservation easement (the "Easement") on the Property, the purpose of which is to assure that the Property will be retained forever in its agricultural and open space condition and to prevent any future development of the Property that will impair the agricultural and open space values of the Property. To carry out this purpose the following restrictions are hereby recorded against the Property.

#### ARTICLE I. COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS GOVERNING USE OF THE PROPERTY

With the preceding Background paragraphs incorporated by reference and intending to be legally bound, Grantors declare, make known, and covenant for themselves and their heirs, legal representatives, and assigns, that the Property shall be restricted to agricultural and directly associated uses as hereafter defined and to those uses specifically authorized herein. However, more restrictive applicable State and local laws, including but not limited to the provisions of the Zoning Ordinance and the Warwick Township Subdivision and Land Development Ordinance as the same may exist from time to time, shall prevail in the determination of permitted uses and development of the land subject to these restrictions.

1. Agricultural uses of land are defined for the purpose of this instrument as the use of land for the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; other livestock and fowl and livestock and fowl products, including the breeding and grazing of any or all such animals; bees and apiary products; fruits and vegetables of all kinds; nursery, floral and greenhouse products; silviculture; aquaculture; and the primary processing and storage of the agricultural production of the Property and other similar and compatible uses. Agricultural uses of land shall not include sod or turf removal.

2. Directly associated uses are defined as customary, supportive and agriculturally compatible uses of farm properties in Lancaster County, Pennsylvania, and are limited to the following:

(1) The direct sale to the public of agricultural products produced principally on the Property.

(2) Any and all structures contributing to the production, primary

processing, direct marketing and storage of agricultural products produced principally on the Property.

(3) Structures associated with the production of energy for use principally on the Property including wind, solar, hydroelectric, methane, wood, alcohol fuel and fossil fuel systems and structures and facilities for the storage and treatment of animal waste produced on the Property.

(4) The provision of services or production and sale, by persons in residence, of agricultural goods, services, supplies and repairs and/or the conduct of on-farm businesses and traditional trades and the production and sale of home occupation goods, arts and crafts, so long as: (1) these uses remain incidental to the agricultural and open space character of the Property and are limited to occupying existing residential and/or principally agricultural structures.

(5) Structures and facilities associated with irrigation, farm pond impoundment and soil and water conservation.

(6) The accommodation of tourists and visitors within existing residential structures on the Property so long as this use is incidental to the agricultural and open space character of the Property.

(7) Other similar uses approved upon written request to the Township and to LFT.

(8) All structures permitted hereunder are subject to the impervious surface restrictions of Article I, Paragraph 6.

3. Grantors acknowledge that no dwelling presently exists on the Property.

(1) One (1) single-family detached dwelling to be utilized by members of the owner's or operator's family ("Dwelling") may be constructed on the Property if:

(a) The residential structure and its curtilage occupy no more than two acres of the Property;

(b) The location of the residential structure and its driveway will not significantly harm the economic viability of the Property for agricultural production; and

(c) Prior to the undertaking of construction of the Dwelling, Grantors shall provide written notice to the Grantee as to the location of the Dwelling on the Property.

(2) Grantors shall be permitted to maintain, repair and expand the Dwelling. In the event the Dwelling is destroyed or substantially damaged, GRANTORS may construct a replacement Dwelling, as improved, at the location of the Dwelling, or in an alternative location with written approval by the Township and by LFT. The construction, reconstruction or expansion of the Dwelling is subject to the impervious surface restrictions imposed by Article I, Paragraph 6.

(3) No other residential structures are permitted on the Property.

4. Any activity on or use of the Property inconsistent with the purpose of this Declaration is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(1) Institutional, industrial and commercial uses other than those uses described in Article I, Paragraphs 1 and 2.

(2) The commercial extraction of minerals by surface mining and the extraction and removal from the Property of topsoil. The extraction of subsurface or deep-mined minerals, including natural gas and oil, and the noncommercial extraction of minerals, including limestone, shale and other minerals for on-farm use, shall be permitted, but may occupy, at any time, no more than one percent (1%) of the total surface acreage.

(3) Use of the Property for the dumping, storage, processing or landfilling of nonagricultural solid or hazardous wastes generated off-site, excepting the use of organic nonagricultural solid waste generated off-site for fertilizer and tilth subject to the prior written approval of the Township and LFT.

(4) Commercial and/or nonpassive recreational development and use involving structures or extensive commitment of land resources (i.e. golf courses, racetracks, and similar uses). Passive recreational uses shall be defined as those recreational pursuits that do not leave evidence that the activity has taken place and/or require trails or allow trails to be created on the Property. Equine breeding and training facilities shall not be interpreted to be commercial recreational uses for the purposes of this paragraph.

(5) New dwellings and new residential uses except as permitted by Article I, Paragraph 3 above.

5. It is the intention of the Grantors to promote agricultural production on the Property. No subdivision of the Property shall be permitted. Notwithstanding the foregoing, this restriction shall not apply to lands transferred in connection with eminent domain proceedings or by deed in lieu of condemnation.

6. Impervious surface coverage shall be limited to 100,000 square feet. For purposes of this Paragraph 6, impervious surfaces shall be defined as any material which covers land which prohibits the percolation of stormwater directly into the soil, including, without limitation, buildings, structures without permanent foundations and the area covered by the roofs of nonpermanent structures.

7. Signs, billboards and outdoor advertising may not be displayed on the Property; provided, however, that signs, the combined area of which may not exceed 25 square feet, may be displayed to state only the name of the Property and the name and address of the occupant, to advertise an on-site activity permitted herein, and to advertise the Property for sale or rent.

8. Agricultural lands shall be managed in accordance with sound soil and water conservation practices in a manner which will not destroy or substantially and irretrievably diminish the productive capability of the Property. However, there shall be no limitations or prohibitions on any agricultural production or farming methods.

9. Grantors, the Township and LFT acknowledge that there are existing Pennsylvania laws and regulations governing agricultural operations, including, without limitation, accelerated soil erosion, nutrient management, the application of restricted-use pesticides and the application of treated municipal sewage sludge. These laws include, without limitation, the Pennsylvania Clean Streams Law (35 P.S. §§691.1 et seq.), the Nutrient Management Act (3 P.S. §§1707 et seq.), the Solid Waste Management Act of 1980, as amended (35 P.S. §6018.104(18)) and the regulations promulgated thereunder in Title 25 of the Pennsylvania Code, and the Pennsylvania Pesticide Control Act (3 P.S. §§111.21 et seq.). Grantors, their heirs, successors and assigns agree to conduct all agricultural operations on the Property in compliance with the above-mentioned laws, as amended and superceded, and the regulations promulgated thereunder, and such similar or related laws, statutes, ordinances and regulations which may be enacted from time to time.

10. The parties recognize that this Declaration cannot address every circumstance that may arise in the future, and the parties agree that the purpose of the Easement is to preserve the Property predominantly in its present condition, and to protect or enhance the Property's agricultural and open space values. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in this Article I and which is inconsistent with the purposes of the Easement or which materially threatens the purposes of the Easement is prohibited.

## ARTICLE II. ENFORCEMENT OF RESTRICTIONS

1. If the Township or LFT determines that a violation of the terms of this Declaration has occurred or is threatened to occur, such party shall give notice to the

Grantors. The written notice shall specify the violation or threatened violation and demand action necessary to cure the violation, including but not limited to restoration of the Property injured to its prior condition in accordance with a plan approved by the Township and LFT, which approval shall not be unreasonably withheld.

2. The Township and LFT, their successors and assigns, shall have the right to enforce these restrictions by injunction and other appropriate proceedings in equity and at law. Grantors specifically acknowledge that the Township and LFT, their successors and assigns, shall have the right to require Grantors, their heirs, legal representatives and assigns, to restore the Property to its condition existing before the commission of any violation of this Declaration.

3. The Township shall have the right to refuse to grant any permit or approval for a use or structure which would violate the provisions of this Declaration.

4. Nothing contained in this Declaration shall be construed to entitle the Township or LFT to bring any action against Grantors, their heirs, legal representatives, and assigns, for any injury to or change in the condition of the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and acts of trespassers that Grantors could not have reasonably anticipated or prevented, 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. In the event the terms of this Declaration are violated by acts of trespassers that Grantors could not have reasonably anticipated or prevented, Grantors agree that the Township and/or LFT shall have the right to pursue enforcement actions against the responsible parties.

5. Any cost, except monitoring, notices and inspections, incurred by the Township and/or LFT in enforcing the terms of this Declaration against Grantors, including, without limitation, costs of suit and attorneys' fees, and any cost of restoration necessitated by Grantors' violation of the terms of this Declaration, shall be borne by Grantors.

6. This Declaration shall, upon recordation, constitute an acceptance by the Township and LFT of their right to enforce this Easement.

7. Forbearance by the Township or LFT to exercise its rights under this Declaration in the event of any breach of any term of this Declaration by Grantors shall not be deemed or construed to be a waiver by the Township or LFT of such term or of any subsequent breach of the same or any other term of this Declaration or of any of the Township's or LFT's rights under this Declaration. No delay or omission by the Township or LFT in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

### ARTICLE III. GENERAL PROVISIONS

1. No right of public access is provided for, nor will result from, the recordation of these restrictions.

2. Representatives of the Township, its successors or assigns, and/or LFT, its successor or assigns, may enter upon the Property at reasonable times and in a reasonable manner for the purposes of inspection and enforcement of the terms of this Declaration; provided that, except in cases where the Township and LFT determine that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantors.

3. The restrictions contained herein shall apply to the land as an open space and agricultural preservation easement in gross in perpetuity. The covenants, terms, conditions and restrictions of this Declaration shall be binding upon, and inure to the benefit of, the parties hereto and their respective legal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

4. If circumstances arise in the future such as to render the purposes of this Declaration impossible to accomplish, this Declaration can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantors have considered the possibility that the uses prohibited by the terms of this Declaration may become more economically valuable than permitted uses and that neighboring properties may be in the future put to such prohibited uses.

5. Upon written request by Grantors, the Township and/or LFT shall within thirty (30) days execute and deliver to Grantors, or to any party designated by Grantors, any document which certifies, to the best of the Township's and/or LFT's knowledge, Grantors' compliance with Grantors' obligations under this Declaration or which otherwise indicates the status of this Declaration. Such certification shall be limited to the condition of the Property as of the most recent inspection by the Township and/or LFT. If Grantors request a more current certification, the Township and/or LFT shall conduct an inspection within thirty (30) days after receiving Grantors' request for such inspection, at Grantors' expense.

6. If the Declaration is taken, in whole or in part, by the exercise of the power of eminent domain, LFT shall be entitled to compensation in accordance with applicable law. This Declaration constitutes a real property interest immediately vested in LFT which, for the purposes of Article III, Paragraph 6, the Grantors and LFT stipulate to have a fair market value determined by multiplying:

- (1) the fair market value of the Property at the time of sale, exchange or involuntary conversion, unencumbered by the Declaration (minus any increase in value after the date of this grant attributable to improvements) by
- (2) the ratio  $x/y$ , where  $x$  is the value of the Declaration as stated in the

Baseline Documentation and  $y$  is the value of the Property, unencumbered by the Declaration, as stated in the Baseline Documentation.

For the purposes of this Paragraph 6, the ratio in Paragraph 6, (2) shall remain constant. The provisions of this Paragraph 6 are illustrated by the following example. The example is for illustration purposes only.

Example: Assume that the fair market value of the Property, at the time of sale, exchange or involuntary conversion, unencumbered by the Declaration (minus any increase in value after the date of this grant attributable to improvements) is \$500. Furthermore, assume that the value of the Declaration at the time of the grant was \$10 and the value of the Property, unencumbered by the Declaration, at the time of the grant was \$100. Based on these assumptions, the ratio in Paragraph 6, (2) is 10/100. Therefore, the stipulated fair market value of the Declaration is \$50 and the LFT will be entitled to \$50 of the proceeds from the sale or exchange of the Property.

7. Grantors agree to incorporate the terms of this Declaration and the Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to the Township and to LFT of the transfer of any interest at least ten (10) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Declaration and the Easement or limit their enforceability in any way.

8. Grantors shall hold harmless, indemnify and defend the Township, and its elected and appointed officials, officers, employees, and agents, and LFT, its officers, employees, and agents (collectively the "Indemnified Parties"), from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including without limitation reasonable attorneys' fees and costs of defense, arising from or in any way connected with: (a) a violation or alleged violation of any State or Federal environmental statute or regulation including, but not limited to, the Act of October 18, 1988 (P.L. 756, No. 108) known as the Hazardous Sites Cleanup Act, and statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials and (b) 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 Property, unless due to the negligence of an Indemnified Party and only that negligent party shall be deprived of this protection.

9. Nothing in this Declaration shall be construed as giving rise to any right or ability of the Township or LFT to exercise physical or managerial control over day-to-day operations of the Property, or any of Grantors' activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.



10. Grantors shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage and the payment, as and when due, of all real estate taxes.

11. Notwithstanding provisions hereof to the contrary, if any, Grantors shall be solely responsible for complying with all federal, state and local laws and regulations in connection with the conduct of any use of the Property or the erection of any structure permitted hereunder, and Grantors shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.

12. LFT shall record this Declaration in a timely fashion in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania, at the expense of LFT.

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

14. The provisions of this Declaration shall not be deemed to interfere with, abrogate, annul, supersede or cancel any easements, covenants, restrictions or reservations contained in any deeds or other agreements affecting the Property.

15. Grantors are seized of the Property in fee simple title. Grantors have the right to grant and convey this Easement. The Property is free and clear of any and all liens and encumbrances except liens for taxes not yet due and payable and mortgage or deed of trust liens that are not subordinate to this Easement by virtue of any executed form of Joinder of Mortgagee attached hereto and incorporated herein.

16. If circumstances arise under which an amendment to or modification of this Declaration would be appropriate, Grantors, the Township and LFT are free to jointly amend this Declaration; provided that no amendment shall be allowed that will affect the qualification of this Declaration or the status of LFT under any applicable laws or Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purpose of this Declaration and shall not affect its perpetual duration. Any such amendment shall be recorded in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania.

17. This Declaration is transferable, but the Township and LFT agree that they will hold this Declaration exclusively for conservation purposes and that they will not transfer their rights and obligations under this Declaration except to an entity (a)

qualified, at the time of the subsequent transfer, as an eligible donee under then applicable state and federal statutes and regulations to hold and administer this Declaration, and (b) which has the commitment, resources and ability to monitor and enforce this Declaration so that the purposes of this Declaration shall be preserved and continued. The Township and LFT further agree to obtain as part of such a transfer the new entity's written commitment to monitor and enforce this Declaration.

18. It is the intent of the parties to this Declaration that the personal liability of Grantors for compliance with these restrictions, for restoration of the Property and for indemnification shall pass to subsequent title owners upon change in ownership of the Property, and such subsequent owners shall assume all personal liability for compliance with the provisions of this Declaration.

19. This Declaration is constructed with the intention of conforming with the requirements for conservation easements under the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, and as amended thereafter.

TO HAVE AND TO HOLD the easements and rights set forth in this Declaration unto the Township and LFT, their successors and assigns, forever.

IN WITNESS WHEREOF, GRANTORS, THE TOWNSHIP AND LFT have executed this Declaration of Restriction of Development on the day and year first above written.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_ (SEAL)

\_\_\_\_\_

\_\_\_\_\_ (SEAL)

TOWNSHIP OF WARWICK  
Lancaster County, Pennsylvania

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman, Board of Supervisors

[TOWNSHIP SEAL]

LANCASTER FARMLAND TRUST

By: \_\_\_\_\_  
Chairman

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF LANCASTER )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, the subscriber, a notary public in and for the aforesaid state and county, came the above-named \_\_\_\_\_ and \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she/they executed the foregoing Declaration of Restriction of Development for the purposes contained therein.

WITNESS my hand and notarial seal the day and year aforesaid.

\_\_\_\_\_  
Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF LANCASTER )

On this, the \_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the Chairman of the Board of Supervisors of the Township of Warwick, Lancaster County, Pennsylvania, and that as such officer, being authorized to do so, executed the foregoing Declaration of Restriction of Development for the purposes therein contained by signing the name of such Township by himself as such officer.

IN WITNESS WHEREOF, I set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF LANCASTER )

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the Chairman of Lancaster Farmland Trust, a non-profit corporation, and that as such officer, being authorized to do so, executed the foregoing Declaration of Restriction of Development for the purposes therein contained by signing the name of Lancaster Farmland Trust by himself as such officer.

IN WITNESS WHEREOF, I set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: