

0000816

**GRANT OF CONSERVATION  
EASEMENT WITH RESPECT  
TO OUTLOTS 1, 2, 3, 5 AND 6**

Document Number

Legal Description: The recorded plat of Wooded Valley Estates, a subdivision being a redivision of Lot 1 of Certified Survey Map No. 1152, being a part of the SW ¼ and the SE ¼ of the NE ¼ of Section 13, Township 4 North, Range 22 East, in the Town of Caledonia, Racine County, Wisconsin and recorded as Document Number 1944600 at the Register of Deeds of Racine County, Wisconsin. See attached Grant of Conservation Easement.

DOC # 1951272

Recorded

JAN. 08, 2004 AT 04:20PM



MARK LADD  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$123.00



Name and Return Address

Elaine Sutton Ekes  
Hostak, Henzl & Bichler, S.C.  
840 Lake Avenue, Third Floor  
Racine, WI 53403

123-

From Tax Key Number: 51-004-04-22-13-050-011

Parcel Identification Number (PIN)

Lot 1	51-004-04-22-13-052-010
Lot 2	51-004-04-22-13-052-020
Lot 3	51-004-04-22-13-052-030
Lot 4	51-004-04-22-13-052-040
Lot 5	51-004-04-22-13-052-050
Lot 6	51-004-04-22-13-052-060
Lot 7	51-004-04-22-13-052-070
Lot 8	51-004-04-22-13-052-080
Lot 9	51-004-04-22-13-052-090
Lot 10	51-004-04-22-13-052-100
Lot 11	51-004-04-22-13-052-110
Lot 12	51-004-04-22-13-052-120
Lot 13	51-004-04-22-13-052-130
Lot 14	51-004-04-22-13-052-140
Lot 15	51-004-04-22-13-052-150
Lot 16	51-004-04-22-13-052-160
Lot 17	51-004-04-22-13-052-170
Lot 18	51-004-04-22-13-052-180
Lot 19	51-004-04-22-13-052-190
Lot 20	51-004-04-22-13-052-200
Lot 21	51-004-04-22-13-052-210
Lot 22	51-004-04-22-13-052-220
Lot 23	51-004-04-22-13-052-230
Lot 24	51-004-04-22-13-052-240
Lot 25	51-004-04-22-13-052-250
Lot 26	51-004-04-22-13-052-260
Lot 27	51-004-04-22-13-052-270
Lot 28	51-004-04-22-13-052-280
Lot 29	51-004-04-22-13-052-290
Lot 30	51-004-04-22-13-052-300
Lot 31	51-004-04-22-13-052-310
Lot 32	51-004-04-22-13-052-320
OUTLOT 1	51-004-04-22-13-052-001
OUTLOT 2	51-004-04-22-13-052-002
OUTLOT 3	51-004-04-22-13-052-003
OUTLOT 5	51-004-04-22-13-052-005
OUTLOT 6	51-004-04-22-13-052-006

**GRANT OF  
CONSERVATION EASEMENT  
WITH RESPECT TO OUTLOTS 1, 2, 3, 5 AND 6**

THIS GRANT OF CONSERVATION EASEMENT ("Conservation Easement") is made this 12<sup>th</sup> day of November, 2003, between and among THE NEWPORT GROUP, LTD. ("Subdivider"), KENOSHARACINE LAND TRUST, INC., a non-profit, charitable corporation ("the Land Trust"), TRI-CITY NATIONAL BANK, a national banking corporation ("Mortgagee"), and the TOWN OF CALEDONIA, a municipal corporation located in Racine County, Wisconsin, its successors and assigns ("the Town") and is made with the approval of the Wisconsin Department of Natural Resources ("DNR");

RECITALS

A. The Subdivider is the owner and developer of Wooded Valley Estates Subdivision located in the Town of Caledonia, Racine County, Wisconsin, (hereinafter referred to as the "Subdivision").

B. The Subdivider is the owner of Outlots 1, 2, 3, 5 and 6 of the Subdivision, which Outlots will be owned in common by the Wooded Valley Estates Homeowner's Association ("Homeowner's Association") and are subject to this Conservation Easement ("Easement Area").

C. The Subdivider is the owner of Outlot 4 of the Subdivision, which Outlot will be sold to the Caledonia Conservancy, subject to the condition that the Caledonia Conservancy convey a conservation easement over said area to the Town and the Land Trust pursuant to the terms set forth below.

D. The Mortgagee holds a mortgage interest in the lands located within the plat of the Subdivision.

E. The DNR has awarded a Stewardship Grant to the Caledonia Conservancy to enable the purchase of Outlot 4 by the Caledonia Conservancy from the Subdivider, subject to the terms and conditions of the Stewardship Grant and

Management Contract for Non-Profit Land Acquisition ("Stewardship Grant"), which is attached as Exhibit A and incorporated herein by reference. Pursuant to the terms of said grant, the DNR must give its prior approval of any interest in the property that is conveyed to a third party.

F. The Subdivider is willing to grant this Conservation Easement to the Land Trust and the Town to protect environmentally sensitive areas located within the Easement Area. Such areas are documented in an inventory of relevant features of the Easement Area that is contained in a stewardship plan, dated March 21, 2003 and revised on July 7, 2003, which is incorporated herein by reference ("Stewardship Plan") and attached as Exhibit B.

G. The Land Trust is qualified to be a "holder" (as that term is defined in Section 700.40(1)(b) of the Wisconsin Statutes) of conservation easements pursuant to Section 700.40(2) of the Wisconsin Statutes.

H. The Town is qualified to be a "holder" (as that term is defined in §700.40 (1)(b) of the Wisconsin Statutes) of conservation easements pursuant to §700.40 (2) of the Wisconsin Statutes

I. The Common Law and the Uniform Conservation Easement Act, Section 700.40 of the Wisconsin Statutes, provide for the creation and conveyance of conservation easements which impose restrictions or affirmative obligations on the Owners of lands.

J. The Land Trust and the Town agree, by accepting this Conservation Easement, to preserve and protect in perpetuity the conservation values of the Easement Area for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which by each of the parties is hereby acknowledged, and pursuant to the laws of the State of Wisconsin, including Section 700.40 of the Wisconsin Statutes, the parties hereto grant and agree as follows:

1.           **Conservation Easement.** The Subdivider does hereby grant, assign and convey to the Land Trust and the Town a conservation easement over the Easement Area pursuant to Section 700.40 of the Wisconsin Statutes of the nature and character and to the extent set forth herein. The development rights conveyed by this Conservation Easement shall include all development rights, except those specifically reserved herein and those reasonably required to carry out the permitted uses of the Easement Area as herein described. The Conservation Easement and restrictions hereby conveyed consist of covenants on the part of the Subdivider and its successors and assigns.

2.           **Purpose.** The purposes of this Conservation Easement are to retain and protect the natural scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property now and in the future for the benefit of present and future generations and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. The Easement Area shall be used only as expressly provided in this Conservation Easement, with management of the Easement Area to be in accordance with the Stewardship Plan. The parties to this Conservation Easement recognize the need to protect natural, scenic or open space values of real property and share the common purpose of conserving these values by this Conservation Easement to prevent the use or development of the Easement Area for any purpose or in any manner which would conflict with the maintenance of these values. Each of the parties accepts such conservation restrictions and development rights in order to conserve these values for present and future generations.

3.           **Prohibited Uses.** Any activity on or use of the Easement Area inconsistent with the purpose of this Conservation Easement is prohibited. No

residential, commercial, industrial, or mining activities shall be permitted, and no building, structure, or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Easement Area, except as specifically permitted under this Conservation Easement or the Stewardship Plan. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

a. The division of the easement area into smaller parcels, whether through legal or *de facto* subdivision, including divisions through the creation of Subdivision, site leases, lot line adjustments or other means. It is the intent of this paragraph to require that the entire Easement Area remain as platted for the purposes of this Conservation Easement and to prohibit the conveyance of any portion of the Easement Area.

b. Use of the Easement Area for residential, commercial or industrial purposes, including use by easement or other right of access or passage across or upon the Easement Area in conjunction with commercial activity.

c. The placement and construction of any buildings, structures, or other improvements of any kind (including, without limitation, roads and parking lots) other than those improvements shown on the plat related to the creation of a walking trail system, or other improvements that are consistent with the Stewardship Plan.

d. Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock or peat, except as may be required in the course of construction and maintenance of the storm water drainage system, or as otherwise permitted pursuant to the Stewardship Plan. In no case shall mining of oil, gas, or other minerals be permitted.

e. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant long term pollution of any surface or subsurface waters.

f. Any use or activity, not expressly permitted, that causes or is likely to cause significant degradation of any woodlands, wetlands, streams, springs, lakes, ponds, marshes, sloughs, swales, swamps, or potholes now existing or hereinafter occurring.

g. No portion of the Easement Area shall be used for dumps, landfills, or the storage or deposit of waste materials of any kind. Disposal of any waste materials generated by activities permitted under this Conservation Easement shall be in accordance with applicable state law and with the approval of the Land Trust and/or the Town.

h. The placement, use or parking of mobile homes, trucks, automobiles, or any other motorized vehicle.

i. No use shall be made of the Easement Area, and no activity thereon shall be permitted, which in the reasonable opinion of the Land Trust or the Town, is or is likely to become inconsistent with the purposes of this Easement Area as stated above, or as set forth in the Stewardship Plan.

4. **Reserved Rights.** The Subdivider reserves to itself and its successors and assigns, all rights accruing from its Ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not prohibited herein and are not inconsistent with the purpose of this Conservation Easement or the Stewardship Plan.

5. **Maintenance of Easement Area.** The Subdivider, its successors and assigns shall be responsible for maintenance of the Easement Area in accordance with the Stewardship Plan, which is to be prepared by a consultant with expertise in rendering professional ecological services. The Subdivider has contracted with its ecologist, Thompson and Associates Wetland Services, LLC, to conduct annual assessments of the Easement Area and Outlot 4 for the first five years after execution of this Easement by all parties. Thereafter, the Land Trust shall, in addition, contract

with such consultant, or other qualified individual, organization or business, to conduct an annual assessment of the Easement Area to ensure compliance with such Stewardship Plan. A written summary of said annual assessment shall be provided by the consultant to the Town, Land Trust, and Subdivider, or its successors and assigns. The cost for the above services as well as any administrative cost incurred by the Land Trust, shall be borne by the Subdivider or its successors and assigns, except that after five years, the Caledonia Conservancy shall be responsible for costs associated with Outlot 4. The Developer shall pay an initial land trust management fee to the Land Trust payable within thirty (30) days of the execution of this Conservation Easement in the amount of \$1,500.00 and a legal defense fee in the amount of \$2,350.00 (\$75 per lot for lots one through thirty and \$50 per each additional lot).

In case of failure to pay any of the costs and fees above, the Town may extend such costs and fees upon the tax roll as a special tax pursuant to Section 66.0627, Wis. Stats., or pursuant to any other applicable section of the statute. The Subdivider, and its successors and assigns, waive right to notice and hearing. In addition, the Land Trust or Town may commence legal action for the recovery of any such amounts owing to it hereunder.

**6. Additional Rights of Land Trust.** To accomplish the purpose of this Conservation Easement, the following additional rights are conveyed to the Land Trust and the Town by this Conservation Easement.

a. To enter upon the Easement Area at reasonable times in order to monitor the Subdivider's compliance with and otherwise enforce the terms of this Conservation Easement; provided that such entry shall be upon prior reasonable notice to the Subdivider; and shall not unreasonably interfere with Subdivider's use and quiet enjoyment of the Easement Area; and

b. To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Conservation Easement and to require, at the

Subdivider's expense, the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use.

7. **Approval.** Where the approval of the Land Trust and/or Town is required, such approval, or denial, shall be given in writing within 45 days of receipt of written request therefore. Such request shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Land Trust or Town to make an informed judgment as to its consistency with the purpose of this Conservation Easement. Such approval may be withheld only upon a reasonable determination that the action as proposed would be inconsistent with the purpose of or would otherwise violate any provision of this Conservation Easement.

8. **Enforcement of the Restrictions.**

a. *Generally.* If the Land Trust and/or Town determines that any party is in violation of the terms of this Conservation Easement or that a violation is threatened, written notice of such violation or threatened violation shall be given to the alleged violating party advising such party of the nature and extent of the violation or threatened violation and demanding corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Easement Area so injured. If the alleged violating party fails to cure the violation within 45-days after receipt of such notice, or under circumstances where the violation cannot reasonably be cured within a 45-day period, fails to begin curing such violation within the 45-day period, or fails to continue diligently to cure such violation until finally cured, the affected party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte if necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation



Easement, or injury to any conservation values protected by this Conservation Easement, including damages for the loss of natural or scenic resources and/or water quality and/or environmental values, and to require the restoration of the Easement Area to the condition that existed prior to any such injury. Any damages recovered shall be applied to the cost of undertaking any corrective action on the Easement Area. The parties agree that remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Land Trust and/or Town shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which it may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy or otherwise available legal remedies.

b. *Costs of Enforcement.* Any costs incurred by the Land Trust and/or Town in enforcing the terms of this Conservation Easement including, without limitation, costs of litigation and attorneys' fees, and any costs of restoration necessitated by any violation of the terms of this Conservation Easement shall be borne by the Subdivider, or its successors and assigns, if the final determination, or resolution of the matter outside of litigation, is in favor of the Land Trust and/or Town.

c. *Enforcement Discretion.* Enforcement of the terms of this Conservation Easement shall be at the discretion of the Land Trust and/or Town, and any forbearance by it to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of any subsequent breach of the same or any other terms of this Conservation Easement or of any rights under this Conservation Easement. No delay or omission by the Land Trust and/or Town in the exercise of any right or remedy upon any breach by any party to this Conservation Easement shall impair such right or remedy or be construed as a waiver.

d. *Acts Beyond Subdivider's Control.* Nothing contained in this Conservation Easement shall be construed to entitle the Land Trust and/or Town to bring any action against the Subdivider, its successors and assigns, for any injury to or change in the Easement Area resulting from causes beyond the Subdivider's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by the Subdivider under emergency conditions to prevent, abate or mitigate significant injury to the Easement Area resulting from such causes. In the event of Acts beyond Subdivider's control, the area that is destroyed shall be restored pursuant to the Stewardship Plan at the cost of the Subdivider or its successors or assigns.

e. *Waiver of Certain Defenses.* The Subdivider hereby waives any defense of laches, estoppel or prescription.

f. *Appeal from Determination of Land Trust.* The Subdivider shall have the right to seek a review by the Town of any determination made by the Land Trust. Such review shall proceed in accordance with Title 4 of the Code of Ordinances for the Town of Caledonia, entitled "Administrative Determinations Review."

9. **Access.** No right of access by the general public to any portion of the Easement Area is conveyed by this Conservation Easement.

10. **Costs, Legal Requirements, and Liabilities.** Subdivider, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the Ownership, operation, upkeep, and maintenance of the Easement Area, including the maintenance of adequate liability insurance coverage. Subdivider remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Subdivider shall keep the Easement Area free of any liens arising

out of any work performed for materials furnished to, or obligations incurred by Subdivider.

11. **Taxes.** Notwithstanding this Conservation Easement, the obligation to pay taxes on the land over which the Conservation Easement runs shall remain with the Subdivider, its successors and assigns. Subdivider shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish the Land Trust and/or Town with satisfactory evidence of payment upon request.

12. **Representations and Warranties.** Subdivider represents and warrants that to the best of its knowledge:

a. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Easement Area;

b. There are not now any underground storage tanks located on the Easement Area, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Easement Area in a manner not in compliance with applicable federal, state and local laws, regulations, and requirements;

c. The Easement Area is in compliance with all current federal, state, and local laws, regulations, and requirements applicable to the Easement Area and its use;

d. There is no pending or threatened litigation in any way affecting, involving, or relating to the Easement Area; and

e. No civil or criminal proceedings or investigations have been instigated or are now pending or have occurred during the time of Subdivider's ownership, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Easement Area or its use, nor do there exist any facts or circumstances that Subdivider might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

13. **Remediation.** If, at any time after the execution of this Agreement, there occurs a release in, on or about the Easement Area of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Subdivider and its successors and assigns agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Land Trust and/or Town, in which case the Land Trust and/or Town shall be responsible therefore.

14. **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Land Trust and/or Town to exercise physical or managerial control over the day-to-day operations of the Easement Area, or any of Subdivider's activities on the Easement Area, or otherwise to become an operator with respect to the Easement Area within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or under state law.

15. **Hold Harmless.** Subdivider hereby releases and agrees to hold harmless, indemnify, and defend the Land Trust and/or Town and their members,

directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) 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 Easement Area, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Easement Area; (3) the presence or release in, on, from, or about the Easement Area, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of sections 10 through 14.

16.           **Subsequent Transfers.** The Subdivider agrees to incorporate the terms of this Conservation Easement by specific reference to the recording data hereof in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Easement Area. Further, at the time the Subdivider turns over control of the Subdivision to the Homeowner's Association, Subdivider shall be released from any continuing obligations hereunder and the Homeowner's Association shall assume all benefits and burdens assigned to Subdivider under Conservation Easement.

17.           **Assignment.** This Easement is transferable, but the Land Trust and/or the Town may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Sec. 700.40, Wis. Stats., (or any successor provision then applicable). As a condition of such transfer, the Land Trust and/or Town shall require that the conservation purpose that this grant is intended to advance continue to be carried out. The Land Trust and/or Town agree to give written notice to Subdivider of an assignment at least twenty (20) days prior to the date of such assignment. The failure of the Land Trust and/or Town to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

18.           **Notices.** Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party shall be in writing and either served personally or sent by certified-mail, return receipt requested, addressed as set forth below or to such other address as any party from time to time shall designate by written notice to the others:

Wendy M. Christensen, Town Clerk  
Town of Caledonia  
6922 Nicholson Road  
Caledonia, WI 53108

Kenosha/Racine Land Trust, Inc.  
c/o Charles Haubrich  
P.O. Box 085153  
Racine, WI 53408-5153

Newport Group, Ltd.  
c/o Raymond Leffler  
1020 West Boulevard  
Racine, WI 53405

19.           **Recordation.** This Conservation Easement shall be recorded in the office of the Register of Deeds for Racine County. Any party may re-record it at any time.

20. **Extinguishment.** If circumstances arise in the future such as render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement and the easements granted herein can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

21. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the agreement to affect the purpose of this Conservation Easement and the policy and purposes of Section 700.40 of the Wisconsin Statutes. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

22. **Severability.** 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 this Conservation Easement, 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.

23. **Binding Effect.** This Conservation Easement shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors, or assigns. It is hereby acknowledged that the covenants contained herein shall constitute a servitude upon the Easement Area and shall run with the land in perpetuity.

24. **Amendment and Modification.** This Conservation Easement and the Stewardship Plan incorporated herein by reference may be amended, modified and supplemented only by written agreement of the parties hereto or their successors or assigns, provided that any such amendment shall not diminish the goals or purposes of the Conservation Easement or affect its perpetual duration.

25. **Entire Agreement.** This Conservation Easement sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officers, employee or representative of any party hereto.

26. **Third Parties.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or corporation or entity, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Conservation Easement. There are no third party beneficiaries to this Conservation Easement.

27. **Acceptance of Holder's Interest.** The Land Trust and the Town by execution of this Conservation Easement hereby accept a holder's interest in this Conservation Easement.

28. **Subordination.** The Mortgagee joins in this Grant of Conservation Easement to subordinate its interests to the rights of the Land Trust and Town hereunder.

29. **Outlot 4.** The Caledonia Conservancy agrees to convey a conservation easement as to Outlot 4 to the Town and Land Trust at the time of closing of its purchase of Outlot 4 from the Subdivider. Said easement shall be substantially in the form of conservation easement attached as Exhibit C, and incorporated herein by reference.

30. **Approval by DNR.** The DNR has set forth its approval of the form of conservation easement pertaining to Outlot 4, as set forth in Exhibit B, in a letter attached as Exhibit D. Said easement shall be conveyed by Caledonia Conservancy after its purchase of Outlot 4 from the Subdivider.

31. **Non-sale of Outlot 4.** In the event that the sale of Outlot 4 to the Caledonia Conservancy does not take place within 30 days of the execution of this



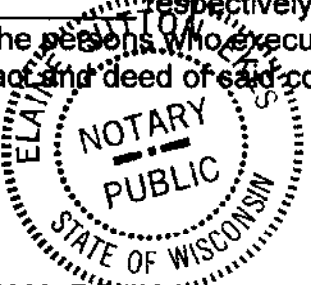


**KENOSHA/RACINE LAND TRUST, INC.**

By: Charles Haubrich  
CHARLES HAUBRICH, President  
Attest: Hannelore Artkimow  
Hannelore Artkimow, Vice President

STATE OF WISCONSIN   )  
  )  
  ) SS  
COUNTY OF RACINE    )

Personally came before me this 12<sup>th</sup> day of November, 2003, the above named, CHARLES HAUBRICH and Hannelore Artkimow, the President and Vice President respectively, of KENOSHA/RACINE LAND TRUST, INC., to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said corporation.



Elaine S. Treffel  
Notary Public, Racine County, WI  
My commission Expires: permanent

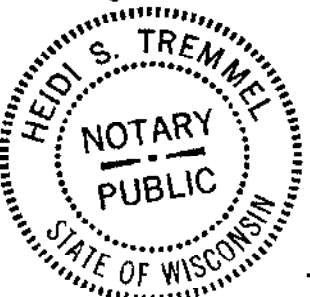
**TRI-CITY NATIONAL BANK,**  
a national banking corporation

By: J. K. [Signature]  
JK's, Sr. Vice-Pres

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

STATE OF WISCONSIN   )  
  )  
  ) SS  
COUNTY OF RACINE    )

Personally came before me this 18<sup>th</sup> day of Nov, 2003, the above named, John W. Kis and \_\_\_\_\_, the Sr. Vice President and \_\_\_\_\_ respectively, of TRI-CITY NATIONAL BANK, a national banking corporation, to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said banking corporation.



Heidi S. Tremmel  
Notary Public, Racine County, WI  
My commission Expires: 4/2/06

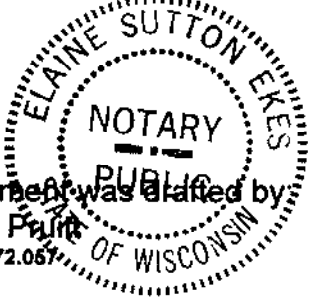
TOWN OF CALEDONIA

By: Susan Greenfield  
SUSAN GREENFIELD,  
TOWN CHAIRMAN

Attest: Wendy M. Christensen  
WENDY M. CHRISTENSEN,  
TOWN CLERK

STATE OF WISCONSIN )  
  ) SS  
COUNTY OF RACINE   )

Personally came before me this 12<sup>th</sup> day of November 2003, the above named, SUSAN GREENFIELD and WENDY M. CHRISTENSEN, Chairman and Clerk for the TOWN OF CALEDONIA, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of said Town.



Elaine Ekens  
Notary Public, Racine County, WI  
My Commission Expires: permanent

This instrument was drafted by  
Timothy J. Primm  
11/11/03 770272.067

State of Wisconsin  
 Department of Natural Resources  
 Box 7921  
 Madison, Wisconsin 53707-7921

STEWARDSHIP GRANT AND  
 MANAGEMENT CONTRACT FOR  
 NON-PROFIT LAND ACQUISITION  
 Form 8700-304 (3/03) Page 1

**COPY**

<b>Sponsor:</b> Caledonia Conservancy		<b>Project Number:</b> UGS-123
<b>Project Title:</b> Tabor Woods Expansion		
<b>Program Name:</b> Knowles-Nelson Stewardship Program Urban Green Space		
<b>Grant Period:</b> (Period during which grant funds will be encumbered and available for payment to the Sponsor under this Stewardship Grant and Management Contract (hereinafter referred to as the "Contract"). May 12, 2003 through June 30, 2005		
<b>Project Scope:</b> Fee simple acquisition of property in Racine County, Wisconsin, which is described in the legal description attached hereto as Exhibit A and made part of this Contract by reference (hereinafter referred to as the "Stewardship Property").		

<b>Recording Area</b>
<b>Name and Return Address</b> Caledonia Conservancy, Ltd. Z 6302 Southern Circle Monona, WI 53716
<b>Parcel Identification Number (PIN)</b> 51-004-04-22-13-052-004

All obligations, terms, conditions and restrictions imposed by this Contract shall be deemed to be covenants and restrictions running with the Stewardship Property, and shall be effective limitations on the use of the Stewardship Property from the date of recording of this Contract, and shall bind the parties hereto and their respective personal representatives, successors and assigns, in perpetuity.

By acceptance of this Contract, the Sponsor, for itself and its successors and assigns, hereby covenants and agrees not to convey, sell, lease, assign or mortgage the Stewardship Property or convert it to uses inconsistent with this Contract without the prior written approval of the Secretary of the Wisconsin Department of Natural Resources, his designee or successor. The Sponsor further agrees that all rights, title and interests in and to the Stewardship Property shall vest in the State of Wisconsin without necessity of reentry, if the Sponsor, its successors or assigns, violates any essential provision described in paragraphs 1 or 2 of this contract.

<b>Project Costs:</b>		The following documents are hereby incorporated into and made part of this Contract:  1. Chapter NR 51, Wisconsin Administrative Code 2. Grant Application and Project Narrative
Total Cost of Grant Project	\$325,000.00	
Sponsor Share	\$162,500.00	
Department Share	\$162,500.00	
Grant Award	\$162,500.00	

**EXHIBIT**  
 A

**REVISION TO THE LAND MANAGEMENT PLAN IN THE  
STEWARDSHIP GRANT AND MANAGEMENT CONTRACT UGS-123**

To be consistent with the Conservation Stewardship Plan and pursuant to paragraph 27 of the Stewardship Grant and Management Contract UGS-123, the Department of Natural Resources and Caledonia Conservancy hereby agree to the following changes in the Stewardship Grant and Management Contract:

1. Paragraph 28. h. of the Contract is amended to allow placement of a small shed (approximately 12' by 12') on the property to store maintenance equipment.
2. Paragraph 28. h. 1) of the Contract is amended to allow new fences to be placed and maintained on the property to control public use and protect the natural features of the property.
3. Paragraph 29. d. of the Contract is amended to require the Sponsor to protect and preserve the Blue-stemmed Goldenrod (*Solidago caesia*), Blackhaw (*Viburnum prunifolium*) and Prairie Trillium (*Trillium recurvatum*) located on the property and to take steps to monitor and remove Garlic Mustard.

All other aspects of the Stewardship Grant and Management Contract UGS-123 shall remain in full force and effect.

APPROVED BY CALEDONIA CONSERVANCY

*Randy Peterka*  
Signature

10-05-03  
Date

RANDY PETERKA, PRESIDENT  
Typed or Printed Name and Title

APPROVED BY WISCONSIN DEPARTMENT OF NATURAL RESOURCES

*Kathryn A. Curtner*  
Kathryn A. Curtner, Director  
Bureau of Community Financial Assistance

11/04/03  
Date

**TERMS AND CONDITIONS OF THE CONTRACT**

This Contract is entered into by and between the Sponsor and the State of Wisconsin Department of Natural Resources (hereinafter referred to as "Department"), in accordance with s. 23.096, Wis. Stats., for the purpose of awarding a Stewardship grant and establishing conditions of management for the Stewardship Property acquired with the grant funds.

The Department and Sponsor mutually agree to the following terms and conditions:

**Essential Provisions:**

1. If the Sponsor violates any of the following conditions of this Contract, which are identified as essential in Ch. NR 51.07(3), Wis. Adm. Code, pursuant to s. 23.096(5), Wis. Stats., and fails to correct the condition within six months after written notification to the Sponsor from the Department, all title, right and interest in the Stewardship Property held by the Sponsor shall vest in the State of Wisconsin without the necessity of reentry or legal judgment:
  - a. Conversion of the Stewardship Property to any use other than that specified in this Contract and the Land Management Plan without the prior written approval of the Department is prohibited.
  - b. Sale or conveyance of the Stewardship Property, or any interest in the Stewardship Property, to a third party without the prior written approval of the Department is prohibited. If the Department does approve a conveyance to a third party, all Stewardship conditions imposed by this Contract and the Land Management Plan shall remain with the Stewardship Property. Any transfer or sale of the Stewardship Property in fee may only be to a nonprofit conservation organization qualified for Stewardship grants, pursuant to ss. 23.096 and 23.0955(1), Wis. Stats., or to a local, state or federal unit of government. Any subsequent owner shall execute an *Assignment of Stewardship Grant and Management Contract*, which states that it has received and reviewed this Contract and the Land Management Plan and shall abide by their provisions. Department approval of any transfer is not valid until the *Assignment of Stewardship Grant and Management Contract* has been signed by the Department and recorded in the Office of the Register of Deeds in the county where the Stewardship Property is located.
  - c. The Sponsor shall not allow any leases, mortgages, permits or encumbrances of any kind on the Stewardship Property without the prior written approval of the Department. The Department may take actions necessary to avoid the placement of liens, judgments or encumbrances against the Stewardship Property.
  - d. The Sponsor shall pay, before delinquency, all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Stewardship Property by competent authority.
  - e. The Sponsor shall at all times maintain its tax-exempt status and be a qualified organization within the meaning of Section 170(h)(3) of the Internal Revenue Code. The Sponsor shall notify the Department of any changes in, or challenges to, its tax-exempt status or to its mission of acquiring property for conservation purposes.
  - f. The Stewardship Property may not be closed to the public unless approved in writing by the Department.
2. If the Sponsor dissolves or ceases to exist, all title, right and interest held by the Sponsor in and to the Stewardship Property shall vest in the state, without the necessity of reentry, unless a transfer under paragraph 1.b. above is approved by the Department.

**Grant and Financial Provisions:**

3. In consideration of the covenants made by the Sponsor herein, the Department promises to obligate to the Sponsor the amount specified on Page 1 as the "Grant Award" and will tender to the Sponsor that portion of the obligation that is required to pay the Department's share of costs, based upon the Department providing up to 50 percent of eligible acquisition costs, as defined in NR 51.002(1), not to exceed the amount of cash needed to cover those costs. The Sponsor hereby promises to execute the project described herein in accordance with the conditions of this Contract and manage the Stewardship Property in accordance with the conditions of the Land Management Plan.
4. Failure by the Sponsor to comply with the terms of this Contract shall not cause the suspension of all obligations of the Department hereunder if, in the judgment of the Department, such failure was due to no fault of the Sponsor. In such case, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for assistance under this Contract, at the Department's discretion.

5. If the Sponsor receives federal, local government or other state funding for acquisition of the Stewardship Property, either before or after this Contract is executed, the Sponsor shall notify the Department of this fact. The Sponsor agrees that funds received from all government sources shall not exceed 100% of the amount of cash needed to cover eligible acquisition costs.
6. Grant payments may not be disbursed to the Sponsor until the following conditions have been met to the satisfaction of the Department:
  - a. The value of the Stewardship Property has been certified by the Department according to Department valuation guidelines.
  - b. The Department has approved an Environmental Inspection Report for the Stewardship Property.
  - c. The Department has approved title insurance or other evidence of marketable title for the Stewardship Property.
  - d. The Department has approved a Land Management Plan for the Stewardship Property.
  - e. The Sponsor has submitted a claim for payment supported by appropriate evidence of cost, which meets Department accounting standards.
  - f. This Contract has been recorded with the Register of Deeds in the County in which the Stewardship Property is located or the Department has approved an escrow closing under Ch. NR 51.08(4), Wis. Adm. Code.
  - g. A warranty deed has been executed and recorded with the Register of Deeds in the County in which the Stewardship Property is located or the Department has approved an escrow closing under Ch. NR 51.08(4), Wis. Adm. Code.
7. The Sponsor shall maintain financial and accounting records for the grant in accordance with generally accepted accounting principles and practices for a period of four years after the final grant payment has been made. These records may be reviewed by state officials.
8. One-half of all receipts from the sale of any structures, improvements or personal property that was included in the appraisal for the Stewardship Property shall be reimbursed to the Department.
9. Income accruing to the Stewardship Property shall be used to further the objectives of the project as stated in this Contract or to further the objectives of another Stewardship project. However, if the Stewardship Property is entered into the County Forest Law Program, income derived from that program shall be distributed according to s. 28.11, Wis. Stats.
10. Reasonable entrance, service or user's fees may be charged and retained by the Sponsor to defray operation and maintenance costs subject to Department review and approval. If such fees do not exceed the fees charged for daily entrance to state parks, Department fee approval is not required.
11. The Sponsor shall keep the Stewardship Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Sponsor.

**General Provisions:**

12. The Sponsor agrees to comply with all applicable state, local and federal statutes and regulations in fulfilling the terms of this Contract, including, but not limited to, general and special zoning, land use permit requirements, disabled access, environmental quality, and historical and archaeological preservation. In particular, the Sponsor agrees to comply with the provisions of s. 23.096, Wis. Stats., and Ch. NR 51, Wis. Adm. Code and with ss. 32.19 to 32.27, Wis. Stats., and Ch. NR 202 relating to relocation. In the event there are any inconsistencies between the statutes and code and this Contract, the statutes and code shall govern.
13. If any provision of this Contract is determined by a court to be invalid, the validity of the remaining provisions shall not be affected thereby.
14. This Contract, together with any referenced parts and attachments, constitutes the entire Contract, and any previous communications or agreements pertaining to the subject matter of this Contract are hereby superseded.
15. Any ambiguities in this Contract shall be construed in a manner that best effectuates the protection of the natural values of the Stewardship Property.

16. The Sponsor may rescind this Contract in writing at any time before expending grant funds. After the Sponsor has expended grant funds, this Contract and the Land Management Plan may be rescinded, modified, or amended only by mutual agreement in writing, except that time extensions of the "Grant Period" may be granted by the Department without the requirement of the Sponsor's signature.
17. This Contract shall be recorded by the Sponsor in the Office of the Register of Deeds in the County where the Stewardship Property is located, and the interests of the State under this Contract shall thereby be placed in the chain of title. The Department may re-record this Contract or any other document necessary to protect its rights under the Contract.
18. No portion of the Stewardship Property shall in the future be used to satisfy land area requirements for other property not subject to this Contract for the purpose of determining building density, lot coverage or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. Development rights have been encumbered or extinguished by this Contract, and may not be transferred to any other property pursuant to a transferable development rights program, cluster development arrangement or otherwise.
19. The Department agrees that the Sponsor shall have sole control over the method, hours worked, time and manner of any performance under this Contract other than as specifically provided herein. The Department reserves the right only to inspect the Stewardship Property for the purpose of ensuring that management is progressing in compliance with this Contract. The Department takes no responsibility for supervision or direction of the performance of this Contract by the Sponsor or the Sponsor's employees or agents. The Sponsor is an independent contractor for all purposes, not an employee or agent of the Department. The Department further agrees that it will exercise no control over the selection and dismissal of the Sponsor's employees or agents.
20. The Sponsor shall not discriminate against any person in the use and enjoyment of the Stewardship Property on the basis of age, race, creed, color, handicap, marital status, conviction record, arrest record, sex, national origin, ancestry, sexual orientation or membership in the national guard, state defense force, or any other reserve component of the military forces of the United States or this state.
21. Except for claims or costs arising out of the acts or omissions of the Department, its officers, employees and agents, the Sponsor agrees to save, keep harmless, defend and indemnify the Department and all its officers, employees and agents, against any and all liability claims, costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring directly or indirectly in connection with or in any way arising out of the occupancy, use, service, operation or performance of work in connection with this Contract or omissions of Sponsor's employees, agents or representatives.
22. In certain cases described in this Contract, the Sponsor is required to obtain written approval from the Department prior to undertaking an action. Whenever such approval is required, the Sponsor shall notify the Department in writing. The request for approval shall describe the nature, scope, design, location, size, timetable, and any other material aspect of the proposed action in sufficient detail to permit the Department to make an informed judgment as to its consistency with the terms and purpose of this Contract. The Department shall approve, conditionally approve, or deny the Sponsor's request in writing within sixty days (60) days of receipt of the written request. The Department may withhold its approval if it lacks sufficient information to reach an informed decision, or if it determines, in its sole discretion, that the proposal violates the purpose of this Contract and impairs the natural resource values of the Stewardship Property.
23. The Sponsor warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that it is a qualified tax exempt organization within the meaning of Section 170(h)(3) of the Internal Revenue Code, and that the persons executing this Contract are authorized to act on its behalf.

#### Land Management Plan:

24. Purpose. Pursuant to s. 23.09(19), Wis. Stats., the primary purpose of this Contract and the Land Management Plan is to provide the general public with opportunities for nature-based outdoor recreation and to preserve, restore or enhance natural open space that has scenic, ecological or natural value.
25. Management Responsibilities of the Sponsor. The Sponsor is responsible for operation of the Stewardship Property and for providing adequate management and maintenance in a manner consistent with the purpose described above and with the requirements and conditions of this Contract and Land Management Plan.



26. Management Rights of the Department. The Department, its officers, employees and agents may enter the Stewardship Property in order to monitor compliance with this Contract and the Land Management Plan or carry out any management activity necessary to ensure the public's rights and safety.

If the Sponsor fails to fulfill its responsibilities under the terms of this Contract, the Department shall have the right, but not the obligation, to undertake land management activities on the Stewardship Property in accordance with the terms of the Land Management Plan. Before undertaking such responsibility, the Department shall provide the Sponsor with six (6) months prior written notice of the land management activity required and give the Sponsor the opportunity to perform that activity within the six-month period, or within a reasonable time thereafter if more time is needed due to weather constraints.

27. Revisions. Changes or revisions to the Land Management Plan may be made with written agreement of the Sponsor and Department.
28. Land Management Conditions and Requirements. Any activity on or use of the Stewardship Property that is inconsistent with the purpose of the project as described in paragraph 24 is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
- a. Animals. There shall be no introduction of any wild animals onto the Stewardship Property without the prior written approval of the Department. There shall be no captive wild animal farm, bird hunting preserve, farm raised deer farm, wild fur farm or dog club training license established or licensed on the Stewardship Property. The Sponsor shall not allow horses, cattle, or other livestock on the Stewardship Property for grazing or other purposes, except as permitted under Paragraph 29.
  - b. Dumping. There shall be no temporary or permanent storage or placement of trash, soil, gravel, ashes, treated sewage, manure piles, hazardous or toxic substances, abandoned vehicles or machinery, or any other unsightly or offensive materials on, under or in the Stewardship Property, except that brush or other plant material cut as the result of activities approved herein may be left on the Stewardship Property.
  - c. Mining, Surface Alteration and Manipulation of Water. There shall be no topographic changes, extraction of subsurface materials, alteration of the natural landscape, or manipulation of any waters or shorelines of the Stewardship Property by excavation, filling, dredging, draining, tiling, ditching or any other means, except as permitted in Paragraph 29.
  - d. Natural Materials. There shall be no damage, destruction or removal from the Stewardship Property of any natural features or natural materials, including, but not limited to, rocks, soil, minerals, dead wood and fossils, except as permitted in Paragraph 29.
  - e. Rights-of-Way. No right-of-way shall be granted across the Stewardship Property in conjunction with any industrial, commercial or residential use of other land not protected by this Contract, except as permitted in paragraph 29.
  - f. Soil Erosion. There shall be no use or activity that causes or is likely to cause significant soil erosion or significant pollution of any surface or sub-surface waters. Best management practices shall be employed to minimize soil erosion during and after construction of any permitted roads, trails, structures or other improvements.
  - g. Spraying. Application of pesticides on the Stewardship Property is not allowed except as follows: (i) to control pests on an emergency basis when such control is necessary to protect public health, (ii) to control non-native or invasive species (iii) for habitat restoration purposes (iv) or for other purposes specifically described in Paragraph 29.
  - h. Structures, buildings and improvements. The placement or construction of any mobile or permanent building, structure or other improvement is prohibited, except as permitted below or in Paragraph 29.
    - 1) Fences. The Sponsor may repair and maintain any existing fences on the Stewardship Property.
    - 2) Signs and Interpretive Displays. The Sponsor may not erect, display or maintain any outdoor advertising structure, sign or billboard on the Stewardship Property; however, the Sponsor may erect signs and interpretive displays for the following purposes: to indicate that the Stewardship Property is under the protection of the Sponsor and to acknowledge the Stewardship Program; to commemorate or interpret the natural features or human history of the Stewardship Property; to regulate uses, mark the boundaries or

provide directions. The placement, size, number and design of signs or interpretive displays shall not diminish the scenic character of the Stewardship Property.

- 3) Roads and Parking Lots. Existing roads on the Stewardship Property may be maintained, but shall not be widened or improved and no new roads shall be constructed or established, except as specifically permitted in Paragraph 29. A small parking lot, commensurate in size with the public use of the Stewardship Property, may be constructed.
  - 4) Trails. The Sponsor may clear, construct and maintain trails for firebreaks, walking, cross-country skiing and other non-motorized recreational activities. Other trail restrictions may be included in paragraph 29 below.
- i. Vegetation. Aquatic vegetation, fallen trees and other natural features in shallow water areas directly adjacent to any shoreline of the Stewardship Property shall not be disturbed, except as specifically permitted under Paragraph 29. Furthermore, there shall be no introduction, removal, damage, mowing, plowing, cutting, trimming or otherwise altering of any trees, shrubs, or other plants on the Stewardship Property, except as permitted in Paragraph 29 or as follows:
- 1) to remove non-native and invasive vegetation
  - 2) to prevent or control insects, diseases, fire, personal injury or property damage
  - 3) to construct and maintain any roads, trails or other structures permitted herein
  - 4) to enhance wildlife habitat or restore and maintain native biological communities
  - 5) to construct firebreaks for prescribed burning.
  - 6) Collecting mushrooms, berries and nuts is permitted, provided that any collecting is carried out in a manner that maintains a sustainable growth and reproduction cycle for the plants.
- j. Vehicles. There shall be no operation of any vehicle on the Stewardship Property, including, but not limited to, bicycles, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, cars and trucks, except as follows: (i) in emergency situations, (ii) for maintenance of the Stewardship Property and habitat and resource management activities, (iii) for disabled access on existing roads and trails that are normally vehicle-accessible, with a permit issued by the Sponsor, or (iv) as permitted in Paragraph 29.
- k. Additional terms, conditions and restrictions are contained in the Project Narrative for the Tabor Woods Expansion Project, which is made part of this Contract by reference.

#### 29. Other Management Conditions:

- a. The Sponsor shall acknowledge the state's assistance in acquiring ownership of the Stewardship Property, and provide notice of public access to the Stewardship Property, by placement of signs on the Stewardship Property that have been approved by the Department.
- b. Notwithstanding paragraph 28. a., horses shall be allowed on a horse trail that shall be established on the Stewardship Property.
- c. The forest shall remain in a natural undisturbed condition with the goal of protecting the native forest vegetation, including ground cover species.
- d. The Sponsor shall protect and preserve the Blue-stemmed Goldenrod (*Solidago caesia*) located on the Stewardship Property.
- e. Notwithstanding paragraph 28. b. and h., improvements to the Stewardship Property may include picnic grounds, benches and trash containers. Any picnic ground or parking lot shall be located outside the forested part of the Stewardship Property.

#### Special Terms and Conditions:

30. The Department may require a Phase 1 and/or Phase II Environmental Audit of all or a portion of the Stewardship Property. The Department may withhold grant payments until it has approved any required Phase 1 and/or Phase II Environmental Audit showing there is no problematic site contamination on the Stewardship Property. Failure to provide a Phase I or Phase II Environmental Audit acceptable to the Department may, at the sole discretion of the Department, render this Contract null and void.

- 31. Grant payments may not be disbursed to the Sponsor until the Sponsor has provided a survey and accurate legal description of the Stewardship Property that has been approved by the Department and attached as Exhibit A to this Contract. Failure to provide a legal description acceptable to the Department shall render this Contract null and void.
- 32. Grant payments may not be disbursed to the Sponsor until the Sponsor has provided legal documentation that public access to the Stewardship Property, satisfactory to the Department, has been secured. This public access must be functional as an access-way for vehicles pulling horse trailers. Failure to provide adequate public access shall render this Contract null and void.

Signed this 20<sup>th</sup> day of MAY, 2003.

CALEDONIA CONSERVANCY

Randy Peterka

Signature of Sponsor Representative

RANDY PETERKA

Typed or Printed Name of Sponsor Representative

STATE OF WISCONSIN )  
                                  ) SS.  
Racine COUNTY)

Personally came before me this 20 day of May, 2003, the above named Randy Peterka to me known to be the person who executed the foregoing instrument and acknowledged the same.

Judith Jurgens  
Signature of Notary Public

Judith Jurgens  
Typed or Printed Name of Notary Public  
Notary Public, State of Wisconsin  
My Commission (expires)(is) May 14, 2006

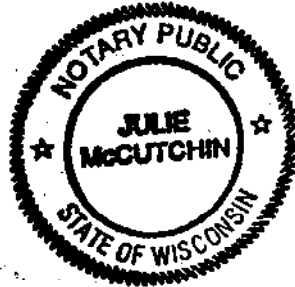
Signed this 16<sup>th</sup> day of May, 2003.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

BY Janet Beach Hanson for  
Kathryn A. Curtner, Director  
Bureau of Community Financial Assistance

STATE OF WISCONSIN )  
                                  ) SS.  
DANE COUNTY)

Personally came before me this 16<sup>th</sup> day of May, 2003, the above named  
Janet Beach Hanson to me known to be the person who executed the foregoing instrument and  
acknowledged the same.



Julie McCutchin  
Signature of Notary Public  
Julie McCutchin  
Typed or Printed Name of Notary Public  
Notary Public, State of Wisconsin  
My Commission (expires)(is) 9-4-2005

THIS INSTRUMENT WAS DRAFTED BY THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

0000844

**Exhibit A – Legal Description**

**Legal descriptions for the Christensen and/or Loppnow properties shall be approved by the Department and attached hereto prior to recording of this Contract and prior to any grant payments.**

## LEGAL DESCRIPTION

Outlot 4, Wooded Valley Estates, a re-division of Lot 1 of Certified Survey Map No. 1152, being a part of the NE 1/4 of Section 13, T4N, R22E, Town of Caledonia, Racine County, Wisconsin, bounded and described as follows: Commencing at the Northwest corner of said NE 1/4; thence S 00°47'08" E along the West line of said NE 1/4, 1324.01 feet to a point on the North line of said Lot 1 and the place of beginning of the lands hereinafter described: thence S 89°13'21" E along the North line of said Lot 1, 999.61 feet; thence S 29°50'16" E 226.47 feet; thence Southwesterly 15.00 feet along the arc of a curve of radius 344.07 feet, center lies to the Southeast, chord of said arc bears S 58°54'48" W 15.00 feet; thence N 32°20'08" W 176.48 feet; thence N 89°13'21" W 268.12 feet; thence S 00°41'55" W 605.77 feet to a point on the South line of said Lot 1; thence N 89°18'05" W along said South line 720.45 feet to a point on the West line of said NE 1/4; thence N 00°47'08" W along said West line 662.01 feet to the place of beginning.

Tax Key Number 51-004-04-22-13-052-004

**CONSERVATION AND STEWARDSHIP PLAN FOR  
WOODED VALLEY ESTATES**

**Caledonia, WI**

**March 21, 2003**

Revised July 7, 2003

Thompson and Associates Wetland Services, LLC

1514 Menomonee Ave.

South Milwaukee, WI 53172

414-571-8383

**Current Site Conditions**

This 33.8-acre property is located in the County of Racine, Township of Caledonia, T 4 N, R 22 E, NE ¼ Section 13. The property is bounded by STH 31 on the east, farm field and woods to the south, farm field to the west, and woods and residential property to the north. The topography is gently rolling hills with the highest elevation on the west and the lowest elevation on the southeast corner of the site. In the recent past, this site was actively farmed. Currently, most of the site is planted in conifers; however, there are scattered areas of open fields, with some small areas of wetlands, and an upland drainageway which bisects the property from north to south. A good quality upland woods is located on the west part of the property with a natural drainageway which flows to the east. A hedgerow borders the south property boundary. According the Racine County Soil Survey, historically this part of the county was originally hardwood forest. The soils on the site are described by the soil survey as silt loam: Morley silt loam (MzdB/MzdB2/MzdC/MzdC2), a well drained soil; and Blount silt loam (BIA) and Radford silt loam (RaA), both soils with hydric inclusions within the soil unit.

**Proposed Conservancy Plan For Common Open Space:**

The proposed site plans include the development of 32 residential lots and 6 outlots of common open space. The outlots in this proposal contain a combined area of 5.01-acres which will be restored (outlot #4 is in a separate proposal by Applied Ecological Services). The soils on site and the remnant woods located in outlot #4 suggest that the original landscape was wooded. This 12 acre outlot on the western portion of the site slopes toward the east. A natural drainageway flows through the woods and into outlot #5. There is a good quality, second growth hardwood forest on most of this lot. The vegetation present includes sugar maple (*Acer saccharum*), shagbark hickory (*Carya ovata*), black cherry (*Prunus serotina*), red oak (*Quercus rubra*), and an understory including trout-lily (*Erythronium albidum*), Mayapple (*Podophyllum peltatum*), Virginia waterleaf (*Hydrophyllum virginianum*), and red trillium (*Trillium recurvatum*), a State of Wisconsin Special Concern species.

The conservancy goal is to plant native prairie and bur oak (*Quercus macrocarpa*) saplings which will eventually mature into oak opening and provide biodiversity, wildlife habitat and aesthetic appeal in the two largest outlots, totaling 4.5 acres. Native bur oak

**EXHIBIT**

B

trees will be planted in a random, open design so that they will grow over many years into open grown oaks. This community once covered large areas of the county before settlement. This conservancy plan will take place over a 5 year period. It will take at least three years for the prairie plants to be visible, for the first several years they put down roots and are difficult to see. Since tree and prairie plantings are best done in spring, the plantings will occur in spring 2004. All other outlots will have native tree and shrub plantings to supplement the existing vegetation, provide vision barriers to the roads or attract wildlife.

The existing conditions and proposed plans on each outlot area as follows:

#### OUTLOT #1

##### Existing:

Outlot #1 is located just west of STH 31 and contains 54,639 square feet (1.25-acres). Currently, Outlot #1 contains planted conifers on the western ½ of the lot in healthy condition. The understory and open areas are old field vegetation.

##### Proposed:

The conifer trees will be removed, the ground prepared, and prairie and 5 oaks planted. Several swales will be graded on this lot for drainageways and the drainageways will be seeded with a wet prairie mix.

#### OUTLOT #2

##### Existing:

Outlot #2 is located in the southeast corner of the property and contains the lowest elevation on the site. This outlot contains 17,257 square feet (0.4-acre). The current vegetation consists of Queen Anne's lace, Canada goldenrod, Kentucky bluegrass, planted conifers, and sandbar willow.

##### Proposed:

Existing conifers will kept in order to block the view of STH 31, some conifers moved over to this lot and white cedar trees will be planted in the lowest areas to provide a buffer.

#### OUTLOT #3

##### Existing:



Outlot #3 is located in the south-central area of the property. This outlot contains 137,613 square feet (3.2-acres) and is the largest lot in this plan. Most of the outlot contains planted conifers and old field vegetation in open space. The lot slopes down toward the central drainageway. It is lower and wetter on the east side of the outlot and conifer tree failure is evident in this area. There are two small wetlands along the south border of Outlot #3 consisting of disturbed wet meadow and dominated by reed canary grass (*Phalaris arundinacea*). A hedgerow is also contained on the south side of the outlot. The species present along the hedgerow are bur oak (*Quercus macrocarpa*), white oak (*Quercus alba*), cottonwood (*Populus deltoides*), hawthorn (*Crataegus* sp.), raspberry (*Rubus idaeus*), bergamot (*Monarda fistulosa*), Canada goldenrod (*Solidago canadensis*), giant ragweed (*Ambrosia trifida*), Queen Anne's lace (*Daucus carota*), smooth brome grass (*Bromus inermis*), and burdock (*Arctium minus*).

Proposed:

The conifers will be removed and chipped, and some of these chips will be used as ground cover for the oak plantings. There is a planned temporary sedimentation pond which will have standing water during the first year, but should be dry thereafter. All areas that are graded will have a cover crop planted of oats during the first year until the prairie plantings take place. This outlot will be planted to prairie and there will be 10 bur oaks planted.

OUTLOT #5

Existing:

Outlot #5 is located in the west-central area of the property and is directly east of Outlot #4. This outlot contains 14,548 square feet (0.33-acre). A wooded drainageway ends within this outlot.

Proposed:

Most of this outlot will be left as is; however, a few hardwood saplings will be planted on the far east edge of this outlot to fill in open areas.

OUTLOT #6

Existing:

Outlot #6 is located in the north-central area of the property. This outlot contains 8,323 square feet (0.19-acre). Planted conifers and old field vegetation is present. There is an upland drainageway running north/south across this lot.

Proposed:

Because this small area receives drainage, it will not be suitable for extensive plantings, however clumps of native wetland shrubs will be planted to increase native diversity and provide some wildlife habitat.

### **Proposed Restoration Measures**

The first year the conifers will be removed from outlots #1 and #3, and the site will be graded according to plans. Efforts will be made to minimize disturbance in the outlots during construction. For example, spoil piles or equipment will not be allowed in the outlots except where grading is proposed. Graded areas will be immediately seeded with oats. The ground will be prepared for prairie seeding. In summer 2003 the existing old field vegetation will be mowed, and after 3-4 weeks the re sprouting vegetation herbicided with roundup. A second mow and herbicide regime are planned to further kill residual perennial plants that would compete with the prairie seeds. Wood chips will be piled up in reserve for the oak plantings. In winter 2003 all plant stock will be ordered.

In spring 2004, the prairie plants and oaks will be planted, after the ground is worked with a harrow. The seeds will be spread with a broadcast seeder and raked in with a harrow. The oaks, 5 foot high "whips" will be planted and chips placed around the root systems. Trees will be planted in late April to allow the roots to be established before the heat of the summer. Wire enclosures will be placed around them and they will be flagged so they are not mowed in the maintenance period.

The other outlots have plantings of several trees or shrubs to increase diversity, wildlife habitat and provide cover. The ground will be herbicided and wood chips applied in preparation for the trees. Trees and shrubs will be planted in spring of 2004, and maintained by spot herbiciding yearly to set back vegetation that would outcompete the shrubs and trees until they are large enough to compete successfully. All trees have been overplanted to allow for some expected mortality over time.

Maintenance in the first year shall be several mowings to keep the competing grasses from seeding and to allow light to reach the prairie plantings. Each fall after planting has begun and for a period of four years, the tree sapling trunks will be wrapped to prevent damage from field mice over the winter months. The site will be monitored on a yearly basis in perpetuity to assess growth of planted trees and the succession of the planted prairie.

A short one to two page monitoring report will be issued yearly to all interested parties including the landowner association. The report will include an assessment of tree growth by species, tree mortality, prairie species present, management undertaken and plans for the following year. After the initial five years, the report will also include an estimate of work needed to be done. It is expected that as the site matures the report will be briefer, unless problems develop.

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Second year maintenance will include a high 8 inch mowing of the prairie to keep the weeds down and let light into the prairie plants. Spot herbicide will be used in any weedy species develop. Trees will be wrapped for winter. A monitoring report will be issued as described above.

The third year the site will not be mowed unless there is a specific weed problem. Spot herbicide could be used as necessary. A monitoring report will be written. If more than three bur oak trees are lost, they will be replanted. Trees will be wrapped for winter.

The fourth and fifth year will include any mowing, a prescribed burn or spot herbiciding if needed and a monitoring report will be prepared. After five years Thompson and Associates will return once a year to assess the site and a short report will be sent to the landowner association describing the outlots and discussing any management needed and an estimate for the work.

Alice Thompson, PWS  
 Thompson and Associates Wetland Services, LLC  
 1514 Menomonee Ave.  
 South Milwaukee, WI 53172  
 414-571-8383

**Planting Plans for Prairie/oak opening planting  
 Wooded Estates, Caledonia (revised 7/7/03)**

1. Fertilizer

Fertilizing of topsoil is not permitted in the restoration areas.

2. Planting

All plant materials and seed shall be native Wisconsin material, preferably from Southeastern Wisconsin. All plant materials shall be native stock, cultivars or hybrids are unacceptable. Seeds shall be viable.

**Prairie Mix :**

Prairie mix shall be applied in Outlots #1 and 3. Seed shall be applied at a rate of at least 7 lbs/acre for grasses and 3 lbs/acre for forbs.

Grasses:

Include at least 5 of 7 grass species:

No one species shall be more than 25 % of the total grass/sedge mix.

Species:	Common Name:
<i>Andropogon gerardi</i>	big bluestem grass
<i>Elymus Canadensis</i>	Canada wild rye
<i>Panicum virgatum</i>	switchgrass
<i>Schizachyrium scoparium</i>	little bluegrass
<i>Sorghastrum nutans</i>	Indian grass
<i>Spartina pectinata</i>	prairie cordgrass
<i>Sporobolus heterolepis</i>	prairie dropseed

Forb mix:

Include at least 12 of 17 species of the following, no one species shall be greater than 15% of the mix:

Species:	Common name:
<i>Anemone canadensis</i>	Canada anemone
<i>Aster laevis</i>	smooth aster
<i>Aster novae-angliae</i>	New England aster

<i>Astragalus canadensis</i>	Canada milk vetch
<i>Desmodium canadense</i>	Canada tick-trefoil
<i>Echinacea purpurea</i>	purple coneflower
<i>Helianthus grosseserratus</i>	Sawtooth sunflower
<i>Heliopsis helianthoides</i>	oxeye sunflower
<i>Monarda fistulosa</i>	bergamot
<i>Ratibida pinnata</i>	gray headed coneflower
<i>Rudbeckia hirta</i>	black-eyed susan
<i>Silphium laciniatum</i>	compass plant
<i>Silphium perfoliatum</i>	cup plant
<i>Silphium terebinthinaceum</i>	prairie dock
<i>Solidago canadensis</i>	Canada goldenrod
<i>Solidago rigida</i>	stiff-leaved goldenrod
<i>Veronicastrum virginicum</i>	Culvers root

**Wet prairie seed mix:**

Wet prairie mix will be seeded in drainageway areas in outlots 1, 3 and the pond edge. Seed shall be applied at a rate of at least 7 lbs/acre for grasses and 3 lbs/acre for forbs.

Grasses/sedges: at least 7 of 9 species will be planted. No one species shall be more than 20 % of the total grass/sedge mix.

<i>Panicum virgatum</i>	switchgrass
<i>Andropogon gerardii</i>	big bluestem
<i>Spartina pectinata</i>	cordgrass
<i>Calamagrostis canadensis</i>	Canada bluejoint grass
<i>Scirpus cyperinus</i>	woolgrass
<i>Scirpus atrovirens</i>	green bulrush
<i>Juncus torreyi</i>	Torry's rush
<i>Acorus calamus</i>	Sweet flag
<i>Sparganium eurycarpum</i>	bur reed

Forbs: Include at least 10 of 13 species of the following, no one species shall be greater than 15% of the mix:

<i>Verbena hastata</i>	Blue vervain
<i>Helenium autumnale</i>	Sneezeweed
<i>Aster novae-angliae</i>	New England aster
<i>Aster simplex</i>	Marsh aster
<i>Solidago graminifolia</i>	Grass leaved goldenrod
<i>Mimulus ringens</i>	Monkey flower
<i>Penthorum sedoides</i>	Ditch stone crop
<i>Tradescantia ohiensis</i>	Spiderwort

<i>Polygonum pennsylvanica</i>	Smartweed
<i>Polygonum amphibium</i>	Smartweed
<i>Eupatorium maculatum</i>	Joe pye weed
<i>Alisma plantago-aquatica</i>	Water plantain
<i>Helianthus grosserratus</i>	Sawtooth sunflower

3. Temporary seed mix:

Live seed oats shall be added to the prairie mixes at a rate of 20 pounds per acre.

4. Methods of seeding:

All seed shall be treated with appropriate inoculants if needed and stratified to insure germination in spring. Ground shall be prepared by mowing and herbiciding of the existing vegetation the summer before seeding. Seed shall be mixed and shall be sown with a broadcast seeder and machine raked.

5. Tree planting: Trees shall be planted in spring after soils are unfrozen and ideally just before a rain.

Species:	Common name:	Where planted:	number:
Trees:			
<i>Quercus macrocarpa</i>	bur oak	outlots 1 and 3	15 (5' high)
<i>Thuja occidentalis</i>	white cedar	outlot 2	25 (18 inches)
<i>Prunus serotina</i>	black cherry	outlot 5	8 (5' high)
Shrubs:			
<i>Cornus stolonifera</i>	red osier dogwood	outlot 6	8 (18 inches)
<i>Virburnum trilobum</i>	high bush cranberry	outlot 6	8 (18 inches)
<i>Sambucus Canadensis</i>	elderberry	outlot 6	8 (18 inches)
<i>Prunus Americana</i>	American plum	outlot 6	8 (18 inches)
<i>Amelanchier stolonifera</i>	service berry	outlot 5	8 (18 inches)
<i>Hamamelis virginiana</i>	witchhazel	outlot 5	8 (18 inches)

5. Restoration Timetable

Plantings shall be done during the spring growing season when soil conditions are suitable. Soil shall be unfrozen. All stock must be stored in cool place while being planted. All restoration work shall be completed by June 1, 2004.

**GRANT OF CONSERVATION EASEMENT  
WITH RESPECT TO OUTLOT 4**

THIS GRANT OF CONSERVATION EASEMENT ("Conservation Easement") is made this 12 day of November, 2003, between and among CALEDONIA CONSERVANCY, LTD., a non-profit charitable corporation ("Caledonia Conservancy"), KENOSHARACINE LAND TRUST, INC., a non-profit, charitable corporation ("the Land Trust") and the TOWN OF CALEDONIA, a municipal corporation located in Racine County, Wisconsin, its successors and assigns ("the Town") and is made with the approval of the Wisconsin Department of Natural Resources ("DNR") (Exhibit A).

RECITALS

A. The Caledonia Conservancy is the owner of Outlot 4 of the Wooded Valley Estates Subdivision, located in the Town of Caledonia, Racine County, Wisconsin, ("Easement Area"). A copy of the legal description of Outlot 4 is attached as Exhibit B.

B. Pursuant to Section 23.096, Wis. Stats., and Chapter NR 51, Wisconsin Administrative Code, the DNR awarded a stewardship grant to the Caledonia Conservancy to be utilized in the purchase of the Easement Area, all subject to the terms and conditions of the Stewardship Grant and Management Contract for Non-Profit Land Acquisition, #UGS-123 ("Stewardship Grant"), a copy of which is attached as Exhibit C and incorporated herein by reference.

C. The Caledonia Conservancy is willing to grant this Conservation Easement to the Land Trust and the Town to protect environmentally sensitive areas located within the Easement Area. Such areas are documented in an inventory of relevant features of the Easement Area that is contained in a stewardship plan, including two oversized diagrams, dated June 24, 2003, of which the original is filed and on record with the Town and is incorporated herein by reference. ("Stewardship Plan"). A copy of the Stewardship Plan approval is attached as Exhibit D.



D. The Land Trust is qualified to be a "holder" (as that term is defined in Section 700.40(1)(b) of the Wisconsin Statutes) of conservation easements pursuant to Section 700.40(2) of the Wisconsin Statutes.

E. The Town is qualified to be a "holder" (as that term is defined in §700.40 (1)(b) of the Wisconsin Statutes) of conservation easements pursuant to §700.40 (2) of the Wisconsin Statutes.

F. The Common Law and the Uniform Conservation Easement Act, Section 700.40 of the Wisconsin Statutes, provide for the creation and conveyance of conservation easements which impose restrictions or affirmative obligations on the Owners of lands.

G. The Land Trust and the Town agree, by accepting this Conservation Easement, to preserve and protect in perpetuity the conservation values of the Easement Area for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which by each of the parties is hereby acknowledged, and pursuant to the laws of the State of Wisconsin, including Section 700.40 of the Wisconsin Statutes, the parties hereto grant and agree as follows:

1. **Conservation Easement.** The Caledonia Conservancy does hereby grant, assign and convey to the Land Trust and the Town a conservation easement over the Easement Area pursuant to Section 700.40 of the Wisconsin Statutes of the nature and character and to the extent set forth herein. The development rights conveyed by this Conservation Easement shall include all development rights, except those specifically reserved herein and those reasonably required to carry out the permitted uses of the Easement Area as herein described. The Conservation Easement and restrictions hereby conveyed consist of covenants on the part of the Caledonia Conservancy and its successors and assigns.



2. **Purpose.** The purposes of this Conservation Easement are to retain and protect the natural scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property now and in the future for the benefit of present and future generations and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. The Easement Area shall be used only as expressly provided in this Conservation Easement and Stewardship Grant, with management of the Easement Area to be in accordance with the Stewardship Plan and Stewardship Grant. The parties to this Conservation Easement recognize the need to protect natural, scenic or open space values of real property and share the common purpose of conserving these values by this Conservation Easement to prevent the use or development of the Easement Area for any purpose or in any manner which would conflict with the maintenance of these values. Each of the parties accepts such conservation restrictions and development rights in order to conserve these values for present and future generations.

3. **Prohibited Uses.** Any activity on or use of the Easement Area inconsistent with the purpose of this Conservation Easement is prohibited. No residential, commercial, industrial, or mining activities shall be permitted, and no building, structure, or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Easement Area, except as specifically permitted under this Conservation Easement, Stewardship Grant, or the Stewardship Plan. Where the requirements of the Conservation Easement, Stewardship Grant, and/or Stewardship Plan are conflicting, the Caledonia Conservancy shall comply with the Stewardship Grant. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

a. Use of this property other than for those outdoor recreation uses set forth in the Department of Natural Resources Stewardship Grant # UGS-123 and consistent with Chapter 23, Wisconsin Statutes, and Chapter NR 51, Wisconsin Administrative Code and as specified herein. In the event of a conflict between the terms of the Stewardship Grant #UGS-123, this Conservation Easement or the Stewardship Plan, provisions of the Stewardship Grant shall supersede any other provision.

b. The division of the easement area into smaller parcels, whether through legal or *de facto* subdivision, including divisions through the creation of condominiums, site leases, lot line adjustments or other means. It is the intent of this paragraph to require that the entire Easement Area remain as platted for the purposes of this Conservation Easement and to prohibit the conveyance of any portion of the Easement Area.

c. Use of the Easement Area for residential, commercial or industrial purposes, including use by easement or other right of access or passage across or upon the Easement Area in conjunction with commercial activity.

d. The placement and construction of any buildings, structures, or other improvements of any kind other than those improvements that are identified in and consistent with the Stewardship Plan or Stewardship Grant. Such improvements include the pedestrian and equestrian trail system, a small parking lot (i.e., not to exceed 2000 square feet), and a small shed (not to exceed 144 square feet and located in the area identified in the Stewardship Plan and approved by the DNR), and fencing all as identified in the Stewardship Plan. If the Caledonia Conservancy is successful in acquiring the "Christensen Property" located south and adjacent to the Easement Area, said parking lot and shed shall be constructed on that property rather than within the Easement Area.

e. Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock or peat, except as otherwise permitted pursuant to the Stewardship Plan or Stewardship Grant. In no case shall mining of oil, gas, or other minerals be permitted. Reasonable amounts of soil may be moved for the purpose of constructing and maintaining a sound trail system and filling depressions caused by the removal of trees, and only as permitted by the Stewardship Grant, provisions 28i and 29c.

f. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant long term pollution of any surface or subsurface waters. Woods chips and gravel may be used on the trails and on the public access and parking lot to prevent erosion and soil degradation. Further, trees and vegetation may be managed, removed, planted or introduced in accordance with the Stewardship Plan, and only as permitted by provisions 28i, 29c and 29d of the Stewardship Grant.

g. All parties to this easement shall protect and preserve the Blue-stemmed Goldenrod (*Solidago caesia*) located on the Easement Area.

h. Any use or activity, not expressly permitted in this Easement, Stewardship Plan or Stewardship Grant that causes or is likely to cause significant degradation of any woodlands, wetlands, streams, springs, lakes, ponds, marshes, sloughs, swales, swamps, or potholes now existing or hereinafter occurring.

i. No portion of the Easement Area shall be used for dumps, landfills, or the storage or deposit of waste materials of any kind. Disposal of any waste materials generated by activities permitted under this Conservation Easement shall be in accordance with applicable state law and with the approval of the Land Trust and/or the Town.

j. The placement, use or parking of mobile homes, trailers, trucks, automobiles, or any other motorized vehicle, except as permitted in the Stewardship

Plan or Stewardship Grant. Motorized equipment, such as tractors, lawn mowers and "bobcats" may be used to construct and maintain a trail system.

k. No use shall be made of the Easement Area, and no activity thereon shall be permitted, which in the reasonable opinion of the Land Trust or the Town, is or is likely to become inconsistent with the purposes of this Easement Area as stated above, or as set forth in the Stewardship Plan or Stewardship Grant. Changes of any portion of the Easement Area to any use other than that specified in the Stewardship Grant without the prior written approval of the DNR is prohibited.

4. **Reserved Rights.** The Caledonia Conservancy reserves to itself and its successors and assigns, all rights accruing from its Ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not prohibited herein and are not inconsistent with the purpose of this Conservation Easement, Stewardship Grant, or the Stewardship Plan.

5. **Maintenance of Easement Area.** The Caledonia Conservancy, its successors and assigns shall be responsible for maintenance of the Easement Area in accordance with the Stewardship Plan and Stewardship Grant, which is to be prepared by a consultant with expertise in rendering professional ecological services. The Subdivider of the Wooded Valley Estates Subdivision, the Newport Group, Ltd., has contracted with its ecologist, Thompson and Associates Wetland Services, LLC, to conduct annual assessments of the Outlot 4 Easement Area for the first five years after execution of this Easement by all parties. Thereafter, the Land Trust shall contract with such consultant, or other qualified individual, organization or business, to conduct an annual assessment of the Easement Area to ensure compliance with such Stewardship Plan and Stewardship Grant. A written summary of said annual assessment shall be provided by the consultant to the Town, Land Trust, DNR and Caledonia Conservancy, or its successors and assigns. The cost for the above services as well as any

administrative cost incurred by the Land Trust, shall be borne by the Caledonia Conservancy or its successors and assigns.

In case of failure to pay any of the costs and fees above, the Town may extend such costs and fees upon the tax roll as a special tax pursuant to Section 66.0627, Wis. Stats., or pursuant to any other applicable section of the statute. The Caledonia Conservancy, and its successors and assigns, waive right to notice and hearing. In addition, the Land Trust or Town may commence legal action for the recovery of any such amounts owing to it hereunder.

6. **Public Access.** The conditions of the Stewardship Grant require public access that must be functional as an access-way for vehicles pulling horse trailers. The Caledonia Conservancy may also utilize that public access to access the Easement Area with necessary vehicles and equipment to maintain the property. A fifteen foot access corridor located between lots 25 and 26 is shown on the final plat of the Subdivision. Said access corridor is to be maintained by the Caledonia Conservancy. While the Caledonia Conservancy anticipates that the access corridor will remain in a natural state, all parties acknowledge that the Town or DNR may require improvements to the access corridor in the future to ensure that functional public access is provided. If the Caledonia Conservancy is successful in acquiring the "Christensen Property" referred to above, the public access shall be moved to said parcel, and said access corridor will be retained to provide access for maintenance of the Easement Area.

7. **Additional Rights of Land Trust and Town.** To accomplish the purpose of this Conservation Easement, the following additional rights are conveyed to the Land Trust and the Town by this Conservation Easement.

a. To enter upon the Easement Area at reasonable times in order to monitor the Caledonia Conservancy's compliance with and otherwise enforce the terms of this Conservation Easement; provided that such entry shall be upon prior reasonable

notice to the Caledonia Conservancy; and shall not unreasonably interfere with Caledonia Conservancy's use and quiet enjoyment of the Easement Area; and

b. To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Conservation Easement and to require, at the Caledonia Conservancy's expense, the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use.

8. **Approval.** Where the approval of the Land Trust and/or Town is required, such approval, or denial, shall be given in writing within 45 days of receipt of written request therefore. Such request shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Land Trust or Town to make an informed judgment as to its consistency with the purpose of this Conservation Easement. Such approval may be withheld only upon a reasonable determination that the action as proposed would be inconsistent with the purpose of or would otherwise violate any provision of this Conservation Easement.

9. **Enforcement of the Restrictions.**

a. *Generally.* If the Land Trust and/or Town determines that any party is in violation of the terms of this Conservation Easement or that a violation is threatened, written notice of such violation or threatened violation shall be given to the alleged violating party advising such party of the nature and extent of the violation or threatened violation and demanding corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Easement Area so injured. If the alleged violating party fails to cure the violation within 45-days after receipt of such notice, or under circumstances where the violation cannot reasonably be cured within a 45-day period, fails to begin curing such violation within the 45-day period, or fails to continue diligently to cure such violation

until finally cured, the affected party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte if necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement, or injury to any conservation values protected by this Conservation Easement, including damages for the loss of natural or scenic resources and/or water quality and/or environmental values, and to require the restoration of the Easement Area to the condition that existed prior to any such injury. Any damages recovered shall be applied to the cost of undertaking any corrective action on the Easement Area. The parties agree that remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Land Trust and/or Town shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which it may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy or otherwise available legal remedies.

b. *Costs of Enforcement.* Any costs incurred by the Land Trust and/or Town in enforcing the terms of this Conservation Easement including, without limitation, costs of litigation and attorneys' fees, and any costs of restoration necessitated by any violation of the terms of this Conservation Easement shall be borne by the Caledonia Conservancy, or its successors and assigns, if the final determination, or resolution of the matter outside of litigation, is in favor of the Land Trust and/or Town.

c. *Enforcement Discretion.* Enforcement of the terms of this Conservation Easement shall be at the discretion of the Land Trust and/or Town, and any forbearance by it to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of any subsequent breach of the same or any other terms of this Conservation Easement or of any rights under this Conservation Easement. No

delay or omission by the Land Trust and/or Town in the exercise of any right or remedy upon any breach by any party to this Conservation Easement shall impair such right or remedy or be construed as a waiver.

d. *Acts Beyond Caledonia Conservancy's Control.* Nothing contained in this Conservation Easement shall be construed to entitle the Land Trust and/or Town to bring any action against the Caledonia Conservancy, its successors and assigns, for any injury to or change in the Easement Area resulting from causes beyond the Caledonia Conservancy's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by the Caledonia Conservancy under emergency conditions to prevent, abate or mitigate significant injury to the Easement Area resulting from such causes. In the event of Acts beyond Caledonia Conservancy's control, the area that is destroyed shall be restored pursuant to the Stewardship Plan and Stewardship Grant at the cost of the Caledonia Conservancy or its successors or assigns, or with the written consent of the Town and the DNR, the altered area shall be managed for its remaining natural ecological values pursuant to a revised Stewardship Plan that reflects the altered condition of the land.

e. *Waiver of Certain Defenses.* The Caledonia Conservancy hereby waives any defense of laches, estoppel or prescription.

f. *Appeal from Determination of Land Trust.* The Caledonia Conservancy shall have the right to seek a review by the Town of any determination made by the Land Trust. Such review shall proceed in accordance with Title 4 of the Code of Ordinances for the Town of Caledonia, entitled "Administrative Determinations Review."

10. **Costs, Legal Requirements, and Liabilities.** Caledonia Conservancy, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the Ownership, operation, upkeep, and maintenance of the Easement Area, including the maintenance of adequate liability



insurance coverage. Caledonia Conservancy remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Caledonia Conservancy shall keep the Easement Area free of any liens arising out of any work performed for materials furnished to, or obligations incurred by Caledonia Conservancy.

11. **Taxes.** Notwithstanding this Conservation Easement, the obligation to pay taxes on the land over which the Conservation Easement runs shall remain with the Caledonia Conservancy, its successors and assigns unless a property exemption is granted pursuant to law. Caledonia Conservancy shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish the Land Trust and/or Town with satisfactory evidence of payment upon request.

12. **Representations and Warranties.** Caledonia Conservancy represents and warrants that to the best of its knowledge:

a. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Easement Area;

b. There are not now any underground storage tanks located on the Easement Area, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the

Easement Area in a manner not in compliance with applicable federal, state and local laws, regulations, and requirements;

c. The Easement Area is in compliance with all current federal, state, and local laws, regulations, and requirements applicable to the Easement Area and its use;

d. There is no pending or threatened litigation in any way affecting, involving, or relating to the Easement Area; and

e. No civil or criminal proceedings or investigations have been instigated or are now pending or have occurred during the time of Caledonia Conservancy's ownership, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Easement Area or its use, nor do there exist any facts or circumstances that Caledonia Conservancy might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

13. **Remediation.** If, at any time after the execution of this Agreement, there occurs a release in, on or about the Easement Area of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Caledonia Conservancy and its successors and assigns agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Land Trust and/or Town, in which case the Land Trust and/or Town shall be responsible therefore.

14. **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Land Trust and/or Town to exercise physical or managerial control over the day-to-day operations of the

Easement Area, or any of Caledonia Conservancy's activities on the Easement Area, or otherwise to become an operator with respect to the Easement Area within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or under state law.

15. **Hold Harmless.** Caledonia Conservancy hereby releases and agrees to hold harmless, indemnify, and defend the State of Wisconsin, Department of Natural Resources, the Land Trust and/or Town and their members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) 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 Easement Area, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Easement Area; (3) the presence or release in, on, from, or about the Easement Area, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of sections 10 through 14.

16. **Subsequent Transfers.** The Caledonia Conservancy agrees to incorporate the terms of this Conservation Easement by specific reference to the recording data hereof in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Easement Area.

17. **Assignment.** This Easement is transferable in accordance with provision 1b of the Stewardship Grant but the Land Trust and/or the Town may assign its rights and obligations under this Easement only with the written approval of the DNR, and only to a non-profit conservation organization qualified for Stewardship grants, pursuant to ss. 23.096 and 23.0955(1), Wis. Stats., or to a local, state or federal unit of government and an organization that is authorized to acquire and hold conservation easements under Sec. 700.40 Wis. Stats., (or any successor provision then applicable). As a condition of such transfer, the Land Trust and/or Town shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Following the written approval of the DNR, the Land Trust and/or Town agree to give written notice to Caledonia Conservancy of an assignment at least twenty (20) days prior to the date of such assignment. The failure of the Land Trust and/or Town to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

18. **Notices.** Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party shall be in writing and either served personally or sent by certified-mail, return receipt requested, addressed as set forth below or to such other address as any party from time to time shall designate by written notice to the others:

Wendy M. Christensen, Town Clerk  
Town of Caledonia  
6922 Nicholson Road  
Caledonia, WI 53108

Kenosha/Racine Land Trust, Inc.  
c/o Charles Haubrich  
P.O. Box 085153  
Racine, WI 53408-5153

Caledonia Conservancy, Ltd.  
c/o Randy Peterka  
7735 Nicholson Road  
Caledonia, WI 53108

Department of Natural Resources  
c/o Kathryn A. Curtner  
Bureau of Community Financial Assistance  
P.O. Box 7921  
Madison, WI 53707-7921

19.           **Recordation.** This Conservation Easement shall be recorded in the office of the Register of Deeds for Racine County. Any party may re-record it at any time.

20.           **Extinguishment.** If circumstances arise in the future such as render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement and the easements granted herein can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

21.           **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the agreement to affect the purpose of this Conservation Easement and the policy and purposes of Section 700.40 of the Wisconsin Statutes. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

22.           **Severability.** 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 this Conservation Easement, 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.

23.           **Binding Effect.** This Conservation Easement shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors, or assigns. It is hereby acknowledged that the covenants contained herein shall constitute servitude upon the Easement Area and shall run with the land in perpetuity.

24.           **Amendment and Modification.** This Conservation Easement and the Stewardship Plan incorporated herein by reference may be amended, modified and supplemented only by written agreement of the parties hereto or their successors or assigns, provided that any such amendment shall not diminish the goals or purposes of the Conservation Easement or affect its perpetual duration. Any amendments to the Stewardship Plan must be approved in writing by the Wisconsin Department of Natural Resources ("DNR").

25.           **Entire Agreement.** This Conservation Easement sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officers, employee or representative of any party hereto.

26.           **Third Parties.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or corporation or entity, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Conservation Easement. There are no third party beneficiaries to this Conservation Easement.

27.           **Acceptance of Holder's Interest.** The Land Trust and the Town by execution of this Conservation Easement hereby accept a holder's interest in this Conservation Easement.

28. **DNR Approval.** The DNR's written consent and approval to this Grant of Conservation Easement is attached as Exhibit A. In the event of the dissolution of the Caledonia Conservancy and/or non-compliance by the Caledonia Conservancy with the conditions of the Stewardship Grant, the Town shall be given the opportunity to assume ownership of the property, subject to the terms of the Stewardship Grant, prior to the reversion of title to the property to the State of Wisconsin.

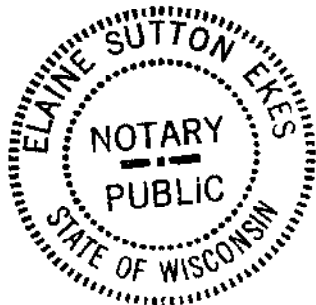
**CALEDONIA CONSERVANCY, LTD.,**  
 a non-profit charitable corporation

By: *Randy Peterka*  
 RANDY PETERKA

Attest: *Cliff Vacek*  
 CLIFF VACEK

STATE OF WISCONSIN )  
 ) SS  
 COUNTY OF RACINE )

Personally came before me this 12<sup>th</sup> day of November 2003, the above named, RANDY PETERKA and CLIFF VACEK, the President and Secretary respectively, of the CALEDONIA CONSERVANCY, LTD., a non-profit charitable corporation, to me known to be the persons who executed the foregoing instrument and acknowledged the same as the act and deed of the partnership.

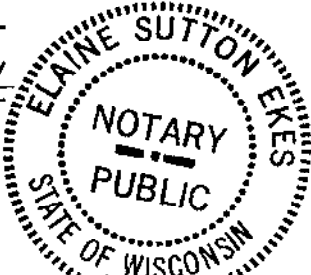


*Elaine Sutton Ekcs*  
 Notary Public, Racine County, WI  
 My Commission Expires: permanent

KENOSHA/RACINE LAND TRUST, INC.

By: Charles Haubrich  
 CHARLES HAUBRICH, President

Attest: Hannelore Artimow  
 Hannelore Artimow, Vice President



STATE OF WISCONSIN )  
 ) SS  
 COUNTY OF RACINE )

Personally came before me this 12<sup>th</sup> day of November, 2003, the above named, CHARLES HAUBRICH and Hannelore Artimow, the President and Vice President respectively, of KENOSHA/RACINE LAND TRUST, INC., to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said corporation.

Elaine S. Ekes  
 Notary Public, Racine County, WI  
 My commission Expires: permanent

TOWN OF CALEDONIA

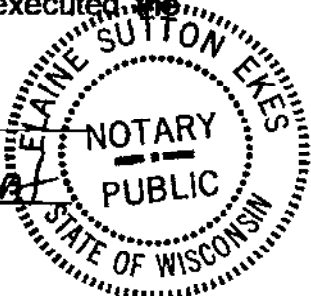
By: Susan Greenfield  
 SUSAN GREENFIELD,  
 TOWN CHAIRMAN

Attest: Wendy M. Christensen  
 WENDY M. CHRISTENSEN,  
 TOWN CLERK

STATE OF WISCONSIN )  
 ) SS  
 COUNTY OF RACINE )

Personally came before me this 12<sup>th</sup> day of November, 2003, the above named, SUSAN GREENFIELD and WENDY M. CHRISTENSEN, Chairman and Clerk for the TOWN OF CALEDONIA, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of said Town.

Elaine S. Ekes  
 Notary Public, Racine County, WI  
 My Commission Expires: permanent



This instrument was drafted by:  
 Timothy J. Pruitt  
 Elaine Sutton Ekes

10/8/03 770272.057





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary  
Gloria L. McCutcheon, Regional Director

Southeast Region Headquarters  
2300 N. Dr. Martin Luther King, Jr. Drive  
PO Box 12436  
Milwaukee, Wisconsin 53212-0436  
Telephone 414-263-8500  
FAX 414-263-8606  
TTY 711

**COPY**

October 8, 2003

Elaine Sutton Ekes  
Hostak Henzl & Bichler, S.C.  
840 Lake Avenue  
Racine, WI 53403

**RECEIVED**  
OCT 09 2003

**HOSTAK, HENZL & BICHLER, S.C.**

Subject: WDNR Approval of Conservation Easement

Dear Elaine:

You have requested department approval of the Caledonia Conservancy, Ltd.'s intention to grant a conservation easement to the Kenosha/Racine Land Trust, Inc. and the Town of Caledonia on a property to be acquired with the following Stewardship grant:

Grant Agreement  
Number

Project Name

UGS-123

Caledonia Conservancy - Tabor Woods Expansion

The property is generally described as Outlot 4 of the Wooded Valley Estates Subdivision, located in the Town of Caledonia, Racine County, Wisconsin.

The department has reviewed the easement and understands that the intent of the easement on this property is to impose certain restrictions and covenants, consistent with Stewardship Program provisions, for the benefit of the Kenosha/Racine Land Trust, Inc. and the Town of Caledonia, to ensure that the property be protected for conservation purposes. This includes use of the property as open space for the scenic and recreational enjoyment of the general public and protection of it's ecological resources and natural habitat.

Given the above assurances, the department acknowledges these terms and conditions and hereby approves of the easement for this property between the Caledonia Conservancy, Ltd. and the Kenosha/Racine Land Trust, Inc. and the Town of Caledonia, to be recorded in the Office of the Register of Deeds for Racine County. Please forward a copy of the recorded easement to me as soon as it is available.

Sincerely,  
*Dan Kaemmerer*  
Dan Kaemmerer  
Community Services Specialist

**RECEIVED**  
OCT 09 2003

C: Tom Blotz, WDNR-SER  
Gene Park, WDNR-SER

Janet Beach Hanson, WDNR-CA/8  
Peter McKeever, Heart Lake Conservation Associa

**HOSTAK HENZL**

**EXHIBIT**

D