

PUBLIC USE TRAIL EASEMENT AGREEMENT

DEFINITIONS

- Grantor: Barnesville Oak Farms, LLC, a Maryland Limited Liability Company, its successors and assigns in its capacity as agent for the Balsamah Corporation, N.V., a Netherlands Antilles Corporation, its successors and assigns, (Grantor).
- Grantee: Equestrian Partners in Conservation, Inc., a Maryland 501(c)(3) Non-Profit Corporation, its successors and assigns (“EPIC” or “Grantee”).
- Plan: Preliminary Plan Number 120090110 as approved by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on September 28, 2010 under Resolution Number 10-129, a copy of which is attached and incorporated by reference herein as Exhibit A. (hereinafter referred to as “the Plan” or “Resolution”)

WITNESSETH

WHEREAS, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (“The Planning Board”) has approved Grantor's Plan conditioned upon Grantor subjecting the property (“Property”) to a Public Use Trail Easement (“PUTE” or “Easement”) running in favor of the Grantee and the public; and

WHEREAS, the location of the Easement is shown on the Plan (incorporated by reference into the terms of this Agreement) and further described on the applicable record plat(s) to be recorded; and

WHEREAS, the purpose of creating a PUTE is to create a trail for public recreational use in accordance with Section 5-1101, Natural Resources Art., Md. Code; and

WHEREAS, the Parties intend for conditions and covenants contained in this Agreement will run with the land in perpetuity and be binding on all subsequent owners and occupants of the Property.

NOW, THEREFORE, the Grantor has executed this Agreement for the purpose of ensuring compliance with conditions imposed by the Planning Board as a requirement of development approval. The Grantor does hereby grant and convey unto the Grantee, in perpetuity, a Public Use Trail Easement on the Property of the size and location described in the Plan, and further described on the applicable record plat(s), of the nature and character described herein. This Easement constitutes a covenant running with the land and is granted to establish a public right to use the trail easement area for all manner of public trail use as herein described. In addition, the parties agree as follows:

1. The foregoing recitals are agreed to and incorporated herein and shall be binding upon the parties
2. The provisions of the Plan, including but not limited to paragraph 3, are hereby adopted and incorporated by reference herein. If there is any conflict between the Plan and this Easement, the provisions of the Plan shall govern.
3. Grantor hereby establishes and grants a non-exclusive perpetual trail easement to the Grantee for the benefit of the public, in, on, over, across, and through the Property as described in the Plan for recreational use in accordance with Section 5-1101, Natural Resources Art., Md. Code. This shall not include motorized vehicles other than those associated with construction, management, and maintenance of the trail.
4. The Grantee and the public shall have the non-exclusive use of the easement for the purposes stated herein and shall have all of the rights and privileges reasonably necessary to exercise this easement.
5. Grantor shall not erect nor permit to be erected any structure, including but not limited to, buildings, improvements, fences and barricades of any nature whatsoever, within the easement premises, without the prior written consent of the Grantee. The Grantor shall not take any action to impede the use of the trail as a recreational trail.
6. Grantor agrees not to change the character of the topography of the easement premises without the prior written consent of the Grantee.
7. Pursuant to Section 5-1104, Natural Resources Article, Annotated Code of Maryland, the Grantor and Grantee are not: (a) extending any assurances that the easement premises are safe for any purpose, (b) conferring on any person the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assuming responsibility for or incurring liability as a result of any injury to any person or property caused by an act of omission of any person.
8. Pursuant to Section 5-1103, Natural Resources Article, Annotated Code of Maryland, the Grantor and Grantee owe no duty of care: (a) to keep the easement premises safe for entry or use by others for the recreational purposes enumerated herein, or (b) to give warning of any dangerous condition, use, structure or activity on the easement to any person who enters on the easement premises for these purposes.
9. In accordance with the Resolution, both the Grantor, and/or the Grantee, have the right to enforce the terms of this Easement, but have no obligation to do so.

10. The Grantee has the right, but is not obligated, to construct, maintain and repair the trail for recreational use and keep the premises clear of trees, shrubs and obstructions as necessary.
11. This grant is subject to existing easements of record for public roads and highways and public utilities.
12. The Grantee is not liable for any existing or future liens, mortgages, deeds of trust, or other encumbrances created voluntarily or involuntarily by the Grantor on the easement premises.
13. Grantor warrants that Grantor has good and indefeasible fee simple title to the easement premises and has the right and authority to execute this Agreement without the consent of any other person or legal entity.
14. Grantor covenants that it will warrant specially this easement and will execute such further assurances as may be requisite.
15. This Agreement and all rights and privileges granted herein shall run with the land and be binding upon and inure to the benefit of the Grantor and Grantee and their successors, assigns and legal representatives.
16. This Agreement shall be construed in accordance with the laws of the State of Maryland and enforced in a court of competent jurisdiction in Montgomery County, Maryland.
17. This Agreement shall be recorded among the land records of Montgomery County, Maryland at the expense of the Grantor.
18. Any written notices to the Grantee required by this Public Use Trail Easement Agreement shall be sent to the Director and/or President, Equestrian Partners in Conservation, P.O. Box 69, Boyds, Maryland 20841.
19. This Easement Agreement is intended to and does supercede the Covenant dated September 11, 2014 recorded by the Grantor in Liber 49221 Folio 445 among the Land Records for Montgomery County, Maryland.

TO HAVE AND TO HOLD unto the Grantee, Its successors and assigns forever, this grant shall be binding upon the heirs, successors and assigns of the Grantor in perpetuity and shall constitute a covenant real running with the land.

IN WITNESS THEREOF, the parties hereto have executed this Public Use Trail Easement on this _____ day of _____, 2015.

GRANTOR:

BARNESVILLE OAK FARMS, LLC

By: _____

(Title)

GRANTEE:

EQUESTRIAN PARTNERS IN CONSERVATION, INC.

By: _____

(Title)

STATE OF MARYLAND :
COUNTY OF MONTGOMERY : TO WIT:

On this ____ day of _____, 2015, before me, the undersigned Notary Public personally appeared _____ on behalf of **BARNESVILLE OAK FARMS, LLC**, and proved to me through satisfactory evidence of identification, which consisted of _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public

STATE OF MARYLAND :
COUNTY OF MONTGOMERY : TO WIT:

On this ____ day of _____, 2015, before me, the undersigned Notary Public personally appeared _____ on behalf of **EQUESTRIAN PARTNERS IN CONSERVATION, INC.** and proved to me through satisfactory evidence of identification, which consisted of _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public

CERTIFICATION

Approved for legal sufficiency by the Office of General Counsel for the Maryland-National Capital Park and Planning Commission on this ____ day of _____, 2015.

By: _____

(Title)

THE UNDERSIGNED, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him/her or under his/her immediate supervision.
