BARRINGTON AREA CONSERVATION TRUST

space to | breathe | ride | play

17 Oakdene Road East
Barrington Hills, IL 60010
(847) 381-4291
info@bactrust.org
www.BACTrust.org

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11/16/10

Attention Village Clerk –

Please accept the attachments 4 easements from the Barrington Area Conservation Trust.

Karen Yancey
Executive Director.

ROADS & BRIDGES

BACT FLANNERY ROAD EASEMENT I

C

This Instrument prepared by
(and after recording return to):
George M. Covington
Law Offices of George M. Covington LLC
500 North Western Avenue
Lake Forest, IL 60045

DECLARATION AND GRANT OF SCENIC EASEMENT AND CONSERVATION RIGHT

THIS DECLARATION OF AND GRANT OF SCENIC EASEMENT AND CONSERVATION RIGHT ("Scenic Easement") is made as of this __ day of _____, 2010, by LOUISE M. FLANNERY AND JAMES G. FLANNERY, JR., NOT INDIVIDUALLY, BUT AS CO-TRUSTEES OF THE JAMES G. FLANNERY FAMILY TRUST A U/A/D JANUARY 29, 1990 ("Grantor"), in favor of VILLAGE OF BARRINGTON HILLS ("Village"), a body politic and corporate organized under the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*) and a home rule unit of government under Article VII, Section 6 of the Constitution of the State of Illinois, whose address is 112 Algonquin Road, Barrington Hills, Illinois 60010, and BARRINGTON AREA CONSERVATION TRUST ("BACT"), an Illinois not for profit corporation, whose address is 17 Oakdene Road East, Barrington Hills, Illinois 60010;

W I T N E S S E T H:

WHEREAS, the Grantor is the owners in fee simple of certain real property commonly known as 100 Brinker Road, Barrington Hills, Illinois 60010 ("Grantor's Property"); and

WHEREAS, the Village is an Illinois municipal corporation and home rule unit as described in the Constitution of the State of Illinois; and

WHEREAS, BACT is an Illinois not for profit corporation whose primary purposes include the conservation of land, natural areas, open space or water areas, or the preservation of native plants or animals;

WHEREAS, the Grantor, Village, and BACT desire to locate a scenic corridor conservation area in, upon, under, along, and across a portion of Grantors' Property legally described on the attached Exhibit A (hereinafter referred to as "Protected Property") and desire and intend that the natural elements and the ecological and aesthetic values of the Protected Property be preserved in their current natural, scenic, open or wooded condition, in order to provide scenic enjoyment for the general public traveling along 100 Brinker Road, Barrington Hills, Illinois 60010 and

WHEREAS, the Grantors desire to: (i) create and establish certain conservation rights, benefits, privileges and impose certain obligations, duties, easements, covenants and conditions upon the Protected Property; and as well as certain privileges; and (ii) impose certain future obligations and duties, which will bind all present and future owners of the Protected Property to the terms, conditions and provisions of this Scenic Easement in the manner hereinafter set forth; and

WHEREAS, the Village and BACT desire generally to promote the conservation of land, natural areas, and open space, and specifically to preserve open space along 100 Brinker Road, Barrington Hills, Illinois 60010, and are willing to accept this Scenic Easement subject to the reservations and the covenants, terms, conditions and restrictions set out herein and imposed hereby; and

WHEREAS, the Grantors, Village and BACT, by the conveyance of this Scenic Easement on, over and across the Protected Property, desire to preserve and conserve the natural, scenic and open space values thereof and prevent the use or development of the Protected Property for any purpose or in any manner inconsistent with the terms of this Scenic Easement; and

WHEREAS, the Illinois Real Property Conservation Rights Act (765 ILCS 120/1 *et seq.*) (the "Conservation Rights Act") authorize the creation of conservation rights to protect land or water areas predominantly in their natural, open, or wooded condition;

NOW THEREFORE, the Grantors, for and in consideration of the foregoing recitations which are included and made a part of this easement by this reference and of the mutual covenants, terms, conditions and restrictions subsequently contained, and as an absolute and unconditional gift do hereby grant and convey unto the Village and

BACT, jointly, to have and to hold forever, an exclusive easement (except as otherwise permitted in this document) and conservation right under the Conservation Rights Act in perpetuity on, over and across the Protected Property.

1. **Rights of Village and BACT**. The rights of the Village and BACT hereunder shall consist solely of the following:

(a). To hold this Scenic Easement upon the Protected Property for the benefit of the general public so that the general public may view but not enter upon the Protected Property in its natural, scenic, and open condition; and

(b). To enforce by proceedings at law or in equity the terms of this easement and the covenants set forth herein, including the right to require the maintenance of the Protected Property and restoration of the Protected Property to its condition as of the date hereof (subject to the rights of the Grantor with respect to the use and construction of the Protected Property of public utilities located below the surface and of driveways and walkways traversing the Scenic Easement from the remainder of the Grantor's Property in a manner generally perpendicular to the public right of way adjacent to the Scenic Easement), it being agreed that there shall be no waiver or forfeiture of the right of the Village and BACT to ensure compliance with the covenants and conditions of this Scenic Easement by reason of any failure to act on the part of the Village or BACT; and

(c) To cause their agents to enter the Protected Property at all reasonable times upon reasonable prior notice (except in case of emergency when no prior notice shall be required) for the purpose of inspecting the Protected Property to determine whether the Grantors are complying with the covenants and conditions of this Scenic Easement.

(d) The Village and BACT shall each be entitled to enforce the terms of this Scenic Easement, with or without the participation or consent of the other holder hereof. Except as may be expressly provided herein, any matter requiring the consent or approval of Village and BACT shall require the consent or approval of both the Village and BACT.

2. **Covenants of Grantor**. In furtherance of and without limitation of the foregoing affirmative rights of the Village and BACT, the Grantor makes the following covenants which shall run with the land and bind the Grantor and all future owners of the Protected Property.

(a). Without the prior consent of Village and BACT, the Grantor shall not undertake or permit the undertaking of any of the following upon the Protected Property:

i. Construction or placement of buildings, camping accommodations or mobile homes, roads, sidewalks, trails, signs, billboards and/or other advertising material, and/or other structures;

ii. Excavation, dredging, mining or drilling or changing the topography of the area constituting the Protected Property or its current natural condition in any manner (except as necessary for the installation of public utilities below the surface of the Protected Property);

iii. Dumping landfill, ashes, garbage, or other unsightly or offensive material;

iv. Removal or destruction of trees, shrubs or other vegetation except for those removed in connection with farming operations, trees under three inches (3") in diameter (DBH), and invasive non-native vegetation; and/or

(b). Grantor shall pay or cause to be paid any and all real estate taxes and assessments levied by competent authorities on the Protected Property and shall maintain (or cause to be maintained) the Protected Property in a clean, sightly and safe condition and repair, thereby relieving the Village and BACT from any responsibility for maintaining the Protected Property. All maintenance and repair shall be made so as to interfere as little as practicable with the rights granted to the Village and BACT pursuant to this Scenic Easement.

(c). The Grantor shall not plant or permit the planting of non-native vegetation and plant species upon the Protected Property without the consent of BACT.

3. **Reserved Rights**. Except as expressly limited in this Scenic Easement the Grantor reserves all rights as owner of the Protected Property, and, not withstanding any provision herein to the contrary, expressly reserves the right to use the Protected Property for:

(a) Farming and grazing of horses and farm animals;

(b) Construction, repair, maintenance and replacement of fences constructed in accord with the Municipal Code of the Grantee;

(c) Installation, repair, maintenance and replacement of public utilities located below the surface of the Scenic Easement; and/or

(d) Construction, repair, maintenance and replacement of one or more driveways, no greater than thirty (30) feet in width, traversing the Scenic Easement from the remainder of the Grantor's Property in a manner generally perpendicular to the public right of way adjacent to the Scenic Easement – as well as driveway appurtenances consisting of a maximum of two (2) posts or pillars (one on each side of each driveway), with or without automatic or manual gates for each driveway, and a maximum of two entrance or driveway lights.

4. **Performance of Grantor's Obligation by Village or BACT**. In the event of a failure by the Grantor to comply with the terms of this Scenic Easement which results in a material interference with the rights granted to the Village and BACT by this Scenic Easement, the Village and/or BACT may notify the Grantor in writing of such failure. In the event the Grantor fails to remedy such default within thirty (30) days after receipt of such notice or, if such default cannot be cured within thirty (30) days, in the event the Grantor fails to commence the cure of such default within such thirty (30) day period and diligently pursue such cure to completion, the Village and/or BACT, at its option may perform the obligation which the Grantor has failed to properly perform hereunder and pay any and all costs and charges associated therewith. Notwithstanding the foregoing, the Grantor shall not be deemed to be in default and non-performing hereunder if such failure to perform obligations occurs during and is due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power,

restrictive governmental laws and regulations, riots, insurrections, war, accidents, casualties, acts of God, or any other cause beyond the reasonable control of the Grantors.

5. **Equitable Relief.** The Grantor recognizes that in the event of non-performance by the Grantor of any of the obligations in this Scenic Easement, damages will be difficult or impossible to ascertain and accordingly the Village and BACT shall have the right, in addition to each and every remedy or right which the Village and BACT may have at law or in equity, to an injunction or similar equitable relief enjoining or restraining any breach or non-performance of, or compelling specific performance of, the provisions of this Scenic Easement.

6. **Grantor's Obligation to Reimburse**. If the Village or BACT is compelled or elects pursuant to this Scenic Easement to pay any sum of money or do any acts that require the payment of money under this Scenic Easement by reason of the Grantor's failure or inability to perform any of the provisions of this Scenic Easement to be performed by the Grantor, the Grantor shall promptly, upon demand, reimburse the Village or BACT for such sums, including any costs and reasonable attorneys fees incurred for the enforcement of the terms of this Scenic Easement against the Grantor. All such sums shall bear interest at the rate of one percent (1%) per annum in excess of the prime rate established by The Northern Trust Company of Chicago, Illinois, from the date of such expenditure until the date of such reimbursement (but in no event exceeding the applicable maximum rate per annum permitted by Illinois law) from the date of expenditure until the date of such reimbursement.

7. **Transfer of Property and Assignment of Easement**.

(a) Whenever a conveyance or other transfer of ownership of any part or all of the Protected Property occurs, the liability of the transferor for any breach of covenant occurring thereafter shall automatically terminate with respect to such transferor. Any transferee shall automatically assume and be bound by the burdens and obligations hereunder running with the land or portion thereof being transferred.

(b) The Village and BACT may each assign their respective interests under this Scenic Easement but only to an organization that is a qualified holder of a conservation right under the Conservation Rights Act and has been approved by the other holder of this Scenic Easement.

8. **Severability**. Invalidation of any covenant or any of the provisions contained in this Scenic Easement, or invalidation of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

9. **Successors and Assigns**. The covenants, terms, conditions and restrictions set forth in this grant shall be binding upon the Grantor and the Village and BACT and their respective agents, personal representatives, heirs, successors and assigns, and shall constitute servitudes running with the Protected Property in perpetuity.

10. **Notices.** All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person (including by commercial overnight courier) or by certified mail, return receipt requested, with postage prepaid to the following addresses, or to such other addresses as either party may subsequently designate:

If to the Grantor:
Louise M. Flannery
James G. Flannery, Jr.
100 Brinker Road
Barrington Hills, Illinois 60010

If to the Village:
Village of Barrington Hills
112 Algonquin Road
Barrtiington Hills, IL 60010

If to BACT:
Barrington Area Conservation Trust
17 Oakdene Road East
Barrington Hills, IL 60010

For purposes of this Scenic Easement all notices, demands, deliveries or other communications required hereunder shall be deemed received on the date actually received, if delivered, and three days after mailing, if mailed.

11. **Nature of Conveyance**. This Scenic Easement is a public dedication, a public easement in gross, and a conservation right under the Conservation Rights Act, and shall be construed and governed in accordance with the Constitution and laws of the State of Illinois, including but not limited to the Conservation Rights Act, and the Illinois Municipal Code. It shall also be deemed both a public trust and a charitable trust. Time is of the essence. However the failure of the Village or BACT to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies which the Village and BACT may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent non-performance or default in any such terms, covenants or conditions.

12. **Amendment and Modification**. This Scenic Easement may be amended or modified from time to time only by written instrument executed by Grantors, the Village and BACT and recorded with the office of the Recorder of Cook County, Illinois. Any party may, in its absolute discretion, withhold its consent to any amendment or modification requested by any other party. No such amendment or modification shall materially and adversely affect the conservation purpose of this Scenic Easement or facilitate extinguishment of this Scenic Easement or result in any instrument that would fail to qualify as a valid conservation right under the Conservation Rights Act. In no event shall the consent of any other party be required for such amendment or modification, even if such other party is entitled to enforce this Easement under the Conservation Rights Act or any other law.

IN WITNESS WHEREOF the Grantor, the Village, and BACT have executed this Scenic Easement the day and year first above written.

Grantor:

LOUISE M. FLANNERY
as Trustee aforesaid

JAMES G. FLANNERY, JR.
as Trustee aforesaid

Village:

VILLAGE OF BARRINGTON HILLS

By: _____

Attest: _____

BACT:

BARRINGTON AREA CONSERVATION TRUST

By: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that LOUISE M. FLANNERY, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 22nd day of October, 2010.

Notary Public

OFFICIAL SEAL
THOMAS Z HAYWARD JR
Notary Public - State of Illinois
My Commission Expires Jul 18, 2013

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that JAMES G. FLANNERY, JR., personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 22nd day of October, 2010.

Notary Public

OFFICIAL SEAL
THOMAS Z HAYWARD JR
Notary Public - State of Illinois
My Commission Expires Jul 18, 2013

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me the Village President of the Village of Barrington Hills, an Illinois municipal corporation, and _____, personally known to me to be the Village Clerk thereof, and both personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Village President and Village Clerk, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk they signed and delivered the said instrument on, as their free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and official seal this ___ day of _____, 2010.

_____

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a notary public in and for said county, in the state aforesaid, DO HEREBY CERTIFY that MARY BRADFORD-WHITE, personally known to me to be the President of BARRINGTON AREA CONSERVATION TRUST, a not for profit corporation of the State of Illinois, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such President she signed and delivered the said instrument on, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this _____day of _____, 2010.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROTECTED PROPERTY

The East 50.00 feet of the North 5.00 acres of the South 10.50 acres of the Southwest Quarter of the Southwest Quarter of Section 10, Township 42 North, Range 9 East of the Third Principal Meridian, in Cook County, Illinois.