

Prepared by:

Name:

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Telephone:

Return to:

Name:

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10/14/2016 final draft for public review for the 7th edition of the Model Grant of Conservation Easement published by the Pennsylvania Land Trust Association.

Please send your comments to Andy Loza at aloza@conserveland.org no later than 10/27/2016.

Tax parcel(s):

GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS

THIS GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS (this “Grant”) dated as of _____ (the “Easement Date”) is by and between _____ (the “undersigned Owner or Owners”) and _____ (the “Holder”).

Article 1. BACKGROUND; GRANT TO HOLDER

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the Property described in exhibit A (the “Property”). The Property is also described as:

Street address:

Municipality:

County:

Parcel identifier:

State: Pennsylvania

Acreage:

1.02 Easement; Covenants

- (a) **Easement.** By this Grant, the undersigned Owner or Owners grant and convey to Holder an unconditional and perpetual easement upon the Property for the purpose of advancing the Conservation Objectives described below (that easement, the “Conservation Easement”). The Conservation Easement empowers Holder to block activities, uses, and Improvements inconsistent with the Conservation Objectives. Article 6 more fully describes the rights this Grant vests in Holder.
- (b) **Owner Covenants.** By this Grant, the undersigned Owner or Owners, in furtherance of the Conservation Objectives, establish covenants binding upon Owners’ interest in the Property, which are set forth in articles 2 through 5. Article 7 addresses potential violation of these covenants and remedies.
- (c) **Holder Covenants.** By this Grant, Holder accepts the Conservation Easement and, in furtherance of the Conservation Objectives, establishes covenants binding upon Holder’s easement interest in the Property, which are set forth in article 6.

1.03 Easement Plan

Attached as exhibit B is a survey or other graphic depiction of the Property (the “Easement Plan”) showing, among other details, the location of one or more of the following areas – the Highest Protection Area, the Standard Protection Area, and the Minimal Protection Area.

1.04 Conservation Objectives

The resource-specific and area-specific purposes of the Conservation Easement (collectively, the “Conservation Objectives”) are as follows:

(a) Resource-Specific

- (1) **Water Resources.** To maintain and improve the quality of water resources, both surface and groundwater, within, around, and downstream of the Property.

- (2) **Biological Resources.** To protect and improve the quality of natural habitat for animals, plants, fungi, and other organisms, particularly Native Species.
- (3) **Soil Resources.** To prevent the loss and depletion of soil on the Property.
- (4) **Scenic Resources.** To protect scenic views of the Property visible from public rights-of-way and other public access points outside the Property.
- (5) **Ecosystem Services.** To absorb within the Property rainwater that otherwise might cause erosion and flooding downstream of the Property; to sequester carbon in plants and soil to mitigate rising atmospheric carbon levels; and to support other healthy ecosystem processes.

(b) Area-Specific

- (1) **Highest Protection Area.** To protect and enhance the richness of biodiversity and natural habitat, keeping the area wild or undisturbed in character.
- (2) **Standard Protection Area.** To promote good stewardship of the land so that it will always be able to support open space activities including Sustainable Agriculture or Sustainable Forestry.
- (3) **Minimal Protection Area.** To accommodate, subject to moderate constraints, a wide variety of activities, uses, and Improvements, confining them to the Minimal Protection Area where they will not be detrimental to the achievement of other Conservation Objectives.

1.05 Baseline Documentation

As of the Easement Date, the undersigned Owner or Owners and Holder have signed an acknowledgment of the accuracy of the report (the “Baseline Documentation”) to be kept on file at the principal office of Holder. The Baseline Documentation contains an original, full-size version of the Easement Plan and other information sufficient to identify on the ground the protection areas identified in this article; describes Existing Improvements; identifies the conservation resources of the Property described in the Conservation Objectives; and includes, among other information, photographs depicting existing conditions of the Property as of the Easement Date.

1.06 Defined Terms

Initially capitalized terms not defined in this article 1 are defined in article 9.

1.07 Federal Tax Items

The provisions of this section supplement and, to the extent of an inconsistency, supersede provisions set forth elsewhere in this Grant.

- (a) **Qualified Conservation Contribution.** The Conservation Easement has been donated in whole or in part by the undersigned Owner or Owners. The donation of the Conservation Easement by this Grant is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code) to a Qualified Organization. If the Conservation Easement is transferred to any Person, that Person must commit to hold the Conservation Easement exclusively for conservation purposes as defined in the Regulations.
- (b) **Public Benefit.** The undersigned Owner or Owners have granted the Conservation Easement to provide a significant public benefit (as defined in §1.170A-14(d)(4) of the Regulations). In addition to the public benefits described in the Conservation Objectives, the Baseline Documentation may identify other information supporting the significant public benefit of the Conservation Easement.
- (c) **Mineral Interests.** The undersigned Owner or Owners represent that no Person has retained a qualified mineral interest in the Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations. From and after the Easement Date, the grant of such an interest is prohibited, and Holder has the right to prohibit the exercise of such a right or interest if granted in violation of this provision.
- (d) **Notice Required under Regulations.** To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Grant, Owners agree to notify Holder before exercising reserved rights that may have an adverse impact on the conservation interests associated with the Property.
- (e) **Extinguishment.** In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that (1) the grant of the Conservation Easement gives rise to a real estate right,

immediately vested in Holder, that entitles Holder to compensation upon extinguishment of the easement; and (2) extinguishment for unexpected changes that make impossible or impractical the continued use of the Property for conservation purposes (as defined in the Regulations) can only be accomplished by judicial proceedings. The fair market value of the right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that the Conservation Easement as of the Easement Date bears to the value of the Property as a whole as of the Easement Date (the "Proportionate Value"). If the Proportionate Value exceeds the compensation otherwise payable to Holder under this Grant or Applicable Law, Holder is entitled to payment of the Proportionate Value. Holder must use funds received on account of the Proportionate Value for conservation purposes (as defined in the Regulations).

- (f) **Acknowledgment of Donation.** Except for such monetary consideration (if any) as is set forth in this article, Holder acknowledges that no goods or services were delivered to the undersigned Owner or Owners in consideration of this Grant.
- (g) **No Representation of Tax Benefits.** The undersigned Owner or Owners represent, warrant, and covenant to Holder that:
 - (1) The undersigned Owner or Owners have not relied upon information or analyses furnished by Holder with respect to either the availability, amount, or effect of a deduction, credit, or other benefit to Owners under Applicable Law; or the value of the Conservation Easement or the Property.
 - (2) The undersigned Owner or Owners have relied solely upon their own judgment and/or professional advice furnished by the appraiser and legal, financial, and accounting professionals engaged by the undersigned Owner or Owners. If a Person providing services in connection with this Grant or the Property was recommended by Holder, the undersigned Owner or Owners acknowledge that Holder is not responsible in any way for the performance of services by these Persons.
 - (3) This Grant is not conditioned upon the availability or amount of a deduction, credit, or other benefit under Applicable Law.

1.08 Beneficiaries

No Beneficiary is identified in this Grant.

1.09 Consideration

The undersigned Owner or Owners acknowledge receipt, as of the Easement Date, of the sum of \$1.00 in consideration of this Grant.

1.10 Superior to all Liens

The undersigned Owner or Owners warrant to Holder that the Property is, as of the Easement Date, free and clear of Liens or, if it is not, that Owners have obtained and recorded in the Public Records the legally binding subordination of the Liens affecting the Property as of the Easement Date.

Article 2. TRANSFER; SUBDIVISION

2.01 Prohibitions

All of the following are prohibited except as set forth in the next section:

- (a) **Transfer of Portion of Property.** Transfer of ownership, possession, or use of a portion of the Property, including subsurface portions of the Property, independent of the remainder of the Property.
- (b) **Subdivision.** Change in the boundary of a Lot or other Subdivision of the Property.
- (c) **Transfer of Density.** Use of open space area protected under this Grant to increase (above limits otherwise permitted under Applicable Law) allowable density or intensity of development within other portions of the Property or outside the Property.
- (d) **Transfer of Rights.** Transfer of development rights or other rights granted or allocated to the Property in support of development outside the Property.

2.02 Permitted Changes

The following changes are permitted:

- (a) **Lots within Property.** If the Property contains more than one Lot, Subdivision to (1) merge two or more Lots into one; or (2) subject to Review, reconfigure one or more of the boundaries of such Lots except a boundary of the Property as described in exhibit A.
- (b) **Transfer to Qualified Organization.** Subject to Review, creation and transfer of a Lot to a Qualified Organization for park, nature preserve, public trail, or other conservation purposes approved by Holder after Review.
- (c) **Transfer of Rights of Possession or Use.** Subject to Review, transfer of possession or use (but not ownership) of one or more portions of the Property, including subsurface portions of the Property, for purposes permitted under, and subject to compliance with, the terms of this Grant. Leases of space within Improvements are not subject to Review.

2.03 Requirements

- (a) **Establishment of Lots; Allocations.** Prior to transfer of a Lot following a Subdivision, Owners must (1) furnish Holder with the plan of Subdivision approved under Applicable Law and legal description of each Lot created or reconfigured by the Subdivision; (2) mark the boundaries of each Lot with permanent markers; and (3) allocate in a document recorded in the Public Records those limitations applicable to more than one Lot under this Grant. This information will become part of the Baseline Documentation incorporated into this Grant.
- (b) **Amendment.** Holder may require Owners to execute an Amendment of this Grant to reflect a change to the description of the Property set forth in exhibit A or other changes and allocations resulting from Subdivision that are not established to the reasonable satisfaction of Holder by recordation in the Public Records of the plan of Subdivision approved under Applicable Law.

Article 3. HIGHEST PROTECTION AREA

3.01 Improvements

Improvements within the Highest Protection Area are prohibited except as permitted below in this article.

- (a) **Existing Improvements.** Existing Improvements may be maintained, repaired, and replaced in their existing locations. Existing Improvements may be expanded or relocated if the expanded or relocated Improvement complies with requirements applicable to Additional Improvements of the same type.
- (b) **Existing Servitudes.** Improvements that Owners are required to allow because of an Existing Servitude are permitted.
- (c) **Additional Improvements.** The following Additional Improvements are permitted:
 - (1) Fences, walls, and gates, not to exceed _____ (five if not noted otherwise) feet in Height or such greater Height as is approved by Holder after Review.
 - (2) Signs; however signs other than Regulatory Signs are limited to a maximum of _____ (eight if not noted otherwise) square feet per sign and a total of _____ (32 if not noted otherwise) square feet for the entire Property.
 - (3) Habitat enhancement devices such as birdhouses and bat houses.
 - (4) Trails covered (if at all) by wood chips, gravel, or other highly porous surface.
 - (5) Subject to Review, footbridges, stream crossing structures, and stream access structures.
 - (6) Tree stands and blinds for hunting or nature study. Tree stands and blinds to remain in place for more than a season are subject to Review.
 - (7) Subject to Review, Access Drives and Utility Improvements to service Improvements within the Property but only if there is no other reasonably feasible means to provide access and utility services to the Property.
 - (8) Subject to Review, Extraction Improvements but only if located wholly beneath the surface at a depth at which there can be no impairment of water or other resources described in the

Conservation Objectives. No Access Drives to construct or service such Improvements are permitted.

3.02 Activities and Uses

Activities and uses within the Highest Protection Area are prohibited except as permitted below in this article and provided in any case that:

- The intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.
 - No Invasive Species are introduced.
- (a) **Existing Servitudes.** Activities and uses that Owners are required to allow because of an Existing Servitude are permitted.
- (b) **Resource Management and Disturbance.** The following activities and uses are permitted:
- (1) Cutting trees, Construction, or other disturbance of resources, including removal of Invasive Species, to the extent reasonably prudent to remove, mitigate, or warn against an unreasonable risk of harm to Persons, their belongings, or health of Native Species on or about the Property. Owners must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.
 - (2) Planting, replanting, and maintaining Native Species or, subject to Review, planting, replanting, and maintaining other vegetation.
 - (3) Subject to Review, removal of vegetation to accommodate replanting as permitted in this article.
 - (4) Construction of permitted Improvements with prompt restoration of soil and vegetation disturbed by such activity.
 - (5) Vehicular use in the case of emergency and in connection with activities or uses permitted under this subsection.
 - (6) Except within Wet Areas, cutting or removing trees, standing or fallen, but only if the aggregate inside bark diameter of stumps (one foot above ground on the uphill side) does not exceed _____ (200 if not noted otherwise) inches per year and only for use within the Property.
 - (7) Subject to Review, extraction of natural gas (regardless of source) or oil, and injection or release of water and other substances to facilitate such extraction, but only at subterranean depths at which there can be no impairment of water or other resources described in the Conservation Objectives. No surface activities or uses, including Construction activities, incident to such extraction, injection, or release are permitted.
 - (8) Application of manure and plant material, both well composted, and, subject to compliance with manufacturer's recommendations, other substances to promote the health and growth of vegetation. (These permitted substances do not include sludge, biosolids, septic system effluent, and related substances.)
 - (9) Piling of brush and other vegetation to the extent reasonably necessary to accommodate activities or uses permitted within the Highest Protection Area.
 - (10) Other activities that Holder, without any obligation to do so, determines are consistent with maintenance or attainment of Conservation Objectives and are conducted in accordance with the Resource Management Plan or other plan approved for that activity after Review.
- (c) **Other Activities.** Activities are permitted that do not require Improvements other than trails and do not materially and adversely affect maintenance or attainment of Conservation Objectives such as the following: (1) walking, horseback riding on trails, cross-country skiing, bird watching, nature study, fishing, and hunting; and (2) educational or scientific activities consistent with and in furtherance of the Conservation Objectives. Vehicular use is not permitted in connection with the activities permitted under this subsection unless Holder approves the use after Review.

Article 4. STANDARD PROTECTION AREA

4.01 Improvements

Improvements within the Standard Protection Area are prohibited except as permitted below in this article.

- (a) **Permitted under Preceding Article.** Improvements permitted under the preceding article are permitted in the Standard Protection Area.
- (b) **Additional Improvements.** The following Additional Improvements are permitted:
 - (1) Agricultural Improvements.
 - (2) Site Improvements reasonably required for activities and uses permitted within the Standard Protection Area.
 - (3) Subject to Review, Site Improvements servicing other areas of the Property, if not reasonably feasible to install entirely within Minimal Protection Area.
 - (4) Site Improvements servicing activities, uses or Improvements not within the Property that Holder, without any obligation to do so, approves after Review.
 - (5) Subject to Review, Improvements for generating and transmitting Renewable Energy that Holder, without any obligation to do so, approves after Review.
- (c) **Impervious Coverage Limitations.** Total Impervious Coverage, including that of both Existing and Additional Improvements but excluding that of Access Drives and ponds, must not exceed _____ (3000 if not noted otherwise) square feet. This limitation is subject to the following supplemental limitations and exceptions:
 - (1) Impervious Coverage must not exceed _____ (500 if not noted otherwise) square feet per roofed Improvement.
 - (2) Subject to Review, Holder may adjust Impervious Coverage limits to accommodate specific Agricultural Improvements intended to improve the production of soil grown crops without damaging soils or harming water quality (for example, well-designed and situated high tunnels).
 - (3) Subject to Review, Holder may adjust Impervious Coverage limits to account for the lesser impact of specific Improvements designed to reduce environmental harm caused by Impervious Coverage (for example, green roofs and permeable surfacing materials).
- (d) **Access Drive Limitations.** Unless otherwise approved by Holder after Review, Access Drives (both Existing Improvements and Additional Improvements) are limited to _____ (800 if not noted otherwise) feet in length and a driving surface not to exceed _____ (14 if not noted otherwise) feet in width.
- (e) **Height Limitations.** The Height of Additional Improvements permitted under this or the following article must not exceed 35 feet. This limitation is subject to the following supplemental limitations and exceptions:
 - (1) Fences, walls, and gates remain limited as in the Highest Protection Area.
 - (2) Improvements for recreational and other (non-Agricultural and non-Forestry) open space activities must not exceed _____ (nine if not noted otherwise) feet in Height.
 - (3) Subject to Review, Holder may adjust Height limitations for specific Improvements requiring a greater Height to be functional (for example, Agricultural silos or Renewable Energy structures).
- (f) **Other Limitations on Additional Improvements.** Additional Improvements permitted within the Standard Protection Area are further limited as follows:
 - (1) Signs remain limited as in the Highest Protection Area.
 - (2) Utility Improvements must be underground or, subject to Review, may be aboveground where not reasonably feasible to be installed underground.
 - (3) The following Improvements are not permitted unless Holder, without any obligation to do so, approves after Review: exterior storage tanks for petroleum or other hazardous or toxic substances (other than reasonable amounts of fuel for activities and uses within the Property permitted under this Grant).
 - (4) Extraction Improvements remain limited as in the Highest Protection Area.

4.02 Activities and Uses

Activities and uses within the Standard Protection Area are prohibited except as permitted below in this article and provided in any case that:

- The intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.
 - No Invasive Species are introduced.
- (a) **Permitted under Preceding Article.** Activities and uses permitted under the preceding article are permitted within the Standard Protection Area.
- (b) **Agriculture.** Sustainable Agriculture that maintains continuous vegetative cover and, if conducted in accordance with a Soil Conservation Plan furnished to Holder, Sustainable Agricultural that does not maintain continuous vegetative cover are permitted. In either case, the limitations set forth below apply:
- (1) Within Wet Areas, Agriculture is prohibited unless approved after Review; within _____ (15 if not noted otherwise) feet of water's edge, Agriculture is prohibited.
 - (2) Within Steep Slope Areas, the Soil Conservation Plan is subject to Review.
 - (3) Animal operations must be conducted in conformance with a nutrient management plan or manure management plan furnished to Holder and meeting the requirements of Applicable Law; concentrated animal operations, as defined by Applicable Law as of the Easement Date, are prohibited.
 - (4) Agricultural uses that involve removal of soil from the Property (such as sod farming and ball-and-burlap nursery uses) are permitted only if conducted in accordance with a Resource Management Plan approved by Holder after Review that provides for, among other features, a soil replenishment program that will qualify the activity as a Sustainable Agricultural use.
 - (5) Woodland Areas must not be used for or converted to Agricultural uses unless Holder, without any obligation to do so, approves after Review.
- (c) **Forestry.** Sustainable Forestry is permitted in accordance with a Resource Management Plan approved after Review.
- (d) **Compatible Activities Related to Agriculture or Forestry.** The following activities are permitted if supportive of Sustainable Agricultural or Sustainable Forestry and conducted at a low intensity compatible with the Conservation Objectives:
- (1) The storage of plant and animal products produced on the Property.
 - (2) The piling or composting of the residues of plant or animal production occurring on the Property for sale or subsequent Agricultural or Forestry use.
 - (3) Subject to Review, sale of Agricultural or Forestry products produced on the Property.
 - (4) Subject to Review, services that directly support Agricultural production or Forestry.
- (e) **Other Disturbance of Resources.** The following activities and uses are permitted:
- (1) Subject to Review, removal or impoundment of water for activities and uses permitted within the Property but not for sale or transfer outside the Property.
 - (2) Removal of vegetation and other Construction reasonably required to accommodate permitted Improvements.
 - (3) Mowing, planting, and maintenance of lawn, garden, and landscaped areas.
 - (4) Generation of Renewable Energy and transmission of such energy if and to the extent Improvements for that purpose are permitted under this article.
 - (5) Subject to Review, disposal of sanitary sewage effluent from Improvements permitted within the Property is permitted if not reasonably feasible to confine such disposal to Minimal Protection Area.
- (f) **Other Activities.** Outdoor recreational and other open-space activities are permitted that (1) are limited in time, place and intensity so as not to interfere with Conservation Objectives and (2) do not require motorized vehicles except, subject to Review, as ancillary support to the primary activity. Activities that require earth disturbance or that will result in more than a *de minimis* reduction in soil permeability are subject to Review.

Article 5. MINIMAL PROTECTION AREA

5.01 Improvements

Improvements within the Minimal Protection Area are prohibited except as permitted below in this article.

- (a) **Permitted under Preceding Articles.** Improvements permitted under a preceding article are permitted.
- (b) **Additional Improvements.** The following Additional Improvements are permitted:
 - (1) Residential Improvements.
 - (2) Site Improvements servicing activities, uses, or Improvements permitted within the Property.
- (c) **Limitations on Improvements.** Improvements permitted within the Minimal Protection Area are limited as follows:
 - (1) Not more than one Improvement (whether an Existing Improvement or Additional Improvement) may contain Dwelling Units (if any) permitted under this article.
 - (2) Limitations on Impervious Coverage and Access Drives set forth for the Standard Protection Area do not apply to the Minimal Protection Area.
 - (3) Limitations on Height, signs, Utility Improvements, Extraction Improvements, and storage tanks applicable to the Standard Protection Area continue to apply.

5.02 Activities and Uses

Activities and uses within the Minimal Protection Area are prohibited except as permitted below in this article and provided in any case that:

- The intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.
 - No Invasive Species are introduced.
- (a) **Permitted under Preceding Articles.** Activities and uses permitted under the preceding articles are permitted within the Minimal Protection Area.
 - (b) **Disturbance of Resources.** Disturbance of resources within the Minimal Protection Area is permitted for purposes reasonably related to activities or uses permitted within the Minimal Protection Area.
 - (c) **Release and Disposal**
 - (1) Disposal of sanitary sewage effluent from Improvements within the Property is permitted.
 - (2) Other piling of materials and non-containerized disposal of substances and materials are permitted but only if such disposal is permitted under Applicable Law; does not directly or indirectly create run-off or leaching outside the Minimal Protection Area; and does not otherwise adversely affect Conservation Objectives.
 - (d) **Residential and Other Uses**
 - (1) Residential use is permitted but limited to not more than one Dwelling Unit.
 - (2) An activity or use not otherwise addressed in this article is permitted if, from vantage points outside the Minimal Protection Area, it is not distinguishable from a permitted Agricultural, Forestry, or residential use; or, if it is, Holder determines, after Review, that the activity or use is consistent with the Conservation Objectives.

Article 6. RIGHTS AND DUTIES OF HOLDER AND BENEFICIARIES

6.01 Holder Covenants

In support of the Conservation Objectives, Holder declares the following covenants binding upon its easement interest in the Property:

- (a) **Exercise of Powers.** Holder must exercise the powers granted to it by this Grant to block activities, uses, and Improvements of the Property inconsistent with the Conservation Objectives.
- (b) **Must be Qualified Organization.** Holder must be and remain at all times a Qualified Organization and must not transfer the Conservation Easement or otherwise assign its rights or responsibilities under

this Grant to a Person other than a Qualified Organization committed to upholding the Conservation Objectives.

- (c) **Proceeds Used for Conservation Purposes.** Holder must use any funds received on account of the release, termination or extinguishment of the Conservation Easement in whole or in part in furtherance of its charitable conservation purposes.
- (d) **Forfeiture Remedy.** If Holder fails to abide by the covenants of this section, a Beneficiary of the Conservation Easement or the Commonwealth of Pennsylvania may petition a court of competent jurisdiction to order the Conservation Easement transferred to a Qualified Organization ready, willing, and able to abide by such covenants.

6.02 Rights and Duties of Holder

The items set forth below are both rights and duties vested in Holder by this Grant:

- (a) **Enforcement.** To enter the Property to investigate a suspected, alleged or threatened violation of the covenants and, if found, to enforce the terms of this Grant by exercising Holder's remedies in this Grant.
- (b) **Inspection.** To enter and inspect the Property for compliance with the requirements of this Grant upon reasonable notice, in a reasonable manner, and at reasonable times.
- (c) **Review.** To exercise rights of Review in accordance with the requirements of this article.
- (d) **Interpretation.** To interpret the terms of this Grant and, at the request of Owners, furnish Holder's explanation of the application of such terms to then-existing, proposed, or reasonably foreseeable conditions within the Property.

6.03 Other Rights of Holder

The items set forth below are also rights vested in Holder by this Grant; however, Holder, in its discretion, may or may not exercise them:

- (a) **Amendment.** To enter into an Amendment with Owners if Holder determines that the Amendment: (1) will not impair Holder's power, enforceable in perpetuity, to block activities, uses, and Improvements of the Property inconsistent with the Conservation Objectives; (2) will not result in a private benefit prohibited under the Code; and (3) will be consistent with Holder's policy with respect to Amendment as of the applicable date of reference.
- (b) **Signs.** To install one or more signs within the Property identifying the interest of Holder or Beneficiaries in the Conservation Easement. Such signs do not reduce the number or size of signs permitted to Owners under this Grant. Signs are to be of the customary size installed by Holder or Beneficiary, as the case may be, and must be installed in locations readable from the public right-of-way and otherwise reasonably acceptable to Owners.
- (c) **Proceedings.** To assert a claim, defend or intervene in, or appeal, any proceeding under Applicable Law that (1) pertains to the impairment of Conservation Objectives; or (2) may result in a transfer, Improvement or use that violates the terms of this Grant.

6.04 Review

The following provisions are incorporated into any provision of this Grant that is subject to Review:

- (a) **Notice to Holder.** At least 30 days before Owners intend to begin or allow an Improvement, activity, or use that is subject to Review, Owners must notify Holder of the proposed change including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the proposal and its potential impact on the Conservation Objectives.
- (b) **Notice to Owners.** Within 30 days after receipt of Owners' notice, Holder must notify Owners of Holder's determination to (1) accept Owners' proposal in whole or in part; (2) reject Owners' proposal in whole or in part; (3) accept Owners' proposal conditioned upon compliance with conditions imposed by Holder; or (4) reject Owners' proposal for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (3), commencement of the proposed Improvement, activity, or use constitutes acceptance by Owners of all conditions set forth in Holder's notice.

(c) **Failure to Notify.** If Holder fails to notify Owners as required in the preceding subsection, the proposal set forth in Owners' notice is deemed approved.

(d) **Standard of Review**

- (1) The phrase "without any obligation to do so," in relation to an approval or determination by Holder, means that, in that particular case, Holder's approval is wholly discretionary and may be given or withheld for any reason or no reason.
- (2) In all other cases, Holder's approval is not to be unreasonably withheld. It is not unreasonable for Holder to disapprove a proposal that may adversely affect resources described in the Conservation Objectives or that is otherwise inconsistent with maintenance or attainment of Conservation Objectives.

6.05 Reimbursement

Owners must reimburse Holder for the costs and expenses of Holder reasonably incurred in the course of performing its duties with respect to this Grant other than monitoring in the ordinary course. These costs and expenses include the allocated costs of employees of Holder.

Article 7. VIOLATION; REMEDIES

7.01 Violation

If Holder determines that the terms of this Grant are being or have been violated or that a violation is threatened or imminent then the provisions of this section will apply:

- (a) **Notice.** Holder must notify Owners of the violation. Holder's notice may include its recommendations of measures to be taken by Owners to cure the violation and restore features of the Property damaged or altered as a result of the violation.
- (b) **Opportunity to Cure.** Owners' cure period expires 30 days after the date of Holder's notice to Owners subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:
 - (1) Owners cease the activity constituting the violation promptly upon receipt of Holder's notice;
 - (2) Owners and Holder agree, within the initial 30-day period, upon the measures Owners will take to cure the violation;
 - (3) Owners commence to cure within the initial 30-day period; and
 - (4) Owners continue thereafter to use best efforts and due diligence to complete the agreed upon cure.
- (c) **Imminent Harm.** No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm or alteration to a natural resource or other feature of the Property described in the Conservation Objectives.

7.02 Remedies

Upon expiration of the cure period (if any) described in the preceding section, Holder may do one or more of the following:

- (a) **Injunctive Relief.** Seek injunctive relief to specifically enforce the terms of this Grant, to restrain present or future violations of the terms of this Grant, and/or to compel restoration of resources destroyed or altered as a result of the violation.
- (b) **Civil Action.** Recover from Owners or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Grant together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses.
- (c) **Self-Help.** Enter the Property to prevent or mitigate further damage to or alteration of natural resources of the Property identified in the Conservation Objectives.

7.03 Modification or Termination

If the Conservation Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Holder the following provisions apply:

- (a) **Compensatory Damages.** Holder is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred. In the event of an extinguishment of the Conservation Easement, Holder is entitled to the greater of the compensation provided under this section or the compensation provided under any other provision of this Grant.
- (b) **Restitution.** Holder is entitled to recover from the Person seeking the modification or termination: (1) restitution of amounts paid for this Grant (if any) and any other sums invested in the Property for the benefit of the public as a result of rights vested by this Grant, plus (2) reimbursement of Litigation Expenses as if a violation had occurred.

7.04 Remedies Cumulative

The description of Holder's remedies in this article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this article or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise one or more of the other rights or remedies available to Holder at the same time or at any other time.

7.05 Waivers

- (a) **No Waiver.** If Holder does not exercise a right or remedy when it is available to Holder, that is not to be interpreted as a waiver of any non-compliance with the terms of this Grant or a waiver of Holder's rights to exercise its rights or remedies at another time.
- (b) **No Material Effect.** Holder in its discretion may provide a Waiver if Holder determines that the accommodation is for a limited time and limited purpose and will have no material effect on the Conservation Objectives.

7.06 No Fault of Owners

Holder will waive its right to reimbursement under this article as to Owners (but not other Persons who may be responsible for the violation) if Holder is reasonably satisfied that the violation was not the fault of Owners and could not have been anticipated or prevented by Owners by reasonable means.

7.07 Multiple Owners

- (a) **Multiple Lots.** If different Owners own Lots within the Property, only Owners of the Lot in violation will be held responsible for the violation.
- (b) **Single Lot.** If more than one Owner owns the Lot in violation of the terms of this Grant, the Owners of the Lot in violation are jointly and severally liable for the violation regardless of the form of ownership.

Article 8. MISCELLANEOUS

8.01 Notices

- (a) **Requirements.** Each Person giving notice pursuant to this Grant must give the notice in writing and must use one of the following methods of delivery: (1) personal delivery; (2) certified mail, return receipt requested and postage prepaid; or (3) nationally recognized overnight courier, with all fees prepaid.
- (b) **Address for Notices.** Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

8.02 Governing Law

The laws of the Commonwealth of Pennsylvania govern this Grant.

8.03 Transfer

- (a) **Notice Required.** Not less than thirty (30) days prior to transfer of the Property or a Lot, Owners must notify Holder of the name(s) and address for notices of the Persons who will become Owners following the transfer.
- (b) **Prior to Transfer.** Owners authorize Holder to (1) contact the Persons to whom the Property or Lot will be transferred, and other Persons representing Owners or the prospective transferees, to discuss with them this Grant and, if applicable, other pertinent documents; and (2) enter the Property to assess compliance with this Grant.
- (c) **Ending Continuing Liability.** If Holder is not notified per this section's requirement, it is not the obligation of Holder to determine whether a violation first occurred before or after the date of the transfer. The pre-transfer Owners continue to be liable on a joint and several basis with the post-transfer Owners for the correction of violations under this Grant until such time as Holder is given the opportunity to inspect and all violations noted in Holder's resulting inspection report are cured.

8.04 Burdens; Benefits

This Grant binds and benefits Owners and Holder and their respective personal representatives, successors, and assigns.

- (a) **Binding on All Owners.** This Grant vests a servitude running with the land binding upon the undersigned Owner or Owners and, upon recordation in the Public Records, all subsequent Owners of the Property or any portion of the Property are bound by its terms whether or not Owners had actual notice of this Grant and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Grant.
- (b) **Rights Exclusive to Holder.** Except for rights of Beneficiaries (if any) under this Grant, only Holder has the right to enforce the terms of this Grant and exercise other rights of Holder. Owners of Lots within the Property do not have the right to enforce the terms of this Grant against Owners of other Lots within the Property. Only Owners of the Lot that is the subject of a request for Review, Waiver, Amendment, interpretation, or other decision by Holder have a right to notice of, or other participation in, such decision.

8.05 Documentation Requirements

- (a) **Between Holder and Owners.** No Amendment, Waiver, approval after Review, interpretation, or other decision by Holder is valid or effective unless it is in writing and signed by an authorized signatory for Holder. This requirement may not be changed by oral agreement. The grant of an Amendment or Waiver in any instance or with respect to any Lot does not imply that an Amendment or Waiver will be granted in any other instance.
- (b) **Between Holder and Assignee.** Any assignment of Holder's rights under this Grant, if otherwise permitted under this Grant, must be in a document signed by both the assigning Holder and the assignee Holder. The assignment document must include a covenant by which the assignee Holder assumes the covenants and other obligations of Holder under this Grant. The assigning Holder must deliver the Baseline Documentation and such other documentation in Holder's possession reasonably needed to uphold the Conservation Objectives.

8.06 Severability

If any provision of this Grant is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Grant remain valid, binding, and enforceable. To the extent permitted by Applicable Law, the parties waive application of any provision of Applicable Law that renders any provision of this Grant invalid, illegal, or unenforceable in any respect.

8.07 Counterparts

This Grant may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one document.

8.08 Indemnity

Owners must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to: (a) a breach or violation of this Grant or Applicable Law; and (b) personal injury (including death) and damage to personal belongings occurring on or about the Property if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

8.09 Guides to Interpretation

- (a) **Captions.** The descriptive headings of the articles, sections and subsections of this Grant are for convenience only and do not constitute a part of this Grant.
- (b) **Glossary.** If a term defined in the Glossary is not used in this Grant, the defined term is to be disregarded as surplus material.
- (c) **Other Terms**
 - (1) The word “including” means “including but not limited to.”
 - (2) The word “must” is obligatory; the word “may” is permissive and does not imply an obligation.
- (d) **Conservation and Preservation Easements Act.** This Grant is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Conservation and Preservation Easements Act.
- (e) **Restatement (Third) of the Law of Property: Servitudes.** This Grant is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of the Law of Property: Servitudes.

8.10 Entire Agreement

This is the entire agreement of Owners, Holder, and Beneficiaries (if any) pertaining to the subject matter of this Grant. The terms of this Grant supersede in full all statements and writings between Owners, Holder, and Beneficiaries (if any) pertaining to the transaction set forth in this Grant.

8.11 Incorporation by Reference

Each exhibit attached to this Grant is incorporated into this Grant by this reference. The Baseline Documentation (whether or not attached to this Grant) is incorporated into this Grant by this reference.

8.12 Coal Rights Notice

The following notice is given to Owners solely for the purpose of compliance with the Conservation and Preservation Easements Act:

NOTICE: The Conservation Easement may impair the development of coal interests including workable coal seams or coal interests that have been severed from the Property.

8.13 Jurisdiction; Venue

Holder and Owners submit to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania located in the county in which the Property is located and agree that any legal action or proceeding relating to this Grant or the Conservation Easement may be brought only in those courts located in that county.

Article 9. GLOSSARY

“**Access Drive**” means a road, drive, or lane providing vehicular access.

“**Additional Improvement**” means an Improvement other than an Existing Improvement.

“**Agricultural Improvement**” means an Improvement used or usable in furtherance of Agricultural uses such as barn, stable, silo, spring house, green house, hoop house, riding arena (whether indoor or outdoor), horse walker, manure storage pit, storage building, farm stand, feeding and irrigation facilities.

“**Agricultural or Agriculture**” means one or more of the following:

- (1) Production for sale of grains, vegetables, fruits, seeds, nuts, and other plant products; mushrooms; animals and their products.
- (2) Production of field crops and forage.
- (3) Production of nursery stock and sod to be removed and planted elsewhere.
- (4) Boarding, stabling, raising, feeding, grazing, exercising, riding, and training horses and instructing riders.

“Amendment” means an amendment, modification, or supplement to this Grant signed by Owners and Holder and recorded in the Public Records. The term “Amendment” includes an amendment and restatement of this Grant.

“Applicable Law” means federal, state or local laws, statutes, codes, ordinances, standards, and regulations applicable to the Property, the Conservation Easement, or this Grant as amended through the applicable date of reference. If this Grant is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations are also included in the defined term.

“Beneficiary” means a Person given rights under the terms of this Grant (other than Owners or Holder).

“Best Management Practices” mean a series of guidelines or minimum standards (sometimes referred to as BMP’s) recommended by federal, state, and/or county resource management agencies for farming and forestry operations; for preventing and reducing pollution of water resources and other disturbances of soil, water, and vegetative resources; and for protecting wildlife habitats.

“Code” means the Internal Revenue Code of 1986, as amended through the applicable date of reference.

“Conservation and Preservation Easements Act” means the Pennsylvania act of June 22, 2001 (P.L. 390, No. 29) (32 P.S. §§5051-5059) as amended through the applicable date of reference.

“Construction” means demolition, construction, reconstruction, maintenance, expansion, exterior alteration, installation, or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, excavation, dredging, mining, filling, or removal of gravel, soil, rock, sand, coal, petroleum, or other minerals.

“Default Rate” means an annual rate of interest equal at all times to two percent (2%) above the prime rate announced from time to time by *The Wall Street Journal*.

“Dwelling Unit” means the use or intended use of an Improvement or portion of an Improvement for human habitation by one or more Persons (whether or not related). Existence of a separate kitchen accompanied by sleeping quarters is considered to constitute a separate Dwelling Unit.

“Existing Improvement” means an Improvement existing as of the Easement Date as identified in the Baseline Documentation.

“Existing Servitude” means an easement or other matter affecting title to the Property (other than a Lien) accorded priority to the Conservation Easement by notice in the Public Records or other prior notice recognized under Applicable Law.

“Extraction Improvements” mean wells, casements, impoundments, and other Improvements for the exploration, extraction, collection, containment, transport, and removal (but not processing or refining) of oil or natural gas (regardless of source) from substrata beneath the surface of the Property. The term “Extraction Improvements” includes any Access Drive required for the Construction or operation of Extraction Improvements or the removal of oil or natural gas from the Property.

“Forestry” means planting, growing, nurturing, managing, and harvesting trees whether for timber and other useful products or for water quality, wildlife habitat, and other Conservation Objectives.

“Height” means the vertical elevation of an Improvement measured from the average exterior ground elevation of the Improvement to a point, if the Improvement is roofed, midway between the highest and lowest points of the roof excluding chimneys, cupolas, ventilation shafts, weathervanes and similar protrusions or, if the Improvement is unroofed, the top of the Improvement.

“Impervious Coverage” means the footprints (including roofs, decks, stairs, and other extensions) of Improvements; paved or artificially covered surfaces such as crushed stone, gravel, concrete, and asphalt; impounded water (such as a man-made pond); and compacted earth (such as an unpaved roadbed). Also included in Impervious Coverage are green roofs and porous pavement surfaces. Excluded from Impervious Coverage are running or non-impounded standing water (such as a naturally occurring lake), bedrock and naturally occurring stone and gravel, and earth (whether covered with vegetation or not) so long as it has not been compacted by non-naturally occurring forces.

“Improvement” means a building, structure, facility, or other improvement, whether temporary or permanent, located on, above, or under the Property.

“Indemnified Parties” mean Holder, each Beneficiary (if any), and their respective members, directors, officers, employees and agents, and the heirs, personal representatives, successors, and assigns of each of them.

“Invasive Species” means a plant species that is non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications such as “Plant Invaders of Mid-Atlantic Natural Areas” by the National Park Service and U.S. Fish and Wildlife Service, are to be used to identify Invasive Species.

“Lien” means a mortgage, lien, or other encumbrance securing the payment of money.

“Litigation Expense” means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or claim for indemnification under this Grant including in each case, attorneys’ fees, other professionals’ fees and disbursements.

“Losses” mean any liability, loss, claim, settlement payment, cost, expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, penalties, or other charge other than a Litigation Expense.

“Lot” means a unit, lot, or parcel of real estate separated or transferable for separate ownership or lease under Applicable Law.

“Market Value” means the fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.

“Native Species” mean a plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases, particularly *The Vascular Flora of Pennsylvania: Annotated Checklist and Atlas* by Rhoads and Klein and *Atlas of United States Trees, vols. 1 & 4* by Little are to be used to establish whether or not a species is native.

“Owners” mean the undersigned Owner or Owners and all Persons after them who hold an interest in the Property.

“Person” means an individual, organization, trust, government, or other entity.

“Public Records” mean the public records of the office for the recording of deeds in and for the county in which the Property is located.

“Qualified Organization” means a governmental or charitable entity that (a) meets the criteria of a qualified organization under §1.170(A-14(c)(1) of the Regulations and (b) is duly authorized to acquire and hold conservation easements under the Conservation and Preservation Easements Act.

“Regulations” mean the provisions of C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

“Regulatory Signs” mean signs (not exceeding one square foot each) to control access to the Property or for informational, directional, or interpretive purposes.

“Renewable Energy” means energy that can be used without depleting its source such as solar, wind, geothermal, and movement of water (hydroelectric and tidal).

“Residential Improvements” mean dwellings and Improvements accessory to residential uses such as garage, swimming pool, pool house, tennis court, and children’s play facilities.

“Resource Management Plan” means a record of the decisions and intentions of Owners prepared by a qualified resource management professional for the purpose of protecting natural resources that the Conservation Objectives aim to protect during certain operations potentially affecting those resources. It includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate), and projects a multi-year description of planned activities for operations to be conducted in accordance with the plan.

“Review” means review and approval by Holder under the procedure described in article 6.

“Review Requirements” mean collectively, any plans, specifications, or other information required for approval of the Subdivision, activity, use, or Construction under Applicable Law (if any) plus the information required under (a) an exhibit incorporated into this Grant or (b) the Baseline Documentation or (c) if the information described in items (a) and (b) is inapplicable, unavailable, or insufficient under the circumstances, the guidelines for Review of submissions set by Holder to provide sufficient information to conduct its Review.

“Site Improvement” means an unenclosed Improvement such as an Access Drive, Utility Improvement, walkway, boardwalk, retention/detention basin or other stormwater management facility, well, septic system, bridge, parking area or other pavement, lighting fixture, sign, fence, wall, gate, man-made pond, berm, and landscaping treatment. The term does not include Extraction Improvements.

“Soil Conservation Plan” means a plan for soil conservation that meets the requirements of the Natural Resources Conservation Service as of the applicable date of reference and for erosion and sedimentation control under Applicable Law.

“Steep Slope Area” means an area greater than one acre having a slope greater than 15%.

“Subdivision” means any division of the Property or any Lot within the Property; and any creation of a unit, lot, or parcel of real estate, including subsurface portions of the Property, for separate use or ownership by any means including by lease or by implementing the condominium form of ownership. The term “Subdivision” includes any “subdivision” as defined in the Pennsylvania Municipalities Planning Code, Act of 1968, P.L. 805, No. 247, as reenacted and amended as of the applicable date of reference.

“Sustainable” means land management practices that provide goods and services from an ecosystem without degrading soil or water resources and without a decline in the yield of those goods and services over time.

“Utility Improvement” means an Improvement for the reception, storage, or transmission of potable water, stormwater, sewage, electricity, gas, telecommunications, or other sources of power. The term does not include Extraction Improvements.

“Waiver” means a written commitment by which Holder, without any obligation to do so, agrees to refrain from exercising one or more of its rights and remedies for a specific period of time with respect to a specific set of circumstances.

“Wet Area” means a watercourse, spring, wetland (including vernal pools), or non-impounded standing water, and the area within 100 feet of its edge.

“Woodland Area” means an area within the Property described as “wooded” or “forested” in the Baseline Documentation or identified as such on the Easement Plan, or if not wooded or forested as of the Easement Date, is designated as successional woodland area on the Easement Plan.

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INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Grant as of the Easement Date.

Witness/Attest:

_____ (SEAL)
Owner's Name:

_____ (SEAL)
Owner's Name:

[NAME OF HOLDER]

_____ By: _____ (SEAL)
Name:
Title:

This document is based on the Model Grant of Conservation Easement, 7th edition (DRAFT of 10/14/2016), provided by the Pennsylvania Land Trust Association.

The model on which this document is based should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. It should be revised under the guidance of legal counsel to reflect the specific situation.

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

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

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

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

_____, Notary Public

Print Name: