

FISHING ACCESS AGREEMENT

THIS FISHING ACCESS AGREEMENT (this "Agreement") dated as of _____ (the "Agreement Date") is by and between _____ (the "undersigned Owner or Owners") and _____ (the "Holder").

Article I. Background

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:

Parcel Identifier:

County:

State: Pennsylvania

1.02 Easement Objectives

The purpose of this Agreement is to establish an Easement Area (defined below) within the Property for the purposes set forth below (collectively, the "Easement Objectives"):

- To provide public access to _____ (with all of its branches, the "Waterway") and its banks for recreational fishing and boating.
- To preserve vegetative cover in a riparian buffer so as to protect water quality and riparian habitat.
- To provide sites for fishery and habitat management, research and educational programs.

1.03 Easement Area; Easement Plan

The portions of the Property that are the subject of this Agreement (collectively, the "Easement Area") consist of the following areas shown on the plan attached as Exhibit "B" (the "Easement Plan"):

(a) Riparian Corridor

The bed and banks of the Waterway and areas within thirty-five feet of the top of the banks of the Waterway (collectively, the "Riparian Corridor"). If a width greater or lesser than this is set forth on the Easement Plan for all or any portion of the Riparian Corridor, the greater or lesser width will apply for that portion. If the location or shape of the Waterway changes, the Riparian Corridor will likewise change location or shape in accordance with the description set forth above. In any event, the Riparian Corridor is limited to the Property.

(b) Outside Riparian Corridor

Sites for construction, installation and use of Accessory Facilities outside the Riparian Corridor in the locations (if any) shown on the Easement Plan.

1.04 Consideration

The undersigned Owner or Owners acknowledge receipt of the sum of \$1.00 in consideration of the grant of easement to Holder under this Agreement.

Article II. Grant of Easement

2.01 Rights of Holder

By signing this Agreement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a perpetual easement and right-of-way over the Easement Area for the purposes described in the Easement Objectives. The easement granted to Holder includes the rights described below in this Section.

(a) Public Access

Subject to Access Restrictions, public use of the Riparian Corridor for recreational fishing and boating together with use in connection with these activities of any Accessory Facilities (defined below in this Section) identified for public use by the Holder. The term "Access Restrictions" means the rules, regulations and/or limitations established by Holder to regulate fishing and boating activities.

(b) Management Activities

Use of the Easement Area by or under the auspices of the Holder for stocking fish, improving stream habitat, stabilizing stream banks and other educational, scientific and resource management activities in furtherance of Easement Objectives.

(c) Accessory Facilities

Installation, construction, maintenance, repair and replacement of Accessory Facilities either within the Riparian Corridor or, if outside the Riparian Corridor, in the locations identified on the Easement Plan or such other locations as are mutually agreeable to Owners and Holder. The phrase "Accessory Facilities" means temporary or permanent structures and improvements used or usable in connection with Easement Objectives; for example, a driveway, trail, footpath, boardwalk or other access way connecting the Riparian Corridor with the public right-of-way; parking area; dock, boat launch, structures that enhance fishing opportunities or fish habitat, and signage to mark the Easement Area and provide information regarding applicable time, place and manner restrictions.

(d) Access

Reasonable means of access (both vehicular and pedestrian) to and from the public right-of-way for the purposes described in (b) and (c) above. As to the public use described in (a) above, access to the Riparian Corridor is via the Waterway unless and to the extent (i) the Riparian Corridor is accessible directly from the public right-of-way; or (ii) an area has been identified by Holder on the Easement Plan as a means of access for public use purposes.

2.02 Rights of Owners

(a) Consistent with Easement Objectives

The easement granted to Holder in this Article is non-exclusive. Owners are permitted to continue to use the Easement Area so long as Owners' use is and remains consistent with Easement Objectives, does not prevent or impair access to the Riparian Corridor or use of Accessory Facilities and otherwise does not violate any specific limitation set forth in this Agreement. Owners may request from Holder clarification of activities and uses that conform to the standard set forth in this Section. Any such clarifications of conforming activities or uses that, prior to the Agreement Date, have been agreed upon by the undersigned Owner or Owners and Holder are listed in an Exhibit entitled "Permitted Uses" attached to this Agreement.

(b) Not Consistent with Easement Objectives

Owners' reserved rights to use the Easement Area are subject to the following limitations unless specifically listed as a "Permitted Use" or Holder (without any obligation to do so) notifies Owners of its approval:

- (i) No removal, impoundment or diversion of water from the Waterway or other change of natural flow of the Waterway is permitted.
- (ii) No change in topography or removal or disturbance of soil, rock or vegetative resources that, individually or in the aggregate, results in the impairment of Easement Objectives is permitted within the Riparian Corridor; however, Owners may cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to persons or property on or about the Easement Area. By exercising such right Owners do not assume any responsibility to inspect the Easement Area or otherwise take responsibility for the safety of any persons entering the Easement Area.

- (iii) No permanent structures or improvements are permitted within the Easement Area other than improvements existing on the Agreement Date in their existing locations as shown on the Easement Plan.
- (iv) No agricultural use of the Riparian Corridor is permitted. Any such uses within other portions of the Easement Area are conducted at Owners' risk; i.e., Holder is not responsible for loss or damage to crops or livestock occasioned by exercise of its rights under this Agreement.
- (v) No timber harvest in the Riparian Corridor is permitted except for harvests carried out in accordance with a forest management plan that (1) supports the Easement Objectives, (2) conforms to Holder's requirements with respect to forest management plans and (3) is approved by Holder.
- (vi) No dumping or placement of ashes, trash, garbage, sewage, manure or other offensive material is permitted within the Easement Area.

(c) Owners' Enforcement Rights

Owners reserve the right to take any action permitted under law to remove from the Property persons entering the Easement Area for purposes other than set forth in the grant of public access under this Article.

2.03 Rights of Beneficiaries

The Persons identified below are beneficiaries of this Agreement (each, a "Beneficiary") and have the right to exercise the same rights, powers and privileges as are vested in the Holder under this Agreement:

- As of the Agreement Date, there are no Beneficiaries of this Agreement.

Article III. Other Legal Matters

3.01 Enforcement

If Holder determines that this Agreement is being or has been violated then Holder may, in addition to other remedies available at law or in equity, do any one or more of the following:

(a) Injunctive Relief

Seek injunctive relief to specifically enforce the terms of this Agreement; to restrain present or future violations of this Agreement; and/or to compel restoration of resources and Accessory Facilities destroyed or altered as a result of the violation.

(b) Self Help

Enter the Property to remove any barrier to the access provided under this Agreement and do such other things as are reasonably necessary to protect and preserve the rights of Holder under this Agreement.

3.02 Warranty

The undersigned Owner or Owners warrant to Holder that:

(a) Subordination of Liens

The Property is, as of the Agreement Date, free and clear of all mortgages, liens and other encumbrances (collectively, "Liens") or, if it is not, that Owners have obtained and attached to this Agreement as an exhibit the legally binding subordination of any Liens affecting the Property as of the Agreement Date.

(b) Existing Agreements

No one has the legally enforceable right (for example, under a lease, easement or right-of-way agreement in existence as of the Agreement Date) to use the Easement Area for purposes inconsistent with Easement Objectives or to prevent Holder from exercising any one or more of its rights under this Agreement.

(c) Hazardous Materials

The Easement Area is not contaminated with materials identified as hazardous or toxic under applicable law (collectively, "Hazardous Materials") and no Hazardous Materials have been stored or generated within the Easement Area.

3.03 Repair of Accessory Facilities; No Duty to Inspect

If any Accessory Facilities are constructed by or on behalf of Holder, Holder is responsible for providing such repairs (other than repairs necessitated by misuse by Owners) as are reasonably required to eliminate or mitigate dangerous or unsafe conditions of which Holder has been notified. Holder disclaims any duty to

inspect the Easement Area for dangerous or unsafe conditions; accordingly, Holder's obligation to repair under this Section commences in each case upon receipt of notice of the dangerous or unsafe condition requiring repair.

3.04 No Charge for Access

No Person is permitted to charge a fee for access to or use of the Easement Area.

3.05 Immunity under Applicable Law

Nothing in this Agreement limits the ability of Owners, Holder or any Beneficiary to avail itself of the protections offered by any applicable law affording immunity to Owners, Holder or any Beneficiary including, to the extent applicable, the Recreational Use of Land and Water Act, Act of February 2, 1966, P.L. (1965) 1860, No. 586, as amended, 68 P.S. §477-1 *et seq.* (as may be amended from time to time).

Article IV. Miscellaneous

4.01 Notices

(a) Requirements

Each Person giving any notice pursuant to this Agreement must give the notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) 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:

With a copy to
each Beneficiary:

4.02 Governing Law

The laws of the Commonwealth of Pennsylvania govern this Agreement.

4.03 Binding Agreement

This Agreement is 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 Easement Area or any portion of the Easement Area are bound by its terms whether or not the Owners had actual notice of this Agreement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Agreement. Subject to such limitations (if any) on Holder's right to assign as may be set forth in this Agreement, this Agreement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

4.04 Guides to Interpretation

(a) Conservation and Preservation Easements Act

This Agreement 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 Pennsylvania Conservation and Preservation Easements Act, the act of June 22, 2001, P. L. 390, No. 29 (the "Conservation Easements Act"). Each Beneficiary identified in Article II (if any) has a third-party right of enforcement as defined in the Conservation Easements Act. The following notice is given to Owners solely for the purpose of compliance with the requirements of the Conservation Easements Act:

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

(b) Restatement of Servitudes

This Agreement 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 of the Law of Property, Third, Servitudes (Susan F. French, Reporter) St. Paul, MN: The American Law Institute (2000).

(c) Certain Terms

The following terms, whenever used in this Agreement, are to be interpreted as follows:

- (i) "Owners" means the undersigned Owner or Owners and all Persons after them who hold any interest in the Easement Area.
- (ii) "Person" means an individual, organization, trust or other entity.
- (iii) "Public Records" means the public records of the office for the recording of deeds in and for the county in which the Easement Area is located.
- (iv) "Including" means "including, without limitation".
- (v) "May" is permissive and implies no obligation; "must" is obligatory.

(d) Incorporation by Reference

Each exhibit referred to in this Agreement is incorporated into this Agreement by this reference.

4.05 Amendments; Waivers

No amendment or waiver of any provision of this Agreement or consent to any departure by Owners from the terms of this Agreement is effective unless the amendment, waiver or consent is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given. An amendment must be recorded in the Public Records.

4.06 Severability

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

4.07 Counterparts

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

4.08 Entire Agreement

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

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

Witness/Attest:

Witness/Attest:

Owner's Name:

Owner's Name:

[NAME OF HOLDER]

_____ By: _____
Name:
Title:

Acceptance by Beneficiary:

[NAME OF BENEFICIARY]

_____ By: _____
Name:
Title:

This document is based on the model Fishing Access Agreement (9/26/2007 edition) 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 to reflect specific circumstances under the guidance of legal counsel.

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 _____, and that he/she as such authorized official, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Holder by her/himself as such authorized official.

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

_____, Notary Public

Print Name: