

Prepared by:

Name:

Address:

Telephone:

Return to:

Name:

Address:

Tax Parcel(s):

GRANT OF FISHING & BOATING ACCESS EASEMENT

THIS GRANT OF FISHING & BOATING ACCESS EASEMENT (the "Access Easement") dated as of _____ (the "Easement 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:

County:

Parcel Identifier:

State: Pennsylvania

Acreage:

1.02 Easement Area; Easement Plan

The portions of the Property that are the subject of this Access Easement (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 _____ 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 (if any) for construction, installation and use of Accessory Facilities outside the Riparian Corridor in the locations shown on the Easement Plan.

1.03 Purposes

The purposes of the Access Easement are to provide the following (collectively, the "Easement Objectives"):

- Public access to the Riparian Corridor for recreational fishing.
- Public access to the Riparian Corridor for recreational non-motorized boating.
- Use of the Easement Area for fishery and habitat management, research and educational programs.

1.04 Consideration

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

Article II. Grant

2.01 Grant of Easement for Public Access

The undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a right to make available to the public a perpetual easement and right-of-way over the Easement Area for the purposes described in the Easement Objectives. Public 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 on the Easement Plan as a means of access for public use purposes.

2.02 Grant of Easement for Other Purposes

The undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder the following rights, including the right to use reasonable means of access (both vehicular and pedestrian) to and from the public right-of-way to exercise these rights:

(a) 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.

(b) Fishery and Habitat Management; Research and Educational Programs

Use of the Easement Area by or under the auspices of the Holder for stocking fish, improving stream habitat and stabilizing stream banks; scientific research; and educational programs.

2.03 Rights of Owners

The easement granted to Holder 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 and the rights granted to Holder in this Article.

Article III. Enforcement; Liability Issues

3.01 Enforcement

Holder may, in addition to other remedies available at law or in equity, compel Owners to make the Easement Area available for the purposes set forth in Article II by exercising any one or more of the following remedies, without any need to show that a civil action for damages is not available to furnish compensation:

(a) Injunctive Relief

Seek injunctive relief to specifically enforce the terms of this Access Easement; to restrain present or future violations of this Access Easement; and/or to compel restoration of Accessory Facilities or other resources 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 Access Easement and do such other things as are reasonably necessary to protect and preserve the rights of Holder under this Access Easement.

3.02 Warranty

The undersigned Owner or Owners warrant to Holder that:

(a) Liens and Subordination

The Easement Area is, as of the Easement Date, free and clear of all Liens or, if it is not, that Owners have obtained and recorded in the Public Records the legally binding subordination of any mortgage, lien, or other encumbrance affecting the Easement Area as of the Easement 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 Easement Date) to use the Easement Area for purposes inconsistent with Easement Objectives or to prevent Holder from exercising any of its rights under this Access Easement.

3.03 No Charge for Access

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

3.04 Immunity under Applicable Law

Nothing in this Access Easement limits the ability of Owners and Holder to avail themselves of the protections offered by any applicable law affording immunity to Owners and Holder 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).

3.05 Public Enters at Own Risk

Use of the Easement Area by members of the general public is at their own risk. Neither Holder nor Owners by entering into this Access Easement assume any duty to or for the benefit of the general public for defects in the location, design, installation, maintenance or repair of Accessory Facilities; for any unsafe conditions within the Easement Area; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Easement Area to public access when unsafe conditions may be present. Holder will endeavor to repair damaged Accessory Facilities but has no duty to do so unless and until Holder receives actual notice, given in accordance with Article IV, of the need to repair an unreasonably dangerous condition.

3.06 Costs and Expenses

All costs and expenses associated with Accessory Facilities are to be borne by Holder except for items included in Owner Responsibility Claims (defined below in this Article).

3.07 Responsibility for Losses and Litigation Expenses

(a) Public Access Claims; Owner Responsibility Claims

If a claim for any Loss for personal injury or property damage occurring within the Easement Area after the Easement Date (a "Public Access Claim") is asserted against either Owners or Holder, or both, it is anticipated that they will assert such defenses (including immunity under the Recreational Use of Land and Water Act) as are available to them under applicable law. The phrase "Public Access Claim" excludes all claims (collectively, "Owner Responsibility Claims") for Losses and Litigation Expenses arising from, relating to or associated with (i) personal injury or property damage occurring prior to the Easement Date; (ii) activities or uses engaged in by Owners, their family members, contractors, agents, employees, tenants and invitees or anyone else entering the Property by, through or under the express or implied invitation of any of the foregoing; or (iii) structures, facilities and improvements within the Easement Area (other than improvements installed by Holder).

(b) Holder Indemnifies Owners

If immunity from any Public Access Claim is for any reason unavailable to Owners, Holder agrees to indemnify, defend and hold Owners harmless from any Loss or Litigation Expense if and to the extent arising from a Public Access Claim. Owners agree to indemnify, defend and hold the Holder harmless from any Loss or Litigation Expense if and to the extent arising from an Owner Responsibility Claim.

(c) Loss; Litigation Expense

- (i) The term "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.
- (ii) The term "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 for indemnification under this Access Easement including in each case, attorneys' fees, other professionals' fees and disbursements.

Article IV. Miscellaneous

4.01 Beneficiaries and Agents

The rights of Holder under this Access Easement may be exercised by Holder, any Person identified by Holder as a beneficiary of this Access Easement and who accepts this designation by recordation in the Public Records of a joinder to this Access Easement (a "Beneficiary"), or any of the contractors, agents, and employees of Holder or Beneficiary.

4.02 Binding Access Easement

This Access Easement 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 Access Easement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Access Easement. Subject to such limitations (if any) on Holder's right to assign as may be set forth in this Access Easement, this Access Easement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

4.03 Governing Law

The laws of the Commonwealth of Pennsylvania govern this Access Easement.

4.04 Definition and Interpretation of Capitalized and Other Terms

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

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

4.05 Incorporation by Reference

Each exhibit or schedule referred to in this Access Easement is incorporated into this Access Easement by this reference.

4.06 Requirement of Writing

No amendment, waiver, 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 does not imply that an amendment or waiver will be granted in any other instance.

4.07 Severability

If any provision of this Access Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Access Easement 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 Access Easement invalid, illegal, or unenforceable in any respect.

4.08 Counterparts

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

4.09 Entire Access Easement

This is the entire agreement of Owners, Holder and any Beneficiary pertaining to the subject matter of this Access Easement. The terms of this Access Easement supersede in full all statements and writings between Owners, Holder, and others pertaining to the transaction set forth in this Access Easement.

4.10 Notices

Notice to Holder under this Access Easement must be in writing and given by one of the following methods: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid. In an emergency, notice may be given by phone (____) or electronic communication (_____) followed by one of the methods in the preceding sentence.

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

Witness/Attest:

Owner's Name: _____ (SEAL)

Owner's Name: _____ (SEAL)

[NAME OF HOLDER]

By: _____ (SEAL)
Name of signatory:
Title of signatory:

This document is based on the Model Grant of Fishing & Boating Access Easement (6/29/2011 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 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: