

Model

Grant of Conservation Easement and Declaration of Covenants for Riparian Buffer Protection with Commentary

Third Edition

Published by the

Pennsylvania Land Trust Association

with support from the

William Penn Foundation

Colcom Foundation

Community Conservation Partnerships Program

Environmental Stewardship Fund

under the administration of the

Pennsylvania Department of Conservation and Natural Resources

Bureau of Recreation and Conservation

and other generous contributors

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Last updated – 4/21/2017



Preface

The [*Model Grant of Conservation Easement and Declaration of Covenants for Riparian Buffer Protection, 3rd edition*](#), provides users with a model document tailored specifically for the protection of a riparian buffer along a waterway.

The model is based on the 7th edition of the [*Model Grant of Conservation Easement and Declaration of Covenants*](#) published by the Pennsylvania Land Trust Association at ConservationTools.org. Unlike that model, which provides for three levels of protection to address variations in conservation objectives across a property, this model addresses situations where you want to apply a uniform set of objectives and restrictions to the protected area.

For guidance in using the riparian model, refer to the commentary to the *Model Grant of Conservation Easement and Declaration of Covenants*. Commentary relevant only to the riparian model is embedded in the model and denoted by use of line separators and the Rockwell font.

Improve the Model

The Pennsylvania Land Trust Association welcomes suggestions for improving the model and commentary. Please direct your comments to the Association via [phone, email, or web form](#).

Acknowledgements

Patricia L. Pregmon, Esq., is the principal author.

Andrew M. Loza is the contributing author, editor, and project manager.

The Pennsylvania Land Trust Association produced this edition of the model with financial assistance from the Colcom Foundation; the William Penn Foundation; the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation; and other generous supporters.



Prepared by:

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Telephone:

Return to:

Name:

Address:

Tax parcel(s):

GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS FOR RIPARIAN BUFFER PROTECTION

THIS GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS FOR RIPARIAN BUFFER PROTECTION (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; Conservation Area

- (a) **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:

Alternative 1 —

- (b) **Conservation Area.** A certain portion of the Property (the "Conservation Area") within which _____ (the "Waterway") is located is the subject of this Grant. The location of the Conservation Area as of the Easement Date is shown on the plan (the "Easement Plan") attached as exhibit B. The "Conservation Area" is defined as the entirety of the Waterway (including its bed and banks) together with adjoining land measured ____ feet landward from the Top of the Banks of the Waterway (to the extent that the land is located within the Property). If the position of the Waterway and the Top of the Banks of the Waterway shift with time, the Conservation Area moves with them.

Alternative 2 —

- (b) **Conservation Area.** A certain portion of the Property (the "Conservation Area") within which _____ (the "Waterway") is located is the subject of this Grant and is described in exhibit A-1 and shown on the plan (the "Easement Plan") attached as exhibit B.

ALTERNATIVES FOR DESCRIBING THE CONSERVATION AREA

Shifting or fixed location. A key issue to consider in describing the Conservation Area is the possibility that the location of the Waterway may shift over time. An assessment of the likelihood and amount of potential movement, tax considerations, and other factors will help you determine whether to create a Conservation Area that moves with the Waterway or permanently fix the location of the Conservation Area.

PA requirement. A Conservation Area described using natural or artificial features of the land (such as a stream bank) or setbacks from the features conforms to the requirements of §4(b) of the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. No. 330. If not using such physical features of the land or the Property's boundary to describe the Conservation Area, the law requires a metes and bounds description.

No application off the Property. Whether a moving or fixed Conservation Area is chosen, the restrictions established by the grant of conservation easement cannot apply beyond the boundary of the Property.

Alternative 1 (Moving Conservation Area):

- **Protects.** If the Waterway's size and location changes, the Conservation Area changes with it. This serves to protect the water resources, no matter how the Waterway shifts on the Property over time.
- **One or both sides.** The definition of "Conservation Area" works whether the Owners own one or both sides of the Waterway.
- **Delineation.** If the Owners and Holder are unable to agree upon the location of the Top of the Bank (and, thus, the boundary of the Conservation Area), the definition in article 9 furnishes an objective method for a qualified professional to delineate it.
- **Tax issue.** Because land included in the Conservation Area as of the Easement Date can subsequently drop out of the Conservation Area due to the Waterway shifting, this alternative likely eliminates the potential for a donation of the easement to qualify for a federal tax deduction. (See B. V. Belk, Jr.; Harriet C. Belk v. Commissioner of Internal Revenue, United States Court of Appeals for the Fourth Circuit, No. 13-2161, December 16, 2014 for an example of why qualification is unlikely.)
- **Deduction-friendly alternative.** Alternative 1 can be modified to preserve the potential for a donation of the easement to qualify for a federal income tax deduction by adding the following text to the end of the provision:

except that land within the Conservation Area as of the Easement Date always remains part of the Conservation Area.

Such a modification presents additional stewardship challenges including monitoring the land based on the Waterway's position both as of the Easement Date and the date that the monitoring is occurring.

- **Centerline-based alternative.** The Conservation Area could be defined as a uniform width measured from the centerline of the stream. This has the advantage of being simple to state in writing. However, it is problematic for several reasons including (1) the width of dry land buffer would lessen wherever and whenever the Waterway widens and (2) measuring a buffer from a stream centerline is more difficult than from the Top of the Bank.

Alternative 2 (Fixed Conservation Area):

- **Permanently set.** The Conservation Area may be defined as a fixed location permanently marked on the ground.
- **Issues.** The fixed location may be problematic because (1) the water resources may receive less protection if the Waterway shifts; and (2) the fixed location must be described in accordance with a metes and bounds survey to conform to the requirements of the Pennsylvania Conservation and Preservation Easements Act, resulting in additional expense.
- **Description linked to public document.** The description of a fixed Conservation Area could be based on a boundary established by a public document. For example:

A certain portion of the Property (the “Conservation Area”) is the subject of this Grant and is defined as the special flood hazard area subject to inundation by the 1% annual chance of flood (100-year flood) on the Flood Insurance Rate Map of _____, 20__ provided by the Federal Emergency Management Agency. For ease of identification, the upland boundary of the Conservation Area is physically marked and USGS coordinates for the markers is included in the Baseline Documentation.

Challenges with this approach include: translating a boundary on a map into markings on the ground and finding public documents that are both accurate and appropriate to the need.

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 Conservation Area 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 Conservation Area, 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 Conservation Area, which are set forth in article 6.

1.03 Present and Future Woodland

Attached as exhibit ___ is a graphic depiction of the Conservation Area designating locations of “Existing Woodland” (if any) and areas intended to grow into woodland in the future (those areas, the “Future Woodland”) (if any). These designated areas are subject to specific covenants set forth in article 3.

DESIGNATION OF WOODLAND

Baseline option. If you prefer, you may instead rely on the Baseline Documentation to identify woodland. In that case replace “Attached as exhibit ___” with “Included in the Baseline Documentation.”

No woodland protection option. If no woodland is to be designated, delete the section heading and replace with “intentionally blank.” Delete the section’s content. Delete Woodland references in article 3

Science. The model provides the opportunity to designate and protect present and future woodland because scientific research has amassed ample evidence that wooded riparian buffers support much better water quality than non-wooded, vegetated buffers.

1.04 Conservation Objectives

The purposes of the Conservation Easement (collectively, the “Conservation Objectives”) are as follows:

- (a) **Water Resources.** To maintain and improve the quality of water resources, both surface and groundwater, within, around, and downstream of the Conservation Area.
- (b) **Biological Resources.** To protect and improve the quality of natural habitat for animals, plants, fungi, and other organisms, particularly Native Species.
- (c) **Soil Resources.** To prevent the loss and depletion of soil.
- (d) **Ecosystem Services.** To absorb within the Conservation Area rainwater that otherwise might cause erosion and flooding downstream of the Conservation Area; to sequester carbon in plants and soil to mitigate rising atmospheric carbon levels; and to support other healthy ecosystem processes.

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 describes Existing Improvements (if any); identifies the conservation resources of the Conservation Area described in the Conservation Objectives; and includes, among other information, photographs depicting existing conditions of the Conservation Area 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 undersigned Owner or Owners and Holder confirm that the grant to Holder of this Conservation Easement is not intended to be a qualified conservation contribution under the Code and Regulations.

ALTERNATIVE IF OWNERS WILL SEEK FEDERAL TAX BENEFITS FOR DONATION OF THE EASEMENT

Delete the above sentence and replace with the content of §1.07 from the *Model Grant of Conservation Easement and Declaration of Covenants*. In §1.01, do not define the Conservation Area such that it can move with the Waterway over time if, as a result of that movement, the Conservation Area as of the Easement Date will become unprotected. The Owners should seek legal counsel familiar with the Code and Regulations to ensure compliance.

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 Conservation Area 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 Conservation Area as of the Easement Date.

Article 2. COVENANTS REGARDING TRANSFER AND SUBDIVISION

2.01 Prohibitions

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

- (a) **Transfer of Portion of Conservation Area.** Transfer of ownership, possession, or use of a portion of the Conservation Area, including subsurface portions of the Conservation Area, independent of the remainder of the Conservation Area.
- (b) **Subdivision.** Change in the boundary of a Lot or other Subdivision of the Conservation Area.
- (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 Conservation Area or outside the Conservation Area.
- (d) **Transfer of Rights.** Transfer of development rights or other rights granted or allocated to the Conservation Area in support of development outside the Conservation Area.

2.02 Permitted Changes

The following changes are permitted:

- (a) **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 Conservation Area, including subsurface portions, for purposes permitted under, and subject to compliance with, the terms of this Grant.

ALTERNATIVE IF USERS WISH TO PERMIT OTHER CHANGES

Insert portions of §2.02 and §2.03 from the *Model Grant of Conservation Easement and Declaration of Covenants*.

Article 3. COVENANTS REGARDING IMPROVEMENTS, ACTIVITIES, AND USES

3.01 Improvements

Improvements within the Conservation 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.
 - (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 Conservation Area.
 - (3) Habitat enhancements such as birdhouses and bat houses and, subject to Review, fish passage, fish habitat improvement, and streambank stabilization structures.
 - (4) 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.
 - (5) Unpaved trails and footbridges for foot traffic.
 - (6) Subject to Review, stream crossing and access structures and associated access corridor for the purpose of allowing livestock, horses and agricultural equipment to cross the Waterway or to access water in the Waterway in a specified location. It is Owners' responsibility to install fencing wherever necessary to prevent grazing within or other unrestricted access to the Conservation Area by horses or livestock.
 - (7) Subject to Review, irrigation facilities accessory to Agriculture.
 - (8) Subject to Review, Access Drives and utility improvements but only if there is no other reasonably feasible means to provide access and utility services to the Property.
 - (9) Subject to Review, Extraction Improvements but only if located wholly beneath the surface at a depth at which there can be no impairment of 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 Conservation 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.
- Existing Woodland must not be used for or converted to Agricultural uses.
- Activities and uses of the Future Woodland must not interfere with its succession to a woodland whose trees form a largely closed canopy.

ALTERNATIVES REGARDING EXISTING WOODLAND OR FUTURE WOODLAND

See §1.03. Delete one or both provisions if not relevant.

- (a) **Existing Servitudes.** Activities and uses that Owners are required to allow because of an Existing Servitude are permitted.
- (b) **Forestry and Agriculture.**
- (1) Sustainable Forestry is permitted in accordance with a Resource Management Plan approved after Review; however, within _____ (35 if not noted otherwise) feet of the Top of the Bank of the Waterway, Forestry is prohibited except, subject to Review, if planned and conducted for the primary purpose of advancing the Conservation Objectives.
 - (2) Sustainable Agriculture is permitted in accordance with a Resource Management Plan approved after Review; however, within _____ (35 if not noted otherwise) feet of the Top of the Bank of the Waterway, Agriculture is prohibited except for the passage of horses and livestock via a corridor permitted under this article to access water at a specified location or stream crossing structures permitted under this article. (The prohibition on Agriculture does not preclude, subject to Review, occasional grazing for the purpose of controlling Invasive Species and improving wildlife habitat.)
- (c) **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 Conservation Area. 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 disturbed soil and vegetation.
 - (5) Subject to Review, stream bank stabilization, dam removal, and other habitat improvement activities.
 - (6) 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, incident to such extraction, injection, or release are permitted.
 - (7) Activities that do not require Improvements other than unpaved 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.
 - (8) 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.

Article 4. [intentionally blank]

Article 5. [intentionally blank]

NOTE REGARDING ARTICLES 3, 4, AND 5

The document includes blank articles because they are used in the *Model Grant of Conservation Easement and Declaration of Covenants*, and their retention facilitates the use of that model's commentary by this model's users. The covenants contained in this model's article 3 include covenants drawn from that model's articles 3 and 4 as well as covenants unique to this model.

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 Conservation Area:

- (a) **Exercise of Powers.** Holder must exercise the powers granted to it by this Grant to block activities, uses, and Improvements of the Conservation Area 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 Conservation Area 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 Conservation Area 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 Conservation Area.

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 Conservation Area 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 Conservation Area 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 Costs and Expenses

Owners must pay or reimburse, as the case may be, Holder's costs and expenses (including Losses, Litigation Expenses, allocated personnel costs, and reasonably incurred liabilities) in connection with: (a) enforcement (including exercise of remedies) under the terms of this Grant; (b) response to requests by Owners for Review, Waiver, or Amendment; and (c) compliance with requests for information, interpretation, or other action pertaining to the Grant if required by Applicable Law.

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 Conservation Area 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 Conservation Area 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.** Exercise Holder's rights under Applicable Law to obtain a money judgment (together with interest thereon at the Default Rate).
- (c) **Self-Help.** Enter the Conservation Area to prevent or mitigate further damage to or alteration of natural resources of the Conservation Area 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 Conservation Area 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 Conservation Area 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 Conservation Area, 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 Conservation Area 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 Conservation Area 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 Conservation Area 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 Conservation Area or any portion of the Conservation Area 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 Conservation Area do not have the right to enforce the terms of this Grant against Owners of other Lots within the Conservation Area. 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 Conservation Area 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.
- (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 Conservation Area: 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 Conservation Area: 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 Conservation Area.

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 Conservation Area 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 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) 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 Conservation Area, 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*.

“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 Conservation Area (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 Conservation Area. 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 Conservation Area.

“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.

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

“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 Conservation Area.

“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 Conservation Area 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 Conservation Area or for informational, directional, or interpretive purposes.

“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 Improvement 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.

“Subdivision” means any division of the Conservation Area or any Lot within the Conservation Area; and any creation of a unit, lot, or parcel of real estate, including subsurface portions of the Conservation Area, 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.

“Top of the Bank” is the elevation at which rising waters begin to inundate the floodplain. In case of ambiguous, indefinite or nonexistent floodplain or question regarding location, the Top of the Bank shall be the bankfull water elevation as delineated by a person trained in fluvial geomorphology and utilizing the most recent edition of *Applied River Morphology* by Dave Rosgen or reference book of greater stature.

“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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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 3rd edition of the
**Model Grant of Conservation Easement and Declaration of Covenants
for Riparian Buffer Protection** (v. 2017.04.21)
published 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: