

DRAFT

TRAIL EASEMENT AGREEMENT

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

Article I. Background; Grant of Easement

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the property described below (the "Property"):

Street Address:

Municipality:

County:

Parcel Identifier:

State: Pennsylvania

Acreage:

1.02 Trail Area; Trail Plan

A certain portion of the Property (the "Trail Area") is the subject of this Agreement and is described in Exhibit "A." The Trail Area is ____ (##) feet wide and is located on the Property as shown on a survey or other graphic depiction attached as Exhibit "B" (the "Trail Plan").

1.03 Trail

A trail for use by the general public may be established in the Trail Area (the "Trail").

1.04 Grant of Easement and Right-of-Way

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 an exclusive easement and right-of-way over, under, and across the Trail Area in perpetuity, for the purpose and subject to the limitations set forth in Article II and the reserved rights of Owners set forth in Article III.

1.05 Purchase Price

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

1.06 Liens and Subordination

The undersigned Owner or Owners warrant to Holder that the Trail Area is, as of the Agreement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Agreement as an exhibit the legally binding subordination of any mortgage, lien, or other encumbrance affecting the Trail Area as of the Agreement Date.

1.07 Existing Agreements

The undersigned Owner or Owners warrant to Holder that there are no easements or other servitudes affecting the Trail Area prior to the Agreement Date and running to the benefit of Persons that constitute legally binding servitudes prior in right to this Agreement.

1.08 Beneficiaries

Owners and Holder grant and convey to the Persons, if any, identified below (the “Beneficiaries”) rights as indicated with respect to this Agreement.

(There are no Beneficiaries.)

Article II. Limitations

The grant of easement under this Agreement is subject to the limitations set forth in this Article.

2.01 Limitation on Activities and Uses

(a) Purpose

The Trail Area may be used only for non-commercial recreational, educational and open-space purposes.

(b) Use

Access to the Trail Area by the general public is subject to the following limitations:

- (i) The Trail may be used only for walking, horseback riding, cross-country skiing, nature study, and the like.
- (ii) Motorized vehicles are prohibited except in the case of emergency or in connection with the construction, maintenance, or patrol of the Trail Area or by persons confined to motor-driven wheelchairs.
- (iii) Use is limited to the hours between dawn and dusk.
- (iv) Smoking or lighting of fires is prohibited.
- (v) Consumption of alcoholic beverages is prohibited.
- (vi) Trapping or hunting is prohibited.
- (vii) Swimming is prohibited.
- (viii) Holder may impose additional reasonable limitations upon the time, place and manner of use.
- (ix) No fee may be charged for use of the Trail Area.

(c) Disturbance

Soil, rock, and vegetative resources may be removed, cut or otherwise disturbed only to the extent reasonably necessary to accommodate construction, maintenance and patrol of the Trail and maintenance of access to the Trail Area. When vegetative cover is removed, it must be restored as soon as reasonably feasible by replanting with grasses or native species of trees, shrubs, and plant materials.

(d) Construction

Prior to commencing initial construction of the Trail or relocation of more than 200 linear feet of the Trail within the Trail Area, Holder must:

- (i) Provide Owners with at least 30 days notice.
- (ii) Obtain legally binding waivers of mechanics liens from all Persons furnishing labor or materials in connection with construction.
- (iii) Obtain certificates evidencing liability insurance coverage with respect to Holder and all Persons entering the Property for the purpose of construction.
- (iv) Obtain, at Holder’s cost and expense, all permits and approvals required for the construction.

2.02 Limitation on Improvements

Improvements within the Trail Area are limited to the following:

(a) Trail

- (i) The Trail, including steps and railings and other trail surface structures as well as bridges and culverts for traversing wet areas within the Trail Area.
- (ii) The Trail may not exceed ____ (##) feet in width.
- (iii) The Trail may be covered, if at all, by wood chips, gravel, or other porous surface, or paved or covered with other material as may be required by Applicable Law.

(b) Accessory Facilities

- (i) A reasonable number of benches, picnic tables, and wastebaskets *[and bicycle racks]*.
- (ii) Signs to mark the Trail and provide information regarding applicable time, place, and manner restrictions.
- (iii) Signs for interpretive purposes and to indicate the interest of Holder and Beneficiaries in the Trail Area.
- (iv) Fencing, gates and barriers to control access.

2.03 No Expense to Owners

Owners are not responsible for costs associated with construction and maintenance of improvements in the Trail Area except for improvements resulting from Owners exercising a reserved right. Holder must promptly pay as and when due all costs and expenses incurred in connection with construction and maintenance.

Article III. Reserved Rights of Owners

The easement granted to Holder under this Agreement is exclusive. This means that Owners have no rights to enter or use the Trail Area except to exercise rights accorded to the general public and except as provided in this Article. Owners reserve the following rights:

3.01 Owner Access

Owners may enter the Trail Area by foot at any time except when construction and maintenance activities could present a danger.

3.02 Mitigating Risk

Owners may cut trees or otherwise disturb resources only to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Trail Area; however, Owners do not assume any responsibility or liability to the general public for failing to do so.

3.03 Fencing

Owners may install fencing, at Owners' expense, along the perimeter of the Trail Area, not to exceed four (4) feet in height and constructed of post-and-rail or other open weave construction that preserves scenic views from the Trail. Owners must not impede access to or discourage use of the Trail.

3.04 Hunting

Owners may close public access to the Trail Area for public safety reasons from the Monday after Thanksgiving through the month of December so as to reasonably accommodate hunting by or under control of Owners within the Trail Area.

Article IV. Federal Tax Items

[If there is no donation or if the undersigned Owner or Owners will not be pursuing federal tax benefits for the donation, the content below the caption of this Article can be deleted and replaced with the following: "The undersigned Owner or Owners and Holder confirm that the grant to the Holder of the easement under this Agreement is not intended to be a qualified conservation contribution under the Internal Revenue Code of 1986, as amended through the applicable date of reference."]

4.01 Qualified Conservation Contribution

The easement granted under this Agreement has been donated in whole or in part to Holder by the undersigned Owner or Owners. It 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 (as defined in §1.170A-14(c)(1) of the Regulations).

4.02 Definitions of Code and Regulations

"Code" means the Internal Revenue Code of 1986, as amended through the applicable date of reference.
"Regulations" mean the provisions of C.F.R. §1.170A-14 as amended through the applicable date of reference.

4.03 Public Benefit

This easement is given for public outdoor recreation and education and is for the substantial and regular use of the general public or the community. This Agreement provides significant public benefit as defined in §1.170A-14(d)(2)(i) of the Regulations. Public policies and programs that illustrate and support the significant public benefit of this Agreement include:

- (i) The Open Space Plan of _____ Township, adopted in 200_, which _____.
- (ii) The _____ County Greenways Plan, adopted in 200_, which _____.
- (iii) The _____ Township Zoning Ordinance, adopted in 200_, which _____.

4.04 Mineral Interests

No Person has retained a qualified mineral interest in the Trail Area of a nature that would disqualify the Agreement for purposes of §1.170A-14(g)(4) of the Regulations.

4.05 Notice Required under Regulations

To the extent required for compliance with §1.170A-13(g)(4)(ii) of the Regulations, Owners agree to notify Holder before exercising any reserved right that may have an adverse impact on the conservation interests or public recreational purposes associated with the Trail Area.

4.06 Baseline Documentation

The undersigned Owner or Owners and Holder have signed for identification purposes the report (the "Baseline Documentation"), to be kept on file at the principal office of Holder, that contains an original, full-size version of the Trail Plan together with other pertinent information regarding the conservation and public recreational interests served by the Agreement, including photographs depicting existing conditions of the Trail Area as of the Agreement Date.

4.07 Trail Area Right

In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that the easement granted under this Agreement gives rise to a property right, immediately vested in the Holder, that entitles the Holder to compensation upon extinguishment of the easement. The fair market value of the property right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that this easement as of the Agreement Date bears to the value of the Property as a whole as of the Agreement Date. Holder must use any funds received by application of this provision in a manner consistent with the recreational and conservation purposes of this Agreement.

4.08 Qualification under §2031(c) of the Code

To the extent required to qualify for exemption from federal estate tax under §2031(c) of the Code, and only to the extent such activity is not otherwise prohibited or limited under this Agreement, Owners agree that commercial recreational uses are not permitted within the Trail Area.

Article V. Miscellaneous

5.01 Indemnity

Holder must indemnify and defend Owners against all Losses and Litigation Expenses resulting from property damage and/or personal injuries that occur or are alleged to occur as a result of Holder's installation or maintenance of the Trail or Trail Area, except to the extent caused by the negligent or wrongful acts or omissions of Owners. The word "Losses" 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. The term "Litigation Expenses" 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 Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.

5.02 Recreation Use of Land and Water Act

This Agreement is intended to be interpreted so as to convey to Owners and Holder all of the protections from liability provided by the Pennsylvania Recreation Use of Land and Water Act, 68 P.S. §477-1 et seq., as amended through the applicable date of reference, or any other Applicable Law that provides immunity or

limitation of liability for owners or possessors who make property available to the public for recreational purposes.

5.03 Amendment

Any amendment of this Agreement must be in writing, signed by Owners and Holder, and recorded in the Public Records.

5.04 Governing Law

The internal laws of the Commonwealth of Pennsylvania govern this Agreement.

5.05 Assignment and Transfer

Neither Owners nor Holder may assign or otherwise transfer any of their respective rights or duties under this Agreement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this section is void.

(a) By Holder

Holder may assign its rights and duties under this Agreement, either in whole or in part, but only to a Qualified Organization that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Agreement. Holder must notify Owners within 30 days prior to the assignment of the identity and address for notices of the Qualified Organization who has agreed to assume the obligations of the Holder under this Agreement.

(b) By Owners

This Agreement is a servitude running with the land binding upon the undersigned Owners and, upon recordation in the Public Records, all subsequent Owners of the Trail Area or any portion of the Trail 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. This Agreement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

5.06 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.

5.07 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.

5.08 Definitions of Capitalized Terms

This section contains definitions of capitalized terms used but not defined elsewhere in the Agreement.

- (i) "Applicable Law" means any federal, state, or local laws, statutes, codes, ordinances, standards, and regulations applicable to the Trail, the Trail Area, or this Agreement, as amended through the applicable date of reference.
- (ii) "Owners" means the undersigned Owner or Owners and all Persons after them who hold any interest in all or any part of the Trail Area.
- (iii) "Person" means an individual, organization, trust, or other entity.
- (iv) "Public Records" means the public records of the Office for the Recording of Deeds in and for the county in which the Trail Area is located.
- (v) "Qualified Organization" means a governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a qualified organization under C.F.R. §1.170A-14(c)(1) as amended through the applicable date of reference; and (d) is duly authorized to acquire and hold trail easements under Applicable Law.

5.09 Incorporation by Reference

The following items are incorporated into this Agreement by means of this reference:

- The legal description of the Trail Area attached as Exhibit "A"
- The Trail Plan attached as Exhibit "B"
- The baseline documentation, if any
- *[The mortgage subordination agreement attached as Exhibit C"]*

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:

Owner's Name: _____

Owner's Name: _____

By: _____

Name of Holder: _____

Name of signatory: _____

Title of signatory: _____

Acceptance by Beneficiary:

[NAME OF BENEFICIARY]

By: _____

Name: _____

Title: _____

This document is based on the model *Trail Easement Agreement* (4/20/2006 ed.) provided by the Pennsylvania Land Trust Association.

This document should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. It must 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 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: