

GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS

THIS CONSERVATION EASEMENT dated as of July_____, 2017 (the “Easement Date”) is by and between JOHN B. SMITH and CATHERINE F. SMITH, husband and wife (“the undersigned Owners”) and CLEARWATER CONSERVANCY OF CENTRAL PENNSYLVANIA, INCORPORATED, a Pennsylvania non-profit corporation (the “Holder”).

Article 1.

BACKGROUND; GRANT TO HOLDER

1.01 Property

The undersigned Owners are the sole owners in fee simple of the Property described in exhibit A (the “Property” sometimes referred to herein as “Chicory Lane Farm”). The Property is also described as:

Street Address: 246 Brush Mountain Road

Municipality: Gregg Township

County: Centre

State: Pennsylvania

Parcel Identifier: 21-4-57

Acreage: 68.78

1.02 Easement; Covenants

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

1.03 Easement Plan

Attached as exhibits B-1 and B-2 are (collectively) the Easement Plan prepared by the Holder dated February, 2017 based upon a survey plan prepared by Fred D. Gay and Son, LLC and Nittany Engineering & Associates, LLC dated February 24, 2016, showing, among other details, the location of one or more of the following areas – the Highest Protection Area and Minimal Protections Areas 1, 2 and 3 (“MPA 1”, “MPA 2” and “MPA 3” respectively).

1.04 Conservation Principles of the Undersigned Owners

The undersigned Owners accept responsibility as stewards for the healthy functioning of the Land within Chicory Lane Farm. They are committed to preserving and enhancing the Property’s capacity for self-renewal as a Biotic Community. They understand that organisms comprising the Biotic Community exist in dynamic, not static, relationship to one-another and to landscape conditions; consequently, the undersigned Owners will manage the Property adaptively as needed and in accordance with this Conservation Easement to sustain the Biotic Community’s resilience. They further assert that the Land has intrinsic value, independent of any economic or human functional value.

1.05 Conservation Objectives

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

- (a) **Resource-Specific**

- (i) **Water Resources.** Chicory Lane Farm includes a number of different types of water resources including perennial as well as intermittent seasonal surface streams, storm runoffs, several types of wetlands, pond and vernal pool impoundments, ground waters and subsurface flows.

This Conservation Easement seeks to protect the quality of water resources within or in the vicinity of the Property by implementing measures that help protect water resources from sediment and non-point pollution and promote the infiltration, detention and natural filtration of storm water. Protecting water resources also helps preserve habitat for Native Species dependent on water resources. The Property is traversed by a perennial stream and an intermittent stream totaling approximately 3,834 feet and functioning as un-named tributaries to Penns Creek, a High Quality Cold Water Fishery (HQ-CWF). Penns Creek flows directly to the Susquehanna River, a major contributor to the Chesapeake Bay. The protection and restoration of the Chesapeake Bay is a multi-state priority that requires good land management practices throughout the Susquehanna River watershed.

The intermittent stream enters the Property on the east and runs west to where it meets a larger perennial stream that runs north-to-south just west of the barn. These tributaries are well protected with mature forested buffers as of the Easement Date and both tributaries exhibit the stable dimension, pattern and profile of a morphologically stable natural stream channel. Further stream channel protection will be achieved through designation in this Grant of 50-foot buffers along both sides of both tributaries, totaling approximately 8.52 acres. In addition to the two un-named tributaries to Penns Creek, the Property contains two restoration wetlands, a wet meadow, a cat-tail marsh, a constructed farm pond, and two small vernal pools which contribute, through filtration and sediment retention, to the stable stream bed forms present on Chicory Lane Farm. Approximately 1.53 acres of the Property are classified as wetlands according to the Natural Wetlands Inventory and an additional 33.94 acres are in hydric soils.

- (ii) **Biological Resources.** To protect and improve the quality of natural habitat for animals, plants, fungi, and other organisms, particularly Native Species including the following resources (which are more fully described in the Baseline Documentation):

1. **Forest and Woodland Resources.** This Conservation Easement seeks to promote biological diversity and to perpetuate and foster the growth an un-fragmented forest or woodlands. Trees store carbon, offsetting the harmful by-products of burning fossil fuels and trap air pollution particulates, cleaning air. Features to be protected include continuous canopy with multi-tiered understory of trees, shrubs, herbaceous plants, and grasses; natural habitat, breeding sites and corridors for the migration of birds and wildlife (and that are more fully described in the Baseline Documentation Report). As of the Easement Date, the Property contains approximately 14.9 acres of mixed deciduous forest.
2. **Botanical Resources.** Species other than Native Species often negatively affect the survival of Native Species and disrupt the functioning of ecosystems. This Conservation Easement seeks to promote healthy grasslands in addition to the woodlands. Hence, the emphasis on Native Species throughout the Conservation Easement. As of the Easement Date, the Property contains an abundance of Native trees, herbaceous plants, vines, shrubs and graminoids, and including several threatened species which are further catalogued in the Baseline Documentation.
3. **Wildlife Resources.** This Conservation Easement seeks to protect large intact areas of wildlife habitat and connect patches of wildlife habitat. Large habitat patches typically support greater biodiversity and can maintain more ecosystem processes than small patches. Large intact habitats allow larger, healthier populations of a species to persist; thus, increasing the chance of survival over time. Fragmentation of large habitats often decreases the connectivity of systems, negatively affecting the movement of species necessary for fulfilling nutritional or reproductive requirements. The Property includes nearly a dozen environmentally different areas with diverse growing conditions, soil types, slopes and moisture levels. To provide easy access to the different habitat areas, a system of trails are maintained along with maps and other materials posted onsite for guidance and enjoyment of the Property. In addition to the native plants and bird resources

observed, a wide array of wildlife, such as white-tail deer, black bear, red fox, bobcat; turkey, woodcock, ruffed grouse; blue and green heron, kingfishers, ducks, geese; warblers, wrens, bluebirds, orioles; hawks, owls, woodpeckers; turtles, frogs, lizards, snakes (non-poisonous); butterflies, dragonflies, bees have been observed and catalogued on the Property.

- (iii) **Soil Resources.** To prevent the loss and depletion of soil on the Property. The total acreage of *prime agricultural soils*, as defined by the U.S. Department of Agriculture, on the Property is 10.02 acres, approximately 5.41 acres in the Highest Protection Area and 4.61 acres in Minimum Protection Areas.
- (iv) **Scenic Resources.** This Conservation Easement seeks to protect scenic views of the Property visible from public rights-of-way (Brush Mountain and Green Grove roads) and other public access points outside the Property. Also to be protected is the relationship of scenic resources within the Easement Area to natural habitats in its surrounds and to protect scenic vistas visible from the Property. In particular, the scenic views including Mount Nittany, Centre Hall Mountain, Brush Mountain, Harry John, Sand Mountain, and Egg Hill from the re-forested higher ridge area of the Highest Protection Area are visually dramatic.
- (v) **Ecosystem Services.** The Conservation Easement seeks to preserve and enhance the ecosystem services of Chicory Lane Farm, “the benefits people obtain from ecosystems” (Millennium Ecosystem Assessment or MEA – United Nations Report, 2006), referenced in the Article 9 Glossary. The Property includes within its borders much natural beauty, ranging from reflections of summer skies in its Vernal Pools, to gnarled trees along its stream banks, to the plumage of resident green herons, to the iridescent flashes of colors from its dragonflies, butterflies, and grackles. Some of the nonmaterial benefits associated with ecosystem services – such as artistic reflection, aesthetic enjoyment, spiritual contemplation, recreational health benefits – are observed throughout the biologically diverse environment of the Property. The rolling terrain, pollinator wildflower masses, cool and warm season grasslands, stream riffles and forest shadows serve to strengthen the underlying interactions between organisms and the environment that are fundamental to a resilient ecosystem. The Biotic Community evidenced on the Property is healthy and strong providing Ecosystem benefits such as nutrient recycling, carbon storage, water purification, crop pollination, natural vegetation and soil regeneration. These and other Ecosystem Services are an inherent and valuable part of the Property and can be preserved only by maintaining its healthy biotic system.
- (vi) **Dark Skies.** As of the Easement Date, Chicory Lane Farm is fortunate to have darker skies than many places, but this important resource must be protected from unwanted skyglow, which is increasingly threatening. The Conservation Easement seeks to limit the potential harmful effects of artificial lighting which can impair nocturnal resources essential to plants and animals through various life-sustaining behaviors such as reproduction, nourishment, and protection from predators. Further, the easement seeks to preserve for human enjoyment the aesthetic experience of dark skies.

(b) Area-Specific Goals

- (i) **Highest Protection Area.** This Conservation Easement seeks to protect natural resources within the Highest Protection Area so as to keep them in an undisturbed state except as required to promote and maintain a diverse community of predominantly Native Species. The Highest Protection Area, as shown on the Easement Plan, is located so as to protect wetlands, tributaries, riparian areas, forest, grasslands, meadows, and wildlife resources.
An additional focus is to protect and enhance the richness of biodiversity and natural habitat, keeping the area wild or undisturbed in character.
- (ii) **Standard Protection Area.** None of the Property has been designated as Standard Protection Area on the Easement Plan.
- (iii) **Minimal Protection Area.** To accommodate, subject to moderate constraints, a wide variety of activities, uses, and Improvements, confining them to three (3) Minimal Protection Areas where they will not be detrimental to the achievement of other Conservation Objectives outside the Minimal Protection Area.

1.06 Baseline Documentation

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

1.07 Defined Terms

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

1.08 Federal Tax Items

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

- (a) Qualified Conservation Contribution.** The Conservation Easement has been donated in whole or in part by the undersigned Owner or Owners. The donation of the Conservation Easement by this Grant is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code) to a Qualified Organization. If the Conservation Easement is transferred to any Person, that Person must commit to hold the Conservation Easement exclusively for conservation purposes as defined in the Regulations.
- (b) Public Benefit.** The undersigned Owner or Owners have granted the Conservation Easement to provide a significant public benefit (as defined in §1.170A-14(d)(4) of the Regulations). In addition to the public benefits described in the Conservation Objectives, the Baseline Documentation may identify other information supporting the significant public benefit of the Conservation Easement.
- (c) Mineral Interests.** The undersigned Owner or Owners represent that no Person has retained a qualified mineral interest in the Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations. From and after the Easement Date, the grant of such an interest is prohibited, and Holder has the right to prohibit the exercise of such a right or interest if granted in violation of this provision.
- (d) Notice Required under Regulations.** To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Grant, Owners agree to notify Holder before exercising reserved rights that may have an adverse impact on the conservation interests associated with the Property.
- (e) Extinguishment.** In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that (1) the grant of the Conservation Easement gives rise to a real estate right, immediately vested in Holder, that entitles Holder in the event of extinguishment as defined in section 2, upon a subsequent sale, exchange, or involuntary conversion of the subject property to a portion of the proceeds at least equal to that proportionate value of the perpetual Conservation Easement restriction; and (2) extinguishment for unexpected changes that make impossible or impractical the continued use of the Property for conservation purposes (as defined in the Regulations) can only be accomplished by judicial proceedings. The fair market value of the right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that the Conservation Easement as of the Easement Date bears to the value of the Property as a whole as of the Easement Date (the “Proportionate Value”). If the Proportionate Value exceeds the compensation otherwise payable to Holder under this Grant or Applicable Law, Holder is entitled to payment of the Proportionate Value. Holder must use funds received on account of the Proportionate Value for conservation purposes as defined in the Regulations.
- (f) Acknowledgment of Donation.** Except for such monetary consideration (if any) as is set forth in this article, Holder acknowledges that no goods or services were delivered to the undersigned Owner or Owners in consideration of this Grant.
- (g) No Representation of Tax Benefits.** The undersigned Owner or Owners represent, warrant, and covenant to Holder that:

- (i) The undersigned Owner or Owners have not relied upon information or analyses furnished by Holder with respect to either the availability, amount, or effect of a deduction, credit, or other benefit to Owners under Applicable Law; or the value of the Conservation Easement or the Property.
- (ii) The undersigned Owner or Owners have relied solely upon their own judgment and/or professional advice furnished by the appraiser and legal, financial, and accounting professionals engaged by the undersigned Owner or Owners. If a Person providing services in connection with this Grant or the Property was recommended by Holder, the undersigned Owner or Owners acknowledge that Holder is not responsible in any way for the performance of services by these Persons.
- (iii) This Grant is not conditioned upon the availability or amount of a deduction, credit, or other benefit under Applicable Law.

1.09 Beneficiaries

No Beneficiary is identified in this Grant.

1.10 Consideration

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

1.11 Superior to all Liens

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

Article 2. TRANSFER; SUBDIVISION

2.01 Prohibitions

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

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

2.02 Permitted Changes

The following changes are permitted:

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

easement on the additional land. In either case, the Holder in its sole discretion must determine whether the additional land meets its criteria for an Amendment or new conservation easement.

2.03 Requirements

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

Article 3.

HIGHEST PROTECTION AREA

3.01 Improvements

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

- (a) **Existing Improvements.** Existing Improvements may be maintained, repaired, and replaced in their existing locations. Existing Improvements may be expanded, excepting the historic structure currently located within the riparian zone of the intermittent stream, 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:
 - (i) Fences, walls, and gates, not to exceed four (4) feet in Height or such greater Height as is approved by Holder after Review. Fences must be constructed of post-and-rail or other open weave construction that preserves scenic views described in the Conservation Objectives. For deer exclusion areas anywhere in the Highest Protection Areas, fences of 8 feet or higher are permitted without Review.
 - (ii) Signs; however, signs other than Regulatory Signs are limited to a maximum of eight (8) square feet per sign and a total of eighty (80) square feet for the entire Property. Signs may be illuminated utilizing low wattage, shielded lighting directed downward from a position immediately above the sign in order to promote Dark Sky.
 - (iii) Habitat enhancement devices such as birdhouses, bat houses, beehives.
 - (iv) Trails covered (if at all) by wood chips, gravel, or other highly porous surface limited to 8-foot maximum width.
 - (v) Subject to Review, footbridges, stream crossing structures, and stream access structures.
 - (vi) Tree stands, blinds or wildlife observation facilities for hunting or nature study. Blinds within Wet Areas and tree stands and blinds that are to remain in place for more than a year are subject to Review.
 - (vii) Subject to Review, Access Drives to service Improvements within the Property but only within the area identified as "Future Access Corridor" on the Easement Plan. Access Drives are limited to a driving surface not to exceed sixteen (16) feet in width and constructed of pervious or semi-pervious materials.
 - (viii) Subject to Review, Utility Improvements to service Improvements within the Property. If, subject to Review, underground installation is not reasonably feasible (financial or otherwise), Utility Improvements may be above ground.

3.02 Activities and Uses

Activities and uses within the Highest Protection Area are prohibited except as permitted below in this

article and provided in any case that:

- The intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.
- No Invasive Species are introduced.

(a) Existing Servitudes. Activities and uses that Owners are required to allow because of an Existing Servitude are permitted.

(b) Resource Management and Disturbance. The following activities and uses are permitted:

- (i) Cutting trees, or other disturbance of resources, including removal of Invasive Species, to the extent reasonably prudent to remove, mitigate, or warn against an unreasonable risk of harm to Persons, their belongings, or health of Native Species on or about the Property. Owners must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.
- (ii) Planting, replanting, and maintaining a diversity of Native Species of trees, shrubs, and herbaceous plant materials in accordance with Best Management Practices or, subject to Review, planting, replanting, and maintaining other vegetation.
- (iii) Subject to Review, removal of vegetation to accommodate replanting as permitted in this article.
- (iv) Subject to Review, construction of permitted Improvements with prompt restoration of soil and native vegetation disturbed by such activity.
- (v) Vehicular use in the case of emergency and in connection with resource management activities, educational or scientific uses permitted under this subsection consistent with and in furtherance of the Conservation Objectives.
- (vi) Except within Wet Areas, cutting or removing trees, standing or fallen, but only if the aggregate inside bark diameter of stumps (one foot above ground on the uphill side) does not exceed three hundred (300) inches per year.
- (vii) Subject to Review, generation and transmission of Renewable Energy if and to the extent Improvements for this renewable energy purpose do not materially and adversely affect maintenance or attainment of Conservation Objectives.
- (viii) Application of manure and plant material, both well composted, and, subject to compliance with manufacturer's recommendations, other substances to promote the health and growth of vegetation. (These permitted substances do not include sludge, biosolids, septic system effluent, and related substances.)
- (ix) Piling of brush and other vegetation to the extent reasonably necessary to accommodate activities or uses permitted within the Highest Protection Area, so long as intensity or frequency of the activity does not materially and adversely affect maintenance or attainment of Conservation Objectives.
- (x) Other activities that Holder, without any obligation to do so, determines are consistent with maintenance or attainment of Conservation Objectives and are conducted in accordance with the Resource Management Plan or other plan approved for that activity after Review.

(c) Other Activities. Activities are permitted that do not require Improvements other than trails and do not materially and adversely affect maintenance or attainment of Conservation Objectives such as the following: (1) walking, horseback riding on trails, cross-country skiing, swimming, bird watching, nature study, fishing, and hunting; and (2) educational, scientific or research, and aesthetic activities consistent with and in furtherance of the Conservation Objectives including workshops, classes, installations, exhibitions, small scale performances, lectures, demonstrations, discussions, and observation and enjoyment of the natural landscape.

Article 4. STANDARD PROTECTION AREA

There is no Standard Protection Area within the Property.

Article 5.

MINIMAL PROTECTION AREA

5.01 Improvements

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

(a) **Permitted under Preceding Articles.** Improvements permitted under a preceding article are permitted.

(b) **Additional Improvements.** The following Additional Improvements are permitted:

- (i) Residential Improvements in MPA 2 only, including small outbuildings for residential use.
- (ii) Within MPA 2 only, Improvements used or usable in furtherance of Sustainable Cultivation of Native Species, including green house, hoop house, hatchery, storage building, farm stand, and irrigation facilities.
- (iii) Site Improvements servicing activities, uses, or Improvements permitted within the Property.
- (iv) Subject to Review, not more than one Visitors Improvement in either MPA 1 or MPA 3. The Visitors Improvement must be designed and located so as not to impair scenic views described in the Conservation Objectives and, unless otherwise approved by Holder, after Review, is limited to a maximum Impervious Coverage limitation of one thousand five hundred (1500) square feet.

(c) **Impervious Coverage Limitations.** Total Impervious Coverage, including that of both Existing and Additional Improvements but excluding that of Access Drives, parking area and ponds, must not exceed one thousand five hundred (1500) square feet for MPA 1, ten thousand (10,000) square feet for MPA 2, and one thousand five hundred (1500) square feet for MPA 3. These limitations are subject to the following supplemental limitations and exceptions:

- (i) Subject to Review, Holder may adjust Impervious Coverage limits to accommodate specific Improvements designed to reduce environmental harm caused by Impervious Coverage (for example, green roofs and permeable surfacing materials).
- (ii) Impervious Coverage associated with additional Residential Improvements must not exceed a maximum of one thousand five hundred (1500) square feet.

(d) Site Improvement Limitations

- (i) Signs remain limited as in Highest Protection Area.
- (ii) Utility Improvements must be underground or, subject to Review, may be aboveground where not reasonably feasible to be installed underground.
- (iii) The following Improvements are not permitted unless Holder, without any obligation to do so, approves after Review: exterior storage tanks for petroleum or other hazardous or toxic substances (other than reasonable amounts of fuel for activities and uses within the Property permitted under this Grant).

(e) **Access Drive and Parking Area Limitations.** Access Drives are limited to a driving surface not to exceed sixteen (16) feet in width and constructed of pervious or semi-pervious materials. Access Drives remain limited, as in the Highest Protection Area, to service only Improvements within the Property and may only be constructed within the “Future Access Corridor” shown on the Easement Plan. Parking Areas associated with additional Residential Improvements or Visitors Improvement in MPA 1 or MPA 3 are permitted, subject to Review, consistent with the Conservation Objectives.

(f) **Height Limitations.** The Height of Additional Improvements must not exceed thirty-five (35) feet or the Height of the highest Existing Improvement (for example, the barn in any of the Minimal Protection Areas,) whichever is greater. This limitation is subject to the following supplemental limitations and exceptions:

- (i) Fences, walls and gates remain limited as in the Highest Protection Area.
- (ii) Improvements for recreational and other (non-Forestry) open space activities must not exceed 9 feet in Height.

(iii) Subject to Review, Holder may adjust Height limitations for specific Improvements requiring a greater Height to be functional (for example, Renewable Energy structures).

(g) Other Limitations on Improvements. Additional Improvements permitted within the Minimal Protection Area are further limited as follows:

- (i) Not more than a total of 3 Improvements (whether an Existing Improvement or Additional Improvements) may contain Dwelling Units (if any) permitted under this article. All Dwelling Units are to be located in MPA 2.
- (ii) Exterior fixtures furnishing artificial light during hours of darkness are permitted provided such fixtures must be “dark sky friendly” and consistent with Conservation Objectives pertaining to nocturnal lighting.

5.02 Activities and Uses

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

- The intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.
- No Invasive Species are introduced.

(a) Permitted under Preceding Article. Activities and uses permitted under a preceding article are permitted within the Minimal Protection Area.

(b) Forestry. Sustainable Positive Impact Forestry is permitted in accordance with a Resource Management Plan approved after Review.

(c) Education, Research, and Aesthetic Activities. Education, research and aesthetic activities related to understanding, preserving and appreciating the Biotic Community and resource-specific references identified in the Conservation Objectives, are permitted in all Minimum Protection Areas. Within MPA 2 only, Sustainable Cultivation of Native Species is permitted in furtherance of these education and research activities.

(d) Administrative and Coordination Activities. Administrative and Coordination Activities related to the maintenance and operation of the Property and on-site educational programs.

(e) Compatible Activities Related to Cultivation or Forestry. The following activities are permitted if supportive of Sustainable Cultivation of Native Species or Sustainable Positive Impact Forestry and conducted at a low intensity compatible with the Conservation Objectives:

- (i) The storage of plant and animal products produced on the Property.
- (ii) The piling or composting of the residues of plant or animal production occurring on the Property for sale or subsequent Sustainable Cultivation of Native Species or Sustainable Positive Impact Forestry use.
- (iii) Subject to Review, sale of Sustainable Cultivation or Sustainable Positive Impact Forestry products produced on the Property.
- (iv) Subject to Review, services that directly support Sustainable Cultivation or Sustainable Positive Impact Forestry.

(f) Disturbance of Resources. Disturbance of resources within the Minimal Protection Area is permitted for purposes reasonably related to activities or uses permitted within the Minimal Protection Area, for example:

- (i) Removal or impoundment of water for activities and uses permitted within the Property but not for sale or transfer outside the Property.
- (ii) Removal of vegetation and other Construction reasonably required to accommodate permitted Improvements.
- (iii) Mowing, planting, and maintenance of lawn, garden, and landscaped areas. Non-Invasive, non-Native Species are permitted.

- (iv) Generation of Renewable Energy and transmission of such energy if and to the extent Improvements for that purpose are permitted under this article.
- (g) **Commercial Activities.** Commercial activities, including food, plants and product sales are permitted within the Visitors Improvement, or in proximity thereof provided that such activities are ancillary to the primary purpose of the Visitors Improvement as a welcome and education center for visitors to the Property and the intensity and frequency of such use does not adversely affect Conservation Objectives. Subject to Review, exterior vehicular parking and signage accessory to such use may be permitted by Holder.
- (h) **Other Activities.** Outdoor recreational and other open-space activities are permitted that (1) are limited in time, place and intensity so as not to interfere with Conservation Objectives and (2) do not require motorized vehicles except as ancillary support to the primary activity. Activities that require earth disturbance or that will result in more than a *de minimis* reduction in soil permeability are subject to Review.
- (i) **Release and Disposal**
 - (i) Disposal of sanitary sewage effluent from Improvements within the Property is permitted.
 - (ii) Other piling of materials and non-containerized disposal of substances and materials are permitted but only if such disposal is permitted under Applicable Law; does not directly or indirectly create run-off or leaching outside the Minimal Protection Area; and does not otherwise adversely affect Conservation Objectives.
- (j) **Residential and Other Uses**
 - (i) Residential use is permitted but limited to not more than a total of three (3) Dwelling Units all in MPA 2.
 - (ii) Subject to Review, raising farm animals for Owners' personal use only and further limited to not more than proportional to one Animal Unit per two (2) acres of enclosed area is permitted.
 - (iii) An activity or use not otherwise addressed in this article is permitted if, from vantage points outside the Minimal Protection Area, it is not distinguishable from a permitted Sustainable Cultivation of Native Species, Sustainable Positive Impact Forestry, or residential use; or, if it is, Holder determines, after Review, that the activity or use is consistent with the Conservation Objectives.

Article 6. RIGHTS AND DUTIES OF HOLDER AND BENEFICIARIES

6.01 Holder Covenants

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

- (a) **Exercise of Powers.** Holder must exercise the powers granted to it by this Grant to block activities, uses, and Improvements of the Property inconsistent with the Conservation Objectives.
- (b) **Must be Qualified Organization.** Holder must be and remain at all times a Qualified Organization and must not transfer the Conservation Easement or otherwise assign its rights or responsibilities under this Grant to a Person other than a Qualified Organization committed to upholding the Conservation Objectives.
- (c) **Proceeds Used for Conservation Purposes.** Holder must use any funds received on account of the release, termination, or extinguishment of the Conservation Easement in whole or in part in furtherance of its charitable conservation purposes.
- (d) **Forfeiture Remedy.** If Holder fails to abide by the covenants of this section, a Beneficiary of the Conservation Easement or the Commonwealth of Pennsylvania may petition a court of competent jurisdiction to order the Conservation Easement transferred to a Qualified Organization ready, willing, and able to abide by such covenants.

6.02 Rights and Duties of Holder

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

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

6.03 Other Rights of Holder

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

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

6.04 Review

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

- (a) **Notice to Holder.** At least 30 days before Owners intend to begin or allow an Improvement, activity, or use that is subject to Review, Owners must notify Holder of the proposed change including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the proposal and its potential impact on the Conservation Objectives.
- (b) **Notice to Owners.** Within 30 days after receipt of Owners' notice, Holder must notify Owners of Holder's determination to (1) accept Owners' proposal in whole or in part; (2) reject Owners' proposal in whole or in part; (3) accept Owners' proposal conditioned upon compliance with conditions imposed by Holder; or (4) reject Owners' proposal for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (3), commencement of the proposed Improvement, activity, or use constitutes acceptance by Owners of all conditions set forth in Holder's notice.
- (c) **Failure to Notify.** If Holder fails to notify Owners as required in the preceding subsection, the proposal set forth in Owners' notice is deemed approved.
- (d) **Standard of Review**
 - (i) 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.
 - (ii) 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 Property damaged or altered as a result of the violation.
- (b) **Opportunity to Cure.** Owners' cure period expires 30 days after the date of Holder's notice to Owners subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:
 - (i) Owners cease the activity constituting the violation promptly upon receipt of Holder's notice;
 - (ii) Owners and Holder agree, within the initial 30-day period, upon the measures Owners will take to cure the violation;
 - (iii) Owners commence to cure within the initial 30-day period; and
 - (iv) Owners continue thereafter to use best efforts and due diligence to complete the agreed upon cure.
- (c) **Imminent Harm.** No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm or alteration to a natural resource or other feature of the Property described in the Conservation Objectives.

7.02 Remedies

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

- (a) **Injunctive Relief.** Seek injunctive relief to specifically enforce the terms of this Grant, to restrain present or future violations of the terms of this Grant, and/or to compel restoration of resources destroyed or altered as a result of the violation.
- (b) **Civil Action.** 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 Property to prevent or mitigate further damage to or alteration of natural resources of the Property identified in the Conservation Objectives.

7.03 Modification or Termination

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

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

7.04 Remedies Cumulative

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

7.05 Waivers

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

7.06 No Fault of Owners

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

7.07 Multiple Owners

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

Article 8.

MISCELLANEOUS

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