

Prepared by: The Land Conservancy for Southern Chester County
541 Chandler Mill Rd
Avondale, PA 19311

Return to: The Land Conservancy for Southern Chester County
541 Chandler Mill Rd
Avondale, PA 19311

UPI#: 62-4-144.3

GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS

THIS GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS (this "Grant") dated as of _____ (the "Easement Date") is by and between Barbara Montgomery ("the undersigned Owner or Owners") and The Land Conservancy for Southern Chester County (the "Holder").

Article 1. Background; Grant to Holder

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the Property described in Exhibit "A" (the "Property"). The Property is also described as:

Street Address:	901 Sills Mill Rd, Kennett Square, PA 19348
Municipality:	Kennett Township
County:	Chester
State:	Pennsylvania
Tax Parcel Identifier(s):	62-4-144.3
Property Acreage:	7.103
Easement Area Acreage:	7.103

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 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 Owner or 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.

(d) **Grant of Public Access.** By signing this Grant, the undersigned Owner or Owners, on behalf of themselves and all subsequent Owners, grant to Holder, in perpetuity, an access easement over the area identified as "Access Area" on the Easement Plan for the purposes described in Section 6.07.

1.03 Easement Plan

Attached as Exhibit "B" is a survey or other graphic depiction of the Property (the "Easement Plan") prepared by Regester Associates, Inc., and dated November 17, 2021 based on a survey by Regester Associates, Inc. dated November 17, 2021 showing, among other details, the location of one or more of the following areas – the Highest Protection Area, the Standard Protection Area, the Minimal Protection Area, and the Access Area.

1.04 Conservation Objectives

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

(a) Resource-Specific

- (1) **Water Resources.** To maintain and improve the quality and quantity of water resources, both surface and groundwater, within, around, and downstream of the Property by implementing measures that minimize sediment and non-point pollution carried in run-off, by limiting impervious surfaces, by maintaining vegetative cover especially woodlands in the vicinity of streams and wetlands and especially on steep slopes, and by promoting the infiltration of precipitation and storm water. The recharge of groundwater will benefit springs and seeps that provide a reliable source of clean water to wetlands and streams. The Property has 900 feet of perennial and intermittent streams that are tributaries to the East Branch of the Red Clay Creek. Approximately 900 feet of streams on the Property are bordered by trees and woodlands.
- (2) **Biological Resources.** To protect and improve the quality of natural habitat for animals, plants, fungi, and other organisms, particularly Native Species. To preserve large intact areas of wildlife habitat, connect patches of wildlife habitat and secure migration corridors. Large habitat patches typically support greater biodiversity than small patches; migration corridors enable wildlife to move to meet nutritional and reproductive needs and facilitate the migration of species in response to changes in environmental conditions.
 - i. **Forest and Woodland Resources.** Perpetuate and foster the growth of a healthy and unfragmented forest or woodland; and maintain a continuous canopy of vegetation with multi-tiered understory of trees, shrubs, wildflowers, forbs, and the organic material of the forest floor. Wooded riparian buffers provide shade as well as structure and organic material that support a variety of aquatic organisms that are capable of absorbing nutrients and transporting nutrients and energy downstream to aquatic species in the watershed. Native woodland plants provide a diverse and abundant habitat to a variety of insect species. Some tree species, such as oaks, may host as many as 500 different caterpillar species. A diverse and abundant insect population is critical to the support and survival of healthy populations of birds, amphibians, reptiles and mammals. Invasive

Species, especially exotic species, that are capable of colonizing, overtaking, and replacing Native Species negatively affect the survival of Native Species and disrupt the functioning of ecosystems. The restrictions intend to minimize disturbances of the woodlands and riparian trees by limiting construction, improvements, clearing, unsustainable forestry practices, and other activities that might damage woodlands and riparian buffers and promote colonization by Invasive Species of plants. The Property has 5 acres of Class I woodlands along tributaries of the East Branch of the Red Clay Creek that together provide habitat to numerous plant and animal species.

- (3) **Soil Resources.** To prevent the loss and depletion of soil on the Property. The Property has approximately 1.5 acres of soils that are considered to be “Prime Agricultural Soils” by the Natural Resources Conservation Service and 2.2 acres of soils categorized as having “Statewide Importance” by the Pennsylvania Department of Agriculture. Restrictions and limitations regarding grading and earthmoving for non-agricultural uses and limitations that prohibit the export of soil by ball and burlap nursery use or by sod farming are intended to preserve the capability of soils for Agricultural and Forestry uses.
- (4) **Scenic Resources.** To protect scenic views of the Property visible from public rights-of-way and other public access points outside the Property. The Property is highly visible to the public from 1500 feet of frontage on Bayard and Sills Mill Roads, which is designated a biodiversity/greenway corridor in the 2015 Kennett Township Comprehensive Plan and a scenic road per the 2005 Kennett Township Resource Prioritization Report. In addition, Sills Mill Road is a recognized greenway route per the Red Clay Valley Scenic Byway.
- (5) **Ecosystem Services.** To absorb within the Property rainwater that otherwise might cause erosion and flooding downstream of the Property; to sequester carbon in plants and soil to mitigate rising atmospheric carbon levels; and to support other healthy ecosystem processes. The restrictions intend to prevent development in the floodplain and protect woodland and meadow vegetation for the important hydrologic functions they serve. The floodplain provides space for the dispersal, storage, and infiltration of floodwaters, thereby reducing floodwater velocity and the damage associated with moving water. The deceleration of floodwaters minimizes streambank and channel erosion, and diminishes potential damage to structures in the floodplain.

(b) Area-Specific

- (1) **Highest Protection Area.** To protect and enhance the richness of biodiversity and natural habitat, keeping the area wild or undisturbed in character.
- (2) **Standard Protection Area.** None of the Property has been designated as Standard Protection Area on the Easement Plan.
- (3) **Minimal Protection Area.** To accommodate, subject to moderate constraints, a wide variety of activities, uses, and Improvements, confining them to the Minimal Protection Area where they will not be detrimental to the achievement of other Conservation Objectives.

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 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.

1.06 Defined Terms

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

1.07 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 to compensation upon extinguishment of the easement; 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) of this Grant 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:
- (1) 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.
 - (2) 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.
 - (3) This Grant is not conditioned upon the availability or amount of a deduction, credit, or other benefit under Applicable Law.
 - (4) There is no Person, other than the undersigned Owner or Owners who has any ownership or leasehold interest in the Property.
 - (5) Any survey or environmental assessment of the Property in the possession of the undersigned Owner or Owners has been furnished to Holder.
 - (6) To the best of the undersigned Owner's or Owners' knowledge, there are no hazardous or toxic wastes or debris, nor any underground storage tanks on or under the Property.

1.08 Beneficiaries

Each of the Persons identified below in this section is a Beneficiary of this Conservation Easement. The specific rights vested in each Beneficiary are described in article 6.

- (a) Township Beneficiary.** This Conservation Easement vested in Holder by this Grant has been purchased in whole or in part with funds provided to Holder by the Township of Kennett, a Pennsylvania municipality of the second-class with offices at 801 Burrows Run Rd, Chadds Ford, PA, Kennett Township (the "Township") acting under the authority granted by the Commonwealth of Pennsylvania for purposes consistent with the terms of the Open Space Lands Acquisition and Preservation Act, Pa. Stat. Ann. Title 32, Section 5001 et. Seq (such ordinance, with the regulations and program requirements promulgated under the authority of such ordinance are referred to in this Grant, collectively, as the "Township Program"). In addition to being a Beneficiary of this Grant, the Township shall also be a co-holder of this Grant for purposes of (1) qualifying this Grant under applicable Preferential Tax Programs and (2) possessing an interest in real property pursuant to the Open Space Lands Acquisition and Preservation (with the ability to exercise the rights and duties of Holder as set forth in Article 6). The interest granted to Beneficiary by this Grant is a presently vested, non-contingent, interest in the Property.
- (b) County Beneficiary.** The Conservation Easement vested in Holder by this Grant has been purchased in whole or in part with funds provided to Holder by the County of Chester (the "County") acting under the authority granted by the Commonwealth of Pennsylvania for purposes consistent with the terms of the Conservation and Land Development Act, Pa. Stat. Ann. Title 32, Section 5001 et. Seq; and program requirements promulgated under the authority of such statute are referred to in this Grant, collectively, as the "County Program". The portions of the Property as to which County Funds have been used to purchase this Grant are referred to, collectively, as the "County Program Area" and encompasses the entirety of the lands described in Exhibit A.

1.09 Consideration

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

1.10 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) **Temporary Transfer.** Subject to Review, transfer of a portion of the Property to a “qualified personal residence trust” as defined in the Code if and for so long as (i) the Owners transferring to the trust maintain ownership of the remainder of the Property and maintain operational control of the entirety of the Property; and (ii) upon the expiration of the trust the entirety of the Property is unified into a single parcel.

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.
- (c) **Municipal Land Use Laws.** In addition to restrictions noted herein, all subdivisions must be approved by the governing body responsible for administration of the applicable subdivision, land use and development regulations.

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 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.** Subject to the limitations in subsection (d) below, the following Additional Improvements are permitted:
 - (1) Fences and gates not to exceed four (4) feet in Height or such greater Height as is approved by Holder after Review, but only if it is made of an open-weave construction that permits the passage of small animals, such as skunks, raccoons, foxes, opossums, and turtles.
 - (2) Regulatory Signs.
 - (3) Habitat enhancement devices such as birdhouses, beehives, and bat houses.
 - (4) Trails covered (if at all) by wood chips, gravel, or other highly porous materials.
 - (5) Subject to Review, footbridges, stream crossing structures, and stream access structures.
 - (6) Tree stands and blinds for hunting or nature study. Blinds to remain in place for more than a season are subject to Review.
 - (7) Subject to Review, Temporary Access Drives and Utility Improvements to service Improvements within the Property but only if there is no other reasonably feasible means to provide access and utility services to the Property.
 - (8) Extraction Improvements are not permitted on the Property.

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

- (1) Stream access structures and stream crossing structures are limited in number to one, and four feet in width.
- (2) Trails are limited to ten feet in width and footbridges are limited to four feet in width.
- (3) Subject to Review, Temporary Access Drives for maintenance purposes in support of the Conservation Objectives are permitted if there is no alternative access point and must be limited to the minimum size needed to conduct the required work so as to not adversely affect the maintenance of attainment of Conservation Objectives. The area utilized for a Temporary Access Drive must be restored upon the completion of the work,
- (4) Utility Improvements must be underground or, subject to Review, may be aboveground where not reasonably feasible to be installed underground.

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 actively introduced.
- The application or disposal of sanitary sewage effluent generated off the Property by spray irrigation, drip irrigation, or any other delivery mechanism is specifically prohibited.

(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.

- (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 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. Owners must restore lands that are cleared of Invasive Species as soon as reasonably feasible by replanting with a diversity of Native Species of trees, shrubs and herbaceous plant materials in accordance with Best Management Practices.
- (2) Planting, replanting, and maintaining Native Species in accordance with Best Management Practices.
- (3) Subject to Review, removal of vegetation to accommodate replanting as permitted in this article. Holder is under no obligation to approve the removal of Native Species of woodland vegetation.
- (4) Construction of permitted Improvements with prompt restoration of soil and vegetation disturbed by such activity in accordance with Best Management Practices. Vegetation restoration shall consist of planting Native Species in accordance with Best Management Practices.
- (5) Subject to Review, pond maintenance activities including dredging, when conducted with an appropriate plan that limits the impact on the habitat and is done as a means to maintain the Conservation Objectives of the Property.
- (6) Vehicular use in the case of emergency and in connection with activities or uses permitted under this subsection.
- (7) Cutting or removing trees for use on the Property is not permitted unless the tree is a danger or falls naturally.

- (8) Except within Woodland Areas, meadow and grassland management activities such as mowing, burning, and cutting to maintain a continuous cover of Native Species of herbaceous plants. Mowing at a frequency greater than once per year is not permitted, except in accordance with a Resource Management Plan approved by Holder.
 - (9) Application of substances (other than manure) to promote health and growth of vegetation in accordance with manufacturer's recommendations and Applicable Law. (These permitted substances do not include sludge, biosolids, septic system effluent, spray or drip irrigation effluent, and related substances.) Within Wet Areas, only substances approved for aquatic use are permitted.
 - (10) Piling of brush and other vegetation originating within the Highest Protection Area to the extent reasonably necessary to accommodate activities or uses permitted within the Highest Protection Area. Brush and vegetation piles must not exceed 100 square feet in aggregate area.
 - (11) 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) Recreation and Education.** Recreational, educational, and scientific research 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, bird watching, nature study, fishing, and hunting; and (2) wildlife research consistent with and in furtherance of the Conservation Objectives. Vehicular use is not permitted in connection with the activities permitted under this subsection unless Holder, without any obligation to do so, approves the use after Review.

Article 4. Standard Protection Area

There is no Standard Protection Area within the Property. The provisions of this article are set forth solely for the purpose of incorporation by reference into subsequent articles.

4.01 Improvements

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

- (a) Permitted under Preceding Article.** Improvements permitted under the preceding article are permitted in the Standard Protection Area subject to the same Review requirements and limitations as in the Highest Protection Area unless otherwise specified below.
- (b) Additional Improvements.** Subject to the limitation in subsection (c) below, the following Additional Improvements are permitted:
 - (1) Except within any Wet Areas, Agricultural Improvements.
 - (2) Signs; however, signs other than Regulatory Signs are limited to a maximum of eight square feet per sign and a total of 32 square feet for the entire Property.
 - (3) Utility Improvements and Site Improvements reasonably required for activities and uses permitted within the Standard Protection Area. Within Wet Areas, Utility Improvements and Site Improvements other than fences, gates, signs and habitat improvement devices are subject to Review.
 - (4) Utility Improvements servicing activities, uses, or Improvements not within the Property that Holder and County, without any obligation to do so, approve after Review.
 - (5) Subject to Review, Improvements for generating and transmitting Renewable Energy that Holder and County, without any obligation to do so, determine are consistent with

maintenance or attainment of Conservation Objectives. Renewable Energy Improvements are limited to those intended to service Improvements, activities, or uses only within the Property, provided, however, that minimal amounts of excess electricity may be sold to the electric grid.

(6) Extraction Improvements are not permitted on the Property.

(c) Impervious Coverage Limitations. Total Impervious Coverage, including that of both Existing and Additional Improvements but excluding that of Access Drives, must not exceed _____ square feet. This limitation is subject to the following supplemental limitations and exceptions:

- (1) Impervious Coverage must not exceed ____ square feet per roofed Improvement.
- (2) Subject to Review, Holder may adjust Impervious Coverage limits to accommodate specific Agricultural Improvements intended to improve the production of soil grown crops without damaging soils or harming water quality (for example, well-designed and situated high tunnels).
- (3) Subject to Review, Holder may adjust Impervious Coverage limits to account for the lesser impact of specific Improvements designed to reduce environmental harm caused by Impervious Coverage (for example, green roofs and permeable surfacing materials).
- (4) Impervious Coverage associated with the ground surface of man-made ponds must not exceed 100 square feet in total. Ponds are not permitted within any Wet Area, and must be designed and constructed to comply with the following standards: (A) promote the discharge of cold, oxygenated water to the extent feasible; (B) reduce excessive solar heating of the water through the application of landscaping measures to provide partial shade of the pond's surface; (C) minimize erosion from points of discharge or overflow, and (D) maintain shoreline vegetation in tall grass or shrubs to discourage use of the pond by Canada geese.

(d) Access Drive Limitations. Unless otherwise approved by Holder after Review, Access Drives (both Existing Improvements and Additional Improvements) are limited to _____ feet in length and a driving surface not to exceed _____ feet in width except and to the extent required by Applicable Law.

(e) Height Limitations. The Height of Additional Improvements permitted under this or the following article must not exceed twenty (20) feet. This limitation is subject to the following supplemental limitations and exceptions:

- (1) Fences and gates remain limited as in the Highest Protection Area.
- (2) Improvements for recreational and other (non-Agricultural and non-Forestry) open space activities must not exceed twelve feet in Height.
- (3) Subject to Review, Holder may adjust Height limitations for specific Improvements requiring a greater Height to be functional (for example, Agricultural silos or Renewable Energy structures).

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

- (1) Utility Improvements must be underground or, subject to Review, may be aboveground where not reasonably feasible to be installed underground.
- (2) 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).
- (3) Previous Agricultural Improvements relating to equestrian use such as a race track or jumping course, that require grading, earthmoving, or excavation must not disturb greater than two thousand (2,000) square feet in aggregate area and are not permitted within Wet Areas.

- (4) Pervious Improvements for non-commercial recreation and open space uses, such as athletic fields, ball courts, putting greens, and other non-commercial recreational facilities that require grading, earthmoving, or excavation must not disturb greater than two thousand (2,000) square feet in aggregate area and are not permitted within Wet Areas.

4.02 Activities and Uses

Activities and uses within the Standard 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 actively introduced
 - The application or disposal of sanitary sewage effluent generated off the Property by spray irrigation, drip irrigation, or any other delivery mechanism is specifically prohibited.
- (a) **Permitted under Preceding Article.** Activities and uses permitted under the preceding article are permitted within the Standard Protection Area subject to the same Review requirements and limitations as in the Highest Protection Area unless otherwise specified below.
- (b) **Agricultural Uses.** Except within Woodland Areas, Sustainable Agricultural uses and activities that maintain continuous vegetative cover and, if conducted in accordance with a current Soil Conservation Plan furnished to Holder, Sustainable Agricultural uses that do not maintain continuous vegetative cover are permitted. In either case, the limitations set forth below apply:
- (1) Within Wet Areas, Agriculture is prohibited unless approved after Review and conducted in accordance with a Resource Management Plan. Holder is under no obligation to approve a Resource Management Plan for Agricultural uses within Wet Areas that does not maintain a continuous vegetative cover, such as plowing, tilling, planting field crops, horticultural, and nursery use. Within _____ feet of water's edge, Agriculture is prohibited.
 - (2) Within Steep Slope Areas, the Soil Conservation Plan is subject to Review.
 - (3) Animal operations must be conducted in conformance with a nutrient management plan or manure management plan furnished to Holder and meeting the requirements of Applicable Law. Subject to Review, grazing at a density greater than one (1) Animal Unit per two (2) acres of fenced pasture but less than one (1) Animal Unit per one and a half (1.5) acres of fenced pasture and if conducted in accordance with a Resource Management Plan. Grazing at a density greater than one (1) Animal Unit per one and a half (1.5) acres of fenced pasture is prohibited. Grazing within Wet Areas, whether governed by a Resource Management Plan or not, is not permitted if in the opinion of the Holder, livestock are causing the erosion of stream banks, sedimentation of surface waters, or contamination of surface waters by manure. Concentrated animal operations, as defined by Applicable Law as of the Easement Date, are prohibited.
 - (4) Agricultural uses that involve removal of soil from the Property (such as sod farming and ball-and-burlap nursery uses) are permitted only if conducted in accordance with a current Soil Conservation Plan or a Resource Management Plan approved by Holder after Review that provides for, among other features, a soil replenishment program that will qualify the activity as a Sustainable Agricultural use. Holder is under no obligation to accept a soil replenishment program that imports soil from outside the Property.
 - (5) Woodland Areas may not be used for or converted to Agricultural uses unless Holder, without any obligation to do so, approves after Review.
- (c) **Forestry.** Except within Wet Areas, Sustainable Forestry is permitted in accordance with a Resource Management Plan approved after Review. Sustainable Forestry within Woodland Areas that impacts less than five thousand (5,000) square feet (including access to trees and harvest sites) may be approved by the Holder without a Resource Management Plan.

- (d) Compatible Activities Related to Agriculture and Forestry.** The following activities are permitted if supportive of Sustainable Agriculture or Sustainable Forestry and conducted at a low intensity compatible with the Conservation Objectives:
- (1) The storage of plant and animal products produced on the Property.
 - (2) The piling or composting of the residues of plant or animal production occurring on the Property for sale or subsequent Agricultural or Forestry use. Manure piles must be located so as not to create run-off into Wet Areas and must be stored in a manner that will prevent excessive infiltration. The aggregate area of all piles of biodegradable material must not exceed one hundred (100) square feet.
 - (3) The sale of Agricultural or Forestry products produced on the Property.
 - (4) Subject to Review, services that directly support Agricultural production or Forestry.
- (e) Other Disturbance of Resources.** The following activities and uses are permitted.
- (1) Subject to Review, removal or impoundment of water for activities and uses permitted within the Standard Protection Area, but not for sale or transfer outside the Property.
 - (2) Removal of vegetation and other Construction reasonably required to accommodate permitted Improvements. Vegetation removal and land disturbance must be conducted in accordance with Best Management Practices.
 - (3) Except within Woodland Areas, mowing, planting, and maintenance of lawn, garden, and landscaped areas.
 - (4) Generation of Renewable Energy and transmission of such energy if and to the extent Improvements for that purpose are permitted under this article.
 - (5) Subject to Review, disposal of sanitary sewage effluent from Improvements permitted within the Property is permitted if not reasonably feasible to confine such disposal to the Minimal Protection Area.
- (f) 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, subject to Review, 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.

Article 5. Minimal Protection Area

5.01 Improvements

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

- (a) Permitted under Preceding Articles.** Improvements permitted under a preceding article are permitted subject to the same Review requirements and limitations unless otherwise specified below.
- (b) Additional Improvements.** The following Additional Improvements are permitted:
- (1) Residential Improvements.
 - (2) Utility Improvements reasonably required for activities and uses permitted within the Property.
 - (3) Site Improvements servicing activities, uses, or Improvements permitted within the Property.
 - (4) Extraction Improvements are not permitted on the Property.

(c) Limitations on Improvements. Improvements permitted within the Minimal Protection Area are limited as follows.

- (1) Not more than one Improvement (whether an Existing Improvement or Additional Improvement) may contain Dwelling Units (if any) permitted under this article.
- (2) Additional Improvements are subject to a Height limitation of thirty-five (35) feet except for Utility Improvements (such as windmills) providing Renewable Energy approved by Holder after Review. Holder is under no obligation to approve Utility Improvements providing alternative energy in excess of thirty-five (35) feet that are enclosed by walls or are roofed.
- (3) Limitations on Impervious Coverage and Access Drives set forth for the Standard Protection Area do not apply to the Minimal Protection Area.
- (4) Limitations on signs, Utility Improvements, and storage tanks applicable to the Standard Protection Area continue to apply.

5.02 Activities and Uses

Activities and uses within the Minimal 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 actively introduced
- The application or disposal of sanitary sewage effluent generated off the Property by spray irrigation, drip irrigation, or any other delivery mechanism is specifically prohibited.

(a) Permitted under Preceding Articles. Activities and uses permitted under the preceding articles are permitted within the Minimal Protection Area subject to the same Review requirements and limitations unless otherwise specified below.

(b) 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. Vegetation removal and land disturbance must be conducted in accordance with Best Management Practices.

(c) Release and Disposal

- (1) Disposal of sanitary sewage effluent from Improvements permitted within the Property is permitted.
- (2) 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 adversely affect Conservation Objectives. Piles must not exceed two hundred (200) square feet in aggregate area

(d) Residential and Other Uses

- (1) Residential use is permitted but limited to not more than one Dwelling Unit.
- (2) Any 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 Agricultural, Forestry, or residential use; or, if it is, Holder determines, after Review, that the activity or use is consistent with the Conservation Objectives. Notwithstanding the foregoing, activities and uses that involve extractive use of water (other than for use or consumption on the Property), soil, gas, oil, or other mineral resources are prohibited.

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 Holder's 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 the 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. Prior notice of entry and inspection is not required to investigate a suspected, alleged, or threatened violation, or if a violation has occurred.
- (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, (3) will not likely result in any overall negative effect on natural resources intended to be protected under the Conservation Objectives; (4) will result overall in an increase in the public benefit of this Conservation Easement; and (5) 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 (i) pertains to the impairment of Conservation Objectives; or (ii) 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.** Before Owners begin or allow a Subdivision, Improvement, activity, or use that is subject to Review, Owners must (1) 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 and (2) receive Holder's approval.
- (b) **Notice to Owners.** Upon receipt of Owners' notice, Holder must review the proposed changes and 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 Subdivision, Improvement, activity, or use constitutes acceptance by Owners of all conditions set forth in Holder's notice.
- (c) **Time for Review.** If requested by Owners, Holder must furnish its estimate of the time required to review the proposed change and use its best efforts and due diligence to notify Owners of its determination within this time period. Otherwise, Holder must make its determination within a reasonable period of time following receipt of Owners' notice to Holder.
- (d) **Standard of Review**
 - (1) The phrase "without any obligation to do so," or "Holder is under no obligation" 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 Cost 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.

6.06 Rights of Beneficiaries

Owners and Holder grant and convey to the Beneficiaries the following rights and benefits with respect to this Grant:

(a) Township Beneficiary

Township has been granted the following rights under this Grant:

- (1) The right to exercise Holder's rights and duties under §6.02 should Holder fail to do so after notice and reasonable (not less than thirty days) opportunity to cure.
- (2) The right to approve transfer of Holder's interests in the Conservation Easement (such approval not to be unreasonably withheld or delayed).
- (3) The right to compel transfer of Holder's rights and duties under this Grant to another Qualified Organization should Holder fail to uphold and enforce in perpetuity the restrictions applicable under this Grant.
- (4) The right of prior approval of any Amendment of this Conservation Easement.
- (5) The right of prior notification of any transfer of Holder's rights under this Grant to a Qualified Organization.
- (6) A permanent right of access and right-of-way over, under, and across the Access Area for the purposes and with the limitations set forth in this article 6.

(b) County Beneficiary

Chester County has been granted the following rights under this Grant:

- (1) The right to exercise Holder's rights and duties under this Grant should Holder fail to uphold and enforce in perpetuity the restrictions under this Grant.
- (2) The right 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 except in the case of imminent harm described in article 7.01(c). Inspection may be completed by way of land, through the use of an unmanned aerial vehicle, or a combination of both.
- (3) The right to compel transfer of Holder's rights and duties under this Grant to another Qualified Organization should Holder fail to uphold and enforce in perpetuity the restrictions applicable to the County Program Area under this Grant.
- (4) The right of prior consultation with Holder when Owners request Review under Article 6; however, County has a right of prior approval of any request for Review to permit a pipeline segment as part of a pipeline system for the interstate transport of oil, natural gas, or gas liquids.
- (5) The right of prior approval of any Amendment of this Conservation Easement to determine whether the Amendment permits uses of the County Program Area not permitted under the County Program.
- (6) The right of prior notification of any transfer of Holder's rights under this Grant to a Qualified Organization with respect to the County Program Area.
- (7) A permanent right of access and right-of-way over, under, and across the Access Area for the purposes and with the limitations set forth in this article 6.

(c) Holder is not responsible for the decisions of or actions undertaken by Beneficiaries.

6.07 Public Access

(a) Purposes of Access Easement. The purposes of the easement for access granted under article 1 are as follows:

- (1) To provide Holder, Township, and County the right to make the Access Area available to the public for walking, nature study, fishing, hiking, jogging, non-motorized cycling, horseback riding on the Public Trail, and similar uses. Public use of the Access Area will be subject to limitations established by the Holder, including without limitation:
 - (i) Motorized vehicles are prohibited except in the case of emergency or in connection with the construction, maintenance, or patrol of the Trail Area. To the extent required by Applicable Law, neither this section nor any other provision of this Grant prevents use

of the Access Area by power-driven mobility vehicles by Persons with mobility impairments.

- (ii) Access is limited to the hours between sunrise and sunset.
 - (iii) Trapping, hunting, and camping is prohibited except with permission of the Owners.
 - (iv) Subject to Review by Holder and Beneficiary, other reasonable limitations upon the public's time, place and manner of use.
- (2) To provide the Holder, Township, and County the right to install and maintain the Public Trail and structures and improvements used in connection with the Public Trail, such as benches, footbridges, culverts, and erosion control Best Management Practices; and for the posting of Regulatory Signs with respect to the use of the Access Area or other information pertaining to the public access granted under this section. The rights granted in this subsection (2) are exercisable only by Holder and Persons designated by Holder to exercise these rights.

(b) Rights of Owners

(1) Consistent with Public Access

The easement for access is non-exclusive. Owners may continue to use the Access Area in accordance with the terms of this Grant so long as Owners' use is consistent with the rights granted in this section and does not prevent or impair access to the Access Area for the purposes described above. Owners may at any time request from Holder or the Beneficiaries clarification of activities and uses that conform to this standard.

(2) Right to Exclude

Owners retain the right to take any action permitted under Applicable Law to remove from the Property (including the Access Area) Persons engaged in activities or uses other than those set forth as purposes of the easement for access granted above.

(3) Not Consistent with Conservation Objectives

Owners' retained rights to use the Access Area are subject to the following limitations unless Holder and the Beneficiaries (without any obligation to do so) notify Owners of their approval:

- (i) Owners may not change topography or remove or disturb soil, rock or vegetative resources that, individually or in the aggregate, results in the impairment of Conservation Objectives within the Access Area; however, Owners may remove Invasive Species and cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to persons or property on or about the Access Area. By exercising such right Owners do not assume any responsibility to inspect the Access Area or otherwise take responsibility for the safety of any persons entering the Access Area.
- (ii) Owners may not permit or install permanent structures or improvements, including fencing, within the Access Area other than the following:
 - (A) Improvements existing on the Easement Date in their existing locations as shown on the Conservation Plan.
 - (B) Subject to Review, Utility Improvement to serve the Property, but only if there is no other reasonably feasible means to provide utility services to the Property.
- (iii) Owners may not use the Access Area for Agricultural uses.
- (iv) No timber harvest in the Access Area is permitted by Owner.
- (v) No dumping or placement of ashes, trash, garbage, sewage, manure or other offensive material is permitted by Owner within the Access Area.

- (vi) Owners may not grant rights-of-way for easements of ingress or egress, driveways, roads, utility lines, or other easements into, on, over, under, or across the Access Area.
- (c) **Immunity of Applicable Law.** Nothing in this Grant limits the ability of Owners, Holder, or any Beneficiary to avail itself of the protections available under any Applicable Law affording immunity to Owners, Holder or any Beneficiary including, to the extent applicable, the Recreational Use of Land and Water Act, Act of February 2, 1966, P.L. (1965) 1860, No. 586, as amended, 68 P.S. §477-1 et seq. (as may be amended from time to time).
- (d) **Public Access Claims; Owner Responsibility Claims.** If a claim for any Loss for personal injury or property damage occurring within the Access Area after the Easement Date (a “Public Access Claim”) is asserted against the Owners, the Holder, the Beneficiaries, or any of them, it is anticipated that they will assert such defenses as are available to them under Applicable Law. The phrase “Public Access Claim” excludes all claims (collectively, “Owner Responsibility Claims”) for Losses and Litigation Expenses arising from, relating to, or associated with (1) personal injury or property damage occurring prior to the Easement Date; (2) Improvements other than those (if any) installed by Holder or Beneficiaries; or (3) activities or uses engaged in by Owners, their family members, contractors, agents, employees, tenants and invitees or anyone else entering the Property (including the Access Area) by, through, or under the express or implied invitation of any of the foregoing.
- (e) **Indemnity.** If immunity from any Public Access Claim is for any reason unavailable to Owners or Beneficiaries, Holder agrees to indemnify, defend and hold Owners and Beneficiaries harmless from any Loss or Litigation Expense if and to the extent arising from a Public Access Claim. Owners agree to indemnify, defend and hold the Holder and Beneficiaries harmless from any Loss or Litigation Expense if and to the extent arising from an Owner Responsibility Claim.
- (f) **No Charge for Access.** No Person is permitted to charge a fee for access to or use of the Access Area or Public Trail.

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 thirty (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 thirty (30) day period, upon the measures Owners will take to cure the violation;
 - (3) Owners commence to cure within the initial thirty (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 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 any 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.** Unless otherwise provided by Pennsylvania law, 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.** Unless otherwise provided by Pennsylvania law, Holder or any Beneficiary is entitled to recover from the Person seeking the modification or termination, (i) 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 (ii) reimbursement of Litigation Expenses as if a violation has 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 any 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 any 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 the 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,
 - (3) or 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 Owner: Barbara Montgomery
901 Sills Mill Rd
Kennett Square, PA 19348
- If to Holder: The Land Conservancy for Southern Chester County
Attn Preservation Director
541 Chandler Mill Rd
Avondale, PA 19311
- If to Township: Kennett Township
801 Burrows Run Rd
Chadds Ford, PA 19317
- If to County: Chester County Preservation Partnership Program Administrator
Department of Parks and Preservation
601 Westtown Road, Suite 390
West Chester, PA 19380-0990

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 Property 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 Property 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 Property 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.
- (d) **Deed of Transfer.** Owners agree to reference this Grant in any deed or other legal instrument by which they transfer the Property or a Lot.

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 Property or any portion of the Property 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 Property do not have the right to enforce the terms of this Grant against Owners of other Lots within the Property. 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, and also by an authorized signatory for each Beneficiary in the case of an Amendment. 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 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; (b) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, (or successor toxic waste or hazardous substance laws or regulations) by any Person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; and (c) personal injury (including death) and damage to personal belongings occurring on or about the Property if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

8.09 Managerial Control Retained by Owners

Nothing in this Grant shall be construed as giving rise to any obligation or ability to exercise physical or managerial control over day-to-day operation of the Property, or otherwise become an operator within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended.

8.10 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 any 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 any 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 and to each Beneficiary all of the rights and privileges of a beneficiary of a conservation easement under the Conservation and Preservation Easements Act.
- (e) **Restatement (Third) of the Law of Property: 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 Property: Servitudes.

8.11 Entire Agreement

This document 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 pertaining to the transaction set forth in this Grant.

8.12 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.

8.13 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 which have been severed from the Property.

8.14 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 Property 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 Area” means the approximately 50-foot-wide corridor shown on the Easement Plan within which will be located the Public Trail.

“Access Drive” means a road, drive, or lane providing vehicular access.

“Additional Improvements” means an Improvement other than an Existing Improvement.

“Agricultural Improvement” means an Improvement used or usable in furtherance of Agricultural uses such as barn, stable, silo, spring house, green house, hoop house, riding arena (whether indoor or outdoor), horse walker, manure storage pit, storage buildings, farm stand, feeding and irrigation facilities.

“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) Boarding, stabling, raising, feeding, grazing, exercising, riding, and training horses and instructing riders.

“Amendment” means an amendment, modification or supplement to this Grant signed by Owners, Holder, and Beneficiary (or Beneficiaries) recorded in the Public Records. The term “Amendment” includes an amendment and restatement of this Grant.

“Animal Unit” means one thousand (1,000) pounds (live weight) of any animal.

“Applicable Law” means federal, state or local laws, statutes, codes, ordinances, standards, and regulations applicable to the Property, 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 (including notices issued interpreting the Regulations) are also included in the defined term.

“Beneficiary” means a Person given rights under the terms of the Grant (other than Owners or Holder).

“Best Management Practices” means 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. Examples of resource management agencies issuing pertinent BMP’s as of the Easement Date are: the Natural Resource Conservation Service of the United States Department of Agriculture (with respect to soil resources); the Pennsylvania Department of Environmental Protection (with respect to soil erosion, sedimentation and water resources); and the following sources of BMP’s with respect to forest and woodland management: the Forest Stewardship Council principles and criteria, Sustainable Forestry Initiative standards, Forest Stewardship Plan requirements, American Tree Farm standards and Best Management Practices for Pennsylvania Forests.

“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, any 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 in *The Wall Street Journal*.

“Dwelling Unit” means the use or intended use of an Improvement or portion of an Improvement for human habitation by one or more Persons (whether or not related). Existence of a separate kitchen accompanied by sleeping quarters is considered to constitute a separate Dwelling Unit.

“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 Property (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 Property. 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 Property.

“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.

“Height” means the vertical elevation of an Improvement measured from the average exterior ground elevation of the Improvement to a point, if the Improvement is roofed, midway between the highest and lowest points of the roof excluding chimneys, cupolas, ventilation shafts, weathervanes and similar protrusions or, if the Improvement is unroofed, the top of the Improvement.

“Impervious Coverage” means the footprints (including roofs, decks, stairs, and other extensions) of Improvements; paved or artificially covered surfaces such as crushed stone, gravel, concrete, and asphalt; impounded water (such as a man-made pond); and compacted earth (such as an unpaved roadbed). Also included in Impervious Coverage are green roofs and porous pavement surfaces. Excluded from Impervious Coverage are running or non-impounded standing water (such as a naturally occurring lake), bedrock and naturally occurring stone and gravel, and earth (whether covered with vegetation or not) so long as it has not been compacted by non-naturally occurring forces.

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

“Indemnified Parties” means 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 the 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” means 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” means 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.

“Owner Responsibility Claim” is defined in section 6.07 of this Grant.

“Owners” means the undersigned Owner or Owners and all Persons after them who hold an interest in the Property.

“Person” means an individual, organization, trust, government, or other entity.

“Preferential Tax Program” means any program under Applicable Law that, as of the applicable date of reference, provides preferential tax treatment for farmland, forestland, open space or other property under conservation easement. As of the Easement Date, examples of Preferential Tax Programs are Act 153 of 1995, Act 319 (sometimes referred to as “Clean and Green”) (72 Pa. Stat. 5490.1 et seq.) and Act 515 (16 Pa. Stat. 11941), and the Preserved Farmland Tax Stabilization Act of 1994, P.L. 605, No. 91.

“Proportionate Value” means the Market Value of this Conservation Easement (expressed as a percentage) as of the Easement Date (determined in accordance with the Regulations) divided by the Market Value of the Property as a whole as of the Easement Date.

“Public Access Claim” is defined in section 6.07 of this Grant.

“Public Records” mean the public records of the office for the recording of deeds in and for the county in which the Property is located.

“Public Trail” means a trail for use by the general public to be established within the Access Area.

“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.

“Recreational Use Statute” means the Pennsylvania Recreational Use Statute, 68 Pa. Stat. 477 as amended through the applicable date of reference or any other Applicable Law that provides immunity or limitation of liability for Owners who make their property available to the public for recreational purposes.

“Regulations” means 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” means signs (not exceeding two square feet each or such greater dimensions as are the minimum required by Applicable Law) to control access to the Property or for informational, directional, or interpretive purposes.

“Renewable Energy” means energy that can be used without depleting its source such as solar, wind, geothermal, and movement of water (hydro-electrical and tidal).

“Residential Improvements” means dwellings and Improvements accessory to residential uses such as garage, swimming pool, pool house, patio, terrace, deck, tennis court, and children’s play facilities.

“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 described in the Conservation Objectives during certain operations potentially affecting natural resources protected under this Conservation Easement. The Resource Management Plan (sometimes referred to as the “RMP”) 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 identified operations to be conducted in accordance with the plan. In the case of forestry activities, a Resource Management Plan should be consistent with current Best Management Practices of the Pennsylvania Bureau of Forestry and

conform to the standards of a Forest Stewardship Plan (or current equivalent) under the Forest Stewardship Program (or current equivalent) administered by the Pennsylvania Bureau of Forestry (or another similar entity approved by Holder). For the harvest of forest products, the RMP should include a harvest plan prepared by a Society of American Foresters (SAF) certified forester (or, if the SAF is no longer in existence, another similar organization) describing harvest goals consistent with the RMP and harvest procedures, including timing, type, and volume of products to be removed, and the layout and post-harvest restoration of skid roads and landing areas. The harvest plan should include measures to protect any special plant, animal, or water resources identified in the easement Baseline Documentation or subsequently identified on the Property. The harvest plan should also specify that the timber harvest will be supervised by a SAF certified consulting forester not affiliated with the logging company. The harvest plan must be approved by the Pennsylvania Bureau of Forestry prior to the harvest.

“Review” means review and approval of Holder under the procedure described in article 6.

“Review Requirements” means, 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.

“Site Improvement” means an unenclosed Improvement such as an Access Drive, farm lane, trail, footbridge, boardwalk, retention/detention basin or other storm water management facility, bridge, parking area or other pavement, lighting fixture, sign, mailbox, fence, wall, gate, man-made pond, berm and landscaping treatment. The term does not include Extraction Improvements.

“Soil Conservation Plan” means a plan for soil conservation and/or sedimentation and erosion control that meets Pennsylvania’s Code, Chapters 91 and 102, and is approved by a Natural Resources Conservation Service certified plan writer.

“Steep Slope Area” means an area greater than one acre having a slope greater than 15%.

“Subdivision” means any division of the Property or any Lot within the Property; and any creation of a unit, lot, or parcel of real estate, including subsurface portions of the Property, 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 goods and services over time.

“Utility Improvement” means an Improvement for the reception, storage, or transmission of potable water, sewage, electricity, gas, telecommunications, or other sources of power. The term does not include Extraction Improvements.

“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.

“Wet Area” means a watercourse, spring, wetland (including vernal pools), or non-impounded standing water, and areas within 100-feet of its edge.

“Woodland Area” mean an area within the Property described as “wooded” or “forested” in the Baseline Documentation or identified as such on the Easement Plan, or if not wooded or forested as of the Easement Date, are designated as successional woodland area on the Easement Plan.

[The remainder of this page is intentionally left blank.]

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

Witness/Attest:

Owner's Name: Barbara Montgomery

The Land Conservancy for Southern Chester County

By: _____
Name:
Title:

Acceptance by Beneficiaries:

Kennett Township

By: _____
Name:
Title:

COUNTY OF CHESTER

By: _____
Name: David T. Stauffer
Title: Director, Parks & Preservation

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:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of Kennett Township, a Township of the Second Class, 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:

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF CHESTER:

ON THIS DAY _____, before me, the undersigned officer, personally appeared David T. Stauffer, Director of Parks and Preservation of Chester County, a political subdivision and Municipal Corporation and County of the Third class, party to this Agreement, and acknowledged this Indenture to be his or her act and deed of said County, known to me personally to be such, and,

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

_____, Notary Public

Print Name: