

## RIPARIAN FOREST BUFFER PROTECTION AGREEMENT

THIS RIPARIAN FOREST BUFFER PROTECTION AGREEMENT (this "Protection Agreement") dated as of \_\_\_\_\_ (the "Agreement Date") is by and between \_\_\_\_\_ (the "undersigned Owner or Owners") and \_\_\_\_\_ (the "Holder").

### Article I. Background

#### 1.01 Property

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

Street Address:

Municipality:

County:

Parcel Identifier:

#### 1.02 Purpose

##### (a) Conservation Objectives

The undersigned Owner or Owners and Holder are entering into this Protection Agreement to establish a riparian forest buffer (the "Riparian Buffer") along \_\_\_\_\_ Creek (the "Creek") for the following purposes (collectively, the "Conservation Objectives"): to maintain and improve the quality of water resources associated with the Creek; to perpetuate and foster the growth of healthy forest; to preserve habitat for Native Species dependent on water resources or forest; and to ensure that activities and uses in the Riparian Buffer are sustainable, i.e., they neither diminish the biological integrity of the Riparian Buffer nor deplete the soil, forest and other natural resources within the Riparian Buffer over time.

##### (b) Riparian Buffer Area

The Riparian Buffer consists of the strips of land stretching \_\_\_\_\_ (\_\_\_) feet landward from the Top of the Banks of the Creek, together with the banks and bed of the Creek, to the extent that the strips, banks and bed are contained within the Property.

##### (c) Baseline Documentation

The report (the "Baseline Documentation"), to be kept on file at the principal office of Holder, describes the conservation values of the Riparian Buffer identified in the Conservation Objectives, describes existing conditions of the Riparian Buffer including Existing Improvements as of the Agreement Date, and includes, among other information, photographs depicting the Riparian Buffer.

#### 1.03 Owners' Control

Owners reserve all rights and responsibilities pertaining to their ownership of the Property but for the rights *specifically* granted to Holder in this Protection Agreement. No public access is granted by virtue of this Protection Agreement.

#### **1.04 Defined Terms**

Initially capitalized terms used and not otherwise defined in this Article I are defined in the last Article of this Protection Agreement (the "Glossary").

## **Article II. Restrictive Covenants: Improvements**

No Improvements are permitted within the Riparian Buffer except as set forth in this Article II.

### **2.01 Existing Improvements**

Any Existing Improvement may be maintained, repaired and replaced in its existing location. An Existing Improvement may be expanded or relocated if the expanded or relocated Improvement complies with requirements applicable to an Additional Improvement of the same type set forth in this Article.

### **2.02 Additional Improvements**

Only the following Additional Improvements are permitted within the Riparian Buffer:

#### **(a) Existing Agreements**

Improvements that Owners are required to allow under Existing Agreements.

#### **(b) Other Additional Improvements**

- (i) Fences, walls and gates along the perimeter of the Riparian Buffer; signs not exceeding one square foot each; and habitat improvement devices such as birdhouses and bat houses.
- (ii) Trails of highly porous surface and footbridges for non-motorized use.
- (iii) Subject to Review, fish passage, fish habitat improvement and stream bank stabilization structures.
- (iv) Subject to Review, irrigation facilities accessory to agricultural use of the Property.
- (v) Subject to Review, stream crossing and access structures and associated access corridor for the purpose of allowing passage across the Riparian Buffer by livestock, horses and agricultural equipment to cross the Creek or access water in the Creek in a specified location. It is Owners' responsibility to install fencing whenever necessary to prevent grazing within or other unrestricted access to the Riparian Buffer by horses or livestock.
- (vi) Subject to Review, access drives and utility lines but only if there is no other reasonably feasible means to provide access and utility services to the Property except via the Riparian Buffer.

## **Article III. Restrictive Covenants: Activities; Uses; Disturbance of Resources**

No activities, uses or disturbances of resources are permitted within the Riparian Buffer except as set forth in this Article III.

### **3.01 Existing Agreements**

Activities, uses and Construction that Owners are required to allow under Existing Agreements are permitted.

### **3.02 Other Activities and Uses**

Except as provided in the preceding section, activities and uses within the Riparian Buffer are limited to those permitted below and provided in any case that the intensity or frequency of the activity or use does not have the potential to materially and adversely impair maintenance or attainment of Conservation Objectives.

#### **(a) Disturbance of Resources**

- (i) 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, property or health of Native Species on or about the Riparian Buffer. 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 Native Species but no monoculture.
- (iii) Removal of Invasive Species to accommodate replanting with Native Species.
- (iv) Sustainable forestry in accordance with a Resource Management Plan approved for that activity after Review but not within fifty (50) feet of the top of the bank of the Creek.

- (v) Agricultural use is limited to passage of horses, livestock and equipment via a corridor (if any) permitted under Article II to access water at a specified location or stream crossing structures (if any) permitted under Article II.
  - (vi) Subject to Review, stream bank stabilization, dam removal and other habitat improvement activities.
  - (vii) Other resource management activities consistent with Conservation Objectives and conducted in accordance with the Resource Management Plan approved for that activity after Review.
  - (viii) Subject to Review, removal and disturbance of soil, rock and vegetative resources to the extent reasonably necessary to accommodate Construction of and maintain access to Improvements within the Riparian Buffer with restoration as soon as reasonably feasible by replanting with Native Species.
  - (ix) Vehicular use (including motorized vehicular use) in connection with an activity permitted within the Riparian Buffer or otherwise in the case of emergency.
- (b) Recreational and Educational Uses**  
Activities that do not require Improvements other than those permitted within the Riparian Buffer and do not have the potential to materially and adversely affect Conservation Objectives such as (i) walking, nature study, bird watching, fishing and hunting; and (ii) other educational or scientific activities consistent with maintenance or attainment of the Conservation Objectives.

## **Article IV. Rights and Duties of Holder and Beneficiaries**

### **4.01 Grant to Holder**

By signing this Protection Agreement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a conservation servitude over the Riparian Buffer in perpetuity for the purpose of administering and enforcing the restrictions and limitations set forth in this Protection Agreement. The undersigned Owner or Owners warrant to Holder that the Riparian Buffer is, as of the Agreement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Protection Agreement as an exhibit the legally binding subordination of any Liens affecting the Riparian Buffer as of the Agreement Date.

### **4.02 Rights and Duties of Holder**

The grant to Holder under the preceding section gives Holder the right and duty to perform the following tasks:

**(a) Enforcement**

To enforce the terms of this Protection Agreement in accordance with applicable provisions of this Protection Agreement including, in addition to other remedies, the right to enter the Property to investigate a suspected, alleged or threatened violation.

**(b) Inspection**

To enter the Property and inspect the Riparian Buffer for compliance with the requirements of this Protection Agreement 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 as and when required under applicable provisions of this Protection Agreement.

**(d) Interpretation**

To interpret the terms of this Protection Agreement, apply the terms of this Protection Agreement to factual conditions on or about the Riparian Buffer, respond to requests for information from Persons having an interest in this Protection Agreement or the Riparian Buffer (such as requests for a certification of compliance), and apply the terms of this Protection Agreement to changes occurring or proposed within the Riparian Buffer.

### **4.03 Other Rights of Holder**

The grant to Holder under this Article also permits Holder, without any obligation to do so, to exercise the following rights:

**(a) Amendment**

To enter into an amendment of this Protection Agreement with Owners if Holder determines that the amendment is consistent with and in furtherance of the Conservation Objectives; will not result in any private benefit prohibited under the Internal Revenue Code; and otherwise conforms to Holder's policy with respect to amendments of conservation servitudes.

**(b) Signs**

To install one or more signs identifying the protected status of the Riparian Buffer which may be located (i) within the Riparian Buffer or (ii) in another location within the Property readable from the public right of way and otherwise reasonably acceptable to Owners.

**4.04 Review**

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

**(a) Notice to Holder**

At least thirty (30) days before Owners begin or allow any Construction, activity or use that is subject to Review, Owners must notify Holder of the change including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the change and its potential impact on natural resources within the Riparian Buffer.

**(b) Notice to Owners**

Within thirty (30) days after receipt of Owners' notice, Holder must notify Owners of Holder's determination to (i) accept Owners' proposal in whole or in part; (ii) reject Owners' proposal in whole or in part; (iii) accept Owners' proposal conditioned upon compliance with conditions imposed by Holder; or (iv) reject Owners' notice for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (iii), commencement of the proposed Improvement, activity, use or Construction 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 Reasonableness**

Holder's approval will not be unreasonably withheld; however, it is not unreasonable for Holder to disapprove a proposal that may adversely affect Conservation Objectives.

**4.05 Beneficiaries**

Owners and Holder grant and convey to any of the Persons identified below (collectively, the "Beneficiaries") the right to exercise Holder's rights and duties under this Protection Agreement should Holder fail to uphold and enforce in perpetuity the restrictions under this Protection Agreement.

- The conservation district of the county in which the Property is located.
- The Commonwealth of Pennsylvania acting through the Department of Environmental Protection.

## **Article V. Violation; Remedies**

**5.01 Breach of Duty**

If Holder fails to enforce this Protection Agreement, or ceases to qualify as a Qualified Organization, then the rights and duties of Holder under this Protection Agreement may be (i) exercised by a Beneficiary or a Qualified Organization designated by a Beneficiary; and/or (ii) transferred to another Qualified Organization by a court of competent jurisdiction.

**5.02 Violation of Protection Agreement**

If Holder determines that this Protection Agreement is being or has 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 Riparian Buffer 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: (i) Owners cease the activity constituting the violation promptly upon receipt of Holder's notice; (ii) Owners and Holder agree, within the initial thirty (30) day period, upon the measures Owners will take to cure the violation; (iii) Owners commence to cure within the initial thirty (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 to natural resource within the Riparian Buffer described in the Conservation Objectives in clear violation of the terms of this Protection Agreement.

**5.03 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) Coercive Relief**

Seek coercive relief to specifically enforce the terms of this Protection Agreement; to restrain present or future violations of this Protection Agreement; and/or to compel restoration of natural resources destroyed or altered as a result of the violation.

**(b) Civil Action**

Recover from Owners or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Protection Agreement together with interest thereon from the date due at an annual rate of interest equal at all times to two percent above the "prime rate" announced from time to time in *The Wall Street Journal*. These monetary obligations include, among others, Losses and Litigation Expenses.

**(c) Self-Help**

Enter the Property to prevent or mitigate irreparable harm to natural resources within the Riparian Buffer identified in the Conservation Objectives in clear violation of the terms of this Protection Agreement.

**(d) Restitution**

Seek restitution of any amounts paid for this Protection Agreement if the Riparian Buffer is the subject of a taking in eminent domain or other civil action seeking modification or termination of this Protection Agreement or release of the Riparian Buffer from this Protection Agreement.

**5.04 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 otherwise under Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other remedies available to Holder at the same time or at any other time.

**5.05 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 this Protection Agreement or a waiver of Holder's rights to exercise its rights or remedies at another time.

**5.06 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.

**5.07 Continuing Liability**

If the Riparian Buffer is transferred while a violation remains uncured, the transferor Owners remain liable for the violation jointly and severally with the transferee Owners. This provision does not apply if Owners (a) notify Holder of the names and address for notices of the transferees and, if less than the entirety of the Property is transferred, furnish Holder with a survey and legal description of the portion of the Property transferred; and (b) Holder has issued a certificate of compliance evidencing no violations within thirty (30)

days prior to the transfer. It is the responsibility of the Owners to notify Holder of the transfer and request a certificate of compliance to verify whether violations exist as of the date of transfer.

## **Article VI. Miscellaneous**

### **6.01 Notices**

#### **(a) Requirements**

Each Person giving any notice pursuant to this Protection Agreement must give the notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid.

#### **(b) Address for Notices**

Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

### **6.02 Governing Law**

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

### **6.03 Binding Agreement**

This Protection Agreement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

### **6.04 Amendments, Waivers**

No amendment or waiver of any provision of this Protection Agreement or consent to any departure by Owners from the terms of this Protection Agreement is effective unless the amendment, waiver or consent is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given.

### **6.05 Severability**

If any provision of this Protection Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Protection Agreement remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Protection Agreement invalid, illegal or unenforceable in any respect.

### **6.06 Counterparts**

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

### **6.07 Indemnity**

Owners must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to: (a) any breach or violation of this Protection Agreement or Applicable Law; (b) damage to property or personal injury (including death) occurring on or about the Riparian Buffer if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

### **6.08 Guides to Interpretation**

#### **(a) Captions**

Except for the identification of defined terms in the Glossary, the descriptive headings of the articles, sections and subsections of this Protection Agreement are for convenience only and do not constitute a part of this Protection Agreement.

#### **(b) Terms**

The word "including" means "including but not limited to". The word "must" is obligatory; the word "may" is permissive and does not imply any obligation.

**(c) Conservation and Preservation Easements Act**

This Protection Agreement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. 390.

**(d) Restatement of Servitudes**

This Protection Agreement 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 Servitudes.

**6.09 Entire Agreement**

This is the entire agreement of Owners, Holder and Beneficiaries (if any) pertaining to the subject matter of this Protection Agreement. The terms of this Protection Agreement supersede in full all statements and writings between Owners, Holder and others pertaining to the transaction set forth in this Protection Agreement.

**6.10 Incorporation by Reference**

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

- The Baseline Documentation
- The legal description of the Property attached as Exhibit "A"

**6.11 Coal Rights Notice**

The following notice is given to Owners solely for the purpose of compliance with the requirements of the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. 390:

**NOTICE:** This Protection Agreement may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Riparian Buffer.

## **Article VII. Glossary**

**7.01 Additional Improvements**

All buildings, structures, facilities and other improvements within the Riparian Buffer other than Existing Improvements.

**7.02 Applicable Law**

Any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Riparian Buffer or this Protection Agreement as amended through the applicable date of reference.

**7.03 Beneficiary or Beneficiaries**

The Persons (if any) designated as a Beneficiary under Article IV.

**7.04 Construction**

Any demolition, construction, reconstruction, 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.

**7.05 Existing Agreements**

Easements and other servitudes affecting the Riparian Buffer prior to the Agreement Date and running to the benefit of utility service providers and other Persons that constitute legally binding servitudes prior in right to this Protection Agreement.

**7.06 Existing Improvements**

Improvements located on, above or under the Riparian Buffer as of the Agreement Date as identified in the Baseline Documentation.

**7.07 Improvement**

Any Existing Improvement or Additional Improvement.

**7.08 Indemnified Parties**

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.

**7.09 Invasive Species**

A plant species that is (a) non-native (or alien) to the ecosystem under consideration; and (b) 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 the Mid-Atlantic Natural Areas”, by the National Park Service National Capital Region, Center for Urban Ecology and the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office are to be used to identify Invasive Species.

**7.10 Lien**

Any mortgage, lien or other encumbrance securing the payment of money.

**7.11 Litigation Expense**

Any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Protection Agreement including in each case, attorneys’ fees, other professionals’ fees and disbursements.

**7.12 Losses**

Any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

**7.13 Native Species**

A plant 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.

**7.14 Owners**

The undersigned Owner or Owners and all Persons after them who hold any interest in all or any part of the Riparian Buffer.

**7.15 Person**

An individual, organization, trust or other entity.

**7.16 Resource Management Plan**

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 Protection Agreement. The Resource Management Plan includes a resource assessment, identifies appropriate performance standards and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

**7.17 Review**

Review and approval of Holder under the procedure described in Article IV.

**7.18 Review Requirements**

Collectively, any plans, specifications or information required for approval of an activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Protection Agreement either as an exhibit or as part of the Baseline Documentation or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

**7.19 Top of the Bank**

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

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

Witness/Attest:

\_\_\_\_\_

\_\_\_\_\_  
Name:

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

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: