APPENDIX G. MODEL TRAIL EASEMENT (short form)

Prepared by:
Name:
Address:
Telephone:

Return to:
Name:
Address:

Tax Parcel(s):

TRAIL EASEMENT AGREEMENT

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

Article I. Background

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the property identified below and more fully described in Exhibit "A" (the "Property").

Street Address:
Municipality: County:
Parcel Identifier: State: Pennsylvania

1.02 Easement Area

The portion of the Property that is subject to this Agreement (the "Easement Area") is shown on the plan attached as Exhibit "B" (the "Easement Plan").

1.03 Purposes

The purposes of this Agreement are to set forth the terms under which the Trail Facilities described in Article II can be established and maintained for activities and uses by the general public described in Article III.

1.04 Consideration

The undersigned Owner or Owners acknowledge receipt of the sum of $1.00 in consideration of the grant of easement to Holder under this Agreement.

Article II. Grant of Easement for Trail Facilities

2.01 Grant

The undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder the perpetual right to create the Trail identified below; to enter the Easement Area at any time to construct, install, maintain and repair any one or more of the items (collectively, with the Trail, the "Trail Facilities") described in paragraph (a) of this section; and, subject to the prior written consent of Owners, those described in paragraph (b) of this section.

(a) Trail Facilities

(i) A trail not to exceed approximately ___ feet in width together with steps, railings, and other surface structures which, as to wet areas, may include bridges and culverts (collectively, the "Trail").

(ii) Signs to mark the Trail, to provide information related to the Trail and for interpretive purposes.

(iii) Fencing, gates, and barriers to control access.

(b) Trail Facilities Requiring Prior Written Consent of Owners
Benches, picnic tables, wastebaskets, and bicycle racks.

2.02 Exercise of Rights

Creation of the Trail and other construction, installation, maintenance and repair of the Trail Facilities may include installation of signage; mowing, cutting or removal of soil, rock or vegetation; application of gravel, crushed stone, wood chips or paving; or other means of creating the Trail surface (if any) and/or identifying the Trail's path. These activities may include vehicular use.

Article III. Grant of Easement for Public Access

3.01 Grant of Easement

The undersigned Owner or Owners, intending to be legally bound, grant to Holder the right to make available to the public a perpetual easement and right-of-way over the Trail and the right to use Trail Facilities for the purposes ("Permitted Trail Uses") described in paragraph (a) and, subject to the prior written consent of Owners, those described in paragraph (b) of this section:

(a) Permitted Trail Uses
Use of the Trail as a right-of-way for (i) walking, hiking, jogging, bicycling, horseback riding, bird watching, nature study; (ii) power-driven mobility devices for use by persons who have mobility impairments; and (iii) emergency vehicles in the case of emergency within the Easement Area.

(b) Uses Requiring Prior Written Consent of Owners
Recreational vehicular use such as snowmobiling; events such as "runs" or competitive races; programmatic use by schools, clubs or other groups; or any use of Trail for purposes other than as a right-of-way for passage over the Property such as picnicking or other stationary activities.

3.02 No Charge for Access

No Person is permitted to charge a fee for access to the Trail or use of the Trail Facilities.

Article IV. Rights of Owners

4.01 Owner Improvements

Owners must not construct, install or maintain any facility or improvement within the Easement Area except the following (collectively, "Owner Improvements"): (i) items existing within the Easement Area as of the Easement Date and listed in the schedule (if any) attached to this document entitled "Existing Owner Improvements"; (ii) items listed in the schedule (if any) attached to this document entitled "Permitted Owner Improvements"; (iii) fencing along the boundary of the Easement Area not impeding access to the Easement Area for the purposes described in Articles II and III; and (iv) items to which Holder, without any obligation to do so, gives its consent in writing.

4.02 Owner Uses and Activities

Owners have the rights accorded to the general public to use the Trail Facilities as well to exercise any one or more of the following rights with such notice to Holder as is reasonable under the circumstances:

(a) Mitigating Risk
Cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Easement Area.

(b) Hunting; Forestry
Close access to the Easement Area for public safety reasons (i) for up to forty (40) days per year so as to accommodate hunting by or under control of Owners; and (ii) for up to sixty (60) days within any ten (10) year period to accommodate forestry activities.

(c) Resource Management
Mow, cut or remove vegetation, or plant vegetation, within the Easement Area but only in accordance with guidelines set forth in the schedule (if any) attached to this document entitled "Permitted Resource Management" and any additions to or modifications of that schedule requested by Owners and approved by Holder in writing, or in the absence of a schedule, in accordance with guidelines approved by Holder in writing.

(d) Grants to Others
Grant leases, licenses, easements and rights-of-way affecting the Easement Area to Persons other than Holder but only for (i) permitted Owner Improvements; (ii) activities and uses that Owners are permitted to engage in under this Agreement; or (iii) other items that Holder, without any obligation to do so, approves after review.

(e) Enforcement Rights
Remove or exclude from the Property any Persons who are (i) in locations other than the Trail or other Trail Facilities or (ii) not engaged in Permitted Trail Uses.

Article V. Enforcement; Liability Issues

5.01 Enforcement
Holder may, in addition to other remedies available at law or in equity, compel Owners to make the Easement Area available for the purposes set forth in Article II and Article III by exercising any one or more of the following remedies, without any need to show that a civil action for damages is not available to furnish compensation:

(a) Injunctive Relief
Seek injunctive relief to specifically enforce the terms of this Agreement; to restrain present or future violations of this Agreement; and/or to compel restoration of Trail Facilities or other resources destroyed or altered as a result of the violation.

(b) Self Help
Enter the Property to remove any barrier to the access provided under this Agreement and do such other things as are reasonably necessary to protect and preserve the rights of Holder under this Agreement.

5.02 Warranty
The undersigned Owner or Owners warrant to Holder that:

(a) Liens and Subordination
The Easement Area is, as of the Agreement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Agreement as an exhibit the legally binding subordination of any mortgage, lien, or other encumbrance affecting the Easement Area as of the Agreement Date.

(b) Existing Agreements
No one has the legally enforceable right (for example, under a lease, easement or right-of-way agreement in existence as of the Agreement Date) to prevent the installation of Trail Facilities or the use of Trail Facilities for Permitted Trail Uses.

(c) Hazardous Materials
To the best of Owner's knowledge, the Easement Area is not contaminated with materials identified as hazardous or toxic under applicable law (collectively, "Hazardous Materials") and no Hazardous Materials have been stored or generated within the Easement Area.

5.03 Immunity under Applicable Law
Nothing in this Agreement limits the ability of Owners and Holder to avail themselves of the protections offered by any applicable law affording immunity to Owners and Holder 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).

5.04 Public Enters at Own Risk
Use of any portion of the Easement Area by members of the general public is at their own risk. Neither Holder nor Owners by entering into this Agreement assume any duty to or for the benefit of the general public for defects in the location, design, installation, maintenance or repair of the Trail Facilities; for any unsafe conditions within the Easement Area; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities to public access when unsafe conditions may be present. Holder will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until Holder receives actual notice given in accordance with Article VI of this Agreement of the need to repair an unreasonably dangerous condition.

5.05 Costs and Expenses

All costs and expenses associated with Trail Facilities are to be borne by Holder except for items included in Owner Responsibility Claims (defined below in this Article).

5.06 Responsibility for Losses and Litigation Expenses

(a) Public Access Claims; Owner Responsibility Claims

If a claim for any Loss for personal injury or property damage occurring within the Easement Area after the Agreement Date (a "Public Access Claim") is asserted against either Owners or Holder, or both, it is anticipated that they will assert such defenses (including immunity under the Recreational Use of Land and Water Act) 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 (i) personal injury or property damage occurring prior to the Agreement Date; (ii) activities or uses engaged in by Owners, their family members, contractors, agents, employees, tenants and invitees or anyone else entering the Property by, through or under the express or implied invitation of any of the foregoing; or (iii) structures, facilities and improvements within the Easement Area (other than improvements installed by Holder).

(b) Indemnity

If immunity from any Public Access Claim is for any reason unavailable to Owners, Holder agrees to indemnify, defend and hold Owners 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 harmless from any Loss or Litigation Expense if and to the extent arising from an Owner Responsibility Claim.

(c) Loss; Litigation Expense

(i) The term "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

(ii) The term "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 for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees and disbursements.

Article VI. Miscellaneous

6.01 Beneficiaries and Agents

The rights of Holder under this Agreement may be exercised by Holder, any Person identified by Holder as a beneficiary of this Agreement and who accepts this designation by recordation in the Public Records of a joinder to this Agreement (a "Beneficiary"), or any of the contractors, agents, and employees of Holder or Beneficiary.

6.02 Binding Agreement

This Agreement is 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 Easement Area or any portion of the Easement Area are bound by its terms whether or not the Owners had actual notice of this Agreement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Agreement. Subject to such limitations (if any) on Holder's right to assign as may be set forth in this Agreement, this Agreement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

6.03 Governing Law

The laws of the Commonwealth of Pennsylvania govern this Agreement.

6.04 Definition and Interpretation of Capitalized and Other Terms

The following terms, whenever used in this Agreement, are to be interpreted as follows:

(i) "Owners" means the undersigned Owner or Owners and all Persons after them who hold any interest in the Easement Area.

(ii) "Person" means an individual, organization, trust, or other entity.

(iii) "Public Records" means the public records of the office for the recording of deeds in and for the county in which the Easement Area is located.

(iv) "Including" means "including, without limitation".

(v) "May" is permissive and implies no obligation; "must" is obligatory.

6.05 Incorporation by Reference

Each exhibit or schedule referred to in this Agreement is incorporated into this Agreement by this reference.

6.06 Amendments; Waivers

No amendment or waiver of any provision of this Agreement or consent to any departure by Owners from the terms of this 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. An amendment must be recorded in the Public Records.

6.07 Severability

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

6.08 Counterparts

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

6.09 Entire Agreement

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

6.10 Notices

Notice to Holder under this Agreement must be in writing and given by one of the following methods: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid. In an emergency, notice may be given by phone (_____) or electronic communication (_____) followed by one of the methods in the preceding sentence.

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

Witness/Attest:

_____ _____
Owner's Name:

_____ _____
Owner's Name:

[NAME OF HOLDER]

_____ By: _____
Name of signatory:
Title of signatory:

This document is based on the Model Trail Easement Agreement (9/11/2010 edition) provided by the Pennsylvania Land Trust Association.

The model on which this document is based should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. It should be revised under the guidance of legal counsel to reflect the specific situation.

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

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

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

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

_____, Notary Public

Print Name: