Prepared by and return to:

Model Declaration of Public Trust

expanded form with grant of conservation easement

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Parcel identification:

Declaration of Public Trust
and Grant of Conservation Easement

THIS DECLARATION OF PUBLIC TRUST AND GRANT OF CONSERVATION EASEMENT are made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Declarant”) on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Pennsylvania nonprofit corporation (“Holder”) joins in this declaration and grant to evidence its acceptance of the rights granted to it hereunder.

# Background

## **Land.** The real property that is the subject of this declaration is identified briefly below and more fully described in exhibit A attached to and incorporated into this declaration (that property, the “Land”).

Parcel identification:

Street address:

Acreage:

Municipality and county:

## **Declarant.** Declarant is a \_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_ class of the Commonwealth of Pennsylvania.

## **Public Trust.** Declarant desires to formally declare a public trust containing the Land and to affirm Declarant’s role and duty as trustee in service of the Public Purposes described in article 2.

## **Constitution.** Article 1, Section 27 of the Pennsylvania Constitution states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

## **Donated or Dedicated Property Act.** Declarant desires this declaration to serve as a dedication of the Land to public use within the meaning of the Act of December 15, 1959, P.L. 1772, 53 P.S. §§3381-3386 (the “Donated or Dedicated Property Act”).

## **Action.** This declaration is made pursuant to resolution \_\_\_\_\_ of Declarant on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_\_.

## **Holder.** The Holder is a charitable corporation qualified to be a holder of conservation easements under the Conservation and Preservation Easements Act, Act of June 22, 2001 (P.L.390, No.29) (32 P.S. §§5051-5059).

## **Authorization to Grant Easement.** The Act of January 19, (1968) 1967, P.L. 992, No. 442 entitled “Preserving Land for Open Air Spaces,” as amended by Act 154 of 2006, authorizes local governments to “transfer open space property interests to a land trust” and to “elect to accept any nominal consideration for the transfer it deems appropriate.”

# Dedication and Declaration

## **Dedication to Public Purposes.** Declarant formally and unequivocally dedicates the Land to the following purposes (collectively, the “Public Purposes”) in perpetuity:

Providing public access for outdoor recreation; and

Providing open space benefits, which may include maintaining and improving the quality of water resources, both surface and groundwater, including replenishing their supply; establishing and protecting scenic views and vantage points for those views; preserving existing, planned, and potential outdoor public recreation and conservation areas; preventing and reducing floods; providing natural habitat for animals, plants, and fungi; preventing the loss and depletion of soil; conserving farmland for agricultural production and forestland for production of timber and other forest products; preserving features of historic, geologic, or biologic significance; and providing for sound land development by providing open space within and around developed lands.

## **Declaration of Public Trust.** Declarant formally and unequivocally declares that the Land is the body of a public trust in service of the Public Purposes and of which Declarant is the trustee.

The following optional provision may be included (and modified as appropriate) to exclude from the dedication certain property interests that Declarant wishes to reserve for other purposes.

## **Reservation.** Declarant reserves the right to install, or allow the installation of, underground improvements. The improvements may serve Public or non-Public Purposes but must be designed and located so as not to materially affect the Public Purposes.

Use the following provision ONLY IF the land was acquired using open space tax dollars.

## **Potential Disposal Pursuant to Referendum.** This declaration is not intended to obviate the possibility of Declarant disposing of those open space property interests acquired all or in part with open space tax revenue, following the assent of the electorate in a referendum pursuant to the act of January 19, (1968) 1967, P.L. 992, No.442, as amended.

The following optional section may be included (and modified as appropriate) to provide a set of rules to guide the administration of the Land consistent with the Public Purposes.

# Covenants

To uphold the Public Purposes, Declarant declares the following covenants running with the land.

## **Prohibited.** Improvements, facilities, activities, and uses are prohibited within the Land except as permitted below.

## **Permitted.** The following improvements, facilities, activities, and uses, are permitted:

1. Trails, walkways, playgrounds, athletic fields, tracks, courts, picnic pavilions, water fountains, toilets, storage sheds, kiosks, signs, accessory lighting, and other facilities and improvements ancillary to permitted activities and uses.
2. Outdoor recreational and outdoor educational uses.
3. Provision of refreshments, rental of outdoor recreation equipment, and other services, provided for the sole purpose of enhancing the public’s outdoor recreational experience.
4. Resource management activities such as planting and mowing vegetation, pruning, sustainable forestry, and wildlife control.
5. Construction, installation, and maintenance of facilities and improvements permitted under this section.

# Clarifications

## **Access.** Declarant will ensure that no charges, barriers, restrictions, or requirements are imposed that restrict public access to the Land or improvements permitted by this Declaration unless they are (1) reasonably necessary in service of the Public Purposes or a permitted use, or for public safety or avoidance of nuisance; and (2) not unduly burdensome.

## **Leasing and Licensing.** Declarant may lease or license portions of the Land to others to provide or assist Declarant in providing facilities, programs, goods, services, or other amenities to the public that are consistent with the Public Purposes.

## **Rights and Remedies**. Rights and remedies arising out of this declaration are cumulative; they neither limit nor are limited by any rights or remedies arising from the Donated or Dedicated Property Act or other applicable authority available for upholding the Public Purposes.

## **Proceeds of Disposal.** In the event that a sale, transfer, or other disposal of the Land or a portion thereof is properly effected, notwithstanding this Declaration or applicable law, all proceeds will be reinvested in service of the Public Purposes.

The following additional clarification should be added IF the optional Covenants section is not being used. Include the bracketed text if the optional reservation is being made.

## **Development.** Except in direct support of the Public Purposes [or in regard to the reservation set forth in subsection 2.3], further development or improvement of the Land is prohibited.

# Grant of Conservation Easement

## **Grant.** Declarant grants and conveys to Holder an unconditional and perpetual easement upon the Land to uphold the Public Purposes and enforce the covenants set forth above. Without limiting the scope of the grant set forth here, this grant empowers Holder to: (a) take such action as may be necessary or desirable to block uses of the Land inconsistent with the Public Purposes or which violate the covenants; and (b) enter the Land to inspect to determine compliance with this declaration and grant.

## **Relationship of Grant to Dedication.** The grant of conservation easement is not intended to supersede any rights of the public established by the dedication of the Land to Public Purposes.

## **Holder's Costs and Expenses.** Declarant must pay or reimburse Holder's costs and expenses in connection with the upholding of the Public Purposes and enforcement of the covenants, including exercise of remedies, in the event of Declarant's failure to abide by this declaration.

## **Coal Notice.** This notice is given to Declarant solely for the purpose of compliance with Pennsylvania’s Conservation and Preservation Easements Act:

NOTICE: The grant of conservation easement may impair the development of coal interests including workable coal seams or coal interests that have been severed from the Land.

[*signature page follows*]

INTENDING TO BE LEGALLY BOUND, Declarant and Holder have signed and delivered this declaration and grant as of the date set forth in the opening recital of this document.

ON BEHALF OF DECLARANT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Seal)

ON BEHALF OF HOLDER \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Seal)

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF :

 ON THIS DAY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ before me, the undersigned officer, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who acknowledged themself to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ class of the Commonwealth of Pennsylvania, and that they, 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 themself as such officer.

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public

 Print Name:

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF :

 ON THIS DAY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ before me, the undersigned officer, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who acknowledged themself to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , a Pennsylvania nonprofit corporation, and that they 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 themself as such officer.

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public

 Print Name:

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provided by WeConservePA.

Nothing contained in the model, which was prepared in the context of Pennsylvania law, is intended to be relied upon as legal advice or to create an attorney-client relationship. There is no guarantee that it is up to date or error free. It should be revised under the guidance of legal counsel to reflect the specific situation.