

Prepared by:

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION is made this [_____] day of [_____] , 201[], by _____, a nonprofit corporation organized and existing under the law, and having its principal office at [_____] , (hereinafter "Declarant and/or Organization").

BACKGROUND

WHEREAS, Declarant is the sole owner in fee simple of certain real property in [municipality], Chester County, Pennsylvania, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Commissioners of Chester County have designated proceeds from Chester County's Open Space Bond Issue for grants/subsidies to conservancies in a cooperative undertaking to promote the health, safety, and public welfare of the citizens of Chester County by providing subsidies to eligible conservation and historic preservation organizations for the acquisition and preservation of significant natural, historic, cultural, scenic, and agricultural resources; and

WHEREAS, Counties are authorized to acquire interests in real property to protect and conserve natural or scientific resources; to protect scenic areas; to preserve sites of historic, geologic or botanic interest; to promote sound, cohesive and efficient land development by preserving open spaces between communities; and for purposes consistent with the terms of the Conservation and Land Development Act (the "Conservation Act"), Pa. Stat. Ann. Title 32, Section 5001 et seq; and

WHEREAS, in February 2002, the Commissioners of Chester County adopted **Linking Landscapes: A Plan for the Protected Open Space Network in Chester County, PA** as the Open Space Element of the Chester County Comprehensive Plan, which recommends rigorously protecting 5,000 acres of open space each year through conservation easements or in-fee acquisition in order to retain the quality of life, ecological, and economic benefits provided by open space; and

WHEREAS, the Commissioners of Chester County have determined that it is in the best interest of its citizens to preserve open space consistent with the strategy set forth in the Chester County Comprehensive Policy Plan **Landscapes2** (2009), and the Open Space Element of the Chester County Comprehensive Plan **Linking Landscapes** (2002), and the Conservation Act; and

WHEREAS, pursuant to the guidelines and criteria of the Chester County Preservation Partnership Program, Declarant Organization has received a grant to assist it in acquiring a fee simple title to preserve the conservation values of the Property; and

WHEREAS, the Property possesses [natural, scenic, open space, historical, agricultural, educational, and/or recreational values (collectively "conservation values")] of great importance to Declarant, the people of Chester County and the people of the Commonwealth of Pennsylvania; and

WHEREAS, in particular the subject Property has [detail values of property]; and

WHEREAS, the specific conservation values of the Property are documented in an inventory of relevant features of the Property, dated [], [], on file at the offices of the Declarant and Chester County, and incorporated herein by this reference ("Baseline Documentation Report"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Declarant intends that the conservation values of the Property be preserved and maintained by the continuation of the land use patterns, including, without limitation, those relating to open space existing at the time of this grant and [other existing uses] that do not significantly impair or interfere with those values; and

WHEREAS, Declarant further intends, as owner of the Property, to permit public access and preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, no additional or future restrictions may be placed on this land by Declarant without the express written consent of the Commissioners of Chester County.

WHEREAS, Declarant is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition; and

WHEREAS, if Declarant should cease to exist as a federally recognized nonprofit conservation organization, the property hereby affected shall revert to and become the sole property of the County of Chester.

NOW, THEREFORE, intending to be legally bound hereby, Declarant hereby declares that the Property shall be utilized perpetually for the public benefit as stated above, subject to further restrictions of use more particularly described below in Article III. The Property shall be held subject to the restrictions set forth in this Declaration which are intended to insure a continuous use of the Property for the purposes indicated and which restrictions or covenants shall run with the Property.

ARTICLE I - DEFINITIONS

The following words and terms, which are used in this Declaration, shall have the following meanings:

1. "Declaration" shall mean and refer to this instrument, as amended from time to time.
2. "Declarant" shall mean and refer to the conservation organization.
3. "Successor Declarant" shall mean each entity to which Declarant shall have specifically, by writing, assigned or conveyed any or all of Declarant's rights in and to the Property.
4. "Property" shall mean the existing property or parcel of real estate referenced above and more particularly described in Exhibit "A" attached hereto. In the event of any additions to the existing property, which shall be made subject to this Declaration pursuant to the provisions of Article II hereof, then, from and after the recording of an appropriate Supplementary Declaration, the term "Property" shall mean the existing property and any such additions.

ARTICLE II - EXISTING PROPERTY

Existing Property. The existing property is all that certain tract of ground situate in [municipality] containing _____ acres of land, more or less, more particularly identified in Exhibit "A" hereto.

ARTICLE III - RESTRICTIONS

The use of the Property as defined in this Agreement shall be restricted to open space, agricultural, forestal, or public access purposes. Specifically prohibited is the disposal of sewage effluent generated off-site on ground that is subject to this Declaration of Covenants, Conditions, and Restrictions. This includes off-site generated sewage effluent at any stage of treatment or post-treatment using any technology including but not limited to spray or drip irrigation. Additionally, cellular towers are not considered a park, recreation, or open space use and are also not permitted on land subject to this Declaration of Covenants, Conditions, and Restrictions. The conveyance of surface or groundwater resources from the Property for commercial or consumptive purposes (including public or private companies or authorities) is specifically prohibited. Any composting materials, waste products, or any other items that are generated off site may not be placed on site for any reason including disposal or processing. These uses are specifically included as examples and do not represent the full extent of uses that are inconsistent with the provisions of this Declaration of Covenants, Conditions, and Restrictions. Land preserved through this Declaration shall not be available to count toward satisfying any open space or preserved land requirements as stipulated under applicable municipal land use laws, ordinances, or codes. Furthermore, owners may not transfer for use outside the Property (whether or not for compensation) any development rights allocated to the Property under Applicable Law. It is agreed that the term of this restriction shall be perpetual and it shall be a covenant running with the land.

ARTICLE IV - ENFORCEMENT

1. The County of Chester shall have the right and power to enforce this Declaration, by any proceedings at law or in equity, against the Declarant or any person or persons violating or attempting to violate any provision of this Declaration of Covenants, Conditions, and Restrictions; to restrain violations; to require specific performance; and/or to recover damages.
2. If the County determines that Declarant is in violation of the terms of this Declaration or that a violation is threatened, the County shall send written notice to Declarant of such violation and demand corrective actions sufficient to cure the violation, and where the violation involves injury to the Property resulting from any use or activity inconsistent with this Declaration, to restore that portion of the Property so injured. If Declarant fails to cure the violation within thirty (30) days after receipt of notice thereof from the County or, under circumstances where the violation cannot reasonably be cured with a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the County may bring an action at law or in equity in a Court of competent jurisdiction to enforce the terms of this Declaration, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction to recover any damages to which it may be entitled for violation of the terms of this Declaration or injury to any public interest protected by this Declaration, and to require the restoration of the Property to the condition that existed prior to such injury.
3. Without limiting Declarant's liability therefore, the County, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. The County's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Declaration and Declarant agrees that the County's remedies at law for any violation of the terms of this Declaration are inadequate and that the County shall be entitled to the injunctive relief described in this Article, both prohibitive and mandatory in addition to such other relief to which the County may be entitled including specific performance of the terms of this Declaration, without necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The County's remedies described in this Article shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
4. Cost of enforcement. Any costs incurred by the County in enforcing the terms of this Declaration shall be borne by Declarant.
5. The failure by the County to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE V - MISCELLANEOUS

1. The covenants and restrictions of this Declaration shall run with the land and bind the Property in perpetuity.
2. The provisions of this Declaration shall, pursuant to its terms, inure to the benefit of Chester County, and bind the Property, Declarant and any Successor Declarant.
3. Recording. This Declaration shall forthwith be recorded in the Office of the Recorder of Deeds in and for the County of Chester, Pennsylvania.
4. If the Declarant shall cease to exist as a federally recognized nonprofit conservation organization, the property hereby affected shall become the sole property of the County of Chester.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

ATTEST:

[APPLICANT]

By: _____
[Title]

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CHESTER SS:

On this _____ day of _____ 201[], before me personally appeared _____, to me personally known, who being by me duly sworn did say that he is the [_____], of the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires: