**Prepared by:**

**Model Consent, Non-Disturbance, and Subordination Agreement**

**WeConservePA publishes this model at WeConservePA.org. Refer to the commentary for explanation of each of the model’s provisions. Delete the entirety of ¶3 if the Owners aren’t donating the easement or will not be seeking a federal tax deduction for a qualified conservation contribution. Also, retitle the document “Consent and Non-Disturbance Agreement.”**

Name:

Address:

Telephone:

**Return to:**

Name:

Address:

**Tax parcel(s):**

**Consent, Non-Disturbance, and Subordination Agreement**

**Mortgage Holder:**

**Mortgage:**

Loan #:

Date of Mortgage:

Date of Recording:

Book: Page:

Instrument #:

**Mortgaged Property:**

Street Address:

Municipality: County:

Parcel Identifier: State: Pennsylvania

**Owners:**

**Easement Holder:**

**Address for Notices:**

INTENDING TO BE LEGALLY BOUND, the Mortgage Holder identified above covenants and agrees as follows for the benefit of the Owners identified above and the Easement Holder identified above.

# Consent

The Mortgage Holder consents to the further encumbrance of the Mortgaged Property identified above by an easement in favor of the Easement Holder.

# Sale Subject to Easement

The Mortgage Holder confirms and agrees that the easement shall survive any sale or other execution upon the Mortgage. The term “Mortgage” when used in this agreement includes all documents and instruments secured by the Mortgage. No sale of the Mortgaged Property by the Mortgage Holder, or by, through, or under the powers vested in the Mortgage Holder pursuant to the Mortgage, shall occur except under and subject to the easement. This covenant applies not only to a sheriff’s sale or other judicial sale of the Mortgaged Property on account of a default or other violation of the Mortgage but also to any sale that directly or indirectly benefits the Mortgage Holder as a creditor of the Owners or a secured creditor with respect to the Mortgaged Property. In furtherance of, but without limiting, this covenant, the Mortgage Holder agrees as follows:

(a) The Easement Holder must not be named as an interest to be divested in any such sale.

(b) Any such sale must be advertised as being held under and subject to the easement.

(c) The Easement Holder has the right to post signage on the Mortgaged Property or otherwise inform the public that any sale or other transfer of the Mortgaged Property is under and subject to the easement.

(d) The Easement Holder has the right to stay any sale advertised or scheduled in violation of the terms of this Agreement and the right to obtain injunctive relief to protect its interest in the survival of the easement in the event of any such sale, the loss of which is not compensable by damages.

# Share of Proceeds

**[DELETE THIS PARAGRAPH IF THE OWNERS AREN’T DONATING THE CONSERVATION EASEMENT OR SEEKING TAX BENEFITS; RETITLE THE DOCUMENT “CONSENT AND NON-DISTURBANCE AGREEMENT.”]**

The Mortgage Holder acknowledges that the easement vests in the Easement Holder the right to receive a percentage share of any proceeds of condemnation or other event terminating or extinguishing the easement upon all or any part of the Mortgaged Property (that event, a “taking”). That percentage share (the “Proportionate Value”) is a constant equal to the fair market value of the easement divided by the fair market value of the Mortgaged Property as if it were not eased, those fair market values established as of the date of the grant of easement by appraisal dated not more than 60 days prior to the date of the grant. Notwithstanding anything to the contrary contained in the Mortgage, the Mortgage Holder agrees that proceeds of a taking shall be divided as and when received so that the Easement Holder receives the Proportionate Value of the proceeds and the Mortgage Holder (or Owners, as the case may be) receives the balance.

# Notices

The Mortgage Holder agrees to use commercially reasonable efforts to notify the Easement Holder, at its address for notices identified above, of its intent to foreclose or otherwise sell or transfer the Mortgaged Property.

# Binding Effect

This Agreement is both a contract and a covenant running with the land. The Mortgage Holder agrees that this agreement is binding upon the Mortgage Holder and its successors and assigns as owner of the Mortgaged Property or holder of any interest therein by, through, or under the Mortgage Holder. This includes any persons who at any time may own, or hold an interest in, the Mortgaged Property by, through or under the Mortgage Holder including any sale held on account of the Mortgage or the interest of the Mortgage Holder as a secured creditor with respect to the Mortgaged Property.

# Consideration

The Mortgage Holder confirms that it has received legally sufficient consideration for this agreement and understands that the Owners and Easement Holder are relying upon this agreement in granting and accepting the easement.

INTENDING TO BE LEGALLY BOUND, the Mortgage Holder has signed this agreement as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

Witness/Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name:

Print Title:

A close up of a logo

Description automatically generated

This document is based on the Model Consent, Non-Disturbance, and Subordination Agreement (v. 2022.11.18) 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.

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 \_\_\_\_, 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: