**Prepared by:**

Model Stewardship Funding Covenant

 v. 2012.08.14c

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Name:

Address:

Telephone:

**Return to:**

Name:

Address:

**Tax parcel(s):**

**Stewardship Funding Covenant**

***If using Section 3, add “*and Grant of Mortgage Lien*”***

**THIS STEWARDSHIP FUNDING COVENANT** (this “Covenant”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Closing Date”) is made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “undersigned Owner or Owners”) in favor of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Holder”).

# Background

## Property

The undersigned Owner or Owners own the land described below (together with any and all improvements thereon, the “Property”) and more fully described in Exhibit “A” attached to and incorporated into this Covenant.

Street Address:

Municipality:

County: State: Pennsylvania

Parcel Identifier: Acreage:

## Conservation Easement

By a certain Grant of Conservation Easement, Holder has been granted the right and duty to protect certain natural and scenic resources within the Property (the “Conservation Easement”). This Covenant evidences the arrangements (“Stewardship Funding Arrangements”) accepted by Holder to fund Holder’s stewardship of the Conservation Easement and other conservation purposes described in Section 2.

## Definitions

### **Capitalized Terms.** Initially capitalized terms used and not otherwise defined in this Covenant are to be given their respective definitions in the Grant of Conservation Easement.

### **Transfer.** “Transfer” is defined as follows: a) the direct or indirect sale, agreement to sell, assignment, devise or conveyance of the Property or any portion of the Property; and b) if a majority ownership interest in, or control of, the Property is changed as a result, the transfer of stock, partnership or other ownership interests in any one or more of the Owners. The occurrence of any of these events is a Transfer whether or not it is voluntary, involuntary, by operation of law, or otherwise.

### **Exceptional Transfer.** “Exceptional Transfer” means any one or more of the following:

1. Transfers to spouses or lineal descendants of one or more of the undersigned Owner or Owners or a trust for the benefit of such spouse or lineal descendants.
2. Any Transfer identified as an “Exceptional Transfer” under §2.1.

# Covenant

## Stewardship Funding Arrangements

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners, on behalf of themselves and all future Owners, covenant to Holder, as a covenant running with the land, to make the payments (“Payments”) required under the Stewardship Funding Arrangements described below on the terms set forth in this Section 2.

***Delete inapplicable stewardship funding arrangements. See***

***commentary for additional and alternative arrangements.***

* Deferred Payment

Single Payment

A Payment of $\_\_\_\_\_\_ is due not later than \_\_\_\_\_\_\_\_\_\_\_\_ or, if earlier, at the time of Transfer. [The outstanding balance of this Stewardship Funding Arrangement bears interest at the annual rate of \_\_%, compounded annually, from the Closing Date through the date of payment in full. The purpose of this Stewardship Funding Arrangement is to defer all, or a portion, of the amount required by Holder to fund long-term stewardship of the Conservation Easement past the Closing Date.]

Periodic Installment Payments

The sum of $\_\_\_\_\_\_ is payable in installment Payments of $\_\_\_ each, together with accrued but unpaid interest. Installment Payments are due on the \_\_\_ and \_\_\_ anniversaries of the Closing Date. The outstanding balance, together with interest due thereon, is due and payable in full on the earlier to occur of Transfer or the \_\_\_ anniversary of the Closing Date. *Note: Repeat bracketed material from the Single Payment example above.*

Installment Payments Extending over a Number of Transfers

The sum of $\_\_\_\_\_\_ is payable in installment Payments of $\_\_\_\_\_ each, together with accrued but unpaid interest. An installment Payment is due upon each Transfer until payment in full is received. If not earlier paid, the outstanding balance, together with interest due thereon, is due and payable in full on the \_\_\_ anniversary of the Closing Date. *Note: Repeat bracketed material from the Single Payment example above.*

* Regular Payment

A Payment of $\_\_\_\_\_ is due on the first anniversary of the Closing Date and each anniversary thereafter. The purpose of this Stewardship Funding Arrangement is to defray Holder’s investment in time, costs and expenses to monitor and otherwise ensure compliance of the Property with the Conservation Easement and to make itself available for consultations with Owners on issues pertaining to Conservation Objectives. Payments not paid when due bear interest at the annual rate of \_\_\_%, compounded annually. If not earlier paid as and when due, Holder has the right to collect the outstanding balance of Payments, together with interest thereon, at the time of Transfer. Also due at the time of Transfer is the portion of the annual Payment allocable to the period from the last anniversary of the Closing Date to the Transfer date.

* Conveyance Payment

A Payment of $\_\_\_\_\_ is due at the time of each Transfer. The purpose of this Stewardship Funding Arrangement is to defray Holder's costs and expenses of inspection and other activities typically arising when conserved property changes ownership.

* Conditional Payment

Generic Provision

A Payment of $\_\_\_ is due upon the occurrence of the following: \_\_\_\_\_\_\_\_. [The purpose of this Stewardship Funding Arrangement is to defray additional monitoring and enforcement burdens that may arise in the future due to the identified activity.] *Note: Repeat bracketed material in the examples below.*

Transfer of Separate Lot(s)

A Payment of $\_\_\_\_ per Lot is due upon the first Transfer of each transferable Lot separate from the remainder of the Property. [Upon payment to Holder of the Payment due for such Lot, the Lot is released from any further obligation for this Stewardship Funding Arrangement and, at the request of the Owners of such Lot, Holder will deliver documentation of the release in form for recording in the Public Records.]

Subdivision into Additional Lot(s)

A Payment of $\_\_\_\_ per Lot is due upon, and as a condition of, Holder's approval, after Review, of a plan of Subdivision or, if earlier, upon the first Transfer of any Lot separate from the remainder of the Property, whether or not Holder's approval of such Transfer was required or obtained. *Note:* *Repeat bracketed release provision from the above example.*

Establishment of Additional Minimal Protection Area(s)

A Payment of $\_\_\_\_ for each Minimal Protection Area designated by Owners after the Easement Date is due upon Owner's designation notice to Holder or, if earlier, upon the commencement, outside of any established Minimal Protection Area, of any use or Construction permitted only within a Minimal Protection Area. *Note: Repeat bracketed release provision as in above example, substituting “Minimal Protection Area” for “Lot”.*

Percentage of Proceeds [timbering example]

A Payment equal to \_\_\_\_% of the proceeds of timber sales or other compensation payable to Owners derived from commercial Forestry operations within the Property or the leasing of the Property for such purposes is due to Holder at the time the proceeds of such activities are due to, or otherwise received by, Owners. After application to costs and expenses arising from or incurred in connection with the Forestry operation, the balance of this Payment is to be used to support projects, in consultation with Owners, to promote reforestation, prevent soil erosion and otherwise further the goals of the Resource Management Plan for such activity and other Conservation Objectives.

## Limited Waiver for Exceptional Transfers

Holder agrees to waive its right to Payment upon an Exceptional Transfer if Holder is notified at least 30 days in advance of the Exceptional Transfer; and, at the time of the Exceptional Transfer:

1. no default in Payments has occurred and is continuing uncured;
2. the Owners following the Exceptional Transfer assume the obligation to make Payments coming due during their period of ownership including any Payments that arose prior to, and remain unpaid as of the date of, the Exceptional Transfer; and
3. accrued but unpaid interest through the date of the Exceptional Transfer is paid in full.

## Tender of Payment

Payments are to be made in cash, electronic funds transfer, bank check or other check drawn on good funds to the Holder and, unless otherwise directed by such Holder, at the address for notices to Holder provided in the Conservation Easement.

## Rights and Remedies

### **Adjustment of Fixed Sums.** If the relative value of the U.S. dollar has changed between the Closing Date and the payment date, a Payment stated at a fixed amount, and not calculated as a percentage, shall be adjusted to the extent reasonably necessary to maintain equivalent value.

### **Interest.** Payments not paid as and when due bear interest at an annual rate, compounded annually, equal to two (2%) percent above (a) the annual rate set forth in §2.1 or, (b) if no annual rate is set forth therein, the “prime rate” announced from time to time in The Wall Street Journal. Interest continues to accrue at the applicable rate until paid in full, including any judgment obtained on account of non-payment.

### **Condition of Holder's Obligations.** If any Payment is not paid as and when due, Holder reserves the right to withhold issuance or delivery of any approval, inspection report or other document requested or required under the terms of the Conservation Easement until such time as past-due obligations are satisfied. This provision supersedes anything to the contrary contained in the Conservation Easement.

### **Notice and Opportunity to Cure.** Holder will use commercially reasonable efforts to notify Owners if a Payment has not been made as and when due in accordance with applicable terms for giving of notice under the Conservation Easement. If not cured within the applicable time period set forth in Holder's notice, or if no time period is given, ten (10) days following the date of Holder's notice, Holder may take any action permitted to Holder under Applicable Law, the Conservation Easement or this Covenant.

***Delete Section 3 if not using the mortgage lien. See the commentary and the guide* Legal Considerations for Stewardship Funding Arrangements *for guidance.***

# Mortgage Lien

## Grant of Mortgage Lien

By signing this Covenant and delivering it to Holder, the undersigned Owner or Owners grant and convey to Holder a mortgage upon the Property (the “Mortgage Lien”) as security for the Payments described in Section 2, together with any costs and expenses, including reasonable attorneys' fees and court costs, arising from the failure to make Payments as and when due. This Mortgage Lien is separate from and shall not merge into any other interest or estate of Holder in the Property including, without limitation, its interest as Holder of the Conservation Easement.

## Defeasance

When no Payments, and no obligation to make future Payments, remain outstanding or may arise in the future, Holder shall record in the public records of the county in which the Property is located a document evidencing the satisfaction of this Covenant and the Mortgage Lien and, upon recordation of such satisfaction, neither this Covenant nor the Mortgage Lien shall have any further force and effect. Any release or satisfaction of this Covenant or the Mortgage Lien has no effect whatsoever on the validity, priority or enforceability of the Conservation Easement.

## Priority

### **Subordinate to Conservation Easement.** The Mortgage Lien is subject and subordinate in all respects to the Conservation Easement.

### **Owners’ Election to Subordinate.** The Mortgage Lien may, at the election of Owners, be subordinated to one or more liens on the Property securing, in the aggregate, indebtedness that does not exceed 90% of the fair market value of the Property. The value of the Property is to be established subject to the Conservation Easement by appraisal performed in accordance with Uniform Standards of Professional Appraisal Practice obtained by Owners and delivered to Holder. Owners must reimburse Holder the costs and expenses reasonably incurred by Holder in connection with any requested subordination. This option to subordinate is not available to Owners if and for so long as any violation of the Conservation Easement has occurred and is continuing uncured or any Stewardship Funding Arrangements remain outstanding.

IN WITNESS WHEREOF and INTENDING TO BE LEGALLY BOUND, Owners have signed this instrument, under seal, as of the Closing Date and delivered it to Holder for recording in the public records of the county in which the Property is located.

WITNESS:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal)

 Print Name:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal)

 Print Name:

 [NAME OF HOLDER]

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

 Print Name:

 Print Title:

This document is based on the

**Model Stewardship Funding Covenant** (v. 2012.08.14c)

provided by the Pennsylvania Land Trust Association

and published at [ConservationTools.org](https://conservationtools.org/).

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:

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:

|  |
| --- |
| Certification of Address of Mortgage Holder |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |