

Return Recorded Version to:

Name: [redacted]

Address: [redacted]

Allegheny County Tax Parcel ID No(s):

Commented [A1]: This should be Township official or Township Solicitor.

TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT (hereinafter referred to as this "Agreement") is made as of _____, 20____, (hereinafter referred to as the "Easement Date")

by and between:

[INSERT NAME OF PROPERTY OWNER], a [*insert form and state of corporation or organization*] with its principal office located at [*insert mailing address of principal office*], its agents, successors and assigns (hereinafter referred to as the "Property Owner")

and

THE TOWNSHIP OF MOON, a Second Class Township and political subdivision of the Commonwealth of Pennsylvania situated in Allegheny County, with its offices located at 1000 Beaver Grade Road, Moon Township, Pennsylvania 15108, by and through the Board of Supervisors of the Township, its agents, successors and assigns (hereinafter referred to as the "Holder").

Article 1. Background

1.01 Property.

The Property Owner is the sole owner in fee simple of certain real property specifically described on Exhibit "A" attached hereto and incorporated herein and being the same property which the Property Owner acquired by deed from _____ dated _____ recorded in the Allegheny County Department of Real Estate at Deed Book Volume _____, page ____ (hereinafter referred to as the "Property"). The Property is also described as:

Street address:

Municipality: Moon Township

County Parcel ID No.:

County: Allegheny

State: Pennsylvania

1.02 Trail Easement Area.

The portion of the Property that is subject to this Agreement (the "Trail Easement Area") is shown and identified as the "Easement for Trail Use" on the plan attached hereto and incorporated herein as Exhibit B (hereinafter referred to as the "Easement Plan").

1.03 Purpose.

This Agreement establishes certain easements described in Articles 2 and 3 of this Agreement (which easements are hereinafter collectively referred to as the "Trail Easement"), details rules regarding the Trail Easement, and identifies rights and responsibilities of the Holder and the Property Owner. The Trail Easement is also intended to provide public ingress, egress, and access on, in, over, across, and through the Property for the Ohio River Trail.

1.04 Consideration.

In consideration of the foregoing, and for the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which the Property Owner hereby acknowledges, and intending to be legally bound hereby, the parties agree to the terms and conditions of this Agreement.

Article 2. Grant of Easement for Trail Facilities

2.01 Grant.

The Property Owner grants, bargains, and conveys to Holder a perpetual and permanent easement to: create the Trail identified below; and enter the Trail Easement Area at any time to construct, install, maintain, and repair the items described in paragraph (a) below (hereinafter collectively, with the Trail, referred to as the "Trail Facilities"), and, subject to the prior written consent of the Property Owner, those described in paragraph (b) below.

(a) Permitted Trail Facilities. The following Trail Facilities may be installed within the Trail Easement Area by the Holder:

- (1) A trail not to exceed approximately ____ feet in clear tread width with an improved surface determined by the Holder (herein referred to as the "Trail");
- (2) Signs to mark the Trail, to provide information related to the Trail, and for interpretive purposes;
- (3) Fencing, gates, and barriers to control access; and
- (4) Equipment and materials to construct, install, maintain, and repair the Trail Facilities.

(b) Trail Facilities Requiring Prior Written Consent of Property Owner. The following improvements may be installed within the Trail Easement Area by the Holder with the prior written consent of the Property Owner:

Benches, picnic tables, wastebaskets, and bicycle racks.

2.02 Exercise of Rights.

For purposes of this Agreement, the construction, installation, maintenance, and repair of the Trail may include, but is not limited to: trailblazing; grading; building retaining walls, steps, railings, boardwalks, and bridges; cutting vegetation; application of gravel, crushed stone, wood chips, paving, or other similar surface material; identifying the Trail's path. These activities may include the use of vehicles, equipment and machinery.

Article 3. Grant of Easement for Public Access

3.01 Grant.

The Property Owner grants, bargains, and conveys to Holder the perpetual and permanent easement and right-of-way, over, on, in, across, and through the Trail Easement Area for the purpose of ingress, egress, and regress of pedestrian, bicycle, and similar traffic, with the right to make such available to the public, to use the Trail Facilities for the purposes described in paragraph (a) below and, subject to the prior written consent of the Property Owner, those described in paragraph (b) below:

(a) Permitted Trail Uses. The Trail Easement Area may be used by the Holder and the public (when the Holder opens such to public use) for the following uses: (1) walking, hiking, jogging, bicycling, horseback riding, bird watching, nature study; (2) power-driven mobility devices for use by persons who have mobility impairments; and (3) emergency vehicles in the case of emergency within the Trail Easement Area.

(b) Uses Requiring Prior Written Consent of Owners. The Trail Easement Area may be used by the Holder and the public (when the Holder opens such to public use) with the prior written consent of the Property Owner:
Recreational vehicular use such as snowmobiling; events such as charity runs or competitive races; programmatic use by schools, clubs, or other groups; or 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 4. Temporary Construction Easement

4.01 Grant.

The Property Owner grants, bargains, and conveys to the Holder a temporary easement in, over, upon, and across that portion of the Property identified as the "Temporary Construction Easement" on the Easement Plan attached hereto and incorporated herein as Exhibit "B" for the purpose grading, constructing, and installing improvements and appurtenances for the Trail Facilities, the operation of construction vehicles, equipment, and machinery related thereto, and activities related thereto (hereinafter referred to as the "Temporary Construction Easement").

4.02 Use.

The Property Owner grants the Holder the free and uninterrupted use, liberty, and privilege to use the Temporary Construction Easement for the purpose for which it is conveyed, as provided for in Paragraph 4.01 of this Agreement, together with free ingress, egress, and regress to and for the Holder within the Temporary Construction Easement at all times during the term provided for in Paragraph ____ of this Agreement for the purposes provided for in Paragraph 4.01 of this Agreement.

4.03 Restoration.

After completing construction of the Trail Facilities, the Holder shall restore the Temporary Construction Easement, as nearly as reasonably possible, to the condition in which the Temporary Construction Easement was found prior to the construction of the Trail Facilities. By executing this Agreement, the Property Owner understands and acknowledges that the grade of the land in the Temporary Construction Easement may be modified as part of the work under this Agreement.

4.04 Termination.

The Temporary Construction Easement shall terminate after completion of the Trail Facilities, as certified in writing by the Holder's Engineer.

Article 5. Rights of Property Owner

5.01 Property Owner Improvements.

Property Owner shall not construct, install, or maintain facilities or improvements within the Trail Easement Area or Temporary Construction Easement (during its term) except for the following:

- (a) Existing Items.** Items existing within the Trail Easement Area as of the Easement Date and listed in an attached schedule (if any) entitled "Existing Improvements."
- (b) Potential Items.** Items listed in an attached schedule (if any) entitled "Permitted Other Improvements."

(c) **Fencing.** Fencing along the boundary of the Trail Easement Area not impeding access to the Trail Easement Area for the purposes of such access described in Articles 2, 3 and 4 of this Agreement.

(d) **Other.** Items to which the Holder, without any obligation to do so, gives its consent in writing.

5.02 Property Owner Uses and Activities.

Except as limited under this Article, the Property Owner has all the rights recognized under applicable law to use the Trail Easement Area and the Temporary Construction Easement (during its term) for purposes consistent with and not interfering with the easement rights granted to the Holder under this Agreement. The Property Owner's rights include the following:

(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 Trail Easement Area and the Temporary Construction Easement (during its term).

(b) **Grants to Others.** Grant leases, licenses, easements and rights-of-way affecting the Trail Easement Area and the Temporary Construction Easement (during its term) to Persons other than the Holder but only for those facilities, improvements, activities, and uses permitted to the Property Owner under this Article.

(c) **Enforcement Rights.** Remove or exclude from the Property Persons who are (1) in locations other than the Trail or other Trail Facilities, or (2) not engaged in permitted uses of the Trail Easement Area.

Article 6. Enforcement; Liability Issues

6.01 Enforcement.

The Holder may, in addition to other remedies available at law or in equity, compel Property Owner to make the Trail Easement Area available for the purposes set forth in Articles 2 and 3 of this Agreement, and to make the Temporary Construction Easement (during its term) available for the purposes set forth in Article 5 of this Agreement, by exercising any one or more of the following remedies, without 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; 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 and use rights provided under this Agreement and do such other things as are reasonably necessary to protect and preserve the rights of the Holder under this Agreement.

6.02 Public Enters at Own Risk.

Use of any portion of the Trail Easement Area by members of the general public is at their own risk. By entering into this Agreement, neither the Holder nor the Property Owner assume 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 unsafe conditions within the Trail Easement Area; for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities and/or Trail Easement Area to public access when unsafe conditions may be present. The Holder will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until the Holder receives notice given in

accordance with Article 7 of this Agreement of the need to repair an unreasonably dangerous condition.

6.03 Costs and Expenses.

The Property Owner shall not have any costs or expenses associated with the Trail Facilities, except for items included in Property Owner Responsibility Claims (as defined in Paragraph 6.04 of this Agreement).

6.04 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 Trail Easement Area, or within the Temporary Construction Easement (during its term), after the Easement Date (hereinafter referred to as a "Public Access Claim") is asserted against either the Property Owner or the Holder, or both, it is anticipated that the Property Owner and/or the Holder will assert such defenses (including, but not limited to, immunity under the Pennsylvania Recreational Use of Land and Water Act, 68 P.S. §477-1 *et seq.*, as amended) as are available to them under applicable law. The phrase "Public Access Claim" excludes all claims for Losses and Litigation Expenses arising from, relating to or associated with the following (herein collectively referred to as "Property Owner Responsibility Claims"): (1) personal injury or property damage occurring prior to the Easement Date; (2) activities or uses engaged in by Property Owner, its 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 (3) structures, facilities, and improvements within the Trail Easement Area (other than improvements installed by the Holder).

(b) Indemnity. If immunity from a Public Access Claim is for any reason unavailable to the Property Owner, the Holder agrees to indemnify, defend, and hold the Property Owner harmless from any Loss or Litigation Expense if and to the extent arising from a Public Access Claim, except to the extent such Public Access Claim arises from or the negligence or willful misconduct of the Property Owner, its contractors, agents, employees, tenants, and invitees. The Property Owner agrees to indemnify, defend, and hold the Holder harmless from any Loss or Litigation Expense if and to the extent arising from a Property Owner Responsibility Claim.

(c) Loss; Litigation Expense. As used in this Article:

- (1) 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.
- (2) 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.

(d) Governmental Immunity. This Agreement is subject to the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa.C.S. §8541-8564, as amended, (hereinafter referred to as the "Tort Claims Act") and nothing in this Agreement shall constitute a waiver of governmental immunity by the Holder under applicable law, including but not limited to the Tort Claims Act.

6.05 Pre-Existing Conditions.

Notwithstanding anything to the contrary that may be contained in this Agreement, it is hereby agreed that neither the Holder nor its employees, agents, contractors or representatives shall have liability to the Owner or Owners for discovering or informing the Owner or Owners of the discovery of any pre-existing environmental condition relative to the Property.

Article 7. Miscellaneous

7.01 Binding Agreement.

This Agreement is a servitude running with the land binding upon the Property Owner, and, upon recordation in the Public Records, all subsequent owners of the Property and any portion of the Property subdivided or consolidated therefrom, whether or not such subsequent 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. This Agreement binds and benefits the Property Owner and the Holder and their respective personal representatives, successors, and assigns.

7.02 Governing Law.

This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania without regard to its principals regarding conflicts of law.

7.03 Definition and Interpretation of Capitalized and Other Terms.

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

- (1) "Property Owner" means the Property Owner and all Persons after them who hold an interest in the Property.
- (2) "Person" means an individual, organization, trust, or other entity.
- (3) "Public Records" means the public records of the office for the recording of deeds in and for the county in which the Property is located.
- (4) "Including" means "including, without limitation."
- (5) "May" is permissive and implies no obligation; "must" is obligatory.
- (6) Any words used in the masculine shall include the feminine and neuter.
- (7) Any words used in the singular shall include the plural, and vice versa.
- (8) The Property Owner and the Holder may be collectively referred to as the "parties" and individually as "party".
- (9) The article, section, and paragraph headings in this Agreement are for convenience and reference only, and the words contained in the article, section and paragraph headings shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

7.04 Incorporation by Reference

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

7.05 Amendments; Waivers

This Agreement shall not be amended unless agreed to in writing signed by both parties, and such an amendment to this Agreement must be recorded in the Public Records. No waiver of any provision of this Agreement or consent to any departure by the Property Owner from the terms of this Agreement is effective unless such waiver or consent is in writing and signed by an authorized signatory for the Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given, therefore no

waiver of any provision of or right under this Agreement shall constitute a waiver of any other provision of or right under this Agreement, nor shall any waiver be a continuing waiver.

7.06 Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, such provision shall be fully severable. This Agreement shall be construed and enforced as if such invalid, illegal, or unenforceable provision had never comprised a part of this Agreement.

7.07 Counterparts

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

7.08 Entire Agreement

This is the entire agreement of the Property Owner and the Holder pertaining to the subject matter of this Agreement. The terms of this Agreement supersede in full all statements and writings between the Property Owner and the Holder pertaining to the transaction set forth in this Agreement.

7.09 Notices.

Notice to the Holder under this agreement must be in writing and given by one of the following methods: (1) personal delivery; (2) certified mail, return receipt requested and postage prepaid; or (3) nationally recognized overnight courier, with all fees prepaid, to the following address:

Township Manager
Township of Moon
1000 Beaver Grade Road
Moon Township, PA 15108.

In an emergency, notice may be given by phone (_____) or electronic communication (_____) followed as soon as reasonably possible by one of the methods in the preceding sentence.

7.10 Warranty.

The Property Owner warrants to the Holder that:

- (a) Liens and Subordination.** The Trail Easement Area is, as of the Easement Date, free and clear of all liens or, if it is not, that the Property Owner has obtained and attached to this Agreement as an exhibit the legally binding subordination of any lien affecting the Trail Easement Area as of the Easement Date.
- (b) Existing Agreements.** No one has the legally enforceable right (for example, under a lease, easement, or right-of-way agreement) to prevent the installation or public use of the Trail Facilities.
- (c) Hazardous Materials.** To the best of its knowledge, the Trail Easement Area and Temporary Construction Easement are not contaminated with hazardous or toxic materials, and no such materials have been stored or generated there.

7.11 Recording.

Promptly upon the mutual execution and delivery of this Agreement by the parties hereto, the Holder shall cause this Agreement to be recorded in the Allegheny County Department of Real Estate.

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