

Outlined below is a sample water quality improvement easement agreement. The sample agreement is based on a model agreement developed by the Pennsylvania Land Trust Association.

THIS WATER QUALITY IMPROVEMENT EASEMENT (this "Easement") dated as of _____ (the "Easement Date") is by and between _____ (the "undersigned Owners") and _____ (the "Holder").

ARTICLE I. BACKGROUND

1.01 Property

The undersigned Owners are the sole owners in fee simple of the Property described in Exhibit "A" (the "Property"). The Property is also described as:
Street Address:
Municipality:
County:
Parcel Identifier:

1.02 Project

The undersigned Owners desire Holder to undertake a project (the "Project") to remediate effects of abandoned mine drainage to improve the quality of water passing through or discharging from the Property. The Project is more fully described in Exhibit "B". The facilities to be installed by Holder in connection with the Project are also described in Exhibit "B" (the "Facilities").

1.03 Plan

Attached as Exhibit "C" is a survey or other graphic depiction of the Property (the "Plan") showing the location of an area

("the Treatment Area") within which Holder intends to undertake the Project. The Plan may also show one or more of the following areas: an area (the "Temporary Construction Area") to be used as a staging area during construction of Facilities; an area (the "Access Corridor") to provide ingress and egress to and from the Treatment Area and the public right of way; and an area (the "Utility Corridor") to provide power or other utility services to service Facilities.

ARTICLE II. GRANT OF EASEMENTS

2.01 Grant of Easement: Treatment Area

The undersigned Owners grant to Holder an easement over the Treatment Area for the purpose of installation, construction and replacement (collectively, "Construction") of the Facilities; maintenance and repair of the Facilities; monitoring water quality, and other activities in furtherance of the goals of the Project. This easement may be exercised at any time and from time to time by Holder. Except as otherwise provided in this Easement with respect to notice prior to commencement of the Construction of the Facilities, no notice to Owners is required prior to entry onto the Property pursuant to the rights granted under this Article.

a) Access Corridor

This grant of easement over the Treatment Area includes an easement for pedestrian (and, if reasonably necessary for Project activities, vehicular) access to and from the public right-of-way over the Access Corridor designated on the Plan (if any) or, if no Access Corridor is designated on the Plan, then over a path to be designated in a location reasonably satisfactory to Owners and Holder.

(b) Educational Purposes

Holder is permitted to invite other Persons, accompanied by an authorized representative of Holder, to enter the Property via the Access Corridor and view the Treatment Area and Facilities within the Treatment Area for scientific and educational purposes related to the Project. Holder is permitted to install signage identifying the Project and/or the interest of Holder and Beneficiaries with respect to the Project within the Treatment Area and/or Access Corridor.

2.02 Grant of Easement: Temporary Construction Area

If a Temporary Construction Area is designated on the Plan, the undersigned Owners grant to Holder an easement over the Temporary Construction Area for the purpose of parking vehicles, storage of materials and equipment and other staging activities related to Construction of Facilities permitted under this Article. Upon termination of use of the Temporary Construction Area, Holder must restore and replant the Temporary Construction Area as nearly as possible to its condition prior to entry.

2.03 Grant of Easement: Utility Corridor

If a Utility Corridor is designated on the Plan, the undersigned Owners grant to holder an easement over the Utility Corridor for the purpose of Construction of power lines or other utility facilities reasonably required in connection with the Project.

2.04 Term

The term of the easements granted in this Article is perpetual provided, however, that Holder may terminate Holder's rights to enter the Property under the grant of this Easement

at any time following notice to Owners. Upon notice of termination, Owners and Holder must sign and record in the Public Records a release of this Easement and, upon such recordation, neither Owners nor Holder have any further rights or obligations under this Easement. Unless otherwise agreed in writing by Owners and Holder, Holder has no obligation to remove Facilities at the end of the term of this Easement.

2.05 Beneficiaries

Should Holder fail to complete the Project, the rights of Holder under this Easement may be exercised by Holder, any of the Persons identified below (collectively, the "Beneficiaries") and the respective employees, agents, contractors, successors and assigns of each of them.

- County in which the Property is located
- County conservation district in the county in which the Property is located
- Pennsylvania Department of Environmental Protection

ARTICLE III. OBLIGATIONS

3.01 No Interference

Owners must not interfere or allow any tenant or other person to interfere in any way with the Project or with the exercise of Holder's rights with respect to the easements granted under Article II. The undersigned Owners grant to Holder a right of inspection over the entire Property to determine compliance with the provisions of this Section.

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(a) Prohibited Activities

Without limiting the breadth of the prohibition under this Section, listed below are examples of activities prohibited to the Owners unless the prior written approval of Holder is first obtained:

- (i) Planting or removing vegetation within the Treatment Area.
- (ii) Construction of any kind within the Treatment Area, Access Corridor, Temporary Construction Area or Utility Corridor, if any.
- (iii) Any activity on or about the Property that changes or redirects water resources within or flowing through the Treatment Area such as channelization of a stream or installation or expansion of a well or pond.

(b) Permitted Activities

The Owners are permitted to engage in the following activities:

- (i) Walking, bird watching and hunting.
- (ii) Planting and harvesting crops and other agricultural activities outside the Treatment Area; provided, however, that Holder is not responsible for any damage to such crops by exercise of Holder's rights under this Easement.

3.02 Construction

Holder agrees that, prior to commencement of Construction of the Facilities:

(a) Notice

Holder must notify Owners not less than 30-days prior to commencement of Construction of the Facilities.

(b) Waivers of Liens

Holder must obtain legally binding waivers of mechanics liens from all Persons

furnishing labor or materials in connection with Construction of the Facilities.

(c) Insurance

Holder must obtain certificates evidencing liability insurance coverage with respect to Holder and all Persons entering the Property for the purpose of Construction of the Facilities.

(d) Permits

Holder must obtain, at Holder's cost and expense, all permits and approvals required for the Construction of the Facilities.

(e) Costs

Holder must promptly pay as and when due all costs and expenses incurred in connection with the Construction of the Facilities.

3.03 Indemnity

(a) Scope of Indemnity

Holder must indemnify and defend the Owners against all Losses and Litigation Expenses arising out of or relating to:

- (i) Any breach or violation of this Easement by Holder or other Beneficiary, as the case may be.
- (ii) Damage to property or personal injury (including death) occurring on or about the Property if and to the extent such damage results from the negligent or wrongful acts or omissions of Holder, any Beneficiary or any other Person entering the Property under the grant of easements set forth in Article II.

(b) Defined Terms

(i) The term "Losses" 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.

(ii) The term "Litigation Expenses" 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 Easement including in each case, attorneys' fees, other professionals' fees and disbursements.

3.04 Title

The undersigned Owners represent and warrant to Holder that they are the sole owners in fee simple of the Property and that the Property is unencumbered by any mortgage or other lien securing the payment of money or, if it is, Owners have obtained and delivered to Holder prior to the Easement Date the subordination of any such mortgage or other lien to this Easement.

ARTICLE IV. MISCELLANEOUS

4.01 Notices

(a) Requirements

Each Person giving any notice pursuant to this Agreement must give the notice in writing and must use one of the following methods of delivery:

- (i) Personal delivery.
- (ii) Certified mail, return receipt requested and postage prepaid.
- (iii) Nationally recognized overnight courier, with all fees prepaid.

(b) Address for Notices

Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or

to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

4.02 Governing Law

The internal laws of the Commonwealth of Pennsylvania govern this Easement.

4.03 Successors and Assigns

Holder may not assign its rights under this Easement except to a non-profit organization or governmental entity that assumes the liabilities and obligations of Holder under this Easement. The rights of any Beneficiary of this Easement are not assignable. Subject to the preceding restrictions, this Easement is binding upon Owners, Holder and their respective successors and assigns.

4.04 Severability

If any provision of this Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Easement remain valid, binding and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders

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any provision of this Easement invalid, illegal or unenforceable in any respect.

4.05 Counterparts

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

4.06 Guides to Interpretation

(a) Captions

The descriptive headings of the articles, sections and subsections of this Easement are for convenience only and do not constitute a part of this Easement.

(b) Other Terms

(i) The word "including" means "including but not limited to".

(ii) The word "must" is obligatory; the word "may" is permissive and does not imply an obligation.

(iii) The word "Owners" means the undersigned Owners and all Persons after them who hold any interest in all or any part of the Property.

(iv) The word "Person" means individual, corporation, partnership, trust or other legally recognized entity.

(v) The term "Public Records" means the office for the recording of deeds in and for the county in which the Property is located.

4.07 Entire Agreement

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

4.08 Incorporation by Reference

The following items are incorporated into this Agreement by means of this reference:

- The legal description of the Property attached as Exhibit "A"
- The description of the Project attached as Exhibit "B"
- The Plan attached as Exhibit "C"

4.09 Public Records

This Easement is intended to be recorded in the Public Records at the expense of Holder as a servitude running with the land identified as the Property. This Easement is binding upon Owners and their successors and assigns as owner of the Property whether or not such Owners had actual notice of the terms of this Easement based on model v.

This document is based on the model *Water Quality Improvement Easement (7/15/05 edition)* provided by the Pennsylvania Land Trust Association. This model should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The document must be revised to reflect specific circumstances under the guidance of legal counsel.

INTENDING TO BE LEGALLY BOUND, the undersigned Owners and Holder have signed and delivered this Easement as of the Easement Date.

Witness/Attest:

Print Name:

By: _____

Name:

Title:

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:

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