DISCLAIMER

The document you are about to access is a sample Declaration of Restrictive Covenants for Conservation (Deed Restriction). The language within this document serves as acceptable baseline terms and conditions for purposes of protecting compensatory mitigation areas required by Department of the Army (DA) permits or verifications in the Baltimore District’s area of responsibility within Pennsylvania. The availability of this Conservation Instrument does not constitute legal, accounting, or tax advice. Not all Conservation Instruments, especially those for historic, agricultural, or other conservation purposes, necessarily follow the same format, nor contain the same provisions and should be tailored for their particular purposes. Formally completed Conservation Instruments are intended to be recorded, enforceable, legal instruments. All persons considering the use of this Conservation Instrument for submission with an application for DA authorization should obtain the services of an attorney licensed to practice law in the Commonwealth of Pennsylvania.

MODEL DEED RESTRICTION

FOR COMPENSATORY MITGATION SITES ASSOCIATED WITH DEPARTMENT OF THE ARMY AUTHORIZATIONS IN THE BALTIMORE DISTRICT’S AREA OF RESPONSIBILITY WITHIN PENNSYLVANIA

**DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION**

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION (hereinafter “Declaration”) made this Click here to enter text. day of Click here to enter text., 20Click here to enter text., by ***[NAME OF GRANTING LANDOWNER]*** (hereinafter “Grantor”), with the U.S. Army Corps of Engineers, Baltimore District (Corps) and the Pennsylvania Department of Environmental Protection (PADEP) as Third-Party Beneficiaries (collectively the Third Parties).

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of certain real estate located in Click here to enter text., and being ***[INSERT IF APPLICABLE: a portion of]*** the property conveyed to the Grantor by deed recorded in deed book ***[insert LIBER FOLIO reference here]*** in the land records of Click here to enter text. County, Pennsylvania, consisting of \_\_\_\_ acres, more or less, more particularly described in Exhibit(s) attached hereto and incorporated by reference, hereinafter referred to as the “Property”; and

*[\*\*NOTE TO GRANTOR: The Grantor shall prepare and attach a legal description (i.e. metes and bounds of the Property, and if less than the whole property, also include a separate, clearly identifiable, legal description of the Mitigation Area, all in an exhibit identified as “Exhibit A” to the Declaration. In addition, the Grantor will include an Exhibit B that shall be a surveyed plat of the area subject to the Declaration. The restricted area shall be clearly labeled on the plat as “Mitigation Area” and be clearly identified by cross-hatching and shading. The Grantor shall also include on the drawing the location and extent of all known, pre-existing easements, rights of ways, utilities, drainage ditches, stormwater facilities, cattle crossings, and structures. For each such item that involves on-going or periodic operation and maintenance, a description of all anticipated and authorized maintenance work and the work boundaries for each item shall also be included. If the legal description(s) and drawing(s) can be legibly included on one exhibit, and whereas clause above for this instrument may be written to describe all of these are one exhibit. (i.e., “…more particularly described and shown in Exhibit A, attached hereto…”)*

WHEREAS, for the purpose of compensatory mitigation, the Corps, through its Baltimore District, Regulatory Branch, and the Grantor have agreed that the Grantor would make the \_\_\_\_-acre portion of the Property, hereinafter referred to as the “Mitigation Area”, described in Exhibit A, and depicted in Exhibit B, subject to the conservation-based covenants described in this Declaration as a condition of the attached Department of the Army Permit or verification letter issued for the ***[INSERT PROJECT NAME USED FOR PERMIT APPLICATION HERE AND CORPS PERMIT NUMBER OR VERIFICATION NUMBER***

WHEREAS, the Grantor agrees to the creation of these conservation-based covenants and intends the Mitigation Area shall be properly created, monitored, and then preserved and maintained in a natural condition in perpetuity;

NOW, THEREFORE, in consideration of the mutually-held interests in preservation of the environment, as well as the terms, conditions, and restrictions contained herein, and pursuant to the laws of the Commonwealth of Pennsylvania, Grantor does agree to the following terms and conditions affecting the Mitigation Area described in Exhibit A and depicted in Exhibit B:

1. PURPOSE

The purpose of this Declaration of Restrictive Covenants for Conservation is:

To preserve and protect the native flora, fauna, soils, water table and drainage patterns, aquatic resources, and other environmental values of the established Mitigation Area;

To maintain the natural viewshed of the Mitigation Area in its native, enhanced, scenic and open condition; and in general;

To assure that the established Mitigation Area, including its air space and subsurface, will be retained in perpetuity in its natural condition, as that may be enhanced, as provided herein and to prevent any use of the Mitigation Area that will impair or interfere with its natural resource functions and values. Grantor intends that this Declaration will confine the use of the Mitigation Area to such activities as are consistent with the purpose of this Declaration; and

To prevent any use of the Mitigation Area that threatens to or will impair, interfere with, or otherwise negatively affect its natural resource functions and values.

To accomplish the purpose of this Declaration, the following rights are created in accordance with ***[FOR GOVERNMENT ENTITIES, USE: Pennsylvania Statutes, Title 32, §§ 5051-5059] [FOR ALL OTHER, USE: Pennsylvania law]:***

1. To allow the Grantor, Department of the Army authorization permittee, long-term stewards if established, the Corps and PADEP the right to enter upon the Property to inspect the Mitigation Area at reasonable times to monitor compliance with and otherwise enforce the terms of this Declaration; provided that, except in cases where immediate entry is necessary to prevent, terminate, or mitigate a violation of this Declaration; such entry shall, when practicable, be upon reasonable prior notice to the Grantor or any successor or assign, and Grantor shall not unreasonably interfere with the Grantor’s or its successor’s or assign’s use and quiet enjoyment of the Property in accordance with the terms of this Declaration;
2. To allow the Grantor, the Corps, the U.S. Department of Justice, and the PADEP to enforce the terms of this Declaration by appropriate legal proceedings in accordance with ***[FOR GOVERNMENT ENTITIES, USE: Pennsylvania Statutes, Title 32 §§ 5051-5059] [FOR ALL OTHERS, USE: Pennsylvania law]*** so as to prevent any activity on or use of the Property that is inconsistent with the purpose of this Declaration and to require the restoration of such areas or features of the Mitigation Area that may be damaged by any inconsistent activity or use; and
3. To allow the Grantor, or their authorized representatives, to enter upon the Property and its Mitigation Area at reasonable times, upon prior notice to the property owner; and upon prior notice and written approval by the Corps and PADEP to take any appropriate environmental or conservation management measures consistent with the terms and purposes of this Declaration, including:
4. Planting of regionally native vegetation (i.e. trees, shrubs, grasses and forbs); or
5. Restoring, altering or maintaining: the topography; hydrology; drainage; structural integrity; streambed; water quantity; water quality; any relevant feature of any stream, wetland, water body, or vegetative buffer within the Mitigation Area.
6. DURATION

This Declaration shall remain in effect in perpetuity, shall run with the land regardless of ownership or use, and is binding upon all subsequent declarants, their heirs, executors, administrators, successors, representatives, devisees, and assigns, as the case may be, as long as said party or parties shall have any interest in any part of the Mitigation Area. This Declaration is intended to survive foreclosure, bankruptcy, condemnation, or judgments affecting the Property. Should the Property be transferred, sold, or conveyed, be subject to foreclosure or bankruptcy, or transferred by any other means whatsoever, the Grantor shall immediately notify the Third Parties in writing.

1. PERMITTED USES

This Declaration will not prevent the Grantor; subsequent property owner(s); and the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner from making use of the area(s) that are not expressly prohibited herein and are not inconsistent with the purpose of this Declaration.

1. RESTRICTIONS

Any activity in or use of the Mitigation Area inconsistent with the purpose of the Declaration by the Grantor; subsequent property owner(s); and the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner, is prohibited. Without limiting the generality of the foregoing, and except when an approved purpose under 1.C above, or as necessary to accomplish mitigation approved under the aforementioned permit, the following activities and uses are expressly prohibited in, on, over, or under the Mitigation Area, subject to all of the express terms and conditions below:

**A. Structures.** The construction of man-made structures including but not limited to the construction, removal, placement, preservation, maintenance, alteration, or decoration of any buildings, roads, utility lines, billboards, or other advertising. This restriction does not include deer stands, bat boxes, bird nesting boxes, bird feeders, duck blinds, and the placement of signs for safety purposes or boundary demarcation.

**B. Demolition.** The demolition of fencing structures constructed for the purpose of demarcation of the Mitigation Area or for public safety.

**C. Soils.** The removal, excavation, disturbance, or dredging of soil, sand, peat, gravel, or aggregate material of any kind; or any change in the topography of the land, including any discharges of dredged or fill material, ditching, extraction, drilling, driving of piles, mining, or excavation of any kind.

**D. Drainage.** The drainage or disturbance of the water level or the water table, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges. All pre-existing or approved project-related drainage/stormwater discharge features should be shown on the accompanying plat map or approved plan and attached to this Declaration.

**E. Waste or Debris.** The storage, dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid, or hazardous waste substance, yard waste, materials, or debris of whatever nature on, in, over, or underground or into surface or ground water, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges.

**F. Non-Native Species.** The planting or introduction of non-native species.

**G. Herbicides, Insecticides and Pesticides.** The use of herbicides, insecticides, or pesticides, or other chemicals, except for as may be necessary to control invasive species that threaten the natural character of the Mitigation Area. State- approved municipal application programs necessary to protect the public health and welfare are not included in this prohibition.

**H. Removal of Vegetation.** The mowing, cutting, pruning, or removal of any kind; disturbance, destruction, or the collection of any trees, shrubs, or other vegetation, except for pruning, cutting or removal for:

1) safety purposes; or

2) control in accordance with accepted scientific forestry management practices for diseased or dead vegetation; or

3) control of non-native species and noxious weeds; or

4) scientific or nature study.

**I. Agricultural Activities.** Unless currently used for agricultural or similarly related purposes, conversion of, or expansion into, any portion of the Mitigation Area for use of agricultural, horticultural, aquacultural, silvicultural, livestock production or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agricultural to silvicultural). ***[NOTE: THE FOLLOWING LANGUAGE SHOULD BE ADDED, AS APPROPRIATE FOR PROJECTS IN DESIGNATED BOG TURTLE COUNTIES: Corps approved management practices, including the introduction of livestock, for the purpose of maintaining bog turtle habitat, are not included in this prohibition.]***

**J.** **Subdivision of Mitigation Area**. Subdivision of real property within the Mitigation Area into multiple parcels.

**K.** **Motor Vehicles.** Recreational use of ATVs, dirt bikes, motorcycles, off-road vehicles, or motor vehicles of any kind is prohibited in theMitigation Area.

**L.** **Non-reporting Permits.** Utilizing a Nationwide Permit, Regional Permit, or State Programmatic General Permit under Section 404 of the Clean Water Act or state general permits under PADEP regulations to impact any aquatic feature on the Mitigation Area that does not require a review by the Corps. Notification shall be required to the Corps and PADEP for the use of any Nationwide Permit, State Programmatic General Permit, or Regional Permit.

**M. Other:** Other acts, uses, excavation, or discharges which adversely affect fish or wildlife habitat or the preservation of lands, waterways, or other aquatic resources within the Mitigation Area.

**N.** Destruction or alteration of the Mitigation Area EXCEPT:

* + 1. Alteration necessary to construct the mitigation sites within the Mitigation Area and associated improvements proposed to be built by ***[Grantor or Permittee, if different]***, its contractors, its successors, and/or assigns, as approved in the mitigation plan approved by the Permit and incorporated into this declaration by reference;
    2. Alteration necessary to ensure the success of the mitigation sites including monitoring, reconstruction, maintenance, or repair of the constructed mitigation sites, as approved by the Corps and PADEP;
    3. Removal of vegetation when approved by the Corps and PADEP and conducted for removal of noxious or invasive plants, or other purposes under H. above.

1. INSPECTION, ENFORCEMENT AND ACCESS RIGHTS

The Corps, and/or the PADEP, and its/their authorized representatives, agents, contractors, and/or designated surety/sureties shall have the right to enter and go upon the Property, to inspect the Mitigation Area, take actions necessary to verify compliance with this Declaration and as determined to be necessary by the Corps and/or PADEP, to complete, monitor, maintain, repair, rehabilitate or restore any or all of the compensatory mitigation to be created on all or any portion of the Mitigation Area. When practicable, and except in cases of emergency, such entry shall be upon prior reasonable notice, preferably at least twenty-four (24) hours in advance, to the property owner. The Grantor grants to the Corps, the U.S. Department of Justice, and/or the PADEP, a discretionary right to enforce this Declaration in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants: provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. Any failure to enforce the provisions of this Declaration shall not be deemed a waiver of any rights created hereunder. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the permit.

1. RECORDING AND EXECUTION BY PARTIES

The Grantor agrees to record this Declaration in the Land Records of the county or counties where the Property is located and provide the Corps with proof of recordation prior to the start of the work authorized by the attached permit. Further, if anticipated activities in the Mitigation Area are agreed upon for future phases of the site, as spelled out in the “Reserved Rights”, the Grantor must submit plans to the Corps and PADEP for review and approval prior to any work in the Mitigation Area.

1. NOTICE OF TRANSFER OF PROPERTY INTERESTS
2. The Corps and PADEP shall be provided with a 60-day advance written notice of any legal action concerning this Declaration or of any action to extinguish, void, or modify this Declaration in whole or in part. No transfer of the rights of this Declaration, or of any other property interests pertaining to the Mitigation Area or the underlying property it occupies shall occur without sixty (60) calendar days prior written notice to the PADEP and the Corps.
3. Grantor(s) shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property and/or Mitigation Area (failure to comply with this paragraph does not impair the validity or enforceability of this Declaration):

NOTICE: This property Subject to Declaration of Restrictive Covenants Recorded at [INSERT BOOK AND PAGE REFERENCES, COUNTY(IES), AND DATE OF RECORDING].

1. MODIFICATIONS

The restrictions contained in this Declaration are required by the attached Department of the Army Permit or verification letter for authorized use of said permit. There shall be no changes or alterations to the provisions in this Declaration without prior written approval from the appropriate District Commander of the Corps, after 60 days advance written notice to the Corps and PADEP. The recorded document, as modified, shall be consistent with the Third Parties’ model site protection instrument at the time of amendment. Mitigation for amendment impacts will be required pursuant to the Corps’ mitigation policies at the time of amendment.

1. NOTICE TO GOVERNMENT

Any permit application, or request for certification or modification, which may affect the Mitigation Area, made to any governmental entity with authority over wetlands or other waters of the United States and/or waters of the State, shall expressly reference and include a copy (with the recording stamp) of this Declaration.

1. RESERVED RIGHTS

This Declaration will not prevent the Grantor, or any subsequent owner of the Property, from making use of the area(s) outside of the Mitigation Area or from uses that are consistent with the purposes of this Declaration including, but not limited to the following:

A. Existing Agreements. Uses that Grantor is required to allow under valid, existing, recorded agreements are permitted, to the extent they do not interfere with, threaten, or degrade the Mitigation Area and only to the extent they are consistent with the purposes of this Declaration. The Grantor and any holders of easements or other property rights for the operation and maintenance of pre-existing or project-related structures or infrastructure such as roads, utilities, drainage ditches, or stormwater facilities that are present on, over or under the Mitigation Area reserve the right, within the terms and conditions of their permits, their agreements, and the law, to continue with such operation and maintenance. All pre-existing or approved project- related structures or infrastructure shall be shown on the accompanying plat map or approved plan and attached to this instrument.

B. If the authorized project requires any related or unanticipated infrastructure modifications, utility relocation, drainage ditches, or stormwater controls within the identified Mitigation Area, or if situations require measures to remove threats to life or property within the identified Mitigation Area, said activities must be approved in writing by the Corps subject to terms and conditions set forth in the written approval. Approval is subject to the Corps' sole discretion. If approved, said activities must be identified on amended Exhibits A and B and must be recorded and specifically noted as an "amendment" and copies of the recorded amended Exhibits must be provided to the Corps and PADEP within 60 days of Corps approval. Approval of said activity by the Corps is in addition to any Clean Water Act, Section 404 permit, or other authorization, which may be required in order to legally implement said activity. The Grantor accepts the obligation to place any other responsible party on reasonable prior notice of their need to request such Corps approval.

1. SEVERABILITY

If any portion of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or application of such provision to persons or circumstances other that those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

***[THE FOLLOWING PARAGRAPH SHOULD BE INCLUDED ONLY WHEN APPLICABLE.]***

***[IF GRANTOR HAS A MORTGAGE OR OTHER LEGAL ENCUMBRANCE ON THE PROPERTY, THE DECLARATION MUST INCLUDE A COMPLETED VERSION OF THE FOLLOWING:]***

1. CONSENT OF LENDER AND TRUSTEE

Grantor is the maker of a note dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from the Grantor secured by a deed of trust dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as trustees and either of whom may act, recorded in the Clerk’s office in Deed Book \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_at page \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the benefit of Bank (The “Deed of Trust.”). \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as trustees, join herein for the sole purpose of subordinating the lien, dignity and priority of the Deed of Trust to this Declaration. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Bank joins herein for the sole purpose of consenting to the

1. INACCURATE OR FRAUDULENT INFORMATION

Should an easement, right or lease on or to the Property not shown on the survey or listed in this Declaration and prior in time and recording to this Declaration, or unrecorded, be exercised in such a manner that it conflicts with or voids the prohibited uses of the Property set out in this Declaration, then the Grantor(s) shall be responsible for providing alternative compensatory mitigation in such amounts and of such service and function as the Corps and PADEP or any enforcer of this Declaration shall determine in accordance with the Clean Water Act and/or Pennsylvania Law.

1. MERGER

The doctrine of merger shall not operate to extinguish this [Restrictive Covenant] if the Restrictive Covenant and the Property become vested in the same party. If the doctrine of merger applies to extinguish the Restrictive Covenant then, unless Grantor, Holder, the Corps, and PADEP otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in the restrictive covenant shall be recorded against the Mitigation Area. If replacing with a conservation easement, the Grantor may suggest a new conservation easement holder and upon approval by the Corps and PADEP, grant a conservation easement protecting the Area.]

1. EMINENT DOMAIN

NOTICE TO PARTIES WITH EMINENT DOMAIN AUTHORITY: Exercise of eminent domain by any party (“Condemning Party”) to take land held as part of a mitigation site under this Declaration may remove restrictions that the Grantor, Grantee, Holder, the Corps or PADEP intend will protect, in perpetuity, the Mitigation Area, and preserve the land serving as compensation of other permitted impacts. Where the Condemning Party: (1) intends to take action(s) that will have impacts on the Mitigation Area, and (2) is required to obtain a Corps or PADEP permit for such impacts, the Corps and PADEP have discretion to increase the Condemning Party’s wetland and/or stream compensation requirements, as part of the permitting process, in order to account for the loss of functions and values. If the Property is taken in whole or in part through eminent domain, the consequential value of the Mitigation Area protected by the Clean Water Act and Pennsylvania Law, including the cost of replacement of the conservation functions, services, and values with other property in the same watershed.

1. COAL RIGHTS NOTICE

The following notice is given to and accepted by Grantor for the purpose and with the intention of compliance with the requirements of the Pennsylvania Conservation and Preservation Easements Act. Nothing herein shall imply the presence or absence of workable coal seams or the severance of coal interests from the Property.

**NOTICE:**

**THIS DECLARATION may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Property.**

IN WITNESS WHEREOF said GRANTOR has executed this Declaration the day and year first above written.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **GRANTOR**: | **GRANTEE**:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | |
|  | | |  | | |
| WITNESS:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | WITNESS:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |

**HOLDER**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESS:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***[COMPANY OR GOVERNMENT ENTITY NAME OF GRANTOR, IF APPLICABLE]***

BY:

***[TITLE OF OFFICER OF GRANTOR ENTITY, OR GRANTOR’S NAME, IF AN INDIVIDUAL]***

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OFClick here to enter text.:

:

On Click here to enter text., before me, a Notary Public for the Commonwealth aforesaid, personally appeared Click here to enter text., who acknowledged himself/herself to be ***[TITLE OF OFFICER OF GRANTOR ENTITY, OR GRANTOR’S NAME, IF AN INDIVIDUAL]***, and that s/he, as ***[USE IF APPLICABLE:*** an officer of***]*** the Grantor, being authorized to do so, executed, in my presence, the foregoing Declaration for the purposes herein contained

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public

My commission expires:

***[SEAL]***

APPROVED AS TO LEGALITY AND FORM

***[ONE OR MORE SIGNATURE BLOCKS HERE FOR THE ATTORNEY FOR THE GRANTOR, AND IF A COMPANY OR GOVERNMENT ENTITY, ANY OTHER NECESSARY OFFICIALS.]***

***NOTE: Some version of the following notarization will accompany the complete, executed, and recorded instrument. The version below is simply one example. Other versions may be used to follow local legal recordation practice, including, for example, but not limited to, those referring only to a Deedbook Volume and Page, or only to a Liber and Folio.]***

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF Click here to enter text.

:

Recorded in the Office for Recording of Deeds in and for aforesaid County, in

Deedbook Click here to enter text., Vol. Click here to enter text., Page Click here to enter text.

Witness my hand and seal of Office

On

RECORDER OF DEEDS GRANTOR

Revised 01 Apr 2022