

This Conservation Easement Template is a standardized document for Mitigation Banks in Maryland. Modifications to this template shall be identified using tracked changes and an explanation for those changes provided in a cover memorandum.

(Template Version Date: 24 Jan 2018)

STATE OF MARYLAND
COUNTY OF _____

CONSERVATION EASEMENT
(Insert Bank Name)

Use this version if the mitigation bank sponsor is the same entity as the Holder of the easement:

THIS CONSERVATION EASEMENT (“Conservation Easement”) is made this _____ day of _____, 20____, by *[insert full legal name of granting landowner]* (“Grantor(s)”) in favor of *[full legal name of holder of conservation easement]* (“Holder”).

Use this version if the mitigation bank sponsor is NOT the holder of the easement:
THIS CONSERVATION EASEMENT made this _____ day of _____, 20____, by *[full legal name of granting landowner]* (the “Grantor”), in favor of *[full legal name of holder of the conservation easement]* (the “Holder”) and *[full legal name of the mitigation bank sponsor]* (the “Bank Sponsor”).

RECITALS

WHEREAS, Grantor(s) *is/are* the fee simple owner(s) of certain real property (“Property” which shall include wetlands, any interest in submerged lands, uplands, associated riparian/littoral rights) located in _____ County, Maryland, more particularly *[describe tract to be preserved, including: 1) acreage, 2) a reference to recorded plat(s), or attach an approved permit drawing or site plan, and 3) any excluded property]* and shown in Exhibit A (i.e., metes and bounds of the Property), and Exhibit B (i.e., a scaled plat of the area subject to the Conservation Easement), and made a part hereof (“Conservation Area”); and

WHEREAS, this Conservation Easement is granted pursuant to the Mitigation Banking Instrument (“MBI”), by and between ___*[insert Bank Sponsor full legal name]* (“Bank Sponsor”), the Grantor and Holder, and intend that the Conservation Area will be used as a mitigation bank to be known as the *[insert Bank Name]*, Department of the Army Action ID *[insert action ID number for the MBI]* approved by the Interagency Review Team (the “IRT”), which consists of the Baltimore District, U.S. Army Corps of Engineers (the “Corps” or “Baltimore District,” to include any successor agency); the U. S. Environmental Protection Agency (“EPA”); the U.S. Fish and Wildlife Service (“USFWS”); the U. S. National Oceanic and Atmospheric Administration (“NOAA”); the Maryland Department of the Environment (“MDE,” to include any successor agency); the Critical Area Commission (“CAC”); the Maryland Historic Trust (“MHT”); and the Maryland Department of Natural Resources (“DNR”); and

WHEREAS, in recognition of the continuing benefit to the Property, and for the protection of waters of the United States and/or the State of Maryland and scenic, resource, environmental, and general property values, the Grantor and Holder have agreed to place certain restrictive covenants on the Property, in order that the Conservation Area shall be retained and maintained in perpetuity predominately in accordance with the vegetative and hydrological conditions described in the performance standards of the MBI for _____ Bank; and

WHEREAS, pursuant to the MBI, the *Bank Sponsor* proposes to create, maintain, and preserve a high quality, self-sustaining natural aquatic system and buffer located on the Conservation Area; and

WHEREAS, under Federal and State law, the Corps has issued Permit No. _____, and MDE has issued Permit No. _____ (collectively, the "Permits"), for impacts to waters of the United States and/or the State of Maryland expected to result from the creation of the self-sustaining natural aquatic system located on the Conservation Area; and

WHEREAS, the MBI requires that this Conservation Easement be executed and recorded in order that the Conservation Area shall remain substantially in its natural condition forever; and

WHEREAS, the Bank Sponsor(s) desire(s) to comply with the conditions of the MBI by imposing this Conservation Easement on a Conservation Area within the Property; and

WHEREAS, the Conservation Area may contain land, functions, values, and services that serve as compensation and mitigation for impacts to waters of the United States and/or waters of the State that were permitted by the Corps and/or MDE; and

WHEREAS, the Corps and MDE are third-party beneficiaries under this Conservation Easement.

NOW THEREFORE, for good and valuable consideration and in consideration of the mutually held interests in enhancement and preservation of the environment, as well as the terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Maryland, Grantor does agree to the following terms and conditions, which shall run with the land and be binding in perpetuity and forever on all heirs, successors, assigns (they are included in the terms, "Grantor," below), lessees, or other occupiers and users.

1. Covenants and Restrictions. Neither the Grantor(s), nor any subsequent owner or owners of the Conservation Area or any portion thereof, shall undertake or cause to be undertaken within or upon the Conservation Area within the Property, as described in (*Recitals and/or the site plan attached*), any of the following:

a. Removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;

b. Changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;

c. Disturbance of the water level or water table by drainage, impoundment, or other means;

d. Dumping, discharging of material, or filling with material, including the driving of piles and placing of obstructions;

e. Grading or removal of material that would alter existing topography;

f. Destruction or removal of plant life that would alter the character of a nontidal wetland, or introduction of exotic species;

g. Agricultural or forestry activities, such as aquaculture, plowing, tillage, cropping, seeding, cultivating, and grazing and raising of livestock, sod production, harvesting for production of food and fiber products. Forestry activities mean planting, cultivating, thinning, harvesting, or any other activity undertaken to use forest resources or to improve their quality or productivity;

h. Use of off-road vehicles and motor vehicles;

i. Destruction or alteration of the Conservation Area EXCEPT:

(i) Alteration necessary to construct the mitigation areas and associated improvements proposed to be built by _____, or its successors, and/or assigns, as approved in the mitigation plan approved by the Permits;

(ii) Alteration necessary to ensure the success of the mitigation areas including monitoring, reconstruction, maintenance, or repair of the constructed mitigation areas, as approved by the Corps and MDE;

(iii) Removal of vegetation when approved by the Corps and MDE and conducted for removal of noxious or invasive plants;

j. Utilizing a non-reporting Nationwide Permit or State Programmatic General Permit under Section 404 of the Clean Water Act or state general permits under MDE regulations to impact any Water of the U.S. on the Property. Notification shall be required to the Corps and MDE for the use of any Nationwide Permit, State Programmatic General Permit, or Regional Permit.

[if reference is made to the Permit, or to a mitigation plan approved by the Permit, all exceptions (including regarding buffer areas) must be specifically spelled out in the Permit or plan; also, additional, specific, exceptions may be listed in this paragraph, e.g., fire or wildlife management plans, boardwalks, etc].

2. Duration and Amendment. The covenants and restrictions listed herein are created pursuant to the Annotated Code of Maryland, Real Property Article § 2-118 and shall run with and bind the Property, and be binding on the Grantor(s), its/their personal representatives, heirs, successors and assigns, unless and until terminated or modified by the Corps, MDE, or other Federal, State, or County agencies which have the legal authority to enforce these covenants and restrictions by regulations, permit, or agreement. The failure of the Corps, MDE, or other such agencies to enforce the provisions of this Conservation Easement shall not be deemed a waiver of any rights created hereunder. After recording, this Conservation Easement may only be amended by a recorded document signed by the Corps, MDE and Grantor(s). The recorded document, as amended, shall be consistent with the Baltimore District and MDE model conservation easements at the time of amendment. Amendment shall be allowed at the discretion of the Corps and MDE, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Mitigation for amendment impacts will be required pursuant to Baltimore District and MDE mitigation policy at the time of amendment. There shall be no obligation to allow an amendment. The Corps and MDE shall be provided with a 60-day advance written notice of any legal action concerning this Conservation Easement or of any action to extinguish, void, or modify this Conservation Easement in whole or in part. This Conservation Easement is intended to survive foreclosure, bankruptcy, condemnation, or judgments affecting the Property.

3. Notice to Government. Any permit application, or request for certification or modification, which may affect the Conservation 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 Conservation Easement.

4. Reserved Rights. It is expressly understood and agreed that this easement does not grant or convey to members of the general public any rights of ownership, entry or use of the Conservation Area. This easement is created solely for the protection of the Property, and for the consideration and values set forth above, and Grantor(s) reserve(s) the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the rights to exclude others and to use the property for all purposes not inconsistent with these restrictive covenants.

5. Monitoring and Maintenance. The Holder, Bank Sponsor, Long-Term Steward (as defined in the MBI), and their authorized agents shall have the right to enter and go upon the lands of Grantor(s) to monitor and manage the Conservation Area to ensure compliance with the Mitigation Site Plan ("Mitigation Site Plan") and Long-Term Management Plan ("Approved Long-Term Management Plan") approved in the MBI. This may include, but is not limited to, completing annual monitoring, controlling invasive species, planting native vegetation, repairing signs/fences, and repairing erosion. The Holder, Corps, MDE, IRT, and its/their authorized agents shall have the right to enter and go upon the lands of Grantor(s) to inspect the Conservation Area, to verify compliance with the Mitigation Site Plan and Approved Long-Term Management Plan.

6. Compliance Inspections. The Holder, Bank Sponsor, Long-Term Steward, Corps, MDE, IRT, and its/their authorized agents shall have the right to enter and go upon the lands of Grantor(s), to inspect the Conservation Area and take actions necessary to verify compliance with these restrictive covenants.

7. Enforcement. The Grantor(s) grant(s) to the Holder, Bank Sponsor, Corps, the U.S. Department of Justice, and/or MDE, a discretionary right to enforce this Conservation Easement in a judicial action against any person(s) or other entity(ies) violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement 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. Nothing herein shall limit the right of the Corps and MDE to modify, suspend, or revoke the Permits.

8. Property Transfers. 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 Conservation Area (failure to comply with this paragraph does not impair the validity or enforceability of this Conservation Easement):

NOTICE: This property Subject to Conservation Easement Recorded at [insert book and page references, county(ies), and date of recording].

Should the Property be transferred, sold, or conveyed, be subject to foreclosure, bankruptcy, or transferred by any other means whatsoever, the Grantor or Bank Sponsor shall immediately notify the Corps in writing..

9. Marking of Property. The perimeter of the Conservation Area shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

[Generally, a surveyed, recorded plat is required; however, at the discretion of the Corps and MDE, an approved permit drawing or site plan attached to this Conservation Easement may suffice]

10. Consent of Lender and Trustee. Grantor(s) is/are the maker(s) of a note dated _____ secured by a deed of trust dated _____ from the Grantor(s) to _____ 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 Conservation Easement.
_____ Bank joins herein for the sole purpose of consenting to the trustee's actions.

11. Recording. The Grantor(s) and Holder agree(s) to record this Conservation Easement in the Land Records of the County and provide the Corps and MDE with proof of recordation within thirty (30) days of recordation. A plat depicting the boundaries of the Conservation Area subject to this Conservation Easement shall be recorded in the deed records office for each county in which the Property is situated prior to the recording of this Conservation Easement. The plat(s) *is/are* recorded at [*include book and page references, county(ies), and date*].

12. Separability Provision. Should any separable part of this Conservation Easement be held contrary to law, the remainder shall continue in full force and effect.

13. Inaccurate or Fraudulent Information. Should an easement, right or lease on or to the Property not shown on the survey or listed in this Conservation Easement and prior in time and recording to this Conservation Easement, or unrecorded, be exercised in such a manner that it conflicts with or voids the prohibited uses of the Property set out in this Conservation Easement, 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 MDE or any enforcer of this Conservation Easement shall determine in accordance with the Clean Water Act and/or the Maryland Nontidal Wetlands Act.

14. Eminent Domain. If the Property is taken in whole or in part through eminent domain, the consequential value of the Conservation Area protected by the Clean Water Act and/or the Maryland Nontidal Wetlands Act is the cost of replacement of the conservation functions, services and values with other property in the same watershed.

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

IN WITNESS WHEREOF, the Grantor(s) *and Holder has/have* duly executed this Conservation Easement the date written above.

IN THE PRESENCE OF:

Grantor(s)

By: _____

[*type name of witness under signature line*]

[*type name of Grantor(s) under signature line*]

Its:

STATE OF MARYLAND
COUNTY OF _____

PERSONALLY appeared before me _____, the undersigned witness, and made oath that he/she saw the within named _____ [, by _____, its _____,] sign, seal and as

his/her/its act and deed, deliver the within named Conservation Easement; and the *he/she* with the other witness named above witnessed the execution thereof.

[type name of Notary Public under signature line]

SWORN to and subscribed before me
This _____ day of _____, 20 ____.

NOTARY PUBLIC FOR
My Commission Expires:

IN THE PRESENCE OF:

Holder

[type name of witness under signature line]

By: _____
[type name of Holder under signature line]

Its:

STATE OF MARYLAND
COUNTY OF

PERSONALLY appeared before me _____, the undersigned witness, and made oath that he/she saw the within named _____ [by _____, its _____] sign, seal and as his/her/its act and deed, deliver the within named Conservation Easement; and that he/she with the other witness named above witnessed the execution thereof.

[type name of Notary Public under signature line]

SWORN to and subscribed before me
This _____ day of _____, 20 ____.

NOTARY PUBLIC FOR
My Commission Expires:

I hereby certify this conservation easement was prepared by or under the supervision of _____, an attorney admitted to practice by the Court of Appeals of Maryland.
