

STATE OF MARYLAND
COUNTY OF _____

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this _____ day of _____, 20____, by _____ (“Declarant(s)”).

RECITALS

WHEREAS, Declarant(s) *is/are* the 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 Declaration), and made a part hereof (“Conservation Area”); and

WHEREAS, Declarant(s) entered into a mitigation banking instrument (the “MBI”) between: the _____ (the “Bank” or the “Bank Sponsor”) and 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 Environmental Protection Agency (“EPA”); the U.S. Fish and Wildlife Service (“USFWS”); the Maryland Department of the Environment (“MDE,” to include any successor agency); and the Maryland Department of Natural Resources (“DNR”); dated _____, 20____; and

WHEREAS, pursuant to the MBI, Declarant proposes to create, maintain, and preserve a self-sustaining natural aquatic system 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 Declaration of Restrictive Covenants (the “Declaration”) be executed and recorded in order that the Conservation Area shall remain substantially in its natural condition forever; and

WHEREAS, the Declarant(s) desire(s) to comply with the conditions of the MBI by imposing this Declaration 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 U.S. and/or waters of the State that were permitted by the Corps and/or MDE; and

WHEREAS, because the Conservation Area may serve as compensation for such above-referenced impacts, the Corps and MDE are third-party beneficiaries under this Declaration.

NOW THEREFORE, Declarant(s) hereby declare(s) that the Conservation Area, and a 25 foot buffer measured outward from the perimeter of the Conservation Area, shall be held, transferred, conveyed, leased, occupied, or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding in perpetuity and forever on all heirs, successors, assigns (they are included in the terms, "Declarant," below), lessees, or other occupiers and users.

1. **Covenants and Restrictions.** Neither the Declarant(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, and/or a 25 foot buffer measured outward from the perimeter of 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 or 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 Declarant(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 Declaration shall not be deemed a waiver of any rights created hereunder. After recording, this Declaration may only be amended by a recorded document signed by the Corps, MDE and Declarant(s). The recorded document, as amended, shall be consistent with the Baltimore District and MDE model conservation restrictions 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 Declaration or of any action to extinguish, void, or modify this Declaration in whole or in part. This Declaration 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 Declaration.

4. Reserved Rights. It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Conservation Area. These restrictive covenants are created solely for the protection of the Property, and for the consideration and values set forth above, and Declarant(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. Compliance Inspections. The Corps, MDE, and its/their authorized agents shall have the right to enter and go upon the lands of Declarant(s), to inspect the Conservation Area and take actions necessary to verify compliance with these restrictive covenants.

6. Enforcement. The Declarant(s) grant(s) to the Corps, the U.S. Department of Justice, and/or MDE, a discretionary right to enforce covenants 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. Nothing herein shall limit the right of the Corps and MDE to modify, suspend, or revoke the Permits.

7. Property Transfers. Declarant(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 Declaration):

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

8. **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 these restrictive covenants may suffice]

9. **Consent of Lender and Trustee.** Declarant(s) is/are the maker(s) of a note dated _____ secured by a deed of trust dated _____ from the Declarant(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 these Deed Restrictions. _____ Bank joins herein for the sole purpose of consenting to the trustee's actions.

10. **Recording.** The Declarant(s) agree(s) to record this Declaration 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 these restrictive covenants shall be recorded in the deed records office for each county in which the Property is situated prior to the recording of these restrictive covenants. The plat(s) is/are recorded at [include book and page references, county(ies), and date].

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

12. **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 owners of the Property 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 Declaration shall determine in accordance with the Clean Water Act and/or the Maryland Nontidal Wetlands Act.

13. **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.

IN WITNESS WHEREOF, the Declarant(s) has/have duly executed this Declaration of Restrictive Covenants the date written above.

IN THE PRESENCE OF:

Declarant(s)

By: _____

[type name of witness under signature line]

[type name of witness under signature line]

[type name of witness under signature line]

Its: [type name of witness under signature line]

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 Declaration of Restrictive Covenants; and the *he/she* with the other witness named above witnessed the execution thereof.

[*type name of witness under signature line*]

SWORN to and subscribed before me

This _____ day of _____, 20__.

NOTARY PUBLIC FOR

My Commission Expires:

IN THE PRESENCE OF:

Trustees/Bank(s)

[*type name of witness under signature line*]

[*type name of witness under signature line*]

By: _____

[*type name of witness under signature line*]

Its: [*type name of witness under signature line*]

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 Declaration of Restrictive Covenants; and that *he/she* with the other witness named above witnessed the execution thereof.

[*type name of witness under signature line*]

SWORN to and subscribed before me

This _____ day of _____, 20____.

NOTARY PUBLIC FOR

My Commission Expires:

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