

DISCLAIMER

NOTE: The document you are about to access is a sample conservation instrument. Although the terms and conditions contained within serve as the baseline terms and conditions for acceptance by the United States Army Corps of Engineers when used in conjunction with an application for authorization to use the Pennsylvania State Programmatic General Permit- 3 (PASPGP-3) for development properties under certain conditions, the availability of this instrument does not constitute legal, accounting, or tax advice. It may or may not serve the needs of any particular potential applicant for a Section 404 permit in Pennsylvania. Not all easements or deed restrictions, especially those for historic, agricultural, or other conservation purposes, necessarily follow the same format, nor contain the same provisions; these 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 instrument, even for submission with an application for authorization under the PASPGP-3, are strongly encouraged to obtain the services of an attorney licensed to practice law in the Commonwealth of Pennsylvania.

MODEL DEED RESTRICTION
FOR THE PENNSYLVANIA STATE PROGRAMMATIC GENERAL PERMIT-3
(PASPGP-3)

DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION (hereinafter "Declaration") made this _____ day of _____, 20____, by *[NAME OF GRANTING LANDOWNER]* (hereinafter "Grantor");

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of certain tracts of land located in

and being *[USE 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 _____ County, Pennsylvania, 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 of the property, and if less than the whole property, also include a separate, clearly identifiable, legal description of the Conservation 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 scaled drawing of the area subject to the Declaration. The restricted area shall be clearly labeled on the plan as "Conservation Area" and be clearly identified by cross-hatching or 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, or 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 all of the legal descriptions and drawing(s) can be legibly included on one exhibit, the whereas clause above for this instrument may be written to describe all of these as one exhibit. (i.e., "...more particularly described and shown in Exhibit A, attached hereto")]*

WHEREAS, the United States Department of the Army, Corps of Engineers, through either its Baltimore, Philadelphia or Pittsburgh District, Regulatory Branch, (hereinafter "USACE"), and the Grantor have agreed that the Grantor would make the portion of the Property hereinafter referred to as the "Conservation Area" subject to the conservation-based covenants described in this Declaration as a condition of the attached Department of the Army Permit issued for the *[INSERT PROJECT NAME USED FOR PERMIT APPLICATION HERE: _____]* project; and

WHEREAS, the Grantor agrees to the creation of these conservation-based covenants and intends that the Conservation Area shall be 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:

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, and other conservation values of the Conservation Area;

To view the Conservation Area in its scenic and open condition; and in general,

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

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 common law]:

A. To allow the Grantor, the USACE or the Pennsylvania Department of Environmental Protection (hereinafter "PADEP") the right to enter upon the Property to inspect the Conservation Area at reasonable times to monitor compliance with and otherwise enforce the terms of this Declaration; provided that, except in cases where Grantor determines that 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 any successor or assign, and Grantor shall not unreasonably interfere with that successor's or assign's use and quiet enjoyment of the Property in accordance with the terms of this Declaration;

B. To allow the Grantor, the USACE or 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 common 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 Conservation Area that may be damaged by any inconsistent activity or use; and

C. To allow the Grantor, or their authorized representatives, to enter upon the Property and its Conservation Area at reasonable times, upon prior notice to the property owner; and upon prior notice and written approval by the USACE to take any appropriate environmental or conservation management measures consistent with the terms and purposes of this Declaration, including:

- 1) planting of native trees, shrubs, grasses and forbs; or
- 2) restoring, altering or maintaining the topography, hydrology, drainage, structural integrity, bed, water quantity, water quality or other relevant feature of any stream, wetland, water body or buffer on the Conservation Area.

2. 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 shall have any interest in any part of the Conservation Area.

3. PERMITTED USES

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

4. RESTRICTIONS

Any activity on or use of the Conservation Area by the property owner and the property owner's personal representatives, heirs, successors, and assigns, inconsistent with the purpose of the Declaration 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 Conservation Area, subject to all of the express terms and conditions below:

- A. **Structures.** The construction of man-made structures on, in, over or above the ground or any water body, 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 Conservation 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 instrument.
- E. **Wastes or Debris.** The storage, dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid or hazardous waste substance, materials or debris of whatever nature on, in, over or under ground 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 insecticides, pesticides, or herbicides or other chemicals, except for as may be necessary to control invasive species that threaten the natural character of the Conservation 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, removal, 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, Livestock & Other Activities.** Unless currently used for these purposes, conversion of, or expansion into, any portion of the Conservation Area for use for 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).

- J. **Other Material Impairment.** Other acts, uses or discharges which adversely affect fish or wildlife habitat or the preservation of lands, wetlands or water areas within the Conservation Area.

5. INSPECTION, ENFORCEMENT & ACCESS RIGHTS

The USACE, the PADEP, and its/their authorized representatives shall have the right to enter and go upon the Property, to inspect the Conservation Area and take actions necessary to verify compliance with this Declaration. When practicable, such entry shall be upon prior reasonable notice to the property owner. The Grantor grants to the USACE, the U.S. Department of Justice, and/or 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. Nothing herein shall limit the right of the USACE to modify, suspend, or revoke the Permit.

6. RECORDING & 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 USACE with proof of recordation prior to the start of the work authorized by the attached permit.

7. NOTICE OF TRANSFER OF PROPERTY INTERESTS

No transfer of the rights of this Declaration, or of any other property interests pertaining to the Conservation Area or the underlying property it occupies shall occur without thirty (30) calendar days prior written notice to the PADEP and the USACE.

8. MODIFICATIONS

The restrictions contained in this Declaration are required by the attached Department of the Army 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 USACE.

9. RESERVED RIGHTS

- A. 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 utilities, drainage ditches, or stormwater facilities that are present on, over or under the Conservation 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 utility relocation, drainage ditches, or stormwater controls within the identified Conservation Area, said activities must be applied for by the Grantor, project proponent, respective utility, or other appropriate party and may be permitted by the USACE.
- C. The Grantor accepts the obligation to place any other responsible party on reasonable prior notice of their need to request such permission.

10. 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 than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

[THE FOLLOWING TWO PARAGRAPHS SHOULD BE INCLUDED ONLY WHEN APPLICABLE.]

[11. MITIGATION

If the work required by a mitigation plan under the Department of Army permit for the authorized project occurs within the Conservation Area, then the Grantor is allowed to construct the mitigation work in accordance with the authorized mitigation plan, a copy of which is incorporated by reference.]

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

[12. CONSENT OF LENDER AND TRUSTEE

Grantor is the maker of a note dated _____ secured by a deed of trust dated _____ from the Grantor 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 Declaration. _____ Bank joins herein for the sole purpose of consenting to the trustee's actions.]

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

***[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 OF _____ :
 :

On _____, before me, a Notary Public for the Commonwealth aforesaid, personally appeared _____, 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 instrument 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 _____ :
 :

Recorded in the Office for Recording of Deeds
in and for aforesaid County, in
Deedbook _____, Vol. _____,
Page _____.

Witness my hand and seal of Office
On _____

RECORDER OF DEEDS

GRANTOR