

STATE OF NEW YORK
COUNTY OF _____

DECLARATION OF
RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this _____ day of _____, 20____, by _____, ("Declarant"), A New York corporation with offices at _____, _____, New York.

RECITALS

WHEREAS, Declarant is the owner in fee of certain real property ("*real property*" includes wetlands, any interest in submerged lands, uplands, associated riparian/littoral rights) (the "Property") comprising _____ acres ± and located in the Town of _____, _____ County, New York. The Property is more particularly described as tax map ID number _____, and is indicated on a plat recorded with the _____ County Clerk at Book _____, Page _____. The Declarant's deed to the Property is recorded at Book _____, page _____; and

WHEREAS, Declarant plans a development on the Property to be known as "_____", which includes discharge of dredged or fill material in a manner authorized by Department of the Army Permit ("DA Permit") number _____ issued on _____, 201_ by the United States Army Corps of Engineers, New York District ("Corps of Engineers", to include any successor agency) in accordance with the federal Clean Water Act, 33 U.S.C. § 1344; and

ALTERNATIVE CLAUSE FOR NATIONWIDE PERMIT

WHEREAS, Declarant plans a development on the Property to be known as "_____", which includes discharge of dredged or fill material in a manner authorized by Department of the Army Nationwide General Permit(s) Number _____ ("DA Permit") in accordance with the federal Clean Water Act, 33 U.S.C. § 1344, authorization number _____ having been verified by letter issued on _____, 201_ by the United States Army Corps of Engineers, New York District ("Corps of Engineers", to include any successor agency); and

WHEREAS, Declarant also seeks to develop the Property in a manner authorized by New York State Department of Environmental Conservation ("NYSDEC", to include any successor agency) Permit number _____ issued on _____, 200_ in accordance with _____ ("NYSDEC Permit"); and

WHEREAS, as a portion of the compensatory mitigation required by the DA Permit and the NYSDEC Permit; in recognition of the continuing benefit to the Property; and for the protection of waters of the United States and scenic, resource, environmental, and general property values; Declarant agrees to place certain Restrictive Covenants on the a portion of the property (the "Restricted Property"), in order that the Restricted Property shall remain substantially in its natural condition forever; and

WHEREAS, the Restricted Property comprises a total of _____ acres of wetlands and adjacent uplands and is shown on the map entitled “ _____ Map”, dated _____ and filed with the plat described above; and

WHEREAS, a metes and bounds description of the Restricted Property is attached to this Declaration as Exhibit “A” and made a part hereof; and a reduced copy of the “ _____ Map” is attached to this Declaration as Exhibit “B” and made a part hereof.

NOW THEREFORE, for good and valuable consideration as set forth above, Declarant hereby declares that the Restricted Property shall be held, occupied, and used, and shall be transferred, conveyed, leased, or otherwise disposed of subject to the following Restrictive Covenants, which shall run with the land and be binding on all heirs, successors, assigns lessees, other occupiers and users (they are included in the term, “Declarant,” below).

PROHIBITIONS

The Declarant shall ensure that these Prohibitions shall run with the Restricted Property in perpetuity, and be binding on the Declarant and its successors, assigns, lessees, and other occupiers and users. These Restrictive Covenants are subject to Declarant’s reserved rights, which follow, and to the requirements of the DA and NYSDEC Permits.

1. **General.** There shall be no future filling, flooding, excavating, mining or drilling; no removal of natural materials; and no alteration of the topography which would materially affect the Restricted Property in any manner, except as authorized by the DA or NYSDEC Permit.
2. **Waters and Wetlands.** In addition to the general restrictions above, within the Restricted Property there shall be no draining, dredging, damming or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, or reducing the reach of waters; and no other discharges or activity requiring a permit under applicable water pollution control laws or regulations, except as authorized by the DA or NYSDEC Permit.
3. **Trees/Vegetation.** On the Restricted Property there shall be no clearing, burning, cutting or destroying of trees or vegetation, except removal or trimming of vegetation hazardous to person or property, or of timber downed or damaged due to natural disaster, or as authorized by the DA or NYSDEC Permit. There shall be no planting or introduction of non-native or exotic species of trees or other vegetation.
4. **Disposal:** There shall be no dumping of trash, waste, garbage or toxic, unsightly, hazardous or offensive material on the Restricted Property.
5. **Uses.** No agricultural, animal grazing, industrial, mining, logging or commercial activity shall be undertaken or allowed on the Restricted Property.
6. **Structures/Utilities.** There shall be no construction, erection, or placement of buildings, billboards, utilities components or any other structures, to include trailers, mobile homes or recreational vehicles, telecommunications towers or antennas, on the Restricted Property.

7. **Roads.** There shall be no construction of roads, trails or walkways on the Restricted Property.
8. **Pest Control.** There shall be no application of pesticides or herbicides to control vegetation on the Restricted Property, without prior written approval of the Corps of Engineers or NYSDEC.
9. **Vehicle Use.** There shall be no driving or use of any mechanical conveyance which may alter or impair the natural contour of the Restricted Property or its natural vegetation, except that motor vehicles may be used in case of emergency, for law-enforcement purposes, or to perform mitigation activity as required by the DA or NYSDEC Permit.
10. **Other Prohibitions.** Any other use of, or activity on, the Restricted Property which is or may become inconsistent with the purposes of this Declaration, the preservation of the Restricted Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

GENERAL CONDITIONS

1. **Other Restrictions.** The Declarant represents and warrants that no restriction of record on the use of the Restricted Property, nor any presently existing future estate or interest in the Restricted Property, nor any lien, obligation, covenant, limitation, lease, mortgage or encumbrance of any kind precludes the imposition of the restrictions, covenants, obligations or agreements of this Declaration, or the maintenance of the Restricted Property in accordance herewith.
2. **Existing Conditions.** The Declarant represents and warrants that no structures of any kind, to include roads, trails or walkways, and that no violations of any these Restrictive Covenants exist on the Restricted Property at the time of execution of this Declaration.
3. **Reserved Rights.** The Restrictive Covenants set forth in this Declaration are created solely for the protection of the Restricted Property, and for the consideration and values set forth above, and Declarant reserves the ownership of the fee simple estate upon the Restricted Property and all rights appertaining thereto, including the right to engage in all acts or uses not prohibited by this Declaration and not inconsistent with the conservation purposes hereof. It is expressly understood and agreed that the terms of this Declaration do not grant or convey to members of the general public any rights of ownership, entry or use of the Restricted Property.
4. **Marking.** The Declarant shall mark the limits of the Restricted Property in a manner approved by the Corps of Engineers, and shall maintain the marking in place so as to notify the public that the Restricted Property is an area preserved for conservation purposes.
5. **Recording.** The Declarant shall record this Declaration in the records of the _____ County Clerk, shall insure that this Declaration is indexed against the Restricted Property, and shall provide the Corps of Engineers with a copy of this Declaration, as filed, within 45 days of execution hereof.
6. **Compliance Inspections.** The Corps of Engineers, NYSDEC and their authorized agents shall have the right to enter and go upon the lands of Declarant to inspect the Restricted Property and take actions necessary to verify compliance with the Restrictive Covenants set forth in this Declaration.
7. **Enforcement.** This Declaration is required as a condition of the DA Permit identified above. The Declarant hereby grants to the Corps of Engineers, the U.S. Department of Justice and NYSDEC a discretionary right to enforce the Restrictive Covenants set forth in this Declaration in a judicial action against any person or other entity 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 or criminal penalties or an award of agency attorneys' fees. Nothing herein shall limit the right of the Corps of Engineers or NYSDEC to modify, suspend or revoke their respective Permits.

8. **Notice to Government.** Any permit application or request made to any governmental entity and affecting the Restricted Property shall expressly reference and include a copy (with the recording stamp) of this Declaration.

9. **Notice to Permitting Authorities.** The Declarant (to include any successor Declarant) shall provide at least 60 days' advance notification to the Corps of Engineers and NYSDEC before any action is taken to void or modify this Declaration, including transfer of title to, or establishment of any other legal claims over, the Restricted Property. In the event of intended conveyance of any real property interest in the Restricted Property, the Declarant shall provide with such notification the full names and mailing addresses of all Grantees.

10. **Property Transfers.** Declarant shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property (failure to comply with this paragraph does not impair the validity or enforceability of these Restrictive Covenants):

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

11. **Amendment.** This Declaration may only be amended by a recorded document signed by the Declarant after written approval by the Corps of Engineers and NYSDEC. Any amendment shall be consistent with the Corps of Engineers' model site protection restrictions at the time of amendment. Amendment shall be allowed at the discretion of the Corps of Engineers and NYSDEC, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Mitigation for amendment impacts will be required pursuant to Corps of Engineers and NYSDEC mitigation policy at the time of amendment. There shall be no obligation to allow an amendment.

12. **Severability Provision.** Should any separable part of these Restrictive Covenants be held contrary to law, the remainder shall continue in full force and effect.

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration of Restrictive Covenants on the date written above.

IN THE PRESENCE OF: _____, Declarant

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On this ____ day of _____ in the year _____, before me personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed in the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC
STATE OF NEW YORK