

Prepared by:

Return to:

UPI #:

**DECLARATION OF PROTECTIVE COVENANT
WITH RESPECT TO RIPARIAN BUFFER AREAS**

THIS DECLARATION OF PROTECTIVE COVENANT (hereinafter "Declaration"), made this _____ day of _____ 20 __, by and between _____, (hereinafter the "Declarants"), and Pennsbury Township, Chester County, Pennsylvania, (hereinafter "Municipality").

WITNESSETH

WHEREAS, Declarants are the fee simple owners of a certain tract of land located in Pennsbury Township, Chester County, Pennsylvania, as more particularly set forth in a deed recorded in Book _____, Page _____, et seq. in the office of the Recorder of Deeds in and for Chester County, Pennsylvania (hereinafter "Property"); and

WHEREAS, Declarants have prepared and filed with Pennsbury Township (hereinafter "Township") a Final Subdivision Plan prepared by _____, dated _____, last revised _____, Delineated Project Number _____, (hereinafter "Final Plan"); and

WHEREAS, Declarants' Property has riparian buffer areas as defined in the Township Zoning Ordinance, Section 162-202, as depicted on Sheet _____ of the Final Plan, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the Final Plan depicts and delineates Zone One and Zone Two riparian buffers (hereinafter collectively "Riparian Buffer Zone") as defined by the Township Zoning Ordinance, Section 162-202; and

WHEREAS, Section 162-1503.E(9) of the Zoning Ordinance requires:

All riparian buffers created by a new subdivision shall be maintained through a declaration of protective covenant, which is required to be submitted for approval by the Township. The covenant shall be recorded in the land records and shall run with the land and continue in perpetuity. Management and maintenance requirement information shall be included.

NOW, THEREFORE, in consideration of the mutually held interests and preservation of the environment and the requirements of the aforesaid Zoning Ordinance, more particularly Section 162-1503.E thereof, Declarants do hereby make the following declarations to be a covenant running with the land in perpetuity:

1. **Declaration of Rights and Obligations.** To accomplish the purpose of this Declaration, the following rights and obligations are created by and between Declarants and the Township.

A. The Declarants and/or the Township shall have the right to enter upon the Property to inspect the Riparian Buffer Zone at reasonable times to monitor compliance with and otherwise enforce the terms of this Declaration; provided further that except in cases where Declarants or Township determine an immediate entry is necessary to prevent, terminate or mitigate violation of this Declaration, such entry shall, when practical, be upon reasonable prior notice to the then-owner of the Property or a portion thereof and such entrance shall not unreasonably interfere with such owner's quiet enjoyment of the Property as contemplated by the terms of this Declaration.

B. Declarants or Township shall have the right to enforce the terms of this Declaration by appropriate legal proceedings as hereinafter provided and in accordance with the applicable statutes,

ordinances, or regulations, including but not limited to the Conservation and Preservation Easements Act, 32 P.S. §§ 5051-5059, to prevent such activity or use of the Property as contrary to the rights or obligations of this Declaration and the permitted uses as set forth hereinafter.

C. Declarants, their successors and assigns or duly authorized agents, servants, and employees, shall have the right to enter the Property and, more particularly, the Riparian Buffer Zone, upon notice to and written approval of the Township, which approval shall not be unreasonably withheld, to take environmental and conservation management measures, including:

- (1) The planting of native trees, shrubs, and grasses.
- (2) Restoring, altering, or maintaining the topography, hydrology, drainage, structural integrity and management of any stream, wetland, water body or Riparian Buffer Zone.
- (3) To maintain, renew or replace structures (including drives and parking areas), lawn or landscaped areas existing as of the date of this Declaration, if any, as hereinafter provided.

2. **Permitted Uses.** This Declaration shall not prevent the Declarants, their heirs, successors, and assigns, from full use and enjoyment of all such areas of the Property that are not subject to the restrictions as riparian buffer areas as set forth herein.

3. **Restrictions.** Except as otherwise specifically provided by this Declaration, no woodland, vegetation or land disturbance of any kind and no building construction of any kind shall be permitted in the Riparian Buffer Zone. By way of example but not limitation, the following uses are restricted or prohibited, as the case may be, in the Riparian Buffer Zone, as more particularly set forth hereinafter:

A. The following practices and activities are restricted within Zones One and Two of the Riparian Buffer Zone, except with approval by the Township and if required, the Pennsylvania Department of Environmental Protection:

- (1) Clearing of existing vegetation.
- (2) Soil disturbance by grading, stripping or other practices.
- (3) Filling or dumping.

- (4) Use, store or application of pesticides, except for the spot spraying of noxious weeds or non-native species.
- (5) Housing, grazing or other maintenance of livestock.
- (6) Storage or operation of motorized vehicles, except for maintenance or emergency use approved by the Township.
- (7) Clearcutting or grubbing of timber

B. Zone One — With the exception of those uses or activities listed below, no woodland disturbance, land disturbance, grading, filling, building activity or timber harvesting shall be permitted within the Zone One Riparian Buffer:

- (1) Regulated activities permitted by the Commonwealth, Army Corp of Engineers, or other Federal Agency (i.e., permitted stream or wetland crossing).
- (2) Provision for unpaved trail and trail access.
- (3) Selective removal of hazardous or invasive alien vegetative species.
- (4) Vegetation management in accordance with an approved landscape plan or open space management plan.
- (5) A soil conservation project approved by the Chester County Conservation District.
- (6) Removal of hazardous material or septic system, junk material, overhanging trees or diseased trees.

C. Zone Two — Except for the following activities, no more than 20% of the total Zone Two Riparian Buffer on the Property shall be regraded, filled, built upon, or otherwise altered or disturbed:

- (1) Activities permitted in the Zone One Riparian Buffer.
- (2) Timber harvesting, when conducted in compliance with a timber harvesting plan approved in writing by the Township. Clear-cutting or grubbing of timber shall not be permitted with the Zone Two riparian buffer.

D. The following land uses and or activities are designated as potential water pollution hazards and must be set back from any watercourse or water body by the distance indicated below. Where more restrictive, the Zoning Ordinance requirements of the Flood Hazard Overlay District shall apply.

(1) Storage of hazardous substances	150 feet
(2) Above or below ground petroleum storage facilities	150 feet
(3) Drain fields from on-site sewage disposal and treatment system	100 feet
(4) Raised septic systems	250 feet
(5) Solid waste landfills or junkyards	300 feet
(6) Confined animal feedlot operations	250 feet
(7) Subsurface discharges from a wastewater treatment plant	100 feet

E. The areas of the Riparian Buffer Zone may be included in net density calculations for the Property if permitted by the Township Zoning Ordinance.

F. Notwithstanding the provisions of 4.A., B., and C. above, to the extent any structures are existing as of the date of this Declaration, are depicted on the Final Plan and are within the Riparian Buffer Zone, said structures shall be considered nonconforming uses and structures and shall be regulated in the future by Article XXII of the Pennsbury Township Zoning Ordinance of 2012, as amended.

4. **Township's Remedies.** If the Township determines that Declarants are in violation of the terms of this Declaration or that a violation is threatened, the Township shall give written notice to Declarants of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity prohibited by or inconsistent with the purpose of this Declaration, to restore the portion of the Property so injured. If Declarants fail to cure the violation within sixty (60) days after receipt of notice thereof from the Township, or under circumstances where the violation cannot be reasonably cured within a sixty (60) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Township may bring an action at law or in equity to a court of competent jurisdiction to

enforce the terms of this Declaration, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Declaration of injury to any conservation values protected by this Declaration, including damages for the loss of scenic, aesthetic or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Declarants' liability therefor, Township, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Township, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Township may pursue its remedies under this paragraph without prior notice to Declarants or without waiting for the period provided for cure to expire. Township's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Declaration, and Declarants agree that Township's remedies at law for any violation of the terms of this Declaration are inadequate and that Township shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Township may be entitled, including specific performance of the terms of this Declaration, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Township's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

A. **Costs of Enforcement.** Any costs incurred by Township in enforcing the terms of this Declaration against Declarants, including reasonable costs of suit and attorney's fees and any costs of restoration necessitated by Declarants' violation of the terms of this Declaration shall be borne by Declarants.

B. **No Waiver.** Any forbearance by Township to exercise its rights under this Declaration in the event of any breach of any term of this Declaration by Declarants shall not be deemed or construed to be a waiver by Township of such term or of any subsequent breach of the same or any other term of this Declaration or of any of Township's rights under this Declaration. No delay or omission by Township in

the exercise of any right or remedy upon any breach by Declarants shall impair such right or remedy or be construed as a waiver.

C. **Waiver of Certain Defenses.** Declarants hereby waive any defense of laches, estoppel, or prescription.

D. **Acts Beyond Declarants' Control.** Nothing contained in this Declaration shall be construed to entitle Township to bring any action against Declarants for any injury to or change in the Property resulting from causes beyond Declarants' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Declarants under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such cases.

5. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Declaration.

6. **Costs and Liabilities.** Declarants retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the payment of taxes and maintenance of adequate comprehensive general liability insurance coverage.

Declarants shall keep the portion of the Property subject to this Declaration free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Declarants.

7. **Duration of Declaration.** The covenants and restrictions created by this Declaration shall be a covenant running with the land and shall be perpetual in duration. Every provision of this Declaration applicable to Declarants shall apply to Declarants' heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation, or other entity claiming title under or through Declarants.

8. **Subsequent Transfers.** Declarants agree to incorporate by reference the place, book, and page numbers of the recording of this Declaration in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Declarants further agree to give written notice to Township of the transfer of any interest at least

thirty (30) days prior to the date of such transfer. The failure of Declarants to perform any act required by this paragraph shall not impair the validity of this Declaration or limit its enforceability in any way.

9. **Hold Harmless.** Declarants shall hold harmless, indemnify, and defend Township and its respective Supervisors, Boards, Commissions, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; and (2) the existence or administration of this Declaration.

10. **Applicability.** Every provision of this Declaration applicable to Declarants shall apply to Declarants' heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation, or other entity claiming title under or through Declarants.

11. **Transfer of Obligations.** Notwithstanding the provisions of paragraph 11 above, upon the transfer by the Declarants or Declarants' successors and assigns (hereinafter "Transferring Grantor") of their right, title, and interest in the Property to a bona fide grantee (hereinafter "Grantee") of such title and interest, the obligations of such Transferring Grantor pursuant to this Declaration, shall cease and shall become the obligations of such Grantee.

12. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first-class mail, postage prepaid, addressed as follows:

To Declarants:

To Township:
Pennsbury Township
Attention: Township Manager
702 Baltimore Pike
Chadds Ford, PA 19317

13. **Interpretation.** This Declaration shall be interpreted under the laws of the Commonwealth of Pennsylvania. For purposes of interpretation, no party to this Declaration shall be considered to be the drafter of the Declaration. All provisions of this Declaration are intended, and shall be interpreted, to effectuate the intent and purpose of the Board of Supervisors of the Township as expressed in Article XV of the Pennsbury Township Zoning Ordinance of 2012, as amended, and restated.

IN WITNESS WHEREOF, the Declarants have executed this Declaration the day and year first above written.

Declarant Signature

Municipality Signature

WITNESS the following signatures and seals:

I. PENNSBURY TOWNSHIP

(SEAL)

For the Municipality

ATTEST:

_____ (City, Borough, Township)

County of _____, Pennsylvania

I, _____, a Notary Public in and for the County and State aforesaid, whose commission expires on the _____ day of _____, 20____, do hereby certify that _____ whose name(s) is/are signed to the foregoing Agreement bearing date of the _____ day of _____, 20____, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS _____ day of _____, 20____.

NOTARY PUBLIC

(SEAL)

II. DECLARANT

(SEAL)

Land Owner

ATTEST:

_____ (City, Borough, Township)

County of _____, Pennsylvania

I, _____, a Notary Public in and for the County and State aforesaid, whose commission expires on the _____ day of _____, 20____, do hereby certify that _____ whose name(s) is/are signed to the foregoing Agreement bearing date of the _____ day of _____, 20____, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS _____ day of _____, 20____.

NOTARY PUBLIC

(SEAL)