

Charleston District Restrictive Covenant Model of September 2010

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STATE OF SOUTH CAROLINA

DECLARATION OF
RESTRICTIVE COVENANTS

COUNTY OF _____

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 ("*real property*" includes wetlands, any interest in submerged lands, uplands, associated riparian/littoral rights) located in _____ County, South Carolina, more particularly described as [*describe property to be preserved as XX acres of wetlands and XX acres of upland buffers and attach an approved permit drawing or surveyed plat of the protected property including: 1) acreage, 2) a reference to recorded plat(s), or (see Paragraph 9),*] ("*Property*"); and

WHEREAS, as compensatory mitigation under Federal *and State* law for Department of the Army permit number _____ ("*Permit*") issued by the U.S. Army Corps of Engineers, Charleston District ("*Corps*" or "Charleston District," to include any successor agency), *and certification(s) and/or permit(s) issued by the S.C. Department of Health and Environmental Control ("DHEC," to include any successor agency)*, and in recognition of the continuing benefit to the permitted property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Declarant(s) *has/have* agreed to place certain restrictive covenants on the Property, in order that the Property shall remain substantially in its natural condition forever.

NOW THEREFORE, Declarant(s) hereby declare(s) that the Property 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 on all heirs, successors, assigns (they are included in the term, "Declarant," below), lessees, or other occupiers and users.

1. **Prohibitions.** Declarant(s) *is/are* and shall be prohibited from the following: filling, draining, flooding, dredging, impounding, clearing, burning, cutting or destroying vegetation, cultivating, excavating, erecting, constructing, releasing wastes, or otherwise doing any work on the Property; introducing exotic species into the Property (except biological controls preapproved in writing by the Corps *and DHEC*); and from changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters, and any other discharge or activity requiring a permit under clean water or water pollution control laws and regulations, as amended. The following are expressly excepted from this paragraph: a) cumulatively very small impacts associated with hunting (excluding planting or burning), fishing, and similar recreational or educational activities, consistent with the continuing natural condition of the Property; b) removal or trimming of vegetation hazardous to person or property, or of timber downed or damaged due to natural disaster; c) restoration or mitigation required under law [*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. **Amendment.** After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps *and DHEC* and Declarant. The recorded document, as

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amended, shall be consistent with the Charleston District model conservation restrictions at the time of amendment. Amendment shall be allowed at the discretion of the Corps *and DHEC*, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Compensatory mitigation for any adverse impacts associated with an amendment will be required pursuant to Charleston District mitigation policy at the time of amendment. There shall be no obligation to allow an amendment.

3. **Notice to Government.** Any permit application, or request for certification or modification, which may affect the Property, made to any governmental entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.

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 Property. 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, *DHEC*, and *its/their* authorized agents shall have the right to enter and go upon the lands of Declarant(s), to inspect the Property 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 *DHEC*, a discretionary right to enforce these restrictive 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 to modify, suspend, or revoke the Permit.

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 (failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants):

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 Property shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

[*Paragraph 9 - generally, a surveyed, recorded plat is required; however, at the discretion of the Corps and DHEC, an approved permit drawing or site plan attached to these restrictive covenants may suffice*]

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9. **Recording of Plat.** A plat depicting the boundaries of the Property 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*].

10. **Long-Term Management.** The Declarant is responsible for long-term management activities identified in an approved mitigation plan, dated _____. The required activities include but are not limited to *management activities (invasive species, fire, etc) and the maintenance and/or replacement of structures (fences, ditch plugs, weirs, etc) that are critical to the long-term success of the mitigation activities as described in the approved mitigation plan.*

11. **Separability 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(s) has/have duly executed this Declaration of Restrictive Covenants the date written above.

IN THE PRESENCE OF: Declarant(s)

[type name of witness under signature line] By: _____
[type name of witness under signature line] [type name of individual under signature line]

[type name of witness under signature line] Its: _____
[title of signing individual, where applicable]

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF _____)

I, a Notary Public, do hereby certify that _____ Personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this _____ day of _____, 20_____.

(Signature of Notary Public)

(Typed/Printed name of Notary Public)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____