

This instrument prepared by:
Tennessee Department of Environment and Conservation
Division of Water Resources
Attn: _____
312 Rosa L. Parks Ave., 10th Floor
Nashville, Tennessee 37243

STATE OF TENNESSEE
COUNTY OF _____

NOTICE OF LAND USE RESTRICTIONS
(“[Add Property Name]”)

Notice is hereby given that, pursuant to their respective authorities found at Tennessee Code Annotated (“T.C.A.”) § 68-212-225 and 33 Code of Federal Regulations (“C.F.R.”) § 332.7(a), the Commissioner of the Tennessee Department of Environment and Conservation (“TDEC”) and the _____ District Engineer of the United States Corps of Engineers (“USACE”) determined that land use restrictions are appropriate for the protection of streams and wetlands, or for other environmental conservation purposes, at the below-described property. Pursuant to T.C.A. § 68-212-225(d) the register of deeds shall record this Notice of Land Use Restrictions (“Notice”) and index it in the grantor index under the name of the owner of the property.

WITNESSETH:

WHEREAS, to its actual knowledge, State of Tennessee (“Owner”) is the sole owner in fee simple of approximately _____ acres of real property described in a deed of record with the _____ County, Tennessee Register of Deeds, Book _____, Page _____ [or *Instrument Number*] (“Property”), and as more particularly described in the legal description attached as **Exhibit A** and incorporated herein by reference;

WHEREAS, the Property is shown on a survey drawn by _____ dated _____, attached hereto as **Exhibit B** and incorporated herein by reference;

WHEREAS, the Property possesses natural resources with significant aquatic, ecological and habitat values (“Conservation Values”). These natural resources are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. These values include Waters of the United States, as defined in 40 C.F.R § 122.2 and 33 C.F.R. Part 328, and Waters of the State, as defined in T.C.A. § 69-3-101, *et seq.*, including streams, wetlands and the adjacent uplands, and other native vegetation and wildlife. These natural resources are of great importance to USACE, TDEC and Owner;

WHEREAS, the Property has been approved by USACE for use as compensatory mitigation pursuant to and as defined in 33 C.F.R. Part 332;

WHEREAS, the Property is managed by the *[Insert Department Name and Abbreviation]* on behalf of the Owner; however the *[Insert Department Name and Abbreviation]* is constructing and managing the approved mitigation project on behalf of the Owner;

WHEREAS, the Property is identified as being occupied by, or as being potential habitat for species of native plants and wildlife, which Owner desires to establish, preserve, protect, restore, and enhance;

WHEREAS, on or about _____, the Commissioner of TDEC issued Aquatic Resource Alteration Permit Number _____ (“ARAP”) to _____, incorporated herein by reference;

WHEREAS, on or about _____, the _____ District Engineer of the USACE issued Department of the Army Permit Number _____ (“DA Permit”) pursuant to Section 404 of the Clean Water Act to _____, incorporated herein by reference;

WHEREAS, the ARAP and DA Permit, and any modifications thereto, authorize certain activities which could affect wetlands or other surface waters in or of the State of Tennessee;

WHEREAS, the ARAP and DA Permit and approval of the Property for use as mitigation requires that certain uses of the Property be restricted; and,

WHEREAS, the purpose of this Notice is to ensure that the Property will be retained forever in an open space condition and to prevent any use of the Property that will impair or interfere with the Conservation Values. Owner intends that this Notice (i) will assure that the Property will be used for such activities that are consistent with the purpose of this Notice, and (ii) shall be implemented consistent with the ARAP and DA Permit.

NOW, THEREFORE, in consideration of the foregoing, Owner hereby declares that the Property shall be held, sold, and conveyed subject to the following land use restrictions. Said land use restrictions shall run with the land and shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and to TDEC and USACE and the respective successors and assigns of such parties:

Land Use Restrictions: Any activity on or use of the Property inconsistent with the purpose of this Notice is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited in, on, over, or under the Property.

- 1) **Destruction or Alteration.** There shall be no destruction or alteration of the Property described in this Notice other than those alterations authorized by TDEC under the ARAP and by USACE under the DA Permit.
- 2) **Livestock.** Livestock shall not be permitted to graze, inhabit, or otherwise enter the Property.
- 3) **Uses.** There shall be no commercial or industrial activity undertaken or allowed; nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with commercial or industrial activity.
- 4) **Vegetation.** There shall be no removal, destruction, cutting, or spraying with biocides or other agrichemicals of any vegetation, nor any disturbance or change in the natural habitat in any manner, excepting activities (*e.g.*, invasive species eradication and access road upkeep) that are essential to the maintenance of the Property as a protected natural area. There shall be no planting or introduction of any vegetation, except as described in the ARAP or DA Permit.
- 5) **Topography.** Except as permitted under the ARAP or DA Permit, there shall be no filling, excavating, dredging, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, any dumping of ashes, garbage, or of any other material not required for the Property's maintenance as a protected natural area, nor granting or authorizing surface entry to the Property for any of these purposes, and no changing of the topography of the land in any manner, excepting activities (*e.g.*, wetland restoration, restorative streambank grading) that are essential for the management of the Property as a protected natural area.
- 6) **Building.** There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards, or other structures, or additions or improvements to existing structures, excepting notice signs as required by the ARAP or DA Permit.
- 7) **Roads.** Except as permitted under the ARAP or DA Permit, there shall be no building of new roads or any other rights of way, nor widening of existing roads or rights of way, excepting access routes and trails required for the management of the Property as a natural area.
- 8) **Waters.** Except as permitted under the ARAP or DA Permit, there shall be no draining, ditching, diking, dredging, channelizing, damming, pumping, impounding, water withdrawals, or underground injection wells; no changing the grade or elevation, impairing or diverting the flow or circulation of waters, or reducing the reach of waters; and no other

discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended.

- 9) **Resources.** There shall be no transfer, encumbrance, sale, lease, or other conveyance of the mineral, air or water rights for the Property and any portion thereof separate from the surface rights, changing the place or purpose of use of the water rights, abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including, but not limited to, (i) riparian water rights, (ii) appropriative water rights, (iii) rights to waters secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property, and (iv) any water from wells that exist or may be constructed in the future on the Property.
- 10) **Vehicles.** There shall be no operation of dune buggies, motorcycles, or any recreational all-terrain vehicles, or any other types of motorized vehicles, excepting work vehicles (e.g., tractors, backhoes, work trucks) required to maintain the Property as a protected natural area.
- 11) **Non-Native/Exotic Species.** There shall be no introduction of non-native or exotic species to the Property.
- 12) **Subdivision.** There shall be no legal or de facto division, subdivision, partitioning, or any other division of the Property.
- 13) **General.** There shall be no use of the Property which may adversely affect the purpose of this Notice or that violates or fails to comply with relevant federal, state, or local laws, regulations, or policies applicable to Owner, the Property, or the use or activity in question.

Other Provisions:

- 14) **Entrance and Inspection.** USACE and TDEC shall have the right to enter and inspect the Property and may enforce this Notice by means of a civil action.
- 15) **Enforcement.** Owner grants USACE and TDEC, as third party beneficiaries hereof, a discretionary right to enforce these land use restrictions in a judicial action against any person or other entity violating or attempting to violate these land use restrictions; provided, however, that no violation of these land use restrictions shall result in forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to complete restoration for any violation, as well as any other remedy available under law or equity, such as injunctive relief and

administrative, civil or criminal penalties. No omission or delay in acting by USACE or TDEC shall bar subsequent enforcement rights or constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification. Nothing herein shall limit the right of USACE and TDEC to modify, suspend, or revoke the DA Permit or ARAP, respectively. Nothing herein shall be construed to authorize USACE or TDEC to institute proceedings against the Owner for changes to the Property due to acts of God, natural disasters, or unauthorized acts of third parties outside the control of Owner so long as the compensatory mitigation has been completed and determined by the USACE and TDEC to be successful in accordance with the ARAP and DA Permit.

- 16) **Costs of Ownership.** Owner retains all responsibilities and will bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Owner remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Notice. Owner agrees that neither USACE nor TDEC have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Owner, the public, or any third parties from risks related to conditions on the Property.
- 17) **Filing.** Owner will record or cause this Notice to be recorded in the official land records of the Register of Deeds of _____ County, Tennessee, as soon as practicable after execution of this instrument, and will provide USACE and TDEC a copy of the recorded instrument within thirty (30) days of recordation.
- 18) **Term.** This Notice shall run with and bind the Property in perpetuity unless/until this Notice shall be made less stringent or canceled as set forth under the paragraph entitled "Amendment and Termination."
- 19) **Amendment and Termination.** This Notice may only be waived, amended, modified, or terminated for cause by and upon the agreement of both the Commissioner of TDEC and _____ District Engineer of USACE. No amendment to this Notice shall be effective until such amendment or instrument terminating this Notice is recorded in the Register of Deeds Office for _____ County, Tennessee. Additional compensatory mitigation may be required for impacts resulting from the amendment.

- 20) **Modifications.** *[Insert Department Abbreviation(s)]* must provide sixty (60) days notice to TDEC and USACE prior to any action being taken that serves to void, modify, amend, or terminate this Notice.
- 21) **Severability.** Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
- 22) **Title.** If any enforceable easement, right, interest, or lease on or to the Property, whether or not listed on **Exhibit C** (prepared after a review of the land file held by the Department of General Services, and that held by *[Insert Department Abbreviation(s)]*, and a title search prepared by _____ dated _____), is exercised in such a manner that conflicts with or voids the uses of the Property set out in this Notice, then the *[Insert Department Abbreviation(s)]* will be responsible for providing alternative compensatory mitigation in such amounts and of such resource type and function as USACE and TDEC or any enforcer of this Notice reasonably determines in accordance with the ARAP and DA Permit.
- 23) **Transfer and Assignment.** Owner shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property:

NOTICE: This Property is subject to a Notice of Land Use Restriction dated *[insert date of Declaration]*, recorded in the *[insert County name]* Register of Deeds Office on *[insert date recorded]* in Deed Book *[insert number]*, Page *[insert number]* *[or Instrument Number,]* and enforceable by the Tennessee Department of Environment and Conservation and U.S. Army Corps of Engineers.

Owner shall provide USACE and TDEC with written notice of any transfer sixty (60) days prior to such transfer. The notice shall include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the Property being transferred. The new transferee will provide USACE and TDEC a letter acknowledging the terms and conditions of this Notice. Failure to comply with this paragraph does not impair the validity or enforceability of this Notice.

- 24) **Other Permits.** Any permit application, or request for certification or modification, which may affect the Property, made to any governmental entity with authority over Waters of the United States or Waters of the State, must expressly reference and include a copy, with the recording stamp, of the terms of this Notice.

- 25) **Jurisdictional Waters.** The Property will remain protected even though it may later be determined, through case law decisions or otherwise, not to have jurisdictional Waters of the United States.
- 26) **General Disclaimer.** USACE, including its employees, agents, and assigns disclaim and will not be held responsible for Owner's negligent acts or omissions or Owner's breach of any representation, warranty, covenant, or agreements contained in this Notice, or violations of any federal, state, or local laws, including all environmental laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including court costs) to which USACE may be subject or incur relating to the Property.
- 27) **Notification.** Any notice, request for approval, or other communication required by these land use restrictions shall be sent by registered mail, pre-paid postage, to the following addresses (or such addresses as may be hereinafter specified by notice pursuant to this paragraph):

To Owner: State of Tennessee
Insert name and contact information for agency primarily responsible for managing the property

With copy to:
Insert name and contact information for agency responsible for managing the mitigation project

To USACE: U.S. Army Corps of Engineers
Attn: Regulatory Division Chief

For Nashville District:
3701 Bell Road
Nashville, Tennessee 37214

For Memphis District:
167 North Main, Room B-202
Memphis, Tennessee 38103-1894

To TDEC: TDEC, Division of Water Resources
Attn: Natural Resources Unit
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243

IN WITNESS WHEREOF, *[Insert Department Name(s)]* on behalf of the State of Tennessee has caused this Notice of Land Use Restriction to be executed by its duly authorized representative(s) on this the _____ day of _____, 20__.

[Insert Agency Name Primarily Responsible for Managing the Property]

By: _____

Name: _____

Title: _____

STATE OF TENNESSEE
COUNTY OF _____

Personally appeared before me, the undersigned Notary Public having authority within the aforesaid State, _____ *[Insert Name]*, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he/she executed the within instrument for the purposes therein contained, and who further acknowledged that he/she is the _____ *[Insert Title]* of the _____ *[Insert Department Name]*.

WITNESS my hand, at office, this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

[Insert Agency Name Responsible for the Mitigation Project]

By: _____

Name: _____

Title: _____

STATE OF TENNESSEE
COUNTY OF _____

Personally appeared before me, the undersigned Notary Public having authority within the aforesaid State, _____ *[Insert Name]*, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he/she executed the within instrument for the purposes therein contained, and who further acknowledged that he/she is the _____ *[Insert Title]* of the _____ *[Insert Department Name]*.

WITNESS my hand, at office, this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

Acknowledged By:

Tennessee Department of General Services

By: _____

Name: _____

Title: _____

Exhibits should be on separate pages attached to this document.

EXHIBIT A – LEGAL DESCRIPTION

EXHIBIT B – SURVEY OF PROPERTY

EXHIBIT C – TITLE ENCUMBRANCES