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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

The Conservation Fund, a Non-Profit Corporation

County of Chester

Unofficial Copy

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

(Strawbridge II, Phase 3)

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is executed this 6th day of February, 2020, to be effective this 2nd day of March, 2020, by THE CONSERVATION FUND, A NON-PROFIT CORPORATION, a Maryland corporation having its principal office at 1655 North Fort Myer Drive, Suite 1300, Arlington, Virginia 22209 (the "Declarant"), and the COUNTY OF CHESTER, a Pennsylvania county of the third class, having its principal office at 313 West Market Street, West Chester, PA 19380 (the "County").

BACKGROUND

WHEREAS, counties are authorized to acquire interests in real property to protect and conserve natural or scenic resources, to protect scenic areas, to preserve sites of historic, geologic or botanic interest, to promote sound, cohesive and efficient land development by preserving open spaces between communities, and for purposes consistent with the terms of the Pennsylvania Open Space Lands Act, Pa. Stat. Ann. Title 32, Section 5001 *et seq*; and

WHEREAS, Declarant represents and warrants that it is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation and protection of land in its natural condition; and

WHEREAS, the Commissioners of Chester County have designated funds under the Chester County Preservation Partnership Program (the "Preservation Partnership Program") to promote the health, safety and public welfare of the citizens of Chester County by providing grants to eligible conservancies and municipalities for the acquisition and preservation of significant natural resources ("County Conservation Purposes"); and

WHEREAS, pursuant to the guidelines and criteria of the Preservation Partnership Program, Declarant received a grant from the Preservation Partnership Program (the "Grant") to assist it in acquiring a fee simple interest to preserve the conservation values of the Property (as defined below); and

WHEREAS, the Property possesses significant natural, scenic, open space, historical, educational, and/or recreational values (collectively, "Conservation Values") of great importance to Declarant, the people of Chester County, and the people of the Commonwealth of Pennsylvania, the preservation and conservation of which will yield significant public benefit; and

WHEREAS, the specific Conservation Values of the Property are documented in the "Phase I Environmental Site Assessment" prepared by Ten Bears Environmental Associates Company, dated July 2017, and updated by Ten Bears Environmental on July 2, 2018, and updated again on _____, 2020; and the "ALTA/NSPS Land Title Survey for the Strawbridge Phase II Property situated in New London, Franklin and Elk Townships, Chester County, Pennsylvania" prepared by Transition Engineering Surveying, dated September 26, 2017, both on file at the offices of the Declarant and incorporated herein by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of the Declarant's purchase of the Property and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Declaration; and

WHEREAS, by deed dated on or about the effective date of this Declaration, and intended to be recorded in the Office of the Recorder of Deeds of Chester County, Pennsylvania (the "Recorder's Office"), Declarant acquired the Property; and

WHEREAS, Declarant desires to transfer the Property to the Commonwealth of Pennsylvania, as indicated in Declarant's application for grant funding under the Preservation Partnership Program; and

WHEREAS, Declarant desires to execute this Declaration to ensure preservation of the Conservation Values of the Property.

NOW THEREFORE, intending to be legally bound hereby, Declarant hereby declares that the Property shall be utilized perpetually for Open Space Purposes only (as defined at Article II, below), subject to further restrictions of use more particularly described below in Article III. The Property shall be subject to the restrictions set forth in this Declaration which are for the purpose of insuring a continuous use of the Property for the purposes indicated and which restrictions or covenants shall run with the Property.

ARTICLE I - DEFINITIONS

The following words and terms which are used in this Declaration shall have the following meanings:

A. "Commonwealth of Pennsylvania" refers to the Commonwealth of Pennsylvania and its agencies, departments, boards, and commissions, including but not limited to the Department of Conservation and Natural Resources ("DCNR").

B. "Property" shall mean that certain tract of ground situate in Elk Township, Chester County, Pennsylvania containing collectively 337.3709 acres of land more or less more particularly described in the legal description prepared by Transition Engineering Surveying dated September 26, 2017, attached hereto as Exhibit "A," and identified as Chester County uniform parcel identifier numbers 70-5-8 .

ARTICLE II – RESTRICTIONS RUNNING TO THE BENEFIT OF THE COUNTY AS REQUIRED UNDER THE PRESERVATION PARTNERSHIP PROGRAM

- A. The use of the Property as defined in this Declaration shall be restricted to open space, agricultural, forestal, park, recreation, natural resource conservation, or public access purposes, including but not limited to such purposes and uses authorized for state park land pursuant to the Conservation and Natural Resources Act, 71 P.S. Section 1340.101-1103, as amended from time to time (all such authorized purposes and uses, the “Open Space Purposes”).
- B. Specifically prohibited are:
- (i) The disposal on or under the Property of sewage effluent generated off-site, including off-site generated sewage effluent at any stage of treatment or post-treatment using any technology. This prohibition includes, but is not limited to, spray or drip irrigation;
 - (ii) Cellular towers;
 - (iii) The conveyance of surface or groundwater resources from the Property for commercial or consumptive purposes (including public or private companies or authorities); and
 - (iv) The placement on site of any composting materials, waste products, or any other similar items that are generated off site, for any reason including disposal or processing.

ARTICLE III - DENSITY LIMITATIONS

The Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Declaration for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Declaration shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

ARTICLE IV - NOTICE OF CERTAIN ACTIVITIES

In order to monitor compliance with the Open Space Purposes, Declarant and its successors and assigns as owner of all or a portion of the Property (including, without limitation DCNR) (hereafter an “Owner”), shall notify (hereafter “Owner’s Notice”) the County, in writing, no less than sixty (60) days prior to undertaking any activities that would reasonably be expected to materially alter the Property. Such activities may include, for example, construction of public access improvements or vegetation management activities that would affect a significant portion of the Property. Owner’s Notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to enable the County to make informed judgments as to its consistency with the Open Space Purposes of this Declaration.

ARTICLE V - SUBSEQUENT TRANSFERS

Declarant and each subsequent Owner agree to incorporate the terms 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. Declarant further agrees to give written notice to the County of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Declarant to perform any act required by this paragraph shall not impair the validity of this Declaration or limit its enforceability in any way. The County acknowledges that it has been notified of the intended transfer of the Property by Declarant to DCNR, and that no further notice of such transfer is required. Upon transfer of the Property by an Owner, the Owner shall have no further responsibility or liability for any violations of this Declaration arising subsequent to the date of such transfer, or any responsibility to enforce the provisions of this Declaration.

ARTICLE VI - ENFORCEMENT

A. The County shall have the right and power to enforce this Declaration against the Owner or any person or persons violating or attempting to violate any provision of this Declaration, by any proceedings at law or in equity to restrain violations and/or to recover damages.

B. If the County determines that the Owner is in violation of the terms of this Declaration or that a violation is threatened, the County shall provide written notice to the Owner of such violation and demand corrective actions sufficient to cure the violation, and where the violation involves injury to the Property resulting from any use or activity inconsistent with the permitted uses of this Declaration, to restore that portion of the Property so injured.

C. If the Owner fails to cure the violation within thirty (30) days after the receipt of written notice thereof from the County or, under circumstances where the violation cannot reasonably be cured within a thirty (30) 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, the County may enforce this Declaration pursuant to Article VI, (A), above.

D. Without limiting Owner's liability therefore, the County, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. The County's remedies described in this Article shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

E. In the event a court of competent jurisdiction issues a final, non-appealable order finding that the Owner has failed to materially comply with the terms of this Declaration any costs incurred by the County in so enforcing the terms of this Declaration, including but not limited to court costs, engineering fees, and any costs of restoration necessitated by the Owner's violation of the terms of this Declaration (but excluding any attorneys fees), shall be borne by the Owner.

F. The failure by the County to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

G. Any liability for claims under this Article VI will be determined in accordance with Pennsylvania law. Nothing in this Agreement shall be construed to limit the Commonwealth of Pennsylvania's rights, obligations, claims or defenses that arise as a matter of law or pursuant to

other provisions of this Declaration. Nothing in this Agreement shall be construed to limit the sovereign immunity of the Commonwealth of Pennsylvania.

ARTICLE VII – RELEASE; LIABILITY

A. During its time of ownership, the Owner agrees to retain all responsibilities and shall bear all costs of any kind related to the ownership, operation, upkeep, and maintenance of the Property. The parties acknowledge that the Commonwealth of Pennsylvania is self-insured and does not maintain insurance coverage. Any other Owner shall maintain adequate comprehensive general liability insurance coverage. The Owner shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by such Owner.

B. Declarant and the County agree that liability regarding claims for injury or damages will be determined in accordance with Pennsylvania law. Nothing in this Agreement shall be construed to limit the Commonwealth of Pennsylvania's rights, obligations, claims or defenses that arise as a matter of law or pursuant to other provisions of this Declaration. Nothing in this Agreement shall be construed to limit the sovereign immunity of the Commonwealth of Pennsylvania.

ARTICLE VIII - EXTINGUISHMENT

A. Subject to Article VIII, Paragraph B, below, if circumstances arise in the future such that it is no longer practicable to keep in place the covenants, conditions and restrictions set forth in this Declaration, or the parties otherwise agree to terminate this Declaration, this Declaration may be terminated in accordance with applicable law.

B.

- (i) In the event that the conditions for termination set forth above at Paragraph A have been satisfied, and the Property is to be sold contingent upon the termination of this Declaration, the proceeds of such sale, after payment of all expenses associated with such sale, shall be distributed in the following order: (a) if the Commonwealth of Pennsylvania is then Owner, to the Commonwealth of Pennsylvania until all outstanding sums issued to pay for the Commonwealth's purchase and any subsequent development of the Property have been repaid; then, to extent of any remaining proceeds (b) to the County in an amount that is the greater of \$1,500,000 or 30% of the sale proceeds net of expenses; then, to the extent of any remaining proceeds, (c) to The Conservation Fund, A Non-Profit Corporation, its successor or assigns, in an amount not to exceed the sum of \$3,725,000 or 60% of the sales proceeds net of expenses, whichever is greater (the "Conservation Fund Contribution"); and (d) the remaining balance, if any, to the Owner.
- (ii) Upon distribution of the sale proceeds in accordance with this Paragraph B, and provided all requirements of law related to termination have satisfied, this Declaration shall terminate.
- (iii) The County shall use any Grant repayments received in a manner consistent with the County Conservation Purposes.

- (iv) Notwithstanding the foregoing in the event that this Declaration was terminated prior to such sale, all sales proceeds shall be payable to the Owner. In the event of any sale made subject to this Declaration, all sales proceeds shall be payable to the Owner.
- (v) No payments shall be made to the County or The Conservation Fund, A Non-Profit Corporation pursuant to clause (B)(i) in the event such entity was repaid the original amount of the Grant or the Conservation Fund Contribution, as applicable, prior to the sale of the Property.

C. The parties shall evidence the termination of this Declaration by executing and recording an appropriate termination document.

ARTICLE IX - NOTICE

All notices, requests, consents, approvals, or other communication hereunder shall be in writing and shall be deemed properly given if sent by U.S. certified mail, return receipt requested, addressed to the appropriate party or successor in interest at the address most recently provided or to such other address as either party from time to time shall designate by written notice to the other.

To County: Chester County Preservation Partnership Program
Department of Open Space Preservation
601 Westtown Road, Suite 390
West Chester, PA 19380-0990

To the Declarant: The Conservation Fund, A Non-Profit Corporation
410 Severn Ave, Suite 204
Attn: Jodi O'Day, Vice President
Annapolis, MD 21403

With A Copy To: The Conservation Fund, A Non-Profit Corporation
1655 North Fort Myer Drive, Suite 1300
Arlington, Virginia 22209
Attn: General Counsel

ARTICLE X - MISCELLANEOUS

A. The covenants and restrictions of this Declaration shall run with the land and bind the Property in perpetuity, unless subsequently modified, terminated, or extinguished by written agreement of the parties.

B. Any amendment to this Declaration shall be in writing, signed by the parties and any required Commonwealth signatories, and recorded in the Office of the Recorder of Deeds in and for the County of Chester, Pennsylvania.

C. In the event any Court of competent jurisdiction shall hold any provision of this Declaration invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

D. This Declaration shall forthwith be recorded in the Office of the Recorder of Deeds in and for the County of Chester, Pennsylvania.

E. The Declarant agrees to abide by, where applicable, specifications for the implementation of signage indicating that the acquisition of the Property was supported by a grant from the Chester County Commissioners Marian Moskowitz, Josh Maxwell, and Michelle Kichline, and DCNR.

F. This Declaration shall be binding upon, and accrue to the benefit of, the parties and their respective successors and assigns.

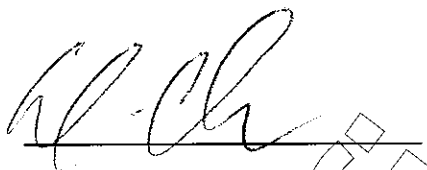
G. Nothing herein shall be construed to restrict DCNR from carrying out their respective legislatively authorized rights, duties and obligations related to the Property.

H. To the extent of any conflict between the terms of this Declaration and the requirements of the Environmental Stewardship and Watershed Protection Act (Act 68 of 1998), 27 Pa.C.S. Section 6101 et seq., the requirements of such Act shall take precedence.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Declarant and the County have executed this Declaration on the day and year first written above.

WITNESS:

THE CONSERVATION FUND, A NON-PROFIT CORPORATION



By:



Jodi R. O'Day
Vice-President & Deputy General Counsel

[Signatures Continue
On Next Page]

WITNESS:

Judith B. Thomas

COUNTY OF CHESTER

By: Brianne L. Zanin
Brianne L. Zanin
Director, Department of Parks and Open Space
Preservation

Unofficial Copy

COMMONWEALTH OF MARYLAND :

: SS

COUNTY OF ANNE ARUNDEL :

On this, the 6th day of February, 2020 before me, the undersigned officer, personally appeared Jodi R. O'Day who acknowledged herself to be the Vice President and Deputy General Counsel of The Conservation Fund a Non-Profit Corporation, and that she as such Vice President being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.


Notary Public

JENNIFER MCNULTY
Notary Public-Maryland
Anne Arundel County
My Commission Expires
September 07, 2020

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CHESTER :

On this, the 10th day of February, 2020 before me, the undersigned officer, personally appeared Brianne L. Zanin who acknowledged herself to be Director of the Chester County Department of Parks and Open Space Preservation, and that she as such and for the purposes therein being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

Susan B. Manwiler

Notary Public

Commonwealth of Pennsylvania - Notary Seal
Susan B. Manwiler, Notary Public
Chester County
My commission expires June 13, 2020
Commission number 1270128
Member, Pennsylvania Association of Notaries

Exhibit A
DESCRIPTION OF THE PROPERTY

Description of premises to be conveyed to The Conservation Fund known as Strawbridge II - Phase 3, as shown on the ALTA/NSPS Land Title Survey prepared by Transition Engineering Surveying dated September 26, 2017, project number 294.02.01, CAD file Strawbridge_Ph2_Base.dwg. Situated in Elk Township, Chester County, Pennsylvania.

Phase 3 (U.P.I. 70-5-8), known as #633 Strickersville Road (Source of Title: Deed Record B, Volume 64, Page 175).

BEGINNING at a point in the bed and title line of Strickersville Road at 33' wide, said point being a common corner for the phase herein being described and Premises B known as #1 Springlawn Road, now or formerly of Delaware Trust Co. and George Strawbridge, et al. (Deed Record B, Volume 64, Page 175) (U.P.I. 70-5-7), said point being in the southerly terminus of a public trail easement at 33' wide, and further located by the title line of said Strickersville Road, S 69° 30' 51" W, 474.02' from a corner of Phase 2 known as #99 Bullock Road (U.P.I. 72-6-4), in the centerline of Big Elk Creek.

THENCE from the said point of beginning, along the title centerlines of said Strickersville Road, the ten (10) following described courses and distances:

1. S 69° 30' 51" W, 194.36' to a point;
2. S 69° 01' 19" W, 760.00' to a point;
3. S 70° 06' 53" W, 300.00' to a point;
4. S 72° 05' 13" W, 320.00' to a point;
5. S 73° 08' 39" W, 191.16' to a point;
6. S 72° 55' 38" W, 168.84' to a point;
7. S 72° 35' 29" W, 343.22' to a point;
8. S 75° 12' 42" W, 791.22' to a point;
9. S 76° 26' 13" W, 1184.83' to a point; and
10. S 81° 13' 25" W, 364.40' to a point (spike set call), a corner for lands known as #112 Schoolhouse Road, now or formerly of Christ S. King and Anna M. King his wife (Deed Book 9034, Page 527) (U.P.I. 70-5-9);

THENCE by the same, the two (2) following described courses and distances:

1. N 10° 41' 43" E, 1765.62' to a point (stone call); and
2. S 86° 25' 52" W, 1539.62' to a point, said point being a common corner for the phase herein being described, said lands known as #112 Schoolhouse Road, lands known as #111 Schoolhouse Road, and Premises A known as #1001 Chesterville Road;

THENCE by the same, the ten (10) following described courses and distances:

1. N 15° 41' 21" E, 376.60' to a point;
2. N 31° 51' 37" E, 412.83' to a point;
3. N 03° 22' 21" E, 233.11' to a point;
4. N 05° 57' 22" W, 258.81' to a point;
5. N 13° 44' 47" E, 271.14' to a point;
6. N 07° 50' 14" W, 297.19' to a point;
7. N 13° 43' 33" W, 367.71' to a point;
8. N 08° 28' 56" E, 281.55' to a point;
9. N 25° 52' 31" E, 296.59' to a point; and
10. N 07° 24' 24" E, 192.19' to a point in line of said Premises B;

THENCE by the same, the forty-three (43) following described courses and distances:

1. S 23° 44' 01" E, 182.64' to a point;
2. S 16° 28' 43" E, 327.85' to a point;
3. S 28° 20' 22" E, 260.11' to a point;
4. S 35° 51' 55" E, 160.89' to a point;
5. along the arc of a circle curving to the left (radius =180.00') (chord =168.56', chord bearing =S 63° 47' 02" E), an arc distance of 175.42' to a point;
6. N 88° 17' 51" E, 110.71' to a point;
7. along the arc of a circle curving to the left (radius =100.00') (chord =77.14', chord bearing =N 65° 36' 41" E), an arc distance of 79.19' to a point;
8. N 42° 55' 32" E, 126.26' to a point;
9. N 69° 30' 06" E, 325.39' to a point;
10. N 59° 32' 16" E, 225.93' to a point;
11. along the arc of a circle curving to the left (radius =215.00') (chord =250.02', chord bearing =N 23° 59' 06" E), an arc distance of 266.82' to a point;
12. along the arc of a circle curving to the right (radius =336.81') (chord =172.60', chord bearing =N 03° 16' 44" E), an arc distance of 174.55' to a point;
13. N 18° 07' 31" E, 185.56' to a point;
14. along the arc of a circle curving to the right (radius =235.00') (chord =275.93', chord bearing =N 54° 04' 35" E), an arc distance of 294.91' to a point;
15. S 89° 58' 22" E, 221.46' to a point;
16. S 89° 55' 31" E, 535.10' to a point;
17. along the arc of a circle curving to the right (radius =150.00') (chord =67.45', chord bearing =S 76° 55' 54" E), an arc distance of 68.03' to a point;
18. S 63° 56' 17" E, 108.82' to a point;
19. S 50° 12' 32" E, 246.80' to a point;
20. along the arc of a circle curving to the right (radius =350.00') (chord =130.71', chord bearing =S 39° 26' 49" E), an arc distance of 131.48' to a point;
21. S 28° 41' 07" E, 356.00' to a point;
22. along the arc of a circle curving to the left (radius =830.00') (chord =129.16', chord bearing =S 33° 08' 52" E), an arc distance of 129.29' to a point;
23. N 90° 00' 00" E, 0.00' to a point;
24. S 37° 36' 37" E, 248.38' to a point;
25. S 10° 26' 17" E, 252.23' to a point;
26. S 54° 42' 00" E, 37.68' to a point;
27. along the arc of a circle curving to the right (radius =425.00') (chord =311.84', chord bearing =S 33° 10' 37" E), an arc distance of 319.30' to a point;

- 28.S 11° 39' 14" E, 109.67' to a point;
- 29.S 05° 11' 35" E, 147.17' to a point;
- 30.S 07° 52' 03" E, 351.37' to a point;
- 31.along the arc of a circle curving to the left (radius =245.00') (chord =237.24',
chord bearing =S 36° 49' 33" E), an arc distance of 247.65' to a point;
- 32.S 65° 47' 03" E, 243.43' to a point;
- 33.along the arc of a circle curving to the left (radius =225.00') (chord =105.31',
chord bearing =S 79° 19' 04" E), an arc distance of 106.29' to a point;
- 34.N 87° 08' 55" E, 85.18' to a point;
- 35.along the arc of a circle curving to the right (radius =350.00') (chord =168.68',
chord bearing =S 78° 54' 28" E), an arc distance of 170.35' to a point;
- 36.S 64° 57' 51" E, 204.61' to a point;
- 37.S 71° 02' 26" E, 182.93' to a point;
- 38.along the arc of a circle curving to the right (radius =425.00') (chord =127.82',
chord bearing =S 62° 23' 32" E), an arc distance of 128.30' to a point;
- 39.S 53° 44' 36" E, 114.99' to a point;
- 40.along the arc of a circle curving to the right (radius =475.00') (chord =233.25',
chord bearing =S 39° 31' 49" E), an arc distance of 235.66' to a point;
- 41.S 25° 19' 02" E, 200.01' to a point;
- 42.along the arc of a circle curving to the right (radius =545.00') (chord =176.07',
chord bearing =S 16° 01' 17" E), an arc distance of 176.84' to a point; and
- 43.S 6° 43' 32" E, 177.09' to a point in the said bed and title line of Strickersville
Road, the first mentioned point and place of beginning;

CONTAINING with said described metes and bounds 337.3709 acres of land, be the same more or less.