

HABITAT CONSERVATION PLAN

FOR THE PROPOSED PLEASANT RIFTS HOUSING DEVELOPMENT DORCHESTER COUNTY, MARYLAND

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September 2008

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1.0 INTRODUCTION AND BACKGROUND

1.1 Purpose and Need

This Habitat Conservation Plan (“HCP”) addresses the subdivision, development and subsequent occupancy of a 29.6-acre property near the Town of Secretary, Dorchester County, Maryland, together with the effects of these activities on the Delmarva fox squirrel (*Sciurus niger cinereus*), a species listed as endangered under the Endangered Species Act of 1973, as amended (“ESA”). The subject property is set within a mosaic of surrounding developed, undeveloped, and agricultural lands and consists of 19.8 acres of forestland (including 1.75 acres of forested wetlands), 7.4 acres of agricultural land, and 2.4 acres of emergent marshland bordering Secretary Creek, which forms the property’s eastern boundary (“Property”). Upon completion of the project, the Property will consist of 13 single-family residential lots, a county road to service the development (Deer Run Drive), various associated infrastructure (e.g., individual, on-site sewage facilities and a storm water management area), and one lot will have a pier on Secretary Creek (collectively the “Project”).

According to the U.S. Fish and Wildlife Service (“USFWS”), the Property represents habitat likely to be occupied by the endangered Delmarva fox squirrel, and the Pleasant Rifts HCP (the “PRHCP”) is needed because the Project is considered likely to “take” fox squirrels in the course of Project construction and subsequent human occupancy and use of the Property (see Section 1.2.1 below). The purpose of the PRHCP is therefore threefold: (1) to establish a program for the conservation and protection of Delmarva fox squirrels and their habitats in the course of proposed Project activities (both short-term and long-term); (2) at the same time, to allow the Project to be undertaken and the resulting 13 residential properties to be developed and used; and (3) to support issuance by the USFWS of an Incidental Take Permit (“ITP”) for the Delmarva fox squirrel pursuant to Section 10(a)(1)(B) of the ESA authorizing take of fox squirrels that may occur over the course of the 50-year permit term.

The PRHCP thus seeks to ensure that the Project is in compliance with the regulatory requirements of the ESA, to provide regulatory coverage and assurances to the current owners of the Property as well as future owners of individual residential lots and community area on the Property, and to balance ESA-related conservation goals with reasonable and lawful land use activities.

1.2 Applicable Law

1.2.1 Federal Endangered Species Act

(1) Federal Endangered Species Act. The Endangered Species Act of 1973, as amended, establishes programs for the conservation of fish, wildlife, and plants that are threatened with extinction and purposes and policies which, among other things, provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved. Generally, the ESA is administered with respect to terrestrial and freshwater fish by the USFWS, and with respect to marine species and anadromous fish by the National Marine Fisheries Service (“NMFS”). The following briefly summarizes ESA provisions that are pertinent to the PRHCP.

(a) *The “Take” Prohibition*. The ESA and federal regulations (50 CFR 17.21 and 17.22) prohibit the “take” of endangered and threatened species of fish and wildlife. Section 3 of the ESA defines “take” to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct.” Federal regulation (50 CFR 17.3) further defines the term “harm” in the take definition to include “significant habitat modification or degradation where it

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actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.” The term “harass” in the definition of take means “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.” Thus, take as defined by the ESA with respect to fish and wildlife can include direct killing or injury, indirect killing or injury as a result of habitat modification (under the “harm” definition), and disruption of essential behavioral patterns (under the “harass” definition).

In the case of the Project, the USFWS anticipates that take of Delmarva fox squirrels may occur through direct injury and mortality (as a result of vehicle strikes), harm (as a result of project-related forest clearing), and harassment (as a result of disturbance) (see Section 4.0).

(b) Section 10/HCPs. During the 1983 ESA reauthorization process, Congress amended section 10(a) of the ESA to provide for the issuance of Incidental Take Permits (or ITPs) with respect to projects occurring on non-federal lands that result in take of listed species. Section 10(a)(1)(B) of the ESA defines incidental take as take that “is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity,” and section 10(a)(2)(A) requires an application for an ITP to include a “conservation plan” detailing, among other things, the impacts of the taking on affected species and how those impacts will be addressed. Such plans have come to be known as Habitat Conservation Plans (or HCPs) and represent the supporting document and biological basis for an ITP. Under Section 10(a)(2)(B) of the Act, to be approved an HCP must be found to, among other criteria, minimize and mitigate the impacts of the taking allowed by the plan to the maximum extent practicable, to provide for adequate funding, and to ensure that the permitted taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

1.2.2 State Law

(1) Maryland Non-game and Endangered Species Conservation Act. Similarly to the federal ESA, Maryland’s Non-game and Endangered Species Conservation Act (“NESCA”) mandates that the Maryland Department of Natural Resources (“MDNR”) maintain a list of species that are in danger of extinction in the state; requires that Maryland State agencies to use their authorities to maintain and enhance non-game wildlife and endangered species populations; and directs the Secretary of MDNR to establish programs to conserve such species. MDNR’s Wildlife and Heritage Service’s Natural Heritage Program (“NHP”) has primary responsibility for implementing and administering NESCA, and, pursuant to the statute, NHP officially recognizes 607 species and subspecies (455 plants and 152 animals) as “endangered,” “threatened,” “in need of conservation,” or “endangered extirpated,” and works to conserve these species through monitoring, habitat conservation, protection and acquisition, and other programs.

(2) Chesapeake Bay “Critical Area” Law. Most of the Property (29.1 acres) occurs within the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program as designated by Maryland’s Chesapeake Bay Protection Act (also known as the “Critical Area Law”). The purpose of the Critical Area Law is to mitigate the damaging impact on Chesapeake Bay of water pollution and loss of natural habitat resulting from adjacent and nearby development, agricultural practices, and forestry activities, while also accommodating future growth in the area. The law defines the “Critical Area” as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. It also establishes three categories of land within the Critical Area—Intensely Developed Areas (IDAs), Limited Developed Areas (LDAs), and Resource Conservation Areas (RCAs)—as well as resource conservation requirements suitable to each such area. The Property is designated LDA.

The primary requirements of the Critical Area Law for development in LDAs and relevant to the Property are: (1) the establishment, preservation, and maintenance of a 100-foot, naturally vegetated, forested buffer between the mean high water line of tidal waters or the edge of tidal wetlands or tributary streams and the developed portions of a property; (2) an upper limit of 30 percent on allowable clearing of forested areas occurring on a project site prior to development; (3) mitigation for the loss of any such forest cleared at specified ratios; and (4) an upper limit of 15 percent of a project site that may consist of "lot coverage" (*e.g.*, structures, asphalt, concrete, tile, and other man-made surfaces).

1.3 Role/Relationships of These Laws under the Plan

The Delmarva fox squirrel is listed as endangered under the ESA and NESCA and is protected by both statutes. Effective June 1, 2008, MDNR is authorized to adopt regulations to implement a state incidental take permit for Delmarva fox squirrels (2008 Md. Laws, Chap. 55). While such regulations have not yet been adopted, the statute requires an applicant for a State ITP to have first "obtained the required federal authorization for the incidental taking of the Delmarva fox squirrel." The ESA, however, as seen above, is the statutory basis for the PRHCP and its effect under the plan is to provide for protections for Delmarva fox squirrels and their habitat on the Property and for protection of off-site habitat in compensation for on-site impacts to the species (*e.g.*, see Sections 5.2 and 5.3, respectively).

One effect of the Critical Area Law is the protection of on-site forest lands. As will be discussed, compliance with the Critical Area Law for this project requires that 13.86 acres of forest be retained on-site. This acreage will be conserved through a declaration of covenants and restrictions that will govern subsequent homeowners' use of the area. Although required under the Critical Areas Law, the nature of these restrictions will also minimize the effect of DFS take resulting from construction and occupancy, and therefore on-site retention of forest lands is appropriately incorporated into the project description and HCP.

2.0 Overview of the PRHCP

The action proposed by the PRHCP consists of the subdivision, residential development, and subsequent occupancy and use of a 29.6-acre property near the Town of Secretary, Dorchester County, on Maryland's "Eastern Shore."¹ Because the USFWS has determined that the Project may cause "take" of the Delmarva fox squirrel, a species listed as endangered under the federal ESA, the purpose of the PRHCP is to address the potential effects of take on the fox squirrel and to support issuance by the USFWS of an ITP for the species with respect to the Project. This section of the HCP describes the Property and the Project, the environmental setting in which they occur, what is included (*i.e.*, "covered") within the regulatory authorities of the proposed PRHCP and ITP, and the proposed permit term.

2.1 Description of the Planning Area

2.1.1 Environmental Setting

(1) General Description. The Property lies along State Route 14 about one-half mile north of its intersection with State Route 16, one mile south (by road) of the Town of Secretary, and one mile east of the Choptank River, a large tributary of Chesapeake Bay (see Map 1). The Warwick River, an east-west flowing tributary of the Choptank lies approximately one mile north of the Property and Secretary Creek, a south-north flowing tributary of the Warwick borders the east side of the Property. Secretary, with a population of about 500, lies at the confluence of the Warwick River and Secretary Creek one-half mile north of the property (line-of-sight); the City of Cambridge, with a population of about 11,000 lies about 10 miles southwest (by road); and Annapolis, the nearest large city, is 40 miles to the northwest across Chesapeake Bay. Immediately surrounding the Property and extending in all directions is a mosaic of inter-mixed developed, undeveloped, agricultural, forested, and other lands, much of which is incised by the numerous inlets and waterways of the Bay. Forestland in the area, which often provides Delmarva fox squirrel habitat (see Map 3 and Section 3.0), occurs in scattered, individual tracts and along river and stream corridors and is often interconnected by agricultural land. The Property thus lies within a highly variegated landscape that is rural in character and significantly influenced by the waters of Chesapeake Bay.

(2) Dorchester County. Dorchester County is one of nine Maryland counties lying east of Chesapeake Bay known collectively as the Eastern Shore, which, together with two Virginia counties to the south (which are also east of the Chesapeake) and the State of Delaware's three counties to the east, make up the Delmarva Peninsula. It is also one of four counties (along with Wicomico, Somerset, and Worcester) making up the "lower" Eastern Shore (which, generally, have less development and agriculture, but more forestland, than the upper Shore counties). Dorchester is the largest of the nine Eastern Shore counties, encompassing about 355,000 acres of land and 71,000 acres of water, and is the most interconnected with Chesapeake Bay; with 1,700 miles of shoreline, including islands, it is almost surrounded by water and much of the southern part of the county consists of tidal wetlands and freshwater marsh. Dorchester County is fifth of the nine counties in the amount of forestland it contains (36%), seventh in the amount of agricultural land (34%), ninth in the amount of developed land (5%), and second in the amount of "other" land such as wetlands and waterways (25%) (Weller and Edwards 2001). In 2000, the population of Dorchester County was reported as 30,674; this was up 1.4 percent from the population reported in 1990 (30,236), while another 3 percent increase is projected by 2010.² Economic activity centers on manufacturing (accounting for 28% of employment) and the agricultural, service, and tourism sectors.

¹ The Property occurs in an area zoned as Suburban Residential and is designated by Dorchester County as Parcel 57 of Tax Map 21, Grid 16.

² Source: Dorchester County Department of Economic Development website.

Map 1: Project Vicinity and Site Map



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Dorchester County is thus the largest and least developed on the Eastern Shore and has a substantial amount of forestland. Its forestlands are changing, however. From 1986 to 1999, for example, the total amount of timberland in the four lower Shore counties (defined as forestland capable of producing commercial crops of wood) declined by 1.1 percent (Frieswyk 2001); while, from 1990 to 1997, forestland overall in these counties declined by 0.46 percent (Weller and Edwards 2001). Also changing are the stand-size classes of lower Shore forests (an indicator of tree size and age) and forest-type groups (an indicator of dominant trees present). Thus, from 1986 to 1999 the amount of forest acreage in saplings and seedlings in the lower Shore counties increased by 10.5 percent, in pole timber acreage decreased by 18.7 percent, and in saw timber acreage increased by 7.2 percent; during the same period, the amount of forest acreage in these counties in the oak/hickory and oak/gum/cypress forest-type groups decreased by 16.1 percent and 23.3 percent, respectively, while acreage in the loblolly/shortleaf pine group increased by 19.9 percent (Frieswyk 2001). These data suggest, in the first case, that forestlands in the four lower Shore counties generally are in a maturing phase (*i.e.*, the trees are getting older and larger); and, in the second case, that pine-dominated forestland to some extent is increasing on the lower Shore and hardwood-dominated forestland is decreasing.

(3) Vegetation and Wildlife. Vegetation on and near the Property is typical of Eastern Shore forests and wetlands and consists of several vegetation types, including upland forest, deciduous forested wetlands, and emergent marshland. Upland forest (both on-site and regionally) consists of hardwood species such as oaks (*Quercus* spp.), maple (*Acer* spp.), sweetgum (*Liquidambar styraciflua*), black gum (*Nyssa sylvatica*), dogwood (*Cornus florida*), American beech (*Fagus grandifolia*), and sycamore (*Platanus occidentalis*), and several conifer species such as Virginia pine (*Pinus virginiana*) and loblolly pine (*Pinus taeda*). In addition, understory vegetation in these forests includes poison ivy (*Toxicodendron radicans*), bayberry (*Myrica cerifera*), cinnamon fern (*Aronia arbutifolia*), blueberry (*Vaccinium* spp.) and blackberry (*Rubus* sp.). Regional forested wetlands (such as the non-tidal wetlands on the Property) include red maple (*Acer rubra*), green ash (*Fraxinus pensylvanica*), black willow (*Salix nigra*), willow oak (*Q. phellos*), swamp white oak (*Q. bicolor*), and tulip poplar (*Liriodendron tulipifera*). On-site and regional marshlands include smooth cordgrass (*Spartina alterniflora*), saltgrass (*Distichlis spicata*), grassworts (*Salicornia* spp.), and black needlerush (*Juncus roemerianus*).

Wildlife common in Dorchester County includes whitetail deer (*Odocoileus virginianus*), eastern gray squirrel (*Sciurus carolinensis*), eastern cottontail (*Sylvilagus floridanus*), muskrat (*Ondatra zibethica*), and red fox (*Vulpes fulva*). Common birds include wading birds such as the great blue heron (*Ardea herodias*) and other herons and egrets; a variety of ducks and geese such as mallards (*Anas platyrhynchos*), wood ducks (*Aix sponsa*), and Canada geese (*Branta canadensis*); hawks and owls such as the osprey (*Pandion haliaetus*), broad-winged hawk (*Buteo platypterus*), kestrel (*Falco sparverius*), and great-horned owl (*Bubo virginianus*); and numerous passerine (*i.e.*, perching) birds. Reptiles and amphibians common in the area include the black rat snake (*Elaphe absoleta*), eastern box turtle (*Terrapene carolina*), mud turtle (*Kinosternon subrubrum*), and American toad (*Bufo americanus*).

Dorchester County supports a healthy population of the recently delisted bald eagle (*Haliaeetus leucocephalis*). Bald eagles occur throughout the Chesapeake Bay region, however, there are no known nests in the vicinity of the project and this project is not considered to have any effects on the Bald Eagle. In addition to the above, Dorchester County supports two species of federally listed wildlife and plants. These are the Delmarva fox squirrel (*Sciurus niger cinereus*) (listed as endangered) and the swamp pink (*Helonius bullata*) (a plant listed as threatened). The swamp pink occurs in a variety of wetland habitats in six states and occurs in Maryland in six known populations in Anne Arundel, Cecil, and Dorchester counties; however, so far as is currently known, it has not been documented within or near the Property. The status of the Delmarva fox squirrel with respect to the Property is discussed in Section 3.0.

2.1.2 Project Description

(1) Site Description. The Property, which is the site of the Project, is 29.6 acres with 19.8 acres consisting of mature mixed-hardwood forest and forested wetlands bordering Secretary Creek (Map 1). This forested area, is part of a single, contiguous or nearly-contiguous corridor of forestland which begins at the confluence of Secretary Creek and the Warwick River, continues through the Property and terminates in other forested blocks. Also included on the Property are 7.4 acres of agricultural land (forming a strip along the west side of the Property adjacent to State Route 14), and 2.4 acres of emergent marshland bordering Secretary Creek. The surrounding area includes agricultural lands; two small, lightly developed parcels (at the northwest corner); a retired county landfill (along the south side), and a sand and gravel mining facility (to the east). Topography on the site consists of flat to mildly rolling upland terrain which slopes downhill to Secretary Creek along the entire east side of the property.

(2) Project Description. RB & JH Properties, LLC, current owner of the Property (“Project Proponent”), proposes to subdivide the Property into 13 individual lots and obtain necessary approvals for the construction and ultimate occupancy of one single-family residence on each lot (see Map 2). Individual lot sizes under the Project will range from one acre to approximately five acres. A reduced scale copy of the Pleasant Riffs subdivision plat entitled “FINAL, Pleasant Riffs Subdivision, P&Z #1023” dated FEB. 2005, Revised 07/30/08, is attached hereto as Appendix D and referred to hereinafter as the “Plat”.

(a) Construction-related Forest Clearing. Forest clearing to accommodate the Project will not exceed 4.83 acres and will be limited to that necessary for: (i) construction of Deer Run Drive; and (ii) within Lots 3-9 and 11-12, construction of a house, driveway, yard, and sewage reserve area (construction within Lots 1, 2, 10, 13, and Outparcel A will occur in the area currently in agriculture and require no forest clearing).³ Remaining forestland on the site will be retained.⁴ Retention of these woods is provided, in part, to comply with the Critical Area Law, which prohibits clearing of more than 30% of the woods. However, the Project Proponent has further minimized the amount of clearing on the Property to reduce loss of habitat for Delmarva fox squirrels.

(3) Project Components/Site Ownership. As defined, the Project includes a short-term component and a long-term component—the short-term component consisting of subdivision of the Property and Project construction, the long-term component of occupancy and use of the completed residences and associated facilities—and, because of this timeframe, ownership of the Property will change over time. The site is currently owned by the Project Proponent. This owner plans to obtain necessary approvals for the Project and, at a minimum, will undertake construction of Deer Run Drive and the storm water management facilities. At that point, it will either sell the entire Property to a homebuilder (who would construct the remainder of the Project) or sell lots individually (in which case individual lot owners would be responsible for construction on their respective properties) (the “Lot Owners”) (R. Showalter, pers. comm.). The Project Proponent also plans to establish the Pleasant Riffs Homeowners Association (“PRHA”), which will own and manage project areas held by all lot owners in common (*e.g.*, Outparcel A). Throughout the life of the Project, the Property will actually or potentially be owned or jointly owned by the Project Proponent, the PRHA, and/or 13 or more unspecified Lot Owners.

³ Source: Pleasant Riffs Subdivision Final Plat, revised July 30, 2008

⁴ For purposes of the PRHCP, “conserved” forestland or Delmarva fox squirrel habitat or “conservation” of such land or habitat refers to forestland on the Property that will be retained (*i.e.*, will not be cut or removed) primarily under the authorities of the Critical Area Law (see Sections 1.2.2 and 5.2.1(3)); while “protected” forestland or Delmarva fox squirrel habitat or “protection” of such land or habitat refers to forestland not on the Property (*i.e.*, off-site habitat) that has been protected by a conservation easement as mitigation for on-site Delmarva fox squirrel impacts under the authorities of the ESA (see Sections 1.2.1 and 5.3).

2.2 Covered Species/Covered Area

(1) Covered Species. The term “Covered Species” refers to the species for which the PRHCP provides specific conservation measures and to which the regulatory authorities of the plan and its associated ITP apply. The PRHCP so covers a single species, the Delmarva fox squirrel (*Sciurus niger cinereus*).

(2) Covered Area. The term “Covered Area” refers to the geographic area to which the PRHCP and its associated ITP apply. That area consists of the entire 29.6-acre Property described in Sections 2.1.1 and 2.1.2 on which the Project is to be constructed and subsequently occupied and used. The PRHCP and ITP cover no lands outside the boundaries of this Property.

2.3 Covered Activities

The term “Covered Activities” refers to activities included in the Project to which the coverage of the HCP’s associated ITP apply (*i.e.*, to those activities covered by the ITP should take of Delmarva fox squirrels occur while they are being carried out). Two categories of activities are covered by the PRHCP: (1) project construction activities; and (2) post construction occupancy and use of the developed Property.

(1) Project Construction Activities. These include any and all on-site, Project-related construction activities undertaken by site owners or hired or contracted personnel including, but not limited to, clearing and grading; materials stockpiling; car, truck, and heavy equipment use; installation and removal of erosion control devices and structures; seeding and planting; and construction of homes, roads, driveways, access roads, associated sewage, drainage, and stormwater facilities, and any and all other facilities and structures associated with completion of the proposed development.

(2) Occupancy and Use Activities. Upon completion of development of the Property or any individual lot, these activities include any and all activities likely to result in take of Delmarva fox squirrels and undertaken by the PRHA in the course of carrying out its on-site responsibilities or by Lot Owners in the course of normal and customary occupancy and use of their properties and homes. Such activities include, but are not limited to, operation, maintenance and repair of lots, lawns, roads, drainage facilities, stormwater management facilities, homes, driveways, and all other facilities and structures held by Lot Owners (individually or in common); vehicle use of on-site roads, driveways, and access roads; the keeping of all animals and pets allowed by local law or regulation; and any and all similar activities actually or potentially resulting in take of Delmarva fox squirrels.

2.4 Permittees

The permittees under the PRHCP are the individuals and organizations who will hold the HCP’s associated ITP; will be responsible for implementing the terms and conditions of the PRHCP, as applicable; and will be subject to the PRHCP’s and ITP’s regulatory benefits and authorities. In light of expected ownership of the Property as described in Section 2.1.2, Subsection (3), the PRHCP’s associated permit will be held jointly and, possibly, sequentially as follows.

(1) By the Project Proponent. RB & JH Properties, LLC will hold the ITP from the time of its issuance throughout the period during which it is legal owner of all or any part of the Property with respect to any Covered Activities undertaken by RB & JH Properties, LLC on any such part of the Property. RB & JH Properties, LLC’s status as permittee under the PRHCP will terminate for a particular portion of the Property immediately upon conveyance of such lot or parcel to the PRHA or one of the Lot Owners

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(defined below) and the ITP and its obligations with respect to that portion of the Property will automatically be transferred to the PRHA or Lot Owners.

(2) By an Unspecified Lot Owners. The ITP will also be held by unspecified lot owners (“Lot Owners”) commencing upon transfer of legal title for all or a portion of the Property to such individual(s) or entity throughout the period during which it (or they) is (or are) legal owner(s) of all or any part of the Property with respect to any Covered Activities undertaken on the portion of the Property owned by such individual or entity.

(3) By the PRHA. The Pleasant Riffs Homeowners Association, Inc. will hold the ITP from the time of its issuance throughout the specified ITP term (see Section 2.5), with respect to the following matters:

(i) operation, maintenance, and repair activities as described in Section 2.3, Subsection (2) and undertaken on portions of the Property for which it is legal owner (*e.g.*, Outparcel A) and on any and all other portions of the Property held by the Lot Owners in common, and

(ii) any and all Covered Activities undertaken or carried out on individual lots by Lot Owners, which are subject to the Declaration of Covenants, Conditions, and Restrictions of the PRHA.

(4) Enforcement. The terms and conditions of the PRHCP, which are comprised of the Delmarva fox squirrel conservation and protection measures described in Section 5.0, will be made binding and enforceable on the above-described permittees through the authorities of its associated ITP and as described in Section 8.1 of the PRHCP’s associated Implementing Agreement (“IA”) (see Section 2.6). Contractors, subcontractors, agents and licensees (collectively, “Agents”) of the permittees shall be entitled to the regulatory benefits of the HCP and ITP provided that they act, at all times, in compliance therewith, however, each permittee shall be remain responsible for any violation of the PRHCP or ITP caused by its Agents.

2.5 Permit Term

The term of the PRHCP and its associated ITP is fifty (50) years.

2.6 Implementing Agreement

In addition to the PRHCP, the Project Proponent has prepared an Implementing Agreement which is associated with and part of the HCP and in effect extends the authorities of its associated ITP. An IA is a contract which, among other things, provides: (1) a means for identifying the responsibilities of the parties to the PRHCP; (2) a mechanism through which parties to the PRHCP unspecified at the time of HCP preparation can be identified and commitments under the PRHCP voluntarily accepted by such parties can be formalized and made binding (*e.g.*, see Section 2.4); and (3) for a variety of legal understandings and remedies. The IA for the PRHCP is attached to the plan as Appendix A.

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2.7 Summary of Project – Property, Proposed Impacts and Mitigation

A summary of the Property, proposed impacts and related mitigation is as follows:

Project Site Information	Acres
Parcel Size	29.6
Land within Critical Area	29.1
Land Cover	
- Agricultural field	7.4
- Forestland	19.8
- Emergent marsh	2.4
Proposed Impacts	
Forest/Habitat Clearing	4.83
Forest/Habitat Degradation (total)	8.11
- within 150' of Deer Drive	(0.38)
- within 175' of building pads (including overlapping areas of Deer Drive degradation)	(7.73)
Proposed Minimization and Conservation Measures (On-site)	
Minimize forest clearing and retain as much forest as possible:	
<ol style="list-style-type: none"> 1. Retention of 14.97 acres of forested Delmarva fox squirrel habitat on-site <ul style="list-style-type: none"> - 8.11 acres of habitat will be retained but degraded - 6.76 acres of undegraded habitat will be retained on-site. <p><i>While 13.86 acres of existing forest must be retained under the Critical Area Law (13.86 acres), the Project Proponent has retained 1.11 additional acres and all retained forest will benefit Delmarva fox squirrels.</i></p> 2. Clearing will only occur outside the breeding season (not during January 1- May 15) 3. Construction will only occur within building envelopes and construction workers will have information to report any injured or dead Delmarva fox squirrels. 4. Residents will have information that enables them to report sightings of Delmarva fox squirrels to monitor their persistence after construction and occupancy. 	
Proposed Mitigation (On-site and Off-site)	
<i>Off-Site Habitat Protection</i>	
- Permanent protection of Delmarva fox squirrel habitat (See Appendices C and H)	35.92
<i>On-site Afforestation</i>	1.65

3.0 Biology of The Delmarva Fox Squirrel

Unless otherwise indicated, the information in this section is adopted from the USFWS's Delmarva Fox Squirrel Recovery Plan (USFWS 1993).

The fox squirrel (*Sciurus niger*) is a large, heavy-bodied squirrel found throughout the eastern U.S. from western New York south to Florida, and west to Texas, Oklahoma, Kansas, northeastern Colorado, Nebraska, and the Dakotas. Ten subspecies of fox squirrels are recognized. The Delmarva fox squirrel (*Sciurus niger cinereus*), first described in 1758, is typically whitish gray dorsally with white underparts and feet and weighs an average of 2.5 to 3.0 pounds. It resembles the gray squirrel (*Sciurus carolinensis*) but is larger, has a fuller tail, and a uniformly colored dorsum. The Delmarva fox squirrel was listed as endangered under the Endangered Species Act in 1967.

(1) Distribution/Status. The Delmarva fox squirrel originally occurred throughout the Delmarva Peninsula and into southeastern Pennsylvania and southern New Jersey. At the time it was listed as endangered, the remnant natural populations persisted only in portions of three counties in Maryland (Queen Anne's, Talbot, and Dorchester), which represents approximately 10 percent of the species' former range. However, in the 1980's and 1990's, the Delmarva fox squirrel was reintroduced into 16 locations in its former range where it had previously been extirpated. These reintroductions were undertaken in Caroline, Cecil, Kent, Somerset, Wicomico and Worcester Counties, Maryland; Chester County, Pennsylvania; Sussex County, Delaware; and Accomack and Northhampton Counties, Virginia. Reintroduced squirrels generally displayed a high degree of fidelity to their release sites (Bendel and Therres 1994), and, of 16 original reintroduction sites, 11 currently have established populations of squirrels (Therres and Willey 2002; USFWS website). In addition, evidence suggests that natural expansion has occurred in both original and reintroduced Delmarva fox squirrel populations (USFWS 2007); for example, fox squirrels have expanded naturally into Caroline County (Glenn Therres, MDNR, pers. comm.) and into Sussex County, Delaware (USFWS 2007). Today, Delmarva fox squirrels occur in eight of the nine Delmarva Peninsula counties in Maryland (all except Cecil County), in Sussex County, Delaware, and in Accomack County, Virginia, and the species' status is characterized as stable or increasing rangewide under current conditions (Therres and Willey 1988; Dueser 1999; USFWS 2007).

(2) Reproduction. In Delmarva fox squirrels, most breeding occurs in the late winter/early spring period and most young are born in February, March, and April, although a secondary birth peak occurs in July and August. On Chincoteague National Wildlife Refuge (NWR), however, only 15 percent of litters or lactating females were observed in the fall, suggesting that the spring breeding period is most important for recruitment of young into the population (Larsen 1990). Gestation in fox squirrels lasts about 44 days and young are dependent on their mothers for about three months.

(3) Habitat/Food Preferences. Generally, Delmarva fox squirrels are opportunistic in their habitat preferences and are typically found in open, park-like forests of mature loblolly pine, oak-pine, and mixed hardwoods. Both upland and bottomland forests are occupied.

In 1988, Dueser et al. (1988) developed a habitat suitability model designed to define important Delmarva fox squirrel habitat parameters (this model was used to select Delmarva fox squirrel translocation sites after 1988). The model indicates that forest sites where Delmarva fox squirrels are present generally have a higher percentage of large trees (12" or greater dbh), a lower percentage of shrub ground cover, and a lower understory density than sites where squirrels are not present. These authors concluded that forest habitat structure (e.g., large trees and an open understory) was a better indicator of Delmarva fox squirrel habitat than either forest composition (e.g., pine versus mixed hardwood) or landscape dimension (e.g.,

proximity to next forest tract). Paglione (1996) also concluded that stand structure is a better such indicator than forest cover type. Smith and Follmer (1972) and Taylor (1976) suggested that Delmarva fox squirrels thrive in open, mature forests because forage time is reduced (since mast is concentrated in large trees) and because large trees contribute to an open understory (as a result of shading by the canopy). Delmarva fox squirrels may also prefer open understory because they often forage on the ground and a relatively clear understory is critical to spotting and escaping mammalian predators. Delmarva fox squirrels also appear to show a preference for edge habitat (*e.g.*, woodland edges) or habitats where several ecotones exist (*e.g.*, forested strips in association with grasslands or agricultural lands) (Flyger and Smith 1980, Taylor 1976).

Delmarva fox squirrels use a variety of food sources including hard mast (primarily oak, hickory, beech, and walnut), soft mast (*e.g.*, loblolly pine seeds and tree and flower buds), fungi, insects, and occasionally bird eggs and young. Unlike gray squirrels, Delmarva fox squirrels also feed on agricultural crops and forage in agricultural fields (Brown and Yeager 1945, Taylor 1976, Flyger and Smith 1980). Taylor (1976), for example, found marked Delmarva fox squirrels in fields 15 percent of the times observed, and observed fox squirrels in crop fields up to 800 meters from the nearest forest edge. Corn appears to be particularly exploited, along with soybeans, wheat, oats, apples, and other field and orchard crops (Taylor 1976, Brown and Yeager 1945). The Delmarva fox squirrel's diet is somewhat seasonal, depending on the availability of particular foods at particular times. Generally fox squirrels feed extensively on soft mast and fungi in the spring, rely more on green pine cones in the late summer and early fall, and feed heavily on hard mast when it becomes available in the fall (Wiegl et al. 1989, USFWS 1993). Pine cones may be particularly important to fox squirrels in years of mast shortages, and soft mast and fungi may also be important as buffers when hard mast is not available.

For shelter, fox squirrels utilize hollows or cavities in trees and nests constructed of leaves and twigs. Leaf nests vary from small day shelters and feeding platforms to large, well-insulated winter nests (Weigl et al. 1989). In Delmarva fox squirrels, however, cavity dens appear to be preferred, especially during breeding periods and winter, as they provide maximum safety for young and protection from cold or wet weather.

To summarize, the attributes of optimal Delmarva fox squirrel habitat appear to be: (1) mature forests with relatively large trees (12" or more in diameter); (2) an open, easily traversed understory; (3) presence of ecotones or edge habitat (*e.g.*, forested land mixed with agricultural land); and (4) presence of suitable nest site locations (*e.g.* cavities) and a variety of nut and seed-bearing trees.

(4) Reasons for Decline. Although the exact causes of the Delmarva fox squirrel's decline are unknown, habitat loss (*i.e.*, forest clearing) and fragmentation as a result of agriculture, timber harvest, and development since approximately the 1850s are thought to have been primary factors (Taylor 1976, USFWS 1993). Over-hunting during the decades prior to the squirrel's listing under the ESA may also have been a factor. Potential continuing threats to the subspecies include timber harvest activities and conversion of forestlands to agriculture and residential and commercial development. Mortality as a result of vehicle strikes, predation by pets, and competition with gray squirrels within habitats altered in a fashion that favors that species may also be factors (Taylor 1976, Dueser 1999).

These factors likely have varied in importance over time. Large-scale loss and conversion of forestland as a result of timber harvest and agriculture were probably more important historically than they are now, while the greatest current threat to the species may be residential, commercial, and industrial development as a result of population growth (Therres and Willey 1988). Human population on the Eastern Shore increased by 15% between the years 1990 and 2000 (MFTF 2000), and similar population growth in the future can be expected (*e.g.*, see Section 2.1.1, Subsection 2). Such increases bring with them a host of

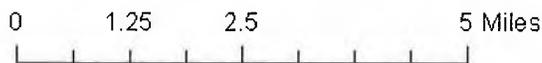
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land use changes (*e.g.*, deforestation), habitat changes (*e.g.*, fragmentation) and other factors (*e.g.*, introduction of domestic predators) that can adversely affect Delmarva fox squirrels.

(5) Recovery Criteria/Benchmark Sites. The Delmarva Fox Squirrel Recovery Plan, approved by the USFWS on June 8, 1993, specifies certain recovery criteria, the satisfaction of which will permit the species to be either reclassified as “threatened” under the ESA or delisted (*i.e.*, removed from the endangered species list). Reclassification criteria are: (1) sufficient understanding of the species’ ecological requirements and distribution to permit effective management; (2) a determination that seven “benchmark” populations (see below) are stable or expanding, based on at least five years of data; and (3) establishment of ten new Delmarva fox squirrel colonies within the species’ historical range. Delisting criteria are, in addition to the above: (4) establishment of five post-1990 Delmarva fox squirrel colonies outside the species’ remaining natural range; (5) periodic monitoring that shows (i) persistence of 80 percent of translocated populations over the full recovery period and (ii) that at least 75 percent of these populations are not declining; (6) that mechanisms are in place that ensure perpetuation of suitable habitat at a level sufficient to allow for desired distribution, based on criteria (1), within all counties in which the species occurs; and (7) that mechanisms are in place to ensure protection and monitoring of new populations, to allow for expansion, and to provide inter-population corridors to permit gene flow among populations.

(6) Presence in the Project Area. Although to date, Delmarva fox squirrels have not been documented on the Property, they are present in suitable habitat in the general area and assumed to be present and breeding on the site. The site contains 19.8 acres of mature mixed-hardwood forest generally possessing the characteristics of Delmarva fox squirrel habitat and is part of a forested corridor bordering Secretary Creek. (see Map 3).

Map 3: Forest Habitat in the Project Vicinity Known to be Occupied by DFS



Legend

- DFS Point Occurrence
- ▨ DFS Polygon Occurrence
- ▭ Project Location

These data represent the ongoing efforts of the U.S. Fish & Wildlife Service, Maryland Department of Natural Resources, and Delaware Department of Natural Resources and Environmental Control to consolidate, summarize, and regularly update and correct information regarding Delmarva Fox Squirrel occurrence. Comprehensive field surveys have not been conducted and changes in this map are expected to occur in the future. This map should be used as a tool to assist decision makers, but cannot produce a definitive statement on the presence, absence, or condition of Delmarva Fox Squirrel populations.

The U.S. Fish & Wildlife Service makes no warranty as to the suitability of this map, for any use, and assumes no liability for its appropriate use or misuse.

USFWS CBFO July 2006

4.0 Effects of the Take

A summary of potential impacts and mitigation resulting from the Pleasant Rifts project is as follows:

Impacts

- Forestland cleared 4.83 acres
- Habitat degradation 8.11 acres

Minimization Measures

- Minimizing the amount of forest clearing to a small building envelope allows retention of 14.97 acres of forest, especially along Secretary Creek, along with 2.4 acres of adjacent marsh.
- Clearing of forest will only occur outside the Delmarva fox squirrel breeding season to avoid clearing den trees.

Mitigation

- On-site afforestation 1.65 acres
- Off-site habitat protection 35.92 acres

4.1 Anticipated Take

(1) Types/Sources of Take. Delmarva fox squirrels might be taken over the course of the Project in three ways (see Section 1.2.1): (a) they might be killed or injured as a result of direct Project-related effects; (b) they might be indirectly killed or injured as a result of habitat-related effects (under the “harm” definition); and (c) they might be indirectly killed or injured as a result of disturbance-related effects (under the “harassment” definition). Delmarva fox squirrels might also be taken as a result of both categories of the PRHCP’s Covered Activities (*i.e.*, Project Construction Activities and Occupancy and Use Activities) and as a result of numerous individual project-associated activities and actions. Overall, the USFWS has described five categories of activities and impacts relating to development that actually or potentially can result in take of Delmarva fox squirrels; these are: (a) direct impacts; (b) habitat loss and degradation (c) vehicle strikes; (d) harassment and/or predation by pets and feral animals; and (e) barriers to dispersal and mobility (USFWS 1999).

(a) Direct Impacts. Direct impacts under the Project (as distinct from indirect impacts) consist specifically of any take (*i.e.*, killing or injury) of Delmarva fox squirrels that occurs or could occur as a direct and immediate result of any project-related activity or action. Examples of such impacts include, but are not necessarily limited to:

(i) Inadvertent striking of (and, likely, death or injury to) Delmarva fox squirrels by both construction-related and post-construction-related cars, trucks, and other types of vehicles and equipment being operated on the site (see Subsection c below);

(ii) Felling of trees and/or clearing of forestland, if Delmarva fox squirrel adults, juveniles, pups, or active nest sites should be present in affected trees at the time they are felled or otherwise removed; and

(iii) Pursuit of or predation on fox squirrels by dogs, cats, or other pets belonging to Pleasant Rifts homeowners, or by stray or feral such animals (see Subsection d below); and,

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(b) *Habitat Loss/Degradation.*

Of the 19.8 acres of forestland on the Property, up to 4.83 acres will be permanently cleared to accommodate the Pleasant Rifts subdivision and 8.11 acres of forestland is within 150 feet of developed portions of the site and would be degraded by proximity to homes and roads.⁵ The specific effects of these impacts are as follows:

(i) Clearing of up to 4.83 acres of mature, on-site forestland to accommodate project-related development, will result in permanent loss of approximately 24% of the 19.8 acres of existing forestland on the site. This can cause DFS to move into new areas resulting in lower survival due to increased predation and competition for resources.

(ii) Habitat degradation (*i.e.*, loss of habitat value) is considered to occur on 8.11 acres of mature, on-site forestlands lying within 150 feet of homes and roads. Indirect adverse effects occur within 150' of homes through disturbance from pets and homeowners. This can cause harm to Delmarva fox squirrels living in this habitat and can ultimately cause squirrels to not use the habitat adjacent to homes. Most of the degradation (7.82 acres) is degradation from homes. A small amount of the habitat degradation (0.38 acres) is from proximity to the entrance road. Squirrels that live in habitat that is within 150' of roads have an increased chance of vehicle strike and thus lower probabilities of survival. While this type of habitat degradation is present at Pleasant Rifts, it is not extensive.

(iii) Conservation of the remaining 6.76 acres of mature forestlands and associated 2.4 acres of emergent marshland on the Property (totaling 9.16 acres) and consisting of all such lands situated between the eastward edge of the development impact areas described above and the west side of Secretary Creek. These forestlands will be conserved under the authorities of the PRHCP and PRHA, will ensure a substantial area of forestland (and, in effect, Delmarva fox squirrel habitat) on the Property that is relatively free of development-related impacts; and will maintain the integrity of the east side of the Property along Secretary Creek as forested Delmarva fox squirrel habitat and a forested habitat corridor.

(c) *Vehicle Strikes.* Vehicle strikes of Delmarva fox squirrels are a clear source of mortality for this species in several areas. While it is not considered to be a rangewide threat to the species (USFWS 2007), it is a visible source of mortality and has been quantified on Refuges where DFS populations are high and reporting of roadkills occurs. However, vehicle strikes are not considered to be the major source of take by the Project and this is reflected in the small amount of degradation of habitat within 150' of the entrance road. No additional consideration of vehicle strikes is needed for the following reasons. First, the entrance road to this subdivision, Deer Drive, ends in a cul-de-sac (not a through street) and is thus not likely to have vehicles traveling at high speeds, and will be mostly limited to the traffic associated with the residents of the subdivision. Second, there is limited habitat on the west side of Deer Drive, all of which is near homes and thus not as likely to be attractive to DFS. Thus DFS that are on the east side of Deer Drive are more likely to stay in the forested habitat along Secretary Creek and have limited reasons for crossing the road to the degraded habitat on the west side of Deer Drive. The degradation from homes and the road in this subdivision overlap in most areas, and the mitigation provided for this overall degraded habitat will compensate for any

⁵ Consistent with USFWS recommendations, the 8.11-acre figure was derived by measuring 150 feet from Deer Drive and 175 feet out from the center of the building pad of each residence to be constructed within forested areas on the project site. For convenience, forested areas within 150' of Deer Drive and/or the 175' radius are referred to collectively throughout the document as being within 150 feet of developed areas on the site.

take from Deer Drive vehicle strikes, which is anticipated to be very small (Cherry Keller, pers. comm.).

(d) Harassment/Predation by Pets/Feral Animals. Information concerning the effects on Delmarva fox squirrels of domestic and feral animals is limited but the following can generally be said. First, Delmarva fox squirrel morphology (*i.e.*, its relatively large, heavy body) and habits (its tendency to travel within and between habitat areas on the ground rather than in treetops) all make the species susceptible to attacks by domestic or feral dogs and cats. An employee of Blackwater NWR, for example, reported observing dogs pursue and tree Delmarva fox squirrels on a number of occasions and, on one occasion, observed a domestic dog pursue and kill a fox squirrel (USFWS 1998). Generally, attacks on adult Delmarva fox squirrels likely involve dogs more frequently than cats, and apparently are unsuccessful more often than they are successful. Domestic cats, on the other hand, are more likely to pursue and/or take Delmarva fox squirrel pups or juveniles than adults (Taylor 1976), although no documentation of cats actually killing Delmarva fox squirrels is currently known.

Thus, the presence of domestic and feral animals in and in the vicinity of Delmarva fox squirrel habitats can affect the species through: (i) predation attempts (in the event fox squirrels are chased or pursued); (ii) mortality or injury (in the event they are caught); and (iii) disturbance impacts (*e.g.*, by eliciting flight responses and/or interrupting or inhibiting fox squirrel foraging, travel, and migration.

(e) Barriers to Dispersal/Mobility. The presence of a new development can also impact Delmarva fox squirrels by creating a barrier to movement and dispersal of squirrels through the forested areas on and off site. However, this is not viewed as a major problem at Pleasant Rifts, because the majority of forest clearing is along the western edge of the forest near the agricultural field. The retention of the forest along Secretary Creek to the east enables Delmarva fox squirrels to continue to use this riparian corridor to move north and south. The retention of the forest along Secretary Creek results from compliance with the Critical Area Law plus additional forest retention provided by the Project Proponent as a mitigation measure and results in a subdivision plan that minimizes the extent to which this community creates a barrier.

(2) Estimating/Determining Take. A key task for the PRHCP and its associated ITP is estimating what levels of take of Delmarva fox squirrels are likely to occur over the course of the 50-year term of the PRHCP; and what such levels can be authorized by the plan while ensuring that the ESA's statutory requirements for HCPs are satisfied. For several reasons, however, the number of individual fox squirrels that might be taken in the course of the PRHCP is difficult to predict. This is because, first, specific population numbers of the species within and near the Property are not known nor can be determined in a cost-effective manner; and, second, because even if such numbers were known, it remains difficult in some cases to predict how many individuals might be taken as a result of this or that particular covered activity. In light of this it is customary in HCP's to employ the number of habitat acres likely to be affected by Covered Activities as a "surrogate" for expressing take levels, and authorized take is then given as the number of habitat acres that may be developed and/or used under the plan. The PRHCP therefore expresses anticipated and allowable take under the PRHCP in this fashion, as follows.

(3) Take Authorized under the Plan. In light of the preceding discussion, and with respect to activities undertaken on the Property in the course of Project-related construction and occupancy and use of the Property, the PRHCP and its associated ITP authorize all take of Delmarva fox squirrels associated with:

(a) Up to 4.83 acres of existing forestland on the Property to be cleared and removed to accommodate Project-related construction as designated in the Pleasant Rifts Subdivision Final Plat;

- (b) 8.11 acres of existing forestland to be retained on the Property but which are expected to be subject to development-related degradation impacts as designated in the Pleasant Riffs Final Plat;

4.2 Effects of the Take

In summary, the proposed 29.6-acre Pleasant Riffs Project will result in the permanent loss of up to 4.83 acres of forested Delmarva fox squirrel habitat on the Property (representing approximately 24% of the 19.8 acres of existing forestland on the site, and about 1% of the 440 acres of existing forestland in the forested corridor of which the Property is a part); and degradation of 8.11 acres of forest habitat because of ongoing development-related impacts within 150 feet of developed portions of the Property.

However, to address the effects of such take as required by the ESA, the Project Proponent proposes:

- (1) To implement numerous measures to minimize take of individual Delmarva fox squirrels in the course of both project-related construction activities and ongoing occupancy and use of the Property (as described in Sections 5.2.1 and 5.2.2 of the PRHCP, respectively); and,
- (2) To mitigate for remaining Project-related take and forestland impacts through:
 - (a) Off-site protection (through a conservation easement) of 35.92 acres of forested Delmarva fox squirrel habitat at a suitable location (as described in Section 5.3, Subsection 1); and,
 - (b) On-site afforestation on 1.65 acres of currently unforested land (as described in Section 5.3, Subsection 2)),

These measures will have the effect, respectively, of:

- (1) Reducing Project-related take of individual Delmarva fox squirrels to minimal levels;
- (2) Protecting a substantial area of off-site forest habitat (35.92 acres) within an area of relatively unfragmented forestland primarily for use by Delmarva fox squirrels. The easement on this habitat prevents loss from development or timber harvest and ensures that this area will remain in mature forest in perpetuity.
- (3) Retaining a substantial portion of existing forestland along Secretary Creek as a relatively undisturbed state and in relatively full function for Delmarva fox squirrel use, migration, and dispersal and,
- (4) Creating new forestland on site that may, ultimately, represent actual or potential Delmarva fox squirrel habitat.

For these reasons, the Project Proponent believes that the adverse effects of the Project on Delmarva fox squirrels, including any direct Project-related take of squirrels as well as habitat-related impacts, will be fully minimized, mitigated, and offset by conservation measures undertaken on behalf of this species; and, therefore, that the Project will not jeopardize the survival and recovery of the Delmarva fox squirrel in the wild either rangewide or in the specific vicinity of the Project.

5.0 Conservation/Mitigation Program

Sections 10(a)(2)(A) and 10(a)(2)(B) of the ESA and federal regulation (50 CFR 17.21 and 17.22), require, among other things, that an HCP specify the steps that will be taken to minimize, mitigate, and monitor the effects of any taking allowed by the plan, and the funding that will be made available to implement the plan. These requirements are addressed for the Project in this Section 5.0 (which specifies the measures that will be implemented to protect and conserve the Delmarva fox squirrel in the course of carrying out of the PRHCP's Covered Activities) and the following Section 6.0 (which describes the PRHCP's funding mechanisms).

5.1 Goals and Objectives

In addition to the above, the USFWS's "5-Point Policy" (USFWS 2000) requires that an HCP establish explicit biological goals and objectives that, among other things, clarify the purpose of the plan and provide a basis for developing its conservation measures. Biological goals are defined by the policy as the broad, guiding principles for an HCP's operating conservation program, while biological objectives represent specific, measurable criteria designed to implement and/or achieve the biological goals. The biological goal of the PRHCP is therefore to establish a program that protects and conserves Delmarva fox squirrels and Delmarva fox squirrel habitat present on the Property to the maximum extent practicable in the course of project-related activities and to ensure regulatory compliance with the ESA. The biological objectives of the PRHCP are:

- (1) To minimize take of Delmarva fox squirrels in the course of Project-related construction activities and long-term occupancy and use of the Property;
- (2) To minimize and mitigate forestland clearing and loss resulting from Project-related construction; and,
- (3) To minimize the effects of long-term occupancy and use of the Property on remaining on-site forestland and maintain such forestland in a fashion suitable for Delmarva fox squirrel nesting, foraging, and migration and dispersal.

5.2 Take Minimization Measures

Take minimization measures typically consist of adjustments or modifications to the design of a project or activity or to the way in which the project is carried out for the purpose of reducing the amount or extent of take of affected species that occurs as a result of the project to minimal levels.

The following Sections 5.2.1 and 5.2.2, specify take minimization measures proposed by the PRHCP to minimize take of Delmarva fox squirrels in the course of carrying out the two categories of activities included in the Project and covered by the PRHCP as described in Section 2.3: (1) Project Construction Activities; and (2) Occupancy and Use Activities. Any take of Delmarva fox squirrels that may still occur (*i.e.*, that cannot practicably be avoided) over the course of the Project will be authorized by the PRHCP's associated ITP.

5.2.1 Project Construction Activities

- (1) Contact Representative/Notification. Prior to the commencement of on-site construction activities relating to the Project, the applicable or appropriate permittee (see Section 2.4) shall designate a contact

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representative who will be responsible for coordinating with the USFWS and ensuring compliance with the PRHCP and its associated ITP throughout the construction period. In addition, a minimum of 30 days prior to planned or anticipated commencement of Initial Construction Activities (as defined in Subsection 3 below) and planned or anticipated commencement of individual home construction activities, the contact representative(s) shall notify the USFWS in writing of the approximate date that construction is to begin. This contact representative shall receive a copy of the information packages attached as Appendices E (which describes minimization measures that must be implemented on the Property) and F (which provides USFWS contact information and information regarding Delmarva fox squirrels).

(2) Timing of Forest Clearing. All forest clearing (*i.e.*, cutting or permanent removal of forestland currently extant on the Property) for purposes of Project-related construction as specified in Section 2.1.2, Subsection (2)(a) of the PRHCP shall be undertaken outside the Delmarva fox squirrel's primary breeding season, or from May 16th to December 31st (*i.e.*, shall not be undertaken during the fox squirrel's primary breeding season, which is January 1st to May 15th).

(3) Minimizing forest clearing/Delineation of Construction Areas. The Critical Area Law minimizes the clearing that is allowed within the Critical Area buffer (see plat) and restricts the extent of clearing to 5.94 acres. However, to minimize adverse impacts to the Delmarva fox squirrel, the Project Proponent has further reduced the clearing to 4.83 acres. This overall retention of 14.97 acres (the "Conserved Forest Lands") of the original 19.8 acres of forest on site (even though some is required for the Critical Area Law) has the effect of retaining habitat along Secretary Creek and enabling movement of Delmarva fox squirrels along the wooded corridor, thus minimizing impacts to fox squirrels using the area. This retained habitat will be delineated by sign posts and retained through the CCRs, and the Critical Area Law. Initial clearing of lots will include the building envelope and the initial requirement of one-third of the septic reserve area, although the total mitigation provided under this HCP is sufficient for the clearing of the entire septic reserve area. Construction areas on the Property, as well as forested areas that are not to be disturbed during construction on or occupancy and use of the Property, shall be designated as follows.

(a) Delineation of Construction Areas. Prior to the commencement of Initial Construction Activities (as that term is defined below):

(i) The applicable permittee (see Section 2.4) or its designated agent shall designate and isolate via appropriate temporary fencing planned construction areas on the Property from that portion of the site's extant forestland which is to remain conserved and undisturbed. All initial construction-related activities shall occur within this fenced disturbance area and shall not encroach into the Conserved Forestlands.

(ii) The line(s) along which such fencing shall be established consist of those delineating and separating the 4.83 acres of forestland currently present on the Property which are designated for removal as identified in the recorded Pleasant Rifts Subdivision Final Plat and in Section 2.1.2, Subsection (2)(a) of the PRHCP, from forestland currently present on the Property that is to be retained and conserved as described above.

(iii) Construction fencing necessary to implement this subsection shall consist of wooden stakes driven into the ground (with 2 to 3 feet showing above ground), situated not more than 10 feet apart (or, if necessary, at a lesser distance dictated by individual circumstances), and connected by brightly-colored construction tape; or of any similar fencing so long as it is expressly designed to meet the purposes of this subsection.

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(iv) For purposes of this subsection, “Initial Construction Activities” are defined to mean all construction and related activities—such as land clearing, cutting and grading, and installation of road surfaces and pipelines—necessary for the establishment of project-related infrastructure (including Deer Run Drive and specified stormwater management facilities) and for Dorchester County to issue building permits for individual lots within the Property.

(b) Delineation of Conserved Forestlands. After the completion of Initial Construction Activities (as defined above) or prior to the commencement of home construction on individual lots within the Property, as appropriate:

(i) The applicable permittee (see Section 2.4) or its designated agent shall use appropriate permanent signs to delineate the area of forest that must be retained from those areas in each individual lot that can eventually be cleared (this includes the building envelope, septic field and septic reserve) or modified and used consistently with construction needs, the PRHA CCRs, and otherwise at the discretion of individual lot owners. All such modifications and uses thereafter (*i.e.*, throughout the period of site occupancy and use) shall occur within this indicated area and shall not encroach into the Conserved Forestlands.

(ii) These signs delineate the outer boundaries of the total clearing indicated by the Plat (*i.e.*, the outer boundaries of the “Clearing Limits” and the “10,000 S.F. ± Sewage Reserve Area”), and will be posted along the forest margin except in the area of the uncleared two-thirds of the septic reserve areas, in which location the signs will be posted along the edge of the approved septic reserve area and within the remaining forest.

(iii) Indicators or delineators necessary to implement this subsection shall consist of permanent signing and/or posts, the design of which shall be developed by the Project Proponent and submitted to the USFWS for approval prior to the commencement of Initial Construction Activities. In addition, such posting or signing shall be put into place within thirty (30) days following completion of Initial Construction Activities or prior to the commencement of home construction on each individual lots within the Property, as appropriate.

(c) Confirmation of Cleared Area. Following completion of clearing activities on each lot, a survey of the cleared area shall be prepared at the expense of the permittee who conducted the clearing depicting the area and location of the clearing on such lot and the fence line delineating the total boundaries of possible clearing discussed above. The cleared area survey shall be delivered to the USFWS Annapolis Field Office, the Maryland Critical Areas Commission and Dorchester County Planning & Zoning.

(4) Information and Education/Request for Observations. Prior to the commencement of Initial Construction Activities, the Delmarva fox squirrel fact sheet and USFWS contact information attached as Appendix F should be provided to all construction-related contractors and supervisors working on the Property.

(5) Speed Limits. Upon the commencement of any and all construction-related activities on the Property, a 15 mph vehicle speed limit shall be posted and enforced starting at the point where Deer Run Road enters the site and continuing along this road and throughout the Property where Project-related vehicles will be operated. The 15 mph speed shall be observed by all construction-related vehicles and equipment throughout the construction period except in emergencies. Upon the completion of Initial Construction Activities, a vehicle speed limit consistent with state or local requirements for residential

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neighborhoods in Dorchester County shall be posted at the beginning of Deer Run Drive, along the road as necessary, and elsewhere on the Property as necessary.

(6) On-site Activities Restrictions. To minimize mortality, harm, or harassment of Delmarva fox squirrels during the construction period, all construction-related personnel working on the Property:

(a) Shall be prohibited from dumping trash except into specified disposal containers, igniting open-air fires within 150 feet of the forested area of the Property, and having unrestrained pets on-site; and,

(b) With the exception of authorized security and law enforcement personnel, shall not use firearms on the site except: (i) when hunting legal waterfowl species over the waters of Secretary Creek or other upland or migratory birds in accordance with state and federal regulations; and (ii) when hunting deer with a legal weapon firing a slug, bullet, or arrow during any legal deer hunting season. No small game hunting, trap or skeet shooting, target practice, or casual plinking shall be permitted on the Property except as noted above.

(7) Reporting Dead, Injured, or Sick Delmarva Fox Squirrels. The appropriate permittee (see Section 2.4) or its designated agent shall ensure: (a) that the contact representative described in Subsection (1) above is notified immediately of the discovery of any dead, injured, or sick Delmarva fox squirrel on the Property in the course of construction activities and the circumstances surrounding the discovery of any such animal; and (b) within 24 hours of such notification, the contact representative shall notify the USFWS' Annapolis Law Enforcement Office (177 Admiral Cochrane Drive, Annapolis, Maryland 21401, (410) 573-4514) of the discovery of the animal. In conjunction with these actions: (a) the appropriate permittee and/or the contact representative have the responsibility to preserve any dead Delmarva fox squirrel and to ensure that evidence intrinsic to determining the cause of death of the animal is also preserved to the maximum extent practicable; and (b) within five (5) calendar days of the discovery of a dead, injured, or sick fox squirrel, the contact representative shall provide a written report to the USFWS describing, to the maximum extent practicable, the circumstances, location, etc. of any such finding, the cause of the death, injury, or sickness of the animal, if known, and the measures, if any, that will be taken to avoid further death or injury of fox squirrels during Project-related construction.

(8) Right of USFWS Access. Throughout the construction period, each permittee, as appropriate, shall grant USFWS employees right of access to the Property at any reasonable time for the inspection and monitoring purposes specified in 50 CFR 13.21(e)(2), and for the specific purposes of monitoring the on-site Delmarva fox squirrel population and monitoring compliance with the PRHCP and its associated ITP. For entry within individual lots pursuant to this paragraph, however, USFWS employees shall provide prior notification to affected homeowners in accordance with provisions described in Section 5.2.2, Subsection (2)(c)(i) below.

(9) Notification of Sale. From the effective date of the PRHCP (defined as the date of issuance of its associated ITP) until the conclusion of the Project's construction period (defined as the time at which home construction on the last of the Project's 13 lots has been completed), each applicable permittee under the PRHCP (see Section 2.4) shall inform the USFWS in writing of the pending sale of all or any part of the Property a minimum of ten (10) calendar days prior to the planned conclusion of any such sale. This is necessary to ensure that the USFWS knows to whom the PRHCP's associated ITP applies.

5.2.2 Occupancy and Use Activities

(1) Establishment/Covenants of the PRHA. Prior to approval of the PRHCP and issuance of its associated ITP, or prior to the commencement of Initial Construction Activities as defined in Section 5.2.1, Subsection (3) undertaken within 150 feet of forested habitat on the Property, whichever occurs first, the Project Proponent shall complete and record in the land records of Dorchester County a Declaration of Covenants, Conditions and Restrictions (“CCRs”) for the purpose of creating the Pleasant Riffs Homeowners Association (“PRHA”), which, among other things, will specify the responsibilities of the PRHA and individual homeowners established under the PRHCP and its associated ITP to protect Delmarva fox squirrels from mortality, harm, and harassment in the course of occupancy and use of the Property. In addition, each individual homeowner on the Property shall, upon purchase of any individual lot, be required to join and agree to maintain membership in the PRHA prior to being allowed to occupy on-site housing. The PRHA’s Declaration of Covenants, Conditions and Restrictions is shown in Appendix B.

(a) Description of the CCRs. The PRHA’s CCRs for the Property concerning Delmarva fox squirrels shall include, but not necessarily be limited to, a description of: (i) the responsibilities of the PRHA in implementing fox squirrel conservation and protection measures specified by the PRHCP and its associated ITP; (ii) the responsibilities of individual homeowners on the Property in implementing fox squirrel conservation and protection measures specified by the PRHCP and its associated ITP; (iii); the PRHA’s authorities to enforce Delmarva fox squirrel-related CCRs with respect to individual homeowners and the mechanisms of such enforcement; (d) the penalties, if any, under the CCRs for violation of its terms and conditions by the PRHA or individual homeowners; and (e) requirements for monitoring activities undertaken (or not undertaken) by the PRHA and individual homeowners under the PRHCP and its associated ITP (as described in Section 5.4 of the PRHCP) and reporting such activities and actions to the USFWS (as described in Section 5.5).

(b) USFWS Review and Approval. Prior to recordation of the PRHA’s Covenants, Conditions and Restrictions, the Project Proponent shall submit a draft of the CCRs to the USFWS for review and approval.

(2) Roles/Responsibilities of the PRHA/Individual Homeowners. Following completion of project-related planning and construction and throughout the remainder of the permit term, the PRHA shall have primary responsibility for administering the PRHCP’s associated ITP; for implementing Delmarva fox squirrel conservation and protection measures under the PRHCP, ITP, and the PRHA’s CCRs applicable to areas on the Property owned or managed by the PRHA (*i.e.*, held by individual homeowners in common, such as Outparcel A); and for ensuring implementation of Delmarva fox squirrel conservation and protection measures under the PRHCP, ITP, and CCRs applicable to individual lots on the Property and compliance with such measures by Lot Owners. Lot Owners, in turn, shall have the responsibility for implementing Delmarva fox squirrel conservation and protection measures under the PRHCP, ITP, and CCRs applicable to them. These measures are described in Subsections (2)(a)-(c) and (3) of this section, in Section 5.4, Subsection (2), and in Section 5.5, and all such measures shall be incorporated into the PRHA’s CCRs and thereafter shall be implemented by the PRHA and Lot Owners, as applicable, for the purpose of protecting Delmarva fox squirrels throughout the permit term.

(a) Responsibilities/Measures Applicable to the Project Proponent and PRHA.

(i) Contact Representative. The PRHA shall designate a contact representative who will coordinate with the USFWS concerning Delmarva fox squirrel-related issues and shall ensure implementation of and compliance with the terms and conditions of the PRHCP, its associated

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ITP, and the PRHA's CCRs. This representative may be an employee or an agent of the PRHA; if the latter, however, the responsibility for compliance and ensuring compliance with the terms and conditions of the PRHCP, ITP and CCRs will ultimately remain with the PRHA.

(ii) Information and Education. Education and public awareness are essential to appropriate implementation of the terms and conditions of the PRHCP and ITP and to maintenance of Conserved Forestlands on the Property. Appendix F provides information regarding Delmarva fox squirrels. Appendix G was prepared to inform Lot Owners of the terms and conditions of the PRHCP, ITP, and the PRHA's CCRs and means of minimizing the impacts of occupancy and use of the Property on Delmarva fox squirrels. The PRHA shall provide Appendices F and G to each Lot Owner in the Project at the time such purchaser becomes a PRHA member; the PRHA shall also provide these materials to each subsequent purchaser of such lots at the time of re-sale of any individual on-site lot or lots. Residents of the Project should note that Appendix F requests residents to send any photographs of Delmarva fox squirrels taken in the vicinity of their homes to the USFWS Chesapeake Bay Field Office, as described by Subsection 5.4(2)(c) below.

(iii) Maintenance of Line of Demarcation. The PRHA shall maintain any and all permanent signs required by and installed pursuant to Section 5.2.1, Subsection (3)(b) above (delineating the line of demarcation between the Conserved Forestlands and areas permitted to be cleared) that occur in areas of the Property not located within individual lots (*i.e.*, located in areas held by all lot owners in common).

(iv) On-site Activities Restrictions. To minimize mortality, harm, or harassment of Delmarva fox squirrels or loss of habitat, throughout occupancy and use of the Property, the PRHA and its CCRs shall ensure:

- (1) That Lot Owners and their contractors and guests are prohibited from igniting open-air fires except for cooking or dumping trash except into containers;
- (2) That, if needed, appropriate containers for trash are provided in common areas and emptied frequently to reduce the attraction of feral animals; and,
- (3) That, with the exception of authorized security or law enforcement personnel, Lot Owners and their contractors and guests are prohibited from firearms use on the site except when hunting legal waterfowl species over the waters of Secretary Creek in accordance with state and federal regulations, and when hunting deer with a legal weapon firing a slug, bullet, or arrow during any legal deer hunting season. No small game hunting, trap or skeet shooting, target practice, casual plinking, or other firearms use of any type shall be permitted on the site except as noted above.

(v) Enforcement. The PRHA's CCRs shall provide and the PRHA shall implement mechanisms for the PRHA to monitor and enforce implementation by Lot Owners of its CCRs relating to Delmarva fox squirrel issues or requirements. In addition, the PRHA shall notify the USFWS (and, where appropriate, Dorchester County) of any violation of such CCRs. Specific measures under the PRHCP, its associated ITP, and the CCRs, or areas subject to such measures, which the PRHA is responsible for enforcing are:

- (1) Measures described in Paragraph (b)(i) below concerning restraint of domestic pets on the Property; in addition, the PRHA and its CCRs shall encourage Lot Owners to report any observations of feral or stray dogs or cats on the Property to either the PRHA or the

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appropriate Dorchester County Animal Control Officer or Agency, and, in the event such observations are made by or reported to the PRHA, the PRHA will report the observation to the appropriate County Animal Control Agency;

(2) Conserved Forestlands on the Property. This is necessary to ensure that no structures, construction, or other activities or features prohibited in these areas as set forth in Subsection (3)(c) below are conducted or put into place; and,

(3) Any and all other measures implementation of which is required by the PRHCP and ITP, and any and all activities prohibition of which is required by the PRHCP and ITP, except for those typically enforced by state or local authorities (such as speed limits).

(vi) Reporting Dead/Injured/Sick Delmarva Fox Squirrels. Upon establishment of the PRHA, with respect to all or part of the Property, as applicable, and continuing throughout the 50-year term of the PRHCP and its associated ITP, the PRHA and its CCRs shall ensure immediate notification to the USFWS of the discovery of any dead, injured, or sick Delmarva fox squirrel on the Property in accordance with provisions described in Section 5.2.1, Subsection (7) above.

(vii) No Conditions/Changes in Conflict with the PRHCP or Recorded Plat. The PRHA shall not approve any conditions or changes to any portion of the Property which are in conflict with the PRHCP, its associated ITP, or the recorded plat.

(viii) PRHA Not to Be Dissolved. The PRHA shall not be dissolved without the express written approval of the USFWS. Such approval must specify that sufficient alternative procedures and funding mechanisms have been established to ensure implementation of the terms and conditions of the PRHCP and its associated ITP (see Section 8.4). The PRHA shall not approve any conditions or changes to the CCRs that are in conflict with the PRHCP, ITP or IA.

(b) Responsibilities/Measures Applicable to Lot Owners.

(i) Domestic Pets. To minimize mortality or harassment of Delmarva fox squirrels, Lot Owners shall implement the following measures with respect to domestic pets:

(1) No domestic pets shall be allowed within Conserved Forestlands on the Property (*i.e.*, beyond the permanent signs described in Section 5.2.1, Subsection (3)(b)) unless they are leashed, chained, or otherwise restrained. This measure is not designed to prohibit domestic pets but rather to ensure that they are kept out of Conserved Forestlands on the Property, or, if present in such forestlands, that they are restrained and controlled;

(2) No Lot Owner or person associated with a Lot Owner on the Property shall provide food or shelter for feral, free-roaming domestic animals (*i.e.*, "strays") unless such animals are also restrained and controlled as described above; and,

(3) Any Lot Owner who observes feral or stray dogs or cats on the Property is encouraged to report such observation(s) to either the PRHA or the appropriate Dorchester County Animal Control Officer or Agency.

(ii) Maintenance of Line of Demarcation; Forest Clearing Restriction. Lot Owners shall maintain any and all permanent signs required by and installed pursuant to Section 5.2.1, Subsection (3)(b) above (delineating the line of demarcation between Conserved Forestlands

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and areas permitted to be cleared) that occur along or within their individual properties. The location and area of clearing permitted on each lot is depicted by the plat and delineated by signs installed by the Project Proponent. Lot Owners may not cut or clear any forest vegetation beyond these signs.

(iii) On-site Activities Restrictions. To minimize mortality, harm, or harassment of Delmarva fox squirrels throughout occupancy and use of the Property, Lot Owners shall observe all activities restrictions described in Subsection (2)(a)(iv) above and all activities prohibitions described in Subsection (3)(c) below.

(iv) Reporting Dead/Injured/Sick Delmarva Fox Squirrels. Upon the beginning of occupancy of individual home sites and throughout the period of such occupancy, all Lot Owners shall immediately notify the PRHA of the discovery of any dead, injured, or sick Delmarva fox squirrel on the Property in accordance with provisions described in Section 5.2.1, Subsection (7) above.

(v) Reporting Live Delmarva Fox Squirrels. Upon the beginning of occupancy of individual home sites and throughout the period of such occupancy, all Lot Owners shall immediately notify the PRHA of the observation of any live Delmarva fox squirrel on the Property in accordance with provisions described in Section 5.4, Subsection (2)(c) below.

(c) Responsibilities/Measures Applicable to the PRHA and Lot Owners.

(i) Right of USFWS Access. The PRHA and Lot Owners shall grant the USFWS right of access to the Property by:

(1) USFWS employees at any reasonable time for the inspection and monitoring purposes specified in 50 CFR 13.21(e)(2) and for the purposes of monitoring and observing the on-site Delmarva fox squirrel population, monitoring implementation of the PRHCP, and undertaking such other activities as it may see fit to protect and conserve on-site Delmarva fox squirrel populations; provided, however, with respect to entry onto individual lots on the Property, that USFWS employees have given notification to affected Lot Owners by phone, e-mail, regular mail or by leaving notification at the Lot Owner's front door a minimum of 48 hours prior to such entry; and,

(2) USFWS contractors or cooperators acting pursuant to a contract or agreement issued by the agency's Chesapeake Bay Field Office and relating specifically to the Property; provided, however, with respect to entry onto individual lots on the site, that such contractors or cooperators have given prior notification to affected Lot Owners by phone, e-mail, regular mail or by leaving notification at the Lot Owner's front door. Such notification shall be given not less than two weeks in advance of such entry or the commencement of any subject activity and a copy of the subject contract or agreement shall be provided to the PRHA also not less than two weeks in advance of such entry or commencement of activity.

(ii) Speed Limits. When driving on the Property, all PRHA personnel and Lot Owners shall observe posted speed limits.

(3) Permitted/Prohibited Activities. In addition to the above, the PRHA's CCRs shall contain language establishing specific permitted activities and uses and prohibited activities and uses on the Property,

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especially within all Conserved Forestlands on the Property remaining after Project-related construction. Such activities and uses are as follows.

(a) *Activities Permitted Within Conserved Forestlands.* Subject to state and local laws, activities and uses permitted within Conserved Forestlands on the Property (*i.e.*, within the area delineated by the permanent indicators described in Section 5.2.1, Subsection 3 above) are as follows.

(i) Construction and use of one pier over Secretary Creek on Lot 7;

(ii) Subject to state and local laws, clearing of a path not more than three (3) feet wide from any residence on the Property to Secretary Creek using hand tools; and,

(iii) Active and passive recreation not resulting in significant damage to or degradation or alteration of Conserved Forestland on the site or its vegetation and substrates.

(b) *Activities Permitted Outside Conserved Forestlands.* Activities and uses permitted outside Conserved Forestlands on the Property (*i.e.*, within the existing agricultural field and area delineated by the permanent indicators described in Section 5.2.1, Subsection 3 above) are as follows.

(i) Construction, placement, and/or occupancy of residences, accessory structures, driveways, drainage structures and septic disposal systems as specified herein;

(ii) Establishment of agricultural fields or pasture; and,

(iii) Growing of trees, plants and flowers as part of a retail or wholesale operation using best management practices for areas of wildlife habitat.

(c) *Activities Prohibited Within Conserved Forestlands.* Activities and uses prohibited within Conserved Forestlands on the Property (*i.e.*, within the area delineated by the permanent indicators described in Section 5.2.1, Subsection 3 above) are as follows.

(i) Presence of domestic pets unless they are physically restrained;

(ii) Construction, development, and associated grading or clearing activities including clearing of existing natural vegetation, tree-cutting, erection of structures, construction of new roads, parking areas, or other impervious surfaces, altering the slope of the land surface, and the placement of sewage disposal systems, except as provided herein;

(iii) Placement of any structures attached to or in addition to an existing structure except as depicted by the Plat, including, without limitation, detached garages, accessory dwellings, sheds, barns, tennis courts, swimming pools, children's play houses or recreational structures or equipment, fences, dog kennels, clotheslines, fuel tanks, garbage cans, incinerators, and gardens; in addition, no construction activities, excavation, grading, clearing, cutting, installation of infrastructure or similar activities shall take place except as depicted by the Plat;

(iv) Cutting or clearing of individual trees except: (1) to prevent trees from falling and blocking waterways or roadways, causing damage to dwellings or other structures, or causing accelerated erosion of the shoreline or streambank of Secretary Creek; (2) in conjunction with horticultural practices used to maintain the health of individual trees; (3) to install or construct a shoreline erosion protection device or measure subject to necessary governmental approval; (4)

to protect on-site Conserved Forestland from extensive pest or disease infestation or threat from fires if approved by the USFWS and MDNR or the Maryland Department of Agriculture; and (5) to enhance the habitat of the Delmarva fox squirrel, if authorized by the USFWS and provided any such actions are approved by relevant state and/or county authorities; and,

(v) Placement of dredged spoil except as necessary for: (1) backfill for permitted shore erosion protection measures; (2) use in approved vegetated shore erosion projects; (3) placement on previously approved channel maintenance spoil disposal areas; and (4) beach nourishment.

5.3 Mitigation Measures

Unlike take minimization measures, which are designed to reduce the amount or extent of take occurring as a result of a project, mitigation measures are designed to mitigate or compensate for the effects of take that actually occurs, particularly take resulting from modification or loss of habitat under the ESA's "harm" definition (see Section 1.2.1). Conservation measures established under an HCP to mitigate for such take typically consist of long-term protection of intact on-site or off-site habitats of species affected by a project.

The USFWS has found, with respect to the Delmarva fox squirrel, that habitat loss and fragmentation throughout the species' range have contributed significantly to its endangered status (USFWS 1993), and, with respect to the Project, that the Project is likely to result in take of Delmarva fox squirrels, primarily through loss and degradation of on-site forested habitats (see Section 1.1). It has also been determined, with respect to the 19.8 acres of forestland currently present on the Property, that some of this must be cut and removed for construction-related purposes (4.83 acres), which is less than the maximum 30% clearing (5.94 acres) permitted by the Critical Area Law (see Section 1.2.2). Consequently, to mitigate for the effects of the Project on Delmarva fox squirrels under the ESA, the Project Proponent proposes three sets of measures, respectively: (1) off-site habitat mitigation, consisting of the protection of off-site Delmarva fox squirrel habitat to compensate for the on-site impacts of 4.83 acres of forest clearing (the total clearing permitted by the Plat) and 8.11 acres of forest degradation resulting from the Project; and (2) on-site forestland mitigation, consisting of 1.65 acres of on-site afforestation.⁶ Each of these measures is described in detail in the following subsections.

(1) Off-site Habitat Mitigation. As seen in Section 4.1, Subsection (1)(b), the Project will result in two types of impacts to Delmarva fox squirrel habitat currently present on the Property: (a) forest clearing (or the permanent removal of on-site forestland to accommodate Project-related construction); and (b) forest degradation (or the reduction in habitat value of forestlands retained on-site as a result of proximity to and the impacts of developed portions of the Property).⁷ As also seen, the size or extent of on-site forestlands subject to these impacts are, respectively: (a) 4.83 acres of forest clearing (representing the maximum area of on-site forestland to be removed to accommodate construction); and (b) 8.11 acres of forest degradation (representing the area of on-site forestland that, upon completion of construction, will be retained but will occur within 150 feet of roads and developed areas of the site).

To compensate for the effects on Delmarva fox squirrels of such forest loss and degradation, the Project Proponent has secured 35.92 acres of off-site forested Delmarva fox squirrel habitat (representing mitigation for 4.83 acres of forest clearing at a 3-to-1 ratio and mitigation for 8.11 acres of forest

⁶ See Footnote 4.

⁷ See Footnote 5.

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degradation at a 2.5-to-1 ratio, as required by the USFWS)⁸ and provided for the long-term protection of those lands. The specific means through which this commitment has been effected, and the specific location of the proposed mitigation lands, are as follows.

(a) *Methods and Means.* To satisfy this obligation, the Project Proponent purchased mitigation credits equal to the 35.92-acres in Dorchester County. This forestland has been protected over the long-term through a perpetual conservation easement placed on and attached to the title of the lands and approved by the USFWS. Under this arrangement, ownership of the lands (and all prerogatives of ownership not otherwise negated by the easement) are retained by the owners; title to the easement is held by the North American Land Trust (a suitable conservation entity or organization approved by USFWS). The off-site mitigation obligation incurred as a result of the Project is considered to have terminated and been discharged upon the later of: (i) approval of the PRHCP, (ii) issuance of the ITP, and (iii) payment by the Project Proponent for mitigation credits equivalent to that obligation and receipt by the USFWS of documentation of that purchase.

The conservation easement agreement, which is dated March 3, 2008 and recorded among the Land Records of Dorchester County, Maryland at Liber 865, folio 645, is attached as Appendix H.

(b) *Site Description.* The mitigation site consists of three parcels of mature forestland comprising approximately 45.7 acres bordering the east side of Maple Dam Road and located 8.9 miles south of the City of Cambridge, 1.8 mile southeast of the town of Seward, and 12.85 miles south of the Property.⁹ The site lies within and is part of a larger, contiguous tract of forestland exceeding 2,500 acres in size and lying between Maple Dam Road and Bepitch Ferry Road. Surrounding the proposed mitigation site on the north and east are the other forestlands within this tract, while the lands immediately west and south of the site and across Maple Dam Road are agricultural and low-density residential. Most of the forestlands located east of the tract itself are part of Blackwater National Wildlife Refuge. A map showing the location (and to some extent, the characteristics) of the mitigation site, its associated forest tract, and approximate areas of Blackwater National Wildlife Refuge ("BNWR") are provided in Appendix C. No other previous easements or obligations are in effect on the site.

The Project Proponent believes the forested mitigation site described above to be highly suitable as a Delmarva fox squirrel mitigation site for several reasons.

- First, it consists of mature forestland (the essential condition of Delmarva fox squirrel habitat; see Section 3.0); occurs within a larger, contiguous forested tract; and the mitigation site and forest tract both are bordered by agricultural lands (which are known to support fox squirrel foraging);
- Second, Delmarva fox squirrels have been observed and their presence confirmed in the forest tract of which the mitigation site is part; and,
- Third, a significant portion of the adjacent forest tract is owned and managed by the USFWS as part of the BNWR. BNWR is managed to provide and protect habitat for over 270 species of rare, federal and state threatened and endangered, and other species, including the Delmarva fox

⁸ The off-site Delmarva fox squirrel habitat protected by the Project Proponent totals 35.92 acres, which is approximately 1.15 acres more than required for the clearing and degradation impacts resulting from the project.

⁹ The parcels comprising the mitigation site are designated by local tax records as Dorchester County Tax Map 71, Parcels 3, 28, and 38.

squirrel. One objective of a draft Comprehensive Conservation Plan that includes BNWR (USFWS 2006) is contributing to delisting of the Delmarva fox squirrel from the endangered species list, and lands within BNWR are managed, in part, to benefit Delmarva fox squirrels.

In summary, the Project Proponent concludes that the lands proposed under the PRHCP to meet its off-site mitigation requirements (together with the immediate environs of those lands) meet all reasonable requirements of Delmarva fox squirrel habitat suitability; actually support Delmarva fox squirrels; and, in addition, occur in the context of forest management scenarios that are highly favorable to Delmarva fox squirrels (as a result of proximity to BNWR lands) and can be expected to be implemented on a long-term basis.

(2) On-Site Afforestation. The Project Proponent is planting 1.65 acres of forest on the Property. While this afforestation is provided, in part, to satisfy requirements under the Critical Area Law, the Project Proponent designed a significant portion (21,517 sq. ft.) on Outparcel A and contiguous to existing forest to expand existing Delmarva fox squirrel habitat.

5.4 Monitoring

(1) By the USFWS. The USFWS is statutorily responsible for monitoring compliance by the PRHCP's permittees with the terms and conditions of the PRHCP. To allow this: (a) throughout the construction period, all permittees under the PRHCP agree to allow USFWS employees to enter the Property at any reasonable time for monitoring and inspection purposes (see Section 5.2.1, Subsection 8); and (b) following construction, the PRHA and all Lot Owners agree to allow USFWS employees, and contractors and cooperators, as applicable, to enter the Property and individual properties on the Property at any reasonable time for similar purposes throughout the 50-year permit term (see Section 5.2.2, Subsection 2.c.i). Conditions and purposes of such entry are described and detailed in the subsections cited above.

(2) By Permittees/Lot Owners. The primary monitoring responsibilities of the PRHCP's permittees and Lot Owners are threefold: (a) monitoring to ensure compliance with the terms and conditions of the PRHCP and its associated ITP; (b) monitoring of the presence or discovery of dead, injured, or sick Delmarva fox squirrels (*e.g.*, as a result of construction-related actions, vehicle strikes, pet depredations, etc.); and (c) monitoring of the presence of live Delmarva fox squirrels.

(a) Compliance Monitoring. Monitoring compliance with the PRHCP's terms and conditions shall be the responsibility: (i) during the construction period, of each permittee (see Section 2.4) with respect to the activities and actions of construction-related contractors and personnel; and, during the period of post-construction site occupancy and use: (ii) of the PRHA with respect to the activities and actions of Lot Owners and agents, contractors, or personnel hired by the PRHA; (iii) of Lot Owners with respect to agents, contractors, or personnel they may hire; and (iv) of the PRHA and Lot Owners with respect to their own activities and actions (*i.e.*, through self-monitoring).

(b) Monitoring of Dead/Injured/Sick Delmarva Fox Squirrels. Monitoring of the presence of dead, injured, or sick Delmarva fox squirrels under the PRHCP is not required to be undertaken systematically but shall occur opportunistically (*e.g.*, during day-to-day construction or site occupancy and use activities) and episodically (*e.g.*, during activities relating to a specific event or circumstance, such as the inadvertent escape of a pet into on-site Conserved Forestland). Nevertheless, all Pleasant Rifts permittees shall be responsible for exercising due diligence in such monitoring (*i.e.*, for being generally alert to the presence of dead, injured, or sick Delmarva fox squirrels on the Property overall or on individual lots on the site, as applicable). In addition, in the

event that a dead, injured, or sick Delmarva fox squirrel is found or discovered on the Property at any time, the measures described in Section 5.2.1, Subsection (7) and Section 5.1.2, Subsections (2)(a)(vi) and (2)(b)(iv) shall be implemented.

(c) *Monitoring of Live Delmarva Fox Squirrels.* Monitoring the presence of live Delmarva fox squirrels on the Property is important for the purpose of determining presence and status of the species within on-site Conserved Forestlands (see Section 5.3, Subsection 2) and the success of the HCP and CCRs in maintaining these forestlands as suitable fox squirrel habitat. To accomplish this, Lot Owners are requested to cooperate with the USFWS in documenting on-site Delmarva fox squirrel occurrences; whenever possible and as opportunity arises, to photograph Delmarva fox squirrels observed on or in the vicinity of their properties (*e.g.*, if fox squirrels are observed at bird feeders, in yards, during walks into wooded portions of a property, etc.); and to submit such photographs to the USFWS. Accordingly, Lot Owners should be alert to Delmarva fox squirrel photo opportunities, and, in the event any such homeowner photographs a Delmarva fox squirrel (or any squirrel believed to be a Delmarva fox squirrel), should submit the photograph to the Branch Chief, Endangered Species Habitat Evaluation and Protection Division, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401, together with a description of the date, location, and time the photograph was taken. Delmarva fox squirrels observed but not photographed need not be reported.

5.5 Reporting

Except as provided below for Lot Owners, each permittee, as applicable (see Section 2.4), shall submit to the USFWS at the beginning of each calendar year a written annual report describing relevant activities under the PRHCP that it undertook or oversaw in the previous calendar year. This report will be due, with respect to the previous calendar year, by February 15 of each year throughout the PRHCP's 50-year term, except that if the PRHCP is approved after July 1 of its first calendar year, activities implemented in that year may be reported in the following year's report. The PRHA shall compile responses from the Lot Owners and submit one annual report applicable to the PRHA and all of the Lot Owners. Each report submitted by the permittees under this section will include a summary of:

- (1) Throughout the construction period, any and all known sale or sales of land occurring with respect to the Property in the preceding calendar year, including sale of the entire Project or sale of unimproved individual lots on the Property;
- (2) Any events, occurrences, or circumstances in the preceding calendar year, if any, in which the PRHCP's terms and conditions were not fully or adequately implemented and what measures, if any, were taken to correct such events or circumstances or to prevent their recurrence in the future;
- (3) Occurrences of Delmarva fox squirrel sightings, if any, on the Property in the previous calendar year, and, with respect to any such sighting(s): (a) the date(s) the sighting(s) occurred; (b) the location of the sighting(s); (c) the number of individual animals observed; (d) the age-class of animals observed, if known (*i.e.*, adult or juvenile); and (e) the events or circumstances surrounding the sighting(s).
- (4) Occurrences of incidental take of Delmarva fox squirrels, if any, or of the finding or discovery of any dead, injured, or sick Delmarva fox squirrels, if any, in the previous calendar year, together with a description of: (a) the date(s) any such taking or discovery of a fox squirrel occurred; (b) the number of specimens taken or found, if known; and (c) the activity or activities being conducted or carried out when the taking or discovery occurred or the events or circumstances surrounding the take or discovery; and,

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(5) Any other pertinent or available information concerning the carrying out of the PRHCP's Covered Activities and conservation program activities, the status of the Delmarva fox squirrel or its habitat on the Property, or other relevant or important information.

In addition, with respect to Paragraph (4) above, reporting of any dead, injured, or sick Delmarva fox squirrel or squirrels shall be undertaken in accordance with Section 5.1.1, Subsection (7) and Section 5.2.2, Subsections (2)(a)(vi) and (2)(b)(iv).

6.0 Funding

Section 10(a)(2)(B) of the ESA requires that an HCP ensure that funding adequate to implement all conservation commitments and measures established by the plan will be provided. Accordingly, funding will be required for the performance of the following Delmarva fox squirrel conservation, protection, and mitigation measures described in Section 4.0 of the PRHCP and will be ensured as follows.

(1) Take Minimization Measures (Project Construction). The PRHCP's take minimization measures with respect to project-related construction activities (see Section 5.2.1) consist primarily of relatively low-cost notification and reporting requirements, an information and education program, activities restrictions, fencing, speed limits, and the like, and will be undertaken primarily by the appropriate permittee (see Section 2.4) and/or bonded construction contractors. Funding for such measures will be provided through the liquid assets of such permittees and contractors and ensured through the bonds such permittees and contractors carry.

Estimated Costs	First-Year	Est. Annual Cost (2 nd year through end of reporting period)
Take Minimization Measures (Project Construction)		
Designation of Contact Representative. USFWS notification of construction commencement. Delivery of Appendices E & F to contact representatives, construction contractors and supervisors	\$75	\$0
Timing and minimization of clearing	\$0	\$0
Delineation of Clearing Limits (survey & construction fencing)	\$6,000	\$0
Permanent signs to delineation Conserved Forestlands	\$400	\$0
Confirmation of cleared area ("as-cleared" survey)	\$2,000	\$0
Speed Limit Signage	\$75	\$0
Reporting dead, injured or sick Delmarva fox squirrels	Nominal	Nominal
Right of USFWS Access	\$0	\$0
Notification of Sales	\$150	\$150 (years 2-3)
Total	\$8,700	\$150 (years 2-3)

(2) Take Minimization Measures (Site Occupancy and Use). The PRHCP's take minimization measures with respect to post-construction site occupancy and use also consist primarily of relatively low-cost requirements such as notification and reporting, information and education, access provisions, activities restrictions, and the like, and will be undertaken by both the PRHA and Lot Owners. The PRHA will also be responsible for enforcing the PRHA's CCRs. The PRHA will be funded initially (*i.e.*, upon its establishment) by the Project Proponent and eventually (*i.e.*, upon sale of individual on-site lots) through the annual dues of PRHA homeowner-members, whose membership in the Association is mandatory (see Section 5.2.2, Subsection 1). Funding for such measures will therefore be provided through the liquid assets of the Project Proponent and the PRHA and will be ensured: (a) with respect to initial PRHA operation, through payment or payments by the Project Proponent necessary to support the PRHA until such time as it is self-supporting; and (b) with respect to ongoing PRHA operation (*i.e.*, from the point at which the PRHA is self-supporting and throughout the ITP term), through the guaranteed annual dues of the Lot Owners. Payment of dues or annual assessments by the Lot Owners is guaranteed by provisions of the CCRs that make such payment obligations enforceable as liens against each Lot in the Project. Take minimization measures for which Lot Owners are responsible are relatively few—see Section 5.2.2, Subsections (2)(b), (2)(c), and (3)—and involve little to no cost.

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Estimated Costs	First-Year	Est. Annual Cost (2 nd year through end of reporting period)
Take Minimization Measures (Site Occupancy and Use)		
Establishment of PRHA and recordation of CCRs	\$300	\$0
Designation of Contact Representative. Delivery of Appendices F & G.	\$50	\$15
Maintenance/replacement of permanent signs delineating Conserved Forestlands (by PHRA and/or Lot Owners)	\$0	\$40
Compliance with On-Site Activity Restrictions (by PHRA and Lot Owners)	\$0	\$0
Compliance monitoring and enforcement of CCR provisions regarding Delmarva fox squirrels (cost of enforcement are an obligation of violating Lot Owner per CCRs)	\$0	Nominal
Reporting dead, injured or sick Delmarva fox squirrels	Nominal	Nominal
Monitoring and reporting live Delmarva fox squirrels	Nominal	Nominal
Right of USFWS Access	\$0	\$0
Annual Reporting	\$450	\$300
Total	\$800	\$355

(3) Mitigation Measures. As seen in Section 5.3, Subsections (1)-(3), respectively, the PRHCP requires that: (a) 35.92 acres of off-site Delmarva fox squirrel habitat be protected through purchase of USFWS-approved mitigation credits; and (b) that additional on-site (1.65 acres) forestland be planted and conserved through appropriate means. Measure (a) above is complete and was funded by the Project Proponent. Documentation of the Project Proponent's mitigation credit purchase is on file with the USFWS-Chesapeake Bay Field Office. Since no construction has occurred on the Property, this mitigation occurred prior to the anticipated impacts for which it is required. Measure (b) above will be satisfied via on-site afforestation, which will be funded by the Project Proponent.

7.0 Changed and Unforeseen Circumstances

7.1 Unforeseen Circumstances/"No Surprises"

The PRHCP incorporates provisions of the "No Surprises" rule for HCPs as promulgated by the USFWS in the *Federal Register* on February 23, 1998 (63 FR 8859) and codified in federal regulation at 50 CFR 17.22(b)(5) and 17.32(b)(5) with respect to changed and unforeseen circumstances. "Unforeseen circumstances" are defined by Federal regulation to mean "changes in circumstances affecting a species or geographic area covered by [an HCP] that could not reasonably have been anticipated by plan developers and the [USFWS] at the time of the plan's negotiation and development, and that result in substantial and adverse changes in the status of the covered species" (50 CFR 17.3). The No Surprises assurances specifically limit the regulatory effects such circumstances can have on an active and ongoing HCP and its associated permittee or permittees.

With respect to the PRHCP, it is acknowledged that the purpose of the PRHCP and its associated ITP is to set forth the rights and obligations of the parties with respect to the PRHCP and to provide for the conservation of Delmarva fox squirrels and the mitigation and compensatory measures required in connection with anticipated incidental taking of Delmarva fox squirrels in the course of otherwise lawful activities within the Property. Accordingly, in the event that unforeseen circumstances occur in the Property the following specific regulatory assurances and provisions will apply, as provided for under the No Surprises regulations and except as otherwise required by law and/or provided for under the terms of the PRHCP:

- (1) No additional mitigation for the effects of the Project on the Delmarva fox squirrel shall be required from any PRHCP permittee provided that the terms of the PRHCP are being "properly implemented" as defined in 50 CFR 17.3; and,
- (2) In the event that the unforeseen circumstances result in changes not provided for by the PRHCP, and if additional conservation and mitigation measures are deemed necessary to respond to the effects of the circumstances, the USFWS may require additional measures of a PRHCP permittee where the PRHCP is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the PRHCP's "operating conservation program" for Delmarva fox squirrels as defined in 50 CFR 17.3 and maintain the original terms of the conservation plan to the maximum extent possible.
- (3) However, additional conservation and mitigation measures will not require the commitment of additional land, water, or financial compensation or restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the PRHCP beyond the level otherwise agreed upon for the species without the consent of the permittees under the PRHCP; and, in addition, in the event that unforeseen circumstances affecting populations of Delmarva fox squirrels or their habitats that are beyond the control of the PRHCP's permittees result in the status of the Delmarva fox squirrel unexpectedly worsening, the primary obligation for implementing additional conservation and mitigation measures shall be the responsibility of the USFWS.
- (4) Thus, in summary, provided that the terms of the PRHCP are being properly implemented, no adjustments or changes to the obligations of the PRHCP as a result of unforeseen circumstances are allowed by the No Surprises assurances without the consent of the affected permittee or permittees. For example, failure to properly delineate on-site construction areas by construction-related personnel or the improper use of firearms on the Property by Lot Owners would represent a failure to properly implement

the PRHCP; and unforeseen circumstances in the project area could include, for example, an outbreak of rabies among the area's Delmarva fox squirrel population. However, if the PRHCP and its associated ITP are being properly implemented, and a change in the PRHCP should become warranted as a result of unforeseen circumstances of an environmental or biological nature: (a) the USFWS would have the responsibility for documenting the subject circumstances; (b) any such change or changes would be limited to the PRHCP's operating conservation program for the Delmarva fox squirrel and would maintain the original terms of the PRHCP to the maximum extent possible; (c) no such change or changes would require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the PRHCP beyond the level agreed on under the plan without the consent of the PRHCP's permittees; and (d) any such additional compensation or related measures needed to respond to the effects of the unforeseen circumstances would be the responsibility of the USFWS.

7.2 Changed Circumstances

Federal regulation defines the term "changed circumstances" in the "No Surprises" rule to mean "changes in circumstances affecting a species or geographic area covered by [an HCP] that can reasonably be anticipated by plan developers and the [USFWS] and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events)" (50 CFR 17.3). The specific terms of the "No Surprises" regulations with respect to changed circumstances are as follows:

- (1) Changed Circumstances Provided for in the Plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the [HCP's] operating conservation program, the permittee will implement the measures specified in the plan.
- (2) Changed Circumstances not Provided for in the Plan. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the [HCP's] operating conservation program, the USFWS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

These provisions mean that any changed circumstances (as distinct from unforeseen circumstances) that may occur over the life of an HCP, and that have been provided for in the plan, will be addressed as specified in the plan. However, any changed circumstances that may occur that were not provided for in the HCP would be addressed (*i.e.*, additional conservation and mitigation measures could be imposed) only with the consent of the permittee. In other words, the exception provided for under the "No Surprises" regulations with respect to unforeseen circumstances (as described above) does not apply to changed circumstances.

- (3) Changed Circumstances Under the PRHCP. No provisions for changed circumstances are provided for under the PRHCP.

8.0 Permit Administration

Permittees under the PRHCP may, from time to time, find it necessary or desirable to amend the plan or its associated ITP or to terminate or modify their commitments under the plan. In addition, although not necessarily anticipated, procedures may periodically be needed to address failure by one party or another to fully implement the PRHCP's requirements. This section addresses these and other procedural issues.

8.1 Amendments

(1) Amendment of the PRHCP and ITP. The PRHCP may occasionally require amendment to: (a) add or remove a species to or from its Covered Species list; (b) revise the PRHCP's Covered Area or list of Covered Activities; (c) modify or extend the permit term; or (d) otherwise revise the PRHCP in a manner that is significantly beyond its scope as originally written and approved and therefore beyond the assumptions about the effects on the Delmarva fox squirrel upon which the original PRHCP was based. Any plan amendment of this type—*i.e.*, which affects key or substantive PRHCP provisions or results in new or significantly different effects on the fox squirrel—would also require amendment of its associated ITP. The PRHCP and permit may therefore be amended for any such reason in accordance with federal statutory or regulatory requirements applicable or in force at the time of any such amendment.

Under current permit regulations (50 CFR Parts 13 and 17), amendment of an ITP is treated in much the same manner as a permit application, and requires, at a minimum: (a) preparation of a revised HCP or HCP addendum incorporating the desired changes and analyzing their effects on the covered species, or, at a minimum, a written description of the amendment, an explanation of why it is needed, and an analysis of its effects on the covered species; (b) publication of a *Federal Register* notice announcing the proposed HCP and permit amendment; and (c) a 30-day public comment period. Whether or not a proposed permit amendment would also require a new or revised NEPA (National Environmental Policy Act) document would be at the discretion of the USFWS.

(2) Amendment of the PRHCP Only. Notwithstanding the above, amendment of the PRHCP may in certain circumstances be accomplished without amending its associated ITP, provided that: (a) any such amendment is of a minor or technical nature and is not expected to result in effects on the Delmarva fox squirrel or the environment, or in changes to the PRHCP's operating conservation program, that are significantly different from those analyzed in the original PRHCP and NEPA document; (b) the permittee (or, as applicable, permittees) submits to the USFWS a written description of the proposed amendment, an explanation of why it is needed, and an explanation of why the amendment is not expected to result in such significantly different effects; and (c) the USFWS concurs with any such finding in writing.

8.2 Permit Termination

(1) Voluntary Termination of the Permit. Any permittee (or, as applicable, permittees) under the PRHCP may terminate its (or their) obligations under the PRHCP and the associated ITP at any time if, in its (or their) view, the PRHCP is no longer necessary, desirable, or applicable. Such permittee (or permittees) may terminate the ITP by providing to the USFWS and any and all Lot Owners (who, under the Covenants, Conditions and Restrictions of the PRHA, are beneficiaries of the permit) written notice and a written explanation of the reason for termination a minimum of 90 calendar days prior to the proposed effective date of termination. Upon such notification, any affected Lot Owner may request a meeting with the permittee requesting the termination to discuss pertinent issues that may be raised by the termination announcement, and the permittee will honor any such request within the 90-day notification period. The PRHCP and its associated ITP will then be considered terminated as of the end of the 90-day

period, provided that all obligations under the PRHCP have been satisfied as described in paragraph (2) below. In addition, the permittee requesting the termination will, in writing and within 30 days of the effective date of permit termination, notify all affected Lot Owners that the permit is to be terminated and that all rights and obligations attendant to the permit will be considered terminated as of the effective date of termination.

(2) Requirements for Voluntary Permit Termination. Any permittee, should it request termination of the ITP, and any affected Lot Owners, understand that voluntary termination of the ITP is allowable only if all obligations and measures required by the PRHCP and incumbent upon the permittee and homeowner or owners at the time of the proposed effective date of termination have been fully implemented or satisfied, and that the USFWS is not obligated to terminate the permit or to consider the permit terminated unless or until this is the case. For example, if forestland habitat of the Delmarva fox squirrel has already been removed, disturbed, or otherwise affected as a result of activities covered by the ITP, the permit may not be terminated until all mitigation obligations connected with such habitat losses or effects have been met. Any permittee requesting termination of the ITP, and any affected Lot Owners, further understand that the regulatory authorities and benefits provided by the PRHCP also cease as of the effective date of termination of the permit.

8.3 Permit Suspension/Revocation

All permittees under the PRHCP understand that the USFWS may suspend or revoke the PRHCP's associated ITP for cause—*i.e.*, for failure by any permittee to satisfy any specific PRHCP responsibility or requirement—in accordance with Federal regulations applicable or in force at the time of the suspension or revocation (such regulations are currently codified at 50 CFR Parts 13 and 17; see, also, Sections 10.4 and 10.5 of the Implementing Agreement). However, the USFWS will not suspend or revoke the permit unless: (1) it has made reasonable, good faith efforts to work cooperatively with the affected permittee(s) to correct the deficiency; (2) the deficiency remains uncorrected, despite the USFWS's good faith efforts; and (3) the USFWS has provided written notice to the affected permittee(s) alerting the permittee(s) of the pending suspension or revocation a minimum of 30 days prior to the effective date of the suspension or revocation. In addition, the permittee(s)' obligations under the PRHCP, the ITP, and/or the CCRs of the PRHA may continue beyond the suspension or revocation if the USFWS determines that any such obligations were unsatisfied at the time of the suspension or revocation.

8.4 Permit Transfer/Succession/Extension

(1) Permit Transfer/Succession. Although not anticipated, in the event the PRHA should cease operation or otherwise be unable to carry out its responsibilities as permittee under the PRHCP with respect to Occupancy and Use Activities (see Sections 2.4 and 5.2.2, Subsections b and c), the PRHA's ITP may be transferred to another entity in accordance with Federal or state regulations applicable or in force at the time of the transfer (such regulations are currently codified at 50 CFR 13.24 and 13.25). An appropriate successor in the event of such a transfer could include another homeowners association or similar organization. The PRHA's CCRs provide that any owner of a portion of the Property shall be subject to the ITP, this HCP and the Implementing Agreement. Accordingly, each Lot Owner's status as a permittee shall terminate upon such owner's conveyance of all of the property it owns within the Project and the new Lot Owner shall be deemed to be a permittee and subject to the PRHCP and ITP.

(2) Permit Extension. In addition, the PRHCP and ITP may be extended beyond their current 50-year term in accordance with provisions specified in Section 10.6 of the Implementing Agreement.

9.0 Alternatives Considered

Section 10(a)(2)(A) of the ESA requires that an HCP specify alternatives to the taking (*i.e.*, to take levels provided for in the plan) that the HCP applicant considered and the reasons why such alternatives were not utilized. Accordingly, this section of the PRHCP describes two alternatives to the Project as currently proposed that were considered but not adopted: (1) a “No Action” alternative (in which the proposed project would not be undertaken); and (2) a “Reduced Take” alternative (in which the project would be undertaken but at a reduced size or scale).

9.1 No Action

Under the No Action Alternative, the proposed Project would not be built or subsequently occupied; the Property would remain in its current, undeveloped condition (in the near-term, at least); no take of Delmarva fox squirrels or loss or modification of forested Delmarva fox squirrel habitat would occur as a result of the Project; no long term on-site or off-site habitat protection would be established; and no ITP would therefore be issued or HCP implemented.

For several reasons, the No Action Alternative would be significantly at odds with the desires and needs of the Project Proponent, and, as with the Reduced Take Alternative, would result in substantial financial losses. It would specifically: (1) result in loss to the Project Proponent of investment costs already expended in land acquisition and project planning; (2) deny the Project Proponent an economic return on its investment in the Property and thwart desired use of its own privately-owned property; and (3) deprive them of much of the economic value of their land (since the Property would not be developed to its highest and best use). It would also leave open the question of the ultimate fate of the Property, since, under the circumstances associated with no action, the Project Proponent might continue to hold the Property in its undeveloped state (temporarily or permanently), consider other development or land-use options for the site, or simply sell the land (perhaps to another development-minded entity). The No Action Alternative would not therefore guarantee that the Property would not ultimately be developed, and future land-use proposals for the site might be less, not more, favorable to the status of Delmarva fox squirrels in the area. Conversely, the Project as proposed under the PRHCP is sensitive to on-site biological resources (see Section 4.0 of the PRHCP), is consistent with Dorchester County’s zoning for the Property (Suburban Residential), and is consistent with existing land uses both immediately surrounding and in the general vicinity of the site (see Map 3 of the PRHCP).

Thus, while potentially favorable from a biological and environmental standpoint (in the short term, at least), the No Action Alternative would be highly unfavorable economically for the owners of the Property; would nevertheless leave the fate of the site and other off-site habitat unresolved as no long term habitat protection would be established; would interrupt progress on a project (as described in the PRHCP) that would leave much of currently-existing Delmarva fox squirrel habitat on the site intact; and, ultimately, could lead to future proposals for the site that would result in greater, not lesser, biological and/or environmental impacts than the action as proposed. For these reasons, the No Action Alternative has been rejected.

9.2 Reduced Take Alternative

Under the Reduced Take Alternative (as with the PRHCP), the proposed Project would be carried out; would consist of a construction phase and an occupancy-and-use phase; and an ITP for the Project would be issued, the PRHCP implemented, and conservation measures similar to those described in the PRHCP undertaken or carried out. The difference is that the Project would be re-designed for the purpose of

reducing the amount, extent, and/or impacts of take of Delmarva fox squirrels likely to occur as a result of the Project. This could be accomplished in a number of ways, including: (1) modifying proposed subdivision of the site to reduce the number of residential lots; (2) modifying proposed development of the site to reduce the amount of forestland clearing needed to accommodate the Project; and/or (3) designating and protecting a portion of the site as an on-site Delmarva fox squirrel reserve. Such modifications, taken individually or in combination, would benefit Delmarva fox squirrels in a number of ways including reduction of the amount of vehicle traffic on the site, the number of domesticated pets present, and the degree of forestland loss and/or degradation likely to occur as a result of development. Similarly, reducing the amount of forestland clearing on the site would leave more fox squirrel habitat in place, which, in turn, would increase the amount of on-site habitat that would be buffered by distance from developed portions of the site.

However, these benefits must be considered in terms of their costs and of the magnitude or importance of those benefits relative to their costs. Generally, the importance of potential benefits to Delmarva fox squirrels represented by the Reduced Take Alternative hinges on two factors—the amount or extent to which take of fox squirrels likely under the PRHCP would actually decrease under the Reduced Take Alternative (which would determine the relative value of the latter compared to the former); and the importance of the Property to local fox squirrel populations (which, in part, would determine the importance of achieving the benefits represented by the Reduced Take Alternative). Furthermore, if any of these factors should prove to be significant or substantial, this would represent justification for implementing the Reduced Take Alternative.

This does not appear to be the case, however, for several reasons. First, the acreage of forested Delmarva fox squirrel habitat that would be removed under the PRHCP is relatively small (just 4.83 acres). Second, the amount or extent to which loss of fox squirrel habitat would actually decrease under the Reduced Take Alternative must therefore itself be relatively small. And, third, except to the extent that they are part of a habitat corridor, forestlands on the Property appear to carry no particular or special importance to local fox squirrel populations. The latter conclusion is based on the facts that i) the particular tract of habitat located on the Property is not deemed any more or less critical than other tracts of habitat, and ii) a number of forested habitat blocks occur in the project area that are substantially larger than the Property and have been documented to support fox squirrels (see Map 3). In addition, the value of the Property as a Delmarva fox squirrel habitat corridor is substantially conserved under all Project alternatives (*i.e.*, the PRHCP, the No Action Alternative, and the Reduced Take Alternative). In light of these considerations, the magnitude or importance of Delmarva fox squirrel benefits under the Reduced Take Alternative appear to be limited at best.

However, the economic costs of the alternative (*i.e.*, if one or more of the revisions described above were to be implemented) would be numerous and substantial and include the following: (1) the costs (in time and money) of re-designing the Project, preparing a new plat and associated engineer's drawings, and re-initiating the local Project approval process; (2) losses associated with the costs of work already completed for the current Project design, much of which would have to be discarded; (3) the costs of revenue foregone as a result of establishing an on-site fox squirrel reserve (since the reserved portion of the site probably could not be sold); and (4) the costs of reduced return on investment generally, since most revisions under a Reduced Take Alternative would have the effect of reducing the financial returns that would be generated from the site and that would return a profit commensurate with the investment. Such revisions could even destroy or significantly undermine the economic feasibility of the Project. For these reasons, the Reduced Take Alternative has also been rejected.

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Personal Communications

- Cherry Keller, Senior Biologist, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401.
- Glenn Therres, Associate Director, Maryland Department of Natural Resources, Wildlife and Heritage Division, 580 Taylor Avenue, E-1, Annapolis, Maryland 21410.

Appendix A:
Implementing Agreement

Implementing Agreement

By and Between

the U.S. Fish and Wildlife Service,

RB & JH Properties, LLC,

and the Pleasant Rifts Homeowners Association, Inc.

TO ESTABLISH A CONSERVATION PROGRAM FOR THE DELMARVA FOX SQUIRREL, A FEDERALLY LISTED ENDANGERED SPECIES, IN THE COURSE OF CONSTRUCTION AND POST-CONSTRUCTION OCCUPANCY AND USE OF THE PROPOSED PLEASANT RIFTS HOUSING DEVELOPMENT, DORCHESTER COUNTY, MARYLAND.

This Implementing Agreement ("Agreement"), made and entered into as of the ____ day of _____, 2008, by and between the U.S. FISH AND WILDLIFE SERVICE ("USFWS"), RB & JH PROPERTIES, LLC ("Project Proponent"), and the PLEASANT RIFTS HOMEOWNERS ASSOCIATION, INC. ("PRHA"), hereinafter collectively called the "Parties," defines the Parties' roles and responsibilities and provides a common understanding of actions that will be taken under the Pleasant Rifts Habitat Conservation Plan ("PRHCP"), which has been prepared pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended ("ESA"), to protect and conserve the federally endangered Delmarva fox squirrel in the course of project construction and post-construction occupancy and use of the proposed Pleasant Rifts housing development in Dorchester County, Maryland.

1.0 RECITALS

This Agreement is entered into with regard to the following facts and considerations:

WHEREAS, the Project Proponent proposes to subdivide the 29.6-acre Property into 13 individual residential lots and to undertake Initial Construction Activities on the Property; currently unknown homebuilders will then construct homes on those lots, and homeowners ("Lot Owners") will subsequently purchase, occupy, and use the resulting residential properties; and the PRHA, pursuant to its Declaration of Covenants, Conditions, and Restrictions ("CCRs") will then carry out management actions on those areas of the Property held in common by such Lot Owners and will otherwise enforce CCRs of the Association throughout the Property;

WHEREAS, the Delmarva fox squirrel (*Sciurus niger cinereus*) is listed as an endangered species under the ESA, 16 U.S.C. §§ 1531 *et seq.*;

WHEREAS, the USFWS has determined that the Property represents actual or potential Delmarva fox squirrel habitat and that "take" of Delmarva fox squirrels may therefore occur in the course of construction on and subsequent occupancy and use of the Project;

WHEREAS, the USFWS is also the agency of the Department of Interior of the United States of America authorized and empowered by Congress to enforce the terms of the ESA with respect to terrestrial wildlife and to issue permits to allow the “incidental take” of endangered and threatened species pursuant to Section 10(a)(1)(B) of the ESA; and,

WHEREAS, procedures to obtain such permits require submission of a Habitat Conservation Plan for the species for which such an Incidental Take Permit (“ITP”) is sought, together with a binding agreement committing the parties to the HCP to implement specified conservation measures on behalf of such species;

NOW, THEREFORE, the Parties hereto do hereby understand and agree as follows:

2.0 LEGAL REQUIREMENTS

2.1 Pursuant to the provisions of Section 10(a)(1)(B) of the ESA, the Project Proponent has prepared the PRHCP and submitted it to the USFWS with a request that the USFWS issue an ITP to allow Delmarva fox squirrels to be incidentally taken within the Permit Area in the course of carrying out the Project.

2.2 In order to fulfill the requirements for issuance of the Permit, the PRHCP sets forth measures intended to ensure that any take occurring within the Permit Area will be incidental; that the impacts of the take will, to the maximum extent practicable, be minimized and mitigated; that procedures to deal with Unforeseen Circumstances will be provided; that adequate funding for the PRHCP will be provided; and that the take will not appreciably reduce the likelihood of the survival and recovery of the Delmarva fox squirrel in the wild. It also includes measures that have been suggested by the USFWS as being necessary or appropriate for the purposes of the PRHCP.

2.3 The USFWS finds that the PRHCP as implemented pursuant to this Agreement does provide such measures and that it does satisfy the legal requirements necessary for it to issue an ITP under Section 10(a)(1)(B) of the ESA.

3.0 DEFINITIONS

The following terms as used in this Agreement shall have the meanings set forth below:

3.1 Terms defined and utilized in the PRHCP and the ESA shall have the same meaning when utilized in this Agreement, except as specifically set forth in this section.

3.2 “Agreement” means this Implementing Agreement, which has been prepared in association with the PRHCP pursuant to the requirements of Section 10(a)(2)(B) of the ESA.

3.3 “Building Pad” means the limits of disturbance for each individual lot in the Project as depicted by the Pleasant Rifts Subdivision Plat.

3.4 “Covered Activities” refers to two categories of activities encompassed by the Project to which the coverage of the PRHCP’s associated ITP apply, which are: (a) Project Construction Activities (including Initial Construction Activities and Home Construction Activities; see Subsections 3.27 and 3.9 below, respectively); and (b) Occupancy and Use Activities associated with the developed project site (see Subsection 3.13 below).

3.5 “Critical Area Law” means Maryland’s Chesapeake Bay Protection Act, which, among other things: (a) establishes the Chesapeake Bay “Critical Area” (defined as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries); and (b) provides for measures to mitigate the impact on the Bay of water pollution and loss of natural habitat resulting from development, agricultural practices, and forestry activities within the Critical Area. The Critical Area Law works complementarily with the ESA and, under the CCRs of the PRHA, has the effect of conserving forestland on the Property representing actual or potential Delmarva fox squirrel habitat.

3.6 “Declaration of Covenants, Conditions, and Restrictions” or “CCRs” refers to the legal document and conditions establishing the PRHA, setting forth the responsibilities and obligations of the PRHA and individual Homeowners in managing the Property during the period of post-construction site occupancy and use, and describing the conditions under which the Property will be managed during that period.

3.7 “ESA” means the federal Endangered Species Act (16 U.S.C. §§ 1531-1544), including all regulations promulgated pursuant to that Act, which, among other things: (a) prohibit “take” of federally listed threatened and endangered species (see Subsection 3.29 below); (b) provide for measures allowing preparation of HCPs and issuance of associated permits for “incidental take” of such species (see Subsections 3.10 and 3.20 below); and (c) provide for measures addressing Unforeseen Circumstances in the course of implementing HCPs (see Subsection 3.30 below).

3.8 “Forest Clearing Area” refers to a maximum of 4.83 acres of existing forestland on the Property that will be cleared to accommodate Project Construction Activities and Occupancy and Use Activities, as described in Section 5.2 of the PRHCP and depicted on the Pleasant Riffs Subdivision Plat. The line of demarcation between this area and the On-site Development Impact Area will be delineated in accordance with Section 5.2.1, Subsection (3)(b) of the PRHCP.

3.9 “Home Construction Activities” refers to construction of residences, accessory structures and related facilities (e.g., driveways, sewage systems, etc.) on those individual lots.

3.10 “Incidental take” means the take of an animal species listed as endangered or threatened pursuant to the ESA that would otherwise be prohibited under section 9 of the Act where such take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

3.11 “Initial Construction Activities” refers to initial ground-disturbing activities such as land clearing and grading and construction of infrastructure (e.g., Deer Run Drive, stormwater management facilities, etc.) necessary to allow Dorchester County to issue building permits for individual lots on the Property.

3.12 “Lot Owner” or “Lot Owners” refers to the person or persons who purchase one or more individual lots on the Property. Lot Owners may: (a) hold such lot(s) for investment purposes, (b) construct residences on those lots; (c) occupy and use residences constructed on those lots; or (d) do any combination of the foregoing (see Sections 3.9 and 3.13).

3.13 “Occupancy and Use Activities” refers to any and all activities that could potentially result in take of Delmarva fox squirrels after Initial Construction Activities have been completed and that are undertaken by the PRHA in the course of carrying out its responsibilities on the Property and by Lot Owners in the course of post-construction occupancy and use of their properties and homes, such

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activities to include, but not to be limited to, operation, maintenance and repair of roads, drainage facilities, stormwater management facilities, and other facilities held by Lot Owners in common; vehicle use of on-site roads, driveways, and access roads; the keeping of all animals and pets allowed by local law or regulation; and any and all similar activities actually or potentially resulting in take of Delmarva fox squirrels and not otherwise prohibited by the PRHCP and the CCRs of the PRHA.

3.14 “Off-site Habitat Mitigation Area” refers to 35.92 acres of off-site Delmarva fox squirrel habitat in Dorchester County which has been secured and protected via a conservation easement granted to North American Land Trust, will be managed as habitat for the fox squirrel in perpetuity pursuant to the requirements of the ESA and the PRHCP, and is intended to mitigate for: (a) the loss of 4.83 acres of Delmarva fox squirrel habitat within the Forest Clearing Area; and (b) degradation of 8.11 acres of fox squirrel habitat within the On-site Development Impact Area.

3.15 “On-site Development Impact Area” refers to 8.11 acres of existing forestland on the Property that will be retained on-site pursuant to the Critical Area Law and conserved through the CCRs of the PRHA, but, because they will occur within 150 feet of developed areas on the Property, will be subject to habitat degradation associated with the impacts of nearby development. This area is described in Section 4.1, Subsection (2)(b)(ii) of the PRHCP.

3.16 “On-site Forestland Conservation Area” refers to 6.76 acres of forestland and 2.4 acres of emergent marshland on the project site (totaling 9.16 acres) that will be retained on-site pursuant to the Critical Area Law and conserved through the CCRs of the PRHA, but, because it occurs outside the On-site Development Impact Area, will be relatively free of development-related impacts. This area is described in Section 4.1, Subsection (2)(b)(iii) of the PRHCP.

3.17 “On-site Conserved Forestland” refers to the 8.11 acre On-site Development Impact Area and 9.16 acre On-site Forestland Conservation Area (totaling 17.37 acres), collectively.

3.18 “On-site Forestland Mitigation Areas” refers to unforested land (1.65 acres of currently unforested land on the Property) on which the Project Proponent will establish or provide for the establishment of new forestland, the purpose of which, pursuant to the requirements of the Critical Area Law, will be to partially mitigate for the loss of 4.83 acres of existing forestland on the Property as result of clearing for the Project. This area of afforestation, a portion of which is contiguous to existing forest, may provide benefits to Delmarva fox squirrels as it matures. Additional afforestation will be provided by the Project Proponent through payment of a fee-in-lieu, which may provide additional off-site habitat for Delmarva fox squirrels, but is not proposed as mitigation for the anticipated impacts.

3.19 “Parties” as used in this Agreement refers to the signatories to the Agreement: RB & JH Properties, LLC, Pleasant Rifts Homeowners Association, Inc., and the U.S. Fish and Wildlife Service.

3.20 “Permit” or “ITP” means an Incidental Take Permit to allow take of Delmarva fox squirrels incidental to the carrying out of the Covered Activities as requested by the Project Proponent pursuant to Section 10(a)(1)(B) of the ESA and as proposed to be issued by the USFWS pursuant to Section 10(a)(2)(B) of the ESA.

3.21 “Permittee(s)” means any or all of the following: (a) the Permittee shall be the Project Proponent and its contractors and assigns throughout the period during which it is legal owner of all or any portion of the Property; (b) currently unspecified lot owners (“Lot Owners”) and their

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contractors and assigns throughout the period during which they own any portion of the Property; and (c) after the PRHA has been created and assumed all obligations assigned to it under its Declaration of Covenants, Conditions, and Restrictions, the Permittee shall also include the PRHA.

3.22 "Permit Area" and "Property" as used in this Agreement have the same meaning as the term "Covered Area" in the PRHCP and means the geographic area on which the proposed Project will be built and to which the PRHCP and its associated ITP will apply, consisting, specifically, of the 29.6-acre property owned by the Project Proponent near the Town of Secretary, Dorchester County, Maryland as described in Section 2.2 of the PRHCP and depicted in the Pleasant Riffs Subdivision Final Plat and Map 2 of the PRHCP.

3.23 "Pleasant Riffs Homeowners Association" or "PRHA" refers to an on-site homeowners association which will undertake assorted functions relating to management of the Project as set forth in its Declaration of Covenants, Conditions, and Restrictions and will assume certain obligations under the PRHCP and these CCR's as set forth in Section 8.1, Subsection (B)(2) of this Agreement.

3.24 "Pleasant Riffs Subdivision Plat" refers to the final plat for the project entitled "Final Pleasant Riffs Subdivision," prepared by Dennis & Baumgartner, Land Surveyors, Inc., Salisbury, Maryland, dated Feb. 2005 and revised July 30, 2008, which will be recorded in the Land Records of Dorchester County prior to the commencement of Initial Construction Activities; together with related Engineers Drawings, Sheets 1 to 4, prepared by TLG Engineering Co., Cambridge, Maryland, dated July 6, 2007.

3.25 "PRHCP" means the Pleasant Riffs Habitat Conservation Plan prepared by the Project Proponent pursuant to Section 10(a)(2)(A) of the ESA in support of application for an ITP allowing take of Delmarva fox squirrels in the course of the Project.

3.26 "Project" refers to the project proposal addressed in the PRHCP and its associated ITP, which consists of: (a) subdivision of the 29.6-acre Property into 13 individual residential lots and construction of a small residential community of 13 residences and associated infrastructure within and around those lots; and (b) subsequent occupancy and use of the Property.

3.27 "Project Construction Activities" refers to any and all on-site, project-related construction activities undertaken by the Project Proponent, any Lot Owner and their contractors, assigns, employees and/or subcontractors. These activities to include Initial Construction Activities and Home Construction Activities, such as clearing and grading, materials stockpiling, vehicle and heavy equipment use, installation and removal of erosion control devices and structures, seeding and planting, and construction of homes, roads, driveways, access roads, associated sewage, drainage, and stormwater facilities, and any and all other facilities and structures associated with completion of the proposed development.

3.28 "Project Proponent" means RB & JH Properties, LLC, which currently owns the Property, proposes to subdivide the Property and to undertake Initial Construction Activities on the Property.

3.29 "Take" as defined in the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any ESA-listed endangered or threatened species or to attempt to engage in any such conduct. The term "harm" in this definition means an act that causes significant habitat modification or degradation where it actually kills or injures such species by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering. The term "harass" in this

definition means an intentional or negligent act or omission which creates the likelihood of injury to such wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

3.30 “Unforeseen Circumstances” as defined by Federal regulation (50 CFR 17.3) and for purposes of the PRHCP and this Agreement, means changes in circumstances affecting the Delmarva fox squirrel or the Property that could not reasonably have been anticipated by the Project Proponent and USFWS at the time of the PRHCP’s development, and that result in substantial and adverse changes in the status of the Delmarva fox squirrel.

4.0 MUTUAL ASSURANCES

The primary purpose of this Agreement is to provide for the long-term reconciliation of the Covered Activities within the Permit Area with conservation and protection of the Delmarva fox squirrel and its habitat.¹ Based on and in consideration of this Agreement and the PRHCP, the Parties hereby agree and extend the following mutual assurances.

4.1 The Service agrees that:

(A) Compliance with the terms and conditions of this Agreement and the PRHCP constitutes compliance with the provisions of the ESA; and,

(B) Implementation of this Agreement and the PRHCP will provide for the conservation and protection of the Delmarva fox squirrel and its habitat in the Permit Area.

4.2 The Permittees agree:

(A) To establish and maintain the take minimization, mitigation, and habitat conservation and protection measures necessary to implement the PRHCP and this Agreement, as described in the Agreement; and,

(B) To establish and maintain sources of funding sufficient to implement the PRHCP and this Agreement, as described in the Agreement.

5.0 PURPOSES

The purposes of this Agreement are:

5.1 To implement a plan to conserve, protect, restore, and enhance the Delmarva fox squirrel and its habitats during construction activities on, and subsequent site occupancy and use of, the Property.

5.2 To ensure implementation of the specific terms of the PRHCP;

5.3 To contractually bind each of the Parties to fulfill and faithfully perform the obligations, responsibilities, and tasks assigned to it pursuant to the terms of the PRHCP and this Agreement;

¹ See Footnote 4 in the PRHCP for explanation of the difference between the terms “conserved” and “conservation” and “protected” and “protection” as used in the plan and in this Agreement.

5.4 To provide remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in the PRHCP and this Agreement; and,

5.5 As stated in Section 9.4, Subsection (A) hereof, to provide assurances to the Permittees that so long as the terms of the PRHCP and the Permit issued pursuant to the PRHCP and this Agreement are fully and faithfully performed, no additional mitigation will be required of the Permittees except as otherwise provided for in the PRHCP and this Agreement or as required by law.

6.0 INCORPORATION OF HCP

The PRHCP and each of its provisions are intended to be, and by this reference are, incorporated herein. However, in the event: (1) of any direct contradiction between specific terms appearing in this Agreement and in the PRHCP, the terms of the Agreement shall control; (2) that specific terms appear in this Agreement but not in the PRHCP, the terms of the Agreement shall control; and (3) that specific terms appear in the PRHCP but not in this Agreement, the terms of the PRHCP shall control. Otherwise, the terms of this Agreement and of the PRHCP shall be interpreted to be supplementary to each other.

7.0 STATED TERM

This Agreement shall become effective on the date the USFWS issues the ITP requested in the PRHCP and shall remain in full force and effect for a period of 50 years or until termination of the ITP, whichever occurs sooner.

Notwithstanding the stated term of this Agreement, the Parties agree and recognize that once the Delmarva fox squirrel has been incidentally taken and its habitat lost or modified pursuant to the Permit and the PRHCP, the take and habitat loss will be permanent. It is therefore the intention of the Parties that the provisions of the PRHCP and of this Agreement regarding the establishment and conservation and protection of forested habitat of the fox squirrel within the Off-site Mitigation Area and On-site Conserved Forestland, as described in Section 5.2, Subsections (1) and (2) of the PRHCP, respectively, and in Section 8.1, Subsection (C) of this Agreement, shall likewise, to the extent permitted by law, be perpetual and extend beyond the Stated Term of the Agreement.

8.0 OBLIGATIONS OF THE PARTIES/PERMITTEES

8.1 Obligations of the Permittees. The obligations of the Project Proponent under the PRHCP, its associated ITP, and this Agreement, as described in Paragraphs 8.1(A)(1) and 8.1(B)(1) below, shall commence on the effective date of the ITP and the Agreement and continue throughout the period of Project Construction Activities unless, following the completion of Initial Construction Activities, the Project Proponent sells its interests in the Property in its entirety to a Homebuilder (e.g., to a construction contractor) or sells those interests incrementally to individual Homebuilders (i.e., to purchasers of individual on-site lots), in which case the obligations of the Project Proponent shall terminate with respect to the property conveyed and the obligations of the purchasing Homebuilder or Homebuilders under the PRHCP and ITP, as described in Paragraph 8.1(A)(2), shall commence on the effective date of any such sale, as evidenced by recorded deed, and continue throughout the period of Home Construction Activities. All of the above, furthermore (i.e., the Project Proponent and a Homebuilder or Homebuilders), under the circumstances described, shall be a Permittee under the PRHCP and its associated ITP during the applicable period.

The obligations of the PRHA and Lot Owners under the PRHCP, its associated ITP, and/or the CCRs of the PRHA, as described in Paragraphs 8.1(B)(2)(a)-(c) below, shall commence, with

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respect to the PRHA, upon its establishment, as evidenced by recordation of its Declaration of Covenants, Conditions, and Restrictions in the land records of Dorchester County, and continue throughout the Stated Term of the Permit; and, with respect to Lot Owners, shall commence on the date they acquire one or more Lots within the Project, and continue throughout the period of such ownership.

In addition, the obligations of the Project Proponent under the PRHCP, its associated ITP, and this Agreement in discharging the measures described in Subsection 8.1(C) below shall commence on the effective date of the ITP and the Agreement and such measures shall be fulfilled prior to the commencement of Initial Construction Activities undertaken within 150 feet of forested habitat on the Property. The obligations of Subsections (C)(1)-(3), furthermore, will remain those of the Project Proponent alone and may not be transferred or assigned to the PRHA or any Lot Owner.

(A) Take Minimization Measures (Project Construction Activities).

(1) By the Project Proponent. The Project Proponent shall implement the take minimization measures specified in Section 5.1.1, Subsections (1)-(9) of the PRHCP in the course of carrying out Initial Construction Activities and, if applicable, Home Construction Activities.

(2) By a Lot Owner. If, however, with respect to Home Construction Activities, the responsibility for take minimization falls to any Lot Owner as a result of purchase of all or any portion of the Pleasant Rifts site, any such Lot Owner shall implement the take minimization measures specified in Section 5.1.1, Subsections (1)-(9) of the PRHCP in the course of such activities.

(B) Take Minimization Measures (Post-Construction Site Occupancy and Use).

(1) By the Project Proponent. Prior to the commencement of Initial Construction Activities within 150 feet of forested habitat on the Property, the Project Proponent shall record in the land records of Dorchester County a Declaration of Covenants, Conditions and Restrictions for the purpose of creating the Pleasant Rifts Homeowners Association, which, among other things, will designate On-site Conserved Forestland on the Property as specified in Subsection (C)(1) below and describe the responsibilities of the PRHA and Lot Owners established under the PRHCP and its associated ITP to protect Delmarva fox squirrels in the course of Occupancy and Use Activities as specified in Subsection (B)(2) below.

(2) By the PRHA & Lot Owners. The PRHA and Lot Owners shall, as applicable:

(a) Implement, observe, or enforce: (i) all requirements of the PRHA's CCRs in the course of Post-construction Site Occupancy and Use; and, in addition (ii) under the terms of the CCR's, each Lot Owner shall, upon purchase of any individual on-site lot, automatically be a member of the PRHA;

(b) Implement: (i) the take minimization measures specified in Section 5.1.2, Subsections (2)(a)-(c) of the PRHCP in the course of Occupancy and Use Activities (which are designed to minimize the effects on Delmarva fox squirrels of vehicle use, domestic pets, human habitation, and other development-related impacts on the project site); (ii) the monitoring measures specified in Section 5.4,

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of the PRHCP; and (iii) the reporting measures specified in Section 5.5 of the PRHCP; and,

(c) Obey and observe: (i) the list of activities permitted within On-site Conserved Forestland as described in Section 5.1.2, Subsection (3)(a) of the PRHCP; (ii) the list of activities permitted outside On-site Forestland Conservation Areas as described in Section 5.1.2, Subsection (3)(b) of the PRHCP; and (iii) the list of activities prohibited within On-site Conserved Forestland as described in Section 5.1.2, Subsection (3)(c) of the PRHCP.

(C) On-site/Off-site Conservation/Mitigation Measures.

(1) On-site Conserved Forestland. The Project Proponent shall ensure that the Declaration of Covenants, Conditions and Restrictions of the PRHA, establishment of which is specified in Subsection (B)(1) above:

(a) Describes and designates: (i) the On-site Development Impact Area; and (ii) the On-site Forestland Conservation Area (collectively, the "On-site Conserved Forestland") as these areas are defined and described in Section 4.2, Subsection (2) of the PRHCP and Subsection 3.20-3.22 of this Agreement; and,

(b) Incorporates as part of the CCRs of the PRHA all take minimization measures specified in Paragraphs (B)(2)(a)-(c) above.

(c) Thus, 14.97 acres of forestland and 2.4 acres of associated wetlands on the Property (totaling 17.37 acres) will be permanently maintained and conserved under the authorities of the Critical Area Law and the CCRs of the PRHA, the purposes of which will be: (i) directly, to conserve on-site forestlands and the waters of Chesapeake Bay; and (ii) indirectly, to maintain a substantial area of forested habitat for Delmarva fox squirrels actually or potentially inhabiting the site now and in the future. The latter, furthermore, will: (iii) help minimize mortality, harm, and harassment of Delmarva fox squirrels in the course of project-related activities both short-term (i.e., during Project Construction Activities) and long-term (i.e., as a result of Post Occupancy and Use Activities); (iv) provide a refuge for fox squirrels that may be displaced as a result of removal of up to 4.83 acres of existing on-site forestland in the Forest Clearing Area; and (v) provide permanent nesting and foraging capabilities and a travel corridor for Delmarva fox squirrels throughout the proposed 50-year Stated Term and beyond.

(2) Off-site Habitat Mitigation Area. In addition, to mitigate for impacts to the Delmarva fox squirrel of the permanent loss of 4.83 acres of existing forested habitat in the Forest Clearing Area of the Property, and of actual or potential degradation of 8.11 acres of existing forested habitat in the On-site Development Impact Area (see above), the Project Proponent has permanently protected and preserved 35.92 acres of off-site Delmarva fox squirrel forest habitat within three contiguous parcels in Dorchester County. This acreage was placed under a conservation easement attached to the title of the land that requires preservation and management of the land for the benefit of Delmarva fox squirrels in perpetuity; such easement (the full text of which is shown in Appendix D of the PRHCP) is held by the North American Land Trust, a conservation organization approved by the USFWS. This mitigation land, a map of which is shown in

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Appendix C of the PRHCP, is located along Maple Dam Road approximately 8.9 miles south of the City of Cambridge in Dorchester County. Derivation of this 35.92 mitigation acreage is as shown in Section 5.3, Subsection (1) of the PRHCP.

(3) On-site/Off-site Forestland Mitigation Areas. Finally, pursuant to the Critical Area Law, and to mitigate for the permanent loss of 4.83 acres of existing forestland in the Forest Clearing Area, the Project Proponent will establish new forestland via: (a) on-site afforestation of a 50-foot buffer along State Route 16 and within Outparcel A totaling 1.65 acres; and (b) payment into the Dorchester County Afforestation Fee-in-Lieu Fund. Although this mitigation is not provided with respect to the Delmarva fox squirrel specifically, it may nevertheless benefit the squirrel if: (a) on-site afforestation over time produces habitat suitable for Delmarva fox squirrel use; or (b) off-site forestland ultimately acquired or protected by Dorchester County represents suitable Delmarva fox squirrel habitat.

8.2 Obligations of the USFWS. The USFWS shall also be responsible for carrying out certain tasks and obligations under the PRHCP, the ITP, and this Agreement, which obligations are:

(A) Permit Oversight. Generally, and in accordance with its statutory authorities and Sections 5.3, 7.1, 8.1, 8.3, and 8.4 of the PRHCP: (1) to ensure compliance by all Permittees with the terms and conditions of the PRHCP, the ITP, and this Agreement throughout the Stated Term; and (2) as necessary and feasible, to assist all Permittees in such compliance;

(B) Site Inspections. In the carrying out of the obligations specified in Subsection (A) above and as necessary and appropriate, to conduct inspections of the Property during the period of Project Construction Activities and Occupancy and Use Activities, provided, however, that with respect to entry onto individual lots on the site, prior notification as described in Section 5.1.2, Subsection (2)(c)(i) of the PRHCP is provided; and,

(C) Technical Assistance. To the maximum extent practicable and appropriate, to ensure the availability of its staff to cooperate with and provide technical assistance to the Permittees.

9.0 REMEDIES AND ENFORCEMENT

Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this Agreement, the ITP, and the PRHCP, and to seek remedies for any breach hereof, subject to the following:

9.1 No Monetary Damages. No Party shall be liable in damages to the other Parties or any other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by the Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing:

(A) Liability Retained. All Parties shall retain whatever liability they would possess for their present and future acts or failure to act without the existence of the Agreement.

(B) Land Owner Liability. All Parties shall retain whatever liability they possess as an owner of interests in land.

9.2 Enforcement Authority of the United States. Nothing contained in this Agreement is intended to limit the authority of the U.S. government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

9.3 Injunctive and Temporary Relief. The Parties acknowledge that the Delmarva fox squirrel is unique and that its loss as a species would result in irreparable damage to the environment and that injunctive and temporary relief may therefore be appropriate to ensure compliance with the terms of this Agreement.

9.4 Limitations on and Extent of Enforceability.

(A) No Surprises Policy. Subject to the availability of appropriated funds and except as otherwise required by law, no further conservation or mitigation measures for the effects of the Covered Activities upon the Delmarva fox squirrel may be required from the Permittees if the Permittees have otherwise abided by the terms of the PRHCP, except in the event of Unforeseen Circumstances; provided that any such additional conservation or mitigation as a result of Unforeseen Circumstances may not require additional land use restrictions or financial compensation from the Permittees without their written consent, as provided for by the USFWS's No Surprises regulations and as described in Section 7.1 of the PRHCP.

(B) Private Property Rights and Legal Authorities Unaffected. Nothing in this Agreement shall be deemed to restrict the rights of the Permittees to the use or development of their lands, or interests in their lands, within the Permit Area.

(C) Damages from Certain Causes. Except to the extent of intentional or negligent acts or omissions attributable to the Permittees, the Permittees shall not be liable or responsible to the USFSW for any loss or damage to or trespass to any real property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or any cause beyond the Permittees' control.

(D) Attorney's Fees. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs. However, attorney's fees and costs against the United States shall be governed by applicable law.

9.5 Dispute Resolution. The Parties recognize that disputes concerning implementation or interpretation of, compliance with, or termination of this Agreement, the PRHCP, and the ITP may arise from time to time. The Parties therefore agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

(A) Informal Dispute Resolution Process. Unless the Parties agree upon another dispute resolution process, or unless an aggrieved Party has initiated administrative proceedings or suit in federal court as provided in this section, the Parties may use the following process to attempt to resolve disputes.

(1) The aggrieved Party will notify the other Party of the provision that may have been violated or is in dispute, the basis for contending that a violation or significant disagreement has occurred, and the remedies it proposes to correct the alleged violation or disagreement.

(2) The Party alleged to be in violation of the Agreement or the subject of the dispute will have thirty (30) days, or such other time as may be agreed to, to respond. During this time such Party may seek clarification of the information provided in the initial notice and the aggrieved Party will use its best efforts to provide any information then available to it that may be responsive to such an inquiry or inquiries.

(3) Within thirty (30) days after such response was provided or was due, the Parties, or representatives of the Parties having authority to resolve the dispute, will meet and negotiate in good faith toward a solution satisfactory to both Parties, or will establish a specific process and timetable to seek such a solution.

(B) Non-binding Mediation. If any issues cannot be resolved through such negotiations, the Parties will consider non-binding mediation or other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

10.0 AMENDMENTS/PERMIT ADMINISTRATION

10.1 Amendment of the Agreement. Except as otherwise set forth herein, this Agreement may be amended consistent with the requirements of the ESA or Critical Area Law, as applicable, and with the written consent of each of the Parties hereto. However, no such amendment shall involve a significant change or modification to the PRHCP's conservation measures or program (or bring the Agreement into significant disaccord with those measures) unless the PRHCP and, if necessary, the Permit are also amended in accordance with Sections 10.2 and 10.3 below, respectively, to maintain consistency between the documents.

10.2 Minor Amendment of the PRHCP. Any Permittee may propose minor amendments to the PRHCP in accordance with paragraphs (A) and (B) below by providing notice to the USFWS with a copy to all other Permittees, as applicable, such notice to include a statement describing the reason for the proposed amendment and a brief analysis of its environmental effects and effects on the Delmarva fox squirrel. Any such proposal will become effective upon written notification to the Permittee(s) by the USFWS that it concurs with the proposed amendment, such notification to be provided within 90 calendar days of receipt of the proposal.

(A) Impermissible Minor Amendments. However, the USFWS will not approve any such amendment if: (1) it determines that the amendment would result in effects on the environment or the Delmarva fox squirrel that are significantly different than those identified in the original PRHCP and NEPA (National Environmental Policy Act) document or result in additional take not analyzed in the original PRHCP and NEPA document; or (ii) if any Permittee objects to the proposed amendment in writing. In either such case, the amendment would be treated as an amendment to the Permit in accordance with Section 10.3 below.

(B) Permissible Minor Amendments. Permissible minor amendments to the PRHCP include, but are not limited to: (i) corrections of typographical, grammatical, or similar editing errors in the PRHCP that do not change its intended meaning; (ii) correction of maps, figures,

tables, etc. in the PRHCP to correct errors or to reflect previously-approved changes in the PRHCP or the Permit; and (iii) minor changes to survey, monitoring, or reporting protocols.

10.3 Amendment of the Permit/Major Amendment of the PRHCP. Amendment of the Permit, major amendment of the PRHCP (i.e., amendment in a fashion that significantly modifies its effects on the environment or the Delmarva fox squirrel), and, if necessary, joint amendment of both may be undertaken in accordance with the following: (1) such an amendment must be processed and approved in accordance with procedures that are essentially equivalent to the original Permit application (i.e., all applicable ESA, NEPA, and federal regulatory requirements must be satisfied, including a public comment period); (2) any Permittee may propose such a Permit and/or PRHCP amendment; and (3) third, no such amendment, to the extent it would affect the Delmarva fox squirrel or the carrying out of the Covered Activities, may be submitted to the USFWS for formal processing without the consent of all applicable Permittees.

10.4 Permit Suspension/Revocation. The USFWS may suspend or revoke the Permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation [currently codified at 50 CFR 13.28(a), 17.22(b)(8), and 17.32(b)(8)]. Such suspension or revocation may apply to the entire Permit Area and all Covered Activities or only to specified Permit Areas and Covered Activities. However, the USFWS will not suspend or revoke the permit unless: (1) it has made reasonable, good faith efforts to work with the affected Permittee(s) and/or Homeowner(s) to correct the deficiency; (2) the deficiency remains uncorrected, despite the USFWS's good faith efforts; and (3) the USFWS has provided written notice to the affected Permittee(s) and/or Homeowner(s) alerting the Permittee(s) and/or Homeowner(s) of the pending suspension or revocation a minimum of 30 days prior to the effective date of the suspension or revocation. In addition, the Permittees' and/or Homeowner(s)' obligations under the PRHCP, the Permit, this Agreement, and/or the CCRs of the PRHA, as applicable, may continue beyond the suspension or revocation if the USFWS determines that any such obligations were unsatisfied at the time of the suspension or revocation.

10.5 Severability. Violation of the Permit by any Permittee(s) with respect to any particular obligation(s) of the PRHCP, the Permit, this Agreement, and/or the CCRs of the PRHA, as applicable, or to any one or more particular parcels of land or portions thereof owned, controlled or within the jurisdiction of any such Permittee(s) shall not adversely affect or be attributed to, nor shall result in a loss or diminution of any right, privilege, or benefit hereunder, of any other Permittee(s), so long as the other Permittee(s) are themselves in compliance with the PRHCP, the Permit, this Agreement, and/or the CCRs of the PRHA, as applicable.

10.6 Permit Extension. Upon agreement of the PRHA and affected Lot Owners, and under Federal law and regulation then in force, the Permit may be extended beyond its initial 50-year Stated Term. If the PRHA and such Lot Owners desire to extend the Permit, the PRHA will so notify the USFWS at least 180 days before the then-current term is scheduled to expire. Extension of the Permit in effect constitutes extension of the PRHCP and this Agreement for the same amount of time as the Permit is extended, subject to any modifications the USFWS may require at the time of the extension.

11.0 MISCELLANEOUS PROVISIONS

11.1 No Partnership. Except as otherwise expressly set forth herein, neither this Agreement nor the PRHCP or its associated ITP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

HABITAT CONSERVATION PLAN FOR THE PROPOSED PLEASANT RIFTS HOUSING DEVELOPMENT
DORCHESTER COUNTY, MARYLAND

11.2 Successors and Assigns. This Agreement and each of its covenants and conditions shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.

11.3 Notice. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the U.S. mail, certified and postage prepaid, return receipt requested, and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing:

USFWS.

U.S. Fish and Wildlife Service
Assistant Regional Director – Ecological Services
300 Westgate Center Drive
Hadley, Massachusetts 01035

U.S. Fish and Wildlife Service
Field Supervisor
Chesapeake Bay Field Office
177 Admiral Cochrane Drive
Annapolis, Maryland 21401

Permittees.

RB & JH Properties, LLC
P.O. Box 309
Secretary, Maryland 21664

With a copy to:
Ryan D. Showalter, Esquire
Miles & Stockbridge P.C.
101 Bay Street
Easton, Maryland 21601

Pleasant Rifts Homeowners Association, Inc.
P.O. Box 309
Secretary, Maryland 21664

With a copy to:
Ryan D. Showalter, Esquire
Miles & Stockbridge P.C.
101 Bay Street
Easton, Maryland 21601

Unspecified Lot Owners
[Identities, addresses to be determined]

Unspecified Homebuilder(s)
[Identity, address to be determined]

11.4 Entire Agreement. This Agreement, together with the PRHCP and the Permit, constitutes the entire Agreement between the Parties. It supersedes any and all other agreements, either oral or in writing between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements between them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

11.5 Captions. The headings of the various sections hereof are for convenience only and shall not affect the meaning of any provision of this Agreement.

11.6 Duplicate Originals. This Agreement may be executed in any number of duplicate originals, all of which shall constitute but one and the same instrument. However, a complete original of the Agreement, together with all amendments thereto, shall be maintained in the official records of each of the Parties hereto.

11.7 Elected Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

11.8 Third Party Beneficiaries. Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. § 1540(g), this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing Federal or State law.

11.9 Availability of Funds. Implementation of this Agreement and the PRHCP by the USFWS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the USFWS will not be required under this Agreement to expend any Federal agency appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

11.10 Relationship to the ESA and Other Authorities. The terms of this Agreement shall be governed by and construed in accordance with the ESA and other applicable laws. In particular, nothing in this Agreement is intended to limit the authority of the USFWS to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the USFWS as an agency of the Federal government.

11.11 References to Regulations. Any reference in this Agreement, the PRHCP, or the Permit to any regulation or rule of the USFWS shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

11.12 Applicable Laws. All activities undertaken pursuant to this Agreement, the PRHCP, and the Permit must be in compliance with all applicable State and Federal laws and regulations.

11.13 Estoppel Certificates. Within twenty (20) days after written request from any Party hereto, the other Party shall execute and deliver to any person designated by the requesting Party a written instrument: (1) identifying this Agreement, the PRHCP, and the ITP and any amendments or modifications thereto; (2) stating that all conditions under this Agreement, the PRHCP, and the ITP to be performed by the requesting Party have been performed (stating exceptions, if any); and (3) stating such other information as the requesting Party reasonably requires.

HABITAT CONSERVATION PLAN FOR THE PROPOSED PLEASANT RIFTS HOUSING DEVELOPMENT
DORCHESTER COUNTY, MARYLAND

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

U.S FISH AND WILDLIFE SERVICE

By _____
Name: _____, Regional Director
U.S. Fish and Wildlife Service
Hadley, Massachusetts

Date _____

RB & JH PROPERTIES, LLC, as "Project Proponent" and as
predecessor-in-interest to and on behalf of unspecified Lot
Owners and Homebuilders

By _____
Phillip J. Harrington, III, Managing Member
Secretary, Maryland

Date _____

PLEASANT RIFTS HOMEOWNERS ASSOCIATION,
INC.

By _____
Phillip J. Harrington, III, President
Secretary, Maryland

Date _____

Appendix B:
Declaration of Covenants, Conditions and Restrictions
of the Pleasant Riffs Homeowners Association

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

PLEASANT RIFTS

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**DECLARATION COVENANTS
AND RESTRICTIONS FOR PLEASANT RIFTS**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration") is made this _____ day of _____, 2008, by RB & JH Properties, LLC, a Maryland limited liability company (the "Declarant").

RECITALS

A. Declarant is the developer of the real property containing approximately 29.6 acres, located near the Town of Secretary, in Dorchester County, Maryland, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").

B. Declarant intends to develop the Property as a residential community as shown on a Plat prepared by Dennis & Baumgartner Land Surveyors, Inc., entitled "Final Pleasant Riffs Subdivision", bearing revision date March 8, 2008, and recorded among the Plat Records of Dorchester County at Plat Cabinet _____, Page _____, or any amendment or revision thereof which may hereafter be recorded among said Plat Records.

C. Declarant intends by this Declaration to provide for the preservation of the values and amenities of the proposed community by (i) insuring the proper development and use of the Property, (ii) enforcing high standards of development, maintenance, and operation of the Property for the benefit of the owners of the lots and any other residents of such community, (iii) granting and reserving rights, easements and other privileges, and (iv) creating a continuing means to provide adequately for a high quality residential community.

D. Declarant wishes to provide for the integrated use of the Property and to provide that each separate parcel shall have all necessary easements for utilities, ingress, egress, use, maintenance, operation and repair, on, over, and across the other parcels as are reasonably necessary for the use and enjoyment of each parcel.

E. Declarant has formed the Pleasant Riffs Homeowners Association, Inc., as a non-stock, non-profit corporation under the laws of the State of Maryland for the purposes of carrying out the powers and duties aforesaid.

F. Declarant also desires to provide for the ongoing implementation of the Pleasant Riffs Habitat Conservation Plan approved by the U.S. Fish and Wildlife Service to protect the Delmarva fox squirrel (*Sciurus niger cinereus*) from mortality, harm, and harassment in the course of occupancy and use of the Project and to provide for compliance with the Incidental Take Permit and Implementing Agreement related thereto.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, leased, used, occupied and conveyed subject to the following easements, restrictions, charges, liens, covenants, reservations and conditions and any amendment thereof, which are established for the purpose of protecting the value and desirability of, and which shall: (i) run with the Property, (ii) be binding on all parties having any right, title or interest in the Property or

any part thereof, their heirs, personal representatives, successors and assigns, and (iii) shall inure to the benefit of the Declarant, each of its successors and assigns of the Property and any part thereof.

ARTICLE I **DEFINITIONS**

As used herein, the following words and terms shall have the following meaning:

Section 1.01. “Architectural Review Committee” or “ARC” shall mean the committee composed of those three or more individuals so designated from time to time by (i) Declarant until all Lots in the Property are Improved Lots, rather than Vacant Lots, and (ii) thereafter by vote of the Board of Directors.

Section 1.02. “Association” shall mean and refer to the Pleasant Rifts Homeowners Association, Inc., a non-stock, non-profit corporation created under the laws of Maryland, its successors and assigns, to be formed for the purpose of accepting conveyance of any Common Area and administering this Declaration to be governed by a Board of Directors pursuant to the Articles of Incorporation for the Association.

Section 1.03. “Base Assessments” shall mean assessments described in Section 9.02.

Section 1.04. “Board of Directors” shall mean the Board of Directors of the Association, as constituted from time to time. The affairs of the Association shall be managed by a Board of Directors initially consisting of three (3) natural persons who shall be designated by the Declarant and who shall hold office until the election of their successors at the first annual meeting of the Members of the Association. The names of the initial Directors are as set forth in the Articles of Incorporation of the Association.

Section 1.05. “Commercial Vehicle” shall mean any vehicle of any kind that: (i) is defined as a commercial vehicle by Maryland or Dorchester County law; (ii) displays business or commercial sign(s), logo(s), lettering, or advertising that covers six (6) square feet or more on any side of the vehicle; (iii) includes or transports any visible commercial structures, accessories or equipment (such as a fuel tank or pipe, ladder or equipment rack); or (iv) is larger than one (1) ton in size. Commercial Vehicle includes passenger cars, vans and trucks normally used for private purposes that satisfy any of (i) through (iv) above.

Section 1.06. “Common Area” shall mean all real property owned by the Association and including any property which is not owned by the Association but which is made available for the benefit, use and enjoyment of the Association and its Members by lease or otherwise, including, but not limited to those areas designated on the Plat (hereinafter defined) as “Outparcel A”, drainage and utility easements, any group mailbox or entrance feature(s), and any other property to be maintained by the Association for the benefit of the Property.

Section 1.07. “Common Expenses” shall mean and include the actual and estimated expenses incurred by the Association in connection with the use, maintenance, repair and

replacement of the Common Area and the operation of the Association. Common Expenses shall include amounts necessary to establish and maintain any reserve or capital repair and replacement fund determined to be necessary and appropriate by the Board of Directors.

Section 1.08. "Declarant" shall mean RB & JH Properties, LLC, a Maryland limited liability company, and its, successors and assigns

Section 1.09. "Easement Areas" shall mean the areas designated on the Plat as "10' Utility & Drainage Easement", "10' Drainage Easement", "50' Drainage & Maintenance Easement" "Site Easement", "20' Ingress / Egress Easement Securing Lots 4 & 5" and other access, drainage, stormwater management and utility easement areas.

Section 1.10. "Forest Clearing Area" shall mean the 4.83 acres of existing woodland on the Property that may be cleared and used in accordance with this Declaration and applicable laws, which area is designated on the Plat as the Deer Drive right-of-way, the 10' Utility & Drainage Easement adjacent to both sides of Deer Drive, and the areas designated as "Clearing Limits" and "10,000 S.F. ± Sewage Reserve Area" on Lots 3-9, 11 and 12.

Section 1.11. "Habitat Conservation Plan" or "HCP" refers to the "Habitat Conservation Plan for the Proposed Pleasant Rifts Housing Development, Dorchester County, Maryland", dated July 2008, and any amendments thereto, as approved by the U.S. Fish and Wildlife Service.

Section 1.12. "Implementing Agreement" or "IA" refers to the Implementing Agreement by and between U.S. Fish and Wildlife Service, Declarant and the Association, dated _____, 2008, and any amendments thereto.

Section 1.13. "Improved Lot" shall mean a Lot upon which a structure suitable for occupancy as a single-family residence has been constructed. All Lots shall be deemed to constitute Improved Lots within the meaning of this Declaration after July 1, 2021.

Section 1.14. "Incidental Take Permit" or "ITP" shall mean Incidental Take Permit No _____, issued by the U.S. Fish and Wildlife Service on _____, 2008 and any amendments thereto.

Section 1.15. "Ingress/Egress Easement Serving Lots 4 & 5" shall mean the easement over Lots 2-4, of varying widths as specified by the Plat, for access to and from Lots 4 and 5.

Section 1.16. "Lot" shall mean and refer to any plot or parcel of land shown upon any recorded subdivision plat of the Property upon which it is intended that a residential dwelling unit be constructed. Any single-family residential lot created pursuant to any such subdivision shall become a Lot for all purposes of this Declaration upon the recordation in the Land Records of Dorchester County of the subdivision plat creating such Lot. The term "Lot" shall include any proposed or existing dwelling unit constructed on or within a Lot.

Section 1.17. "Member" shall mean and refer to a Person having membership in the Association, as provided herein.

Section 1.18. "Mortgage" shall mean any recorded instrument, including a deed of trust, encumbering a Lot which is intended to secure the performance of an obligation.

Section 1.19. "Mortgagee" shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots.

Section 1.20. "On-site Conserved Forestland" shall mean the forestland and emergent marshland on the Property to be conserved in its natural state in accordance with the restrictions set forth herein. Such area is depicted by the Plat as the wooded and marsh areas of the Property, generally located between the "Woods Line" and the northern and eastern (Secretary Creek) property boundaries, excluding the Deer Drive right-of-way, the 10' Utility & Drainage Easement adjacent to both sides of Deer Drive, and the areas designated as "Clearing Limits" and "10,000 S.F. ± Sewage Reserve Area" on Lots 3-9, 11 and 12.

Section 1.21 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding contract purchasers and those having such interest merely as security for the performance of an obligation. The record Owner of more than one Lot shall be deemed an Owner herein with respect to each Lot.

Section 1.22. "Person" means a natural person, a corporation, a partnership, trustee or other legal entity.

Section 1.23. "Plat" means the subdivision plat prepared by Dennis & Baumgartner Land Surveyors, Inc., entitled "Final Pleasant Rifts Subdivision", bearing revision date March 8, 2008, and recorded among the Plat Records of Dorchester County at Plat Cabinet ____, Page ____, or any amendment or revision thereof which may hereafter be recorded among said Plat Records.

Section 1.24. "Project" shall mean the residential community, known or to be known as "Pleasant Rifts", as shown on the Plat or any amendment or revision thereof.

Section 1.25. "Property" shall mean and refer to all of the real property described in EXHIBIT A and shown on the Plat.

Section 1.26. "Structure" shall mean and refer to any thing or device placed upon or connected to the Property (or any part thereof), including by way of illustration but not limitation, any building, garage, porch, shed, greenhouse, covered or uncovered patio, swimming pool, tennis court, radio or television antenna or satellite dish, fence, curbing, paving, wall, signboard, swing set, dog house or kennel, ramp, clothes line, or any other temporary or permanent improvement to such Lot. "Structure" shall also mean (i) any excavation, fill, ditch, or other thing or device which affects or alters the flow of surface water from, upon or across any Lot, and (ii) any change in the grade of any lot of more than six (6) inches from that existing at the time of original subdivision.

Section 1.27. "Supplementary Declaration" shall include all modifications, deletions or additions to the Declaration which are legally executed and duly recorded in the Land Records of Dorchester County, Maryland.

Section 1.28. "USFWS" shall mean the United States Fish and Wildlife Service.

Section 1.29. "Utility & Drainage Easement" shall mean the area so designated on the Plat.

Section 1.30. "Vacant Lot" shall mean and refer to any Lot which is not an Improved Lot.

ARTICLE II **PROPERTY SUBJECT TO DECLARATION**

Section 2.01. Property Subject to the Declaration. The real property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in Dorchester County, Maryland, and is more particularly described on EXHIBIT A attached hereto and by this reference made a part hereof and referred to herein as the "Property." No other real estate owned by the Declarant shall be subject to this Declaration.

ARTICLE III **EASEMENTS AND PROPERTY RIGHTS**

Section 3.01. Declaration of Easements and Rights. The following easements and rights are hereby declared or reserved:

(a) *Utilities and Drainage*. Easements for the installation and maintenance of utilities and drainage facilities are hereby granted and reserved as shown on the Plat.

(b) There is hereby reserved for a period of fifteen (15) years from the date of recordation of this Declaration unto the Declarant and to such other party(ies) as the Declarant may specifically assign such rights, for the benefit of the: (i) Lots and (ii) Common Area, a blanket easement upon, across and under the Property (provided such easement does not encroach upon any building within the Property or unreasonably interfere with the use and enjoyment of the Property and/or each Lot), for vehicular and pedestrian ingress and egress, curb cuts, parking, and slope or grading easements, as well as for the installation, replacement, repair and maintenance of all utilities and further including the right to connect to and use any such utilities and stormwater management facilities which may exist or be located upon the Property from time to time. This easement specifically includes an easement for the benefit of the Declarant to extend drainage and utility lines to the rear of Lots. By virtue of this easement, it shall be permissible to erect and maintain poles, pipes, lines, wires, conduits and other equipment on, above or below any portion of the Property, including any improvements constructed thereon, and to have construction vehicles, equipment and the like exercise the aforesaid right of ingress and egress over the Property. There is further reserved unto the Declarant the right to

grant specific easements, both temporary and permanent, to any person or entity over any part of the Property in furtherance of the blanket easement created by this subsection (b). Further, without limiting the generality of the foregoing, the Declarant reserves the right to unilaterally execute and record such additional easements and agreements as may be necessary in order to give effect to the foregoing easements and other rights, which additional easements and other agreements need not be consented to or joined in by any party having an interest in the Property; provided, however, that if requested by the Declarant, any party having an interest in the Property shall promptly join in and execute such confirmatory easements and other agreements.

(c) For a period of fifteen (15) years from the date of recordation of this Declaration, the Declarant reserves a blanket easement and right on, over and under the Property (provided such easement does not encroach upon any building within the Property or unreasonably interfere with the use and enjoyment of the portion of the Property and/or Lot affected) to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to its original condition as near as practicable. There is further reserved unto the Declarant the right to grant specific easements, both temporary and permanent, to any person or entity over any part of the Property in furtherance of the blanket easement created by this subsection (c).

(d) The Association, its agents and employees, shall have an irrevocable right and an easement to enter the Lots for the purposes of exercising the rights and fulfilling the obligations and duties established by this Declaration, including without limitation monitoring and enforcing compliance with the Delmarva fox squirrel conservation provisions and requirements set forth in the HCP, ITP and/or this Declaration; provided that such easement shall not entitle the entry within the interior portion of any Structure located on the Property, but shall permit the entry into fenced or other similar areas of the Property.

(e) A mutual right and easement for utility services is hereby established for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with utility services being provided to other Owners within the Project. If a Lot contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part, of other Owners within the Project, then the Owner of such Lot shall promptly, at his expense, repair any damage to such utilities caused by the Owner, his guests or invitees.

Section 3.02. Extent of Easements. The easement rights reserved and/or granted above shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Declarant and the Association to establish uniform rules, assessments and regulations pertaining to the use of any portion of the Property subject to the Easements set forth in this Article with respect to any portion under their respective responsibility and control. Notwithstanding any provision to the contrary in this Article III, the reserved easements shall not impose any obligation on Declarant to take any action(s) nor shall they be interpreted or construed to change the allocation of responsibility set forth in this Declaration. *Exercise of these easements shall be subject to the Delmarva fox squirrel conservation measures set forth in Article XVII.*

Section 3.03. USFWS Easement Rights. All of the Property shall also be subject to the access easement rights described by Section 17.12.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 4.01. Membership. Every Lot Owner shall be a Member of the Association. Membership is mandatory and shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration.

Section 4.02. Voting. The Association shall have the following three (3) classes of voting membership:

(a) Class "A". Class "A" Members shall be the Owners of Improved Lots and shall be entitled to one (1) vote for each such Lot owned. When more than one Person holds an interest in any such Lot, all such persons shall be Members. The vote for such Lot shall be exercised as those Persons determine, but in no event shall more than one vote be cast with respect to any such Lot.

(b) Class "B". The Class "B" Members shall be the Vacant Lot Owners, and shall be entitled to one-half (1/2) vote for each such Lot owned. When more than one Person holds an ownership interest in any such Lot, the vote of the Owner of such Lot shall be exercised as those Persons determine, but in no event shall more than one-half (1/2) vote be cast with respect to any such Lot. At such time as a Vacant Lot becomes an Improved Lot, the voting classification of such Lot will be adjusted accordingly.

(c) Class "C". The Class "C" Member shall be the Declarant. The Declarant shall originally be entitled to thirteen (13) votes; this number shall be decreased by one (1) vote for each vote outstanding in the Class "A" membership and by one (1) vote for each one-half (1/2) vote outstanding in the Class "B" membership. The Class "C" membership shall terminate and be converted to Class "A" or Class "B" membership, as the case may be, upon the happening of the earlier of the following:

(i) when the total outstanding Class "A" and Class "B" votes equal or exceed ten (10);

(ii) ten (10) years from the date of recordation of this Declaration; provided, however, that if the Declarant is delayed in the improvement and development of the Property on account of a building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid ten (10) year period shall be extended by a period of time equal to the length of the delays or an additional ten (10) years, whichever is less; or

(iii) when, in its discretion, the Declarant so determines and surrenders the Class C memberships for cancellation on the books of the Association.

From and after the happening of the first to occur of such events, each Class "C" Member shall be deemed to be a Class "A" or Class "B" Member entitled to the applicable vote for each Lot owned.

Section 4.03. Assignment to Tenant. Any Owner of an Improved Lot which is leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such lease or other written instrument is furnished to the Secretary of the Association prior to any meeting.

ARTICLE V **MAINTENANCE**

Section 5.01. Association's Responsibility.

(a) The Association shall maintain and keep in good order the Common Area, such maintenance to be funded as provided in Article IX hereof. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated upon such areas.

(b) The Association's responsibilities under subsection (a) shall also include the maintenance and repair of all stormwater management facilities serving the Property. The Association shall hereafter be responsible for all obligations of Declarant as established by the "Inspection and Maintenance Agreement of Private Stormwater Management Facilities and Sediment Control" by and between Declarant and Dorchester County, Maryland, which agreement is dated _____, 2008 and recorded among the Land Records of Dorchester County, Maryland at Liber _____, folio _____ (the "Stormwater Inspection Agreement"). The Association shall hereafter indemnify and hold harmless the Declarant from any and all obligations, damages, fines, suits and causes of action arising under the Stormwater Inspection Agreement. The provisions of this subsection (b) shall not be modified, amended or terminated without Declarant's written approval.

(c) The Association may, at the discretion of the Board of Directors, assume additional maintenance responsibilities upon all or any portion of the Property. In the event such maintenance occurs on a Lot, all costs of such maintenance shall be assessed only against those Owners to which the services are provided. In the event the Association assumes additional maintenance responsibilities upon all or any portion of the Property and outside of the Lots, all costs of such maintenance shall be assessed against all owners.

Section 5.02. Owner's Responsibility. The Owner of each Lot shall keep his Lot, and all improvements thereon, in good order and repair, including, but not limited to, seeding, watering, and mowing of all lawns and yards, painting (or other appropriate external care) of all Structures on the Lot, and maintenance of the signs and posts described in Section 17.03(a)(iii), all in a manner and with such frequency as is consistent with good property management and maintenance.

If, in the opinion of the Board of Directors, such maintenance is not properly performed by any Lot Owner, the Association may perform such maintenance and assess the Lot Owner for the cost thereof. All costs incurred by the Association in connection with such maintenance shall be reimbursed to the Association by the Owner of the Lot upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article IX. Except in the case of an emergency, the Association shall afford the Owner reasonable notice and an opportunity to cure the default prior to undertaking such maintenance.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

Section 6.01. Insurance. (a) The Board of Directors, or its duly authorized agent, shall have the authority to and may obtain hazard insurance for loss or damage for all insurable improvements within the Common Area. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board of Directors shall have the authority and responsibility to obtain a public liability policy for the Common Area. Such public liability policy shall be for such amount as deemed reasonable by the Board of Directors but shall, at a minimum, have at least a Five Hundred Thousand Dollar (\$500,000) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000) limit per occurrence, and a Five Hundred Thousand Dollar (\$500,000) minimum property damage limit.

(c) Premiums for all insurance obtained by the Board of Directors or its duly authorized agent shall be a Common Expense and as such will be included in the Base Assessment. All policies obtained by the Board of Directors or its duly authorized agent may contain a reasonable deductible.

(d) All policies obtained by the Board of Directors or its duly authorized agent shall be for the benefit of the Association and the Lot Owners and their Mortgagees as their interests may appear.

(e) Exclusive authority to adjust losses under policies obtained by the Board of Directors or its duly authorized agent shall be vested in the Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(f) The Board of Directors or its duly authorized agent shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, its manager, the Lot Owners, and their respective tenants, servants, agents, and guests;

(ii) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized agent or on account of any one or more Lot Owners without prior demand in writing delivered to the Board of Directors to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Board of Directors, its duly authorized agent, any Lot Owner, or Mortgagee;

(iii) that any "other insurance" clause in any policy exclude individual Lot Owners' policies from consideration; and

(iv) that no policy may be cancelled or substantially modified without at least thirty (30) days prior written notice to the Board of Directors.

(g) In addition to the other insurance required by this Section, the Board of Directors may obtain, as a Common Expense, directors and officers liability insurance, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds for directors, officers, employees, and other persons handling or responsible for the Association's funds.

ARTICLE VII

CHANGE OF DEVELOPMENT PLAN

Section 7.01. Change of Development Plan by Declarant. The term "change of development plan" shall mean any change in all or any part of the Property or the abandonment or modification of the Project. The Declarant intends to develop the Property in accordance with the Plat, as subsequently modified from time to time. Subject to applicable federal, State and local laws, the Declarant reserves the right to modify the Plat at its sole option, from time to time, with respect to any portion of the Property owned by the Declarant at the time of such modification. The Plat or any future Plat shall not bind the Declarant, its successors and assigns, to adhere to the Plat in the development of the Property. Except as provided by the HCP, ITP and IA, Declarant shall have the unilateral right, privilege, and option from time to time, without the approval of Class "A" or Class "B" Members, to change the use of all or any portion of the Property owned by the Declarant at the time of such change. A Supplementary or Amended Declaration detailing the change of land use shall be executed by the Declarant and recorded in the Land Records of Dorchester County, Maryland.

Section 7.02. Amendment. Section 7.01 of this Declaration shall not be amended without the written consent of Declarant, so long as the Declarant owns any portion of the Property.

ARTICLE VIII

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 8.01. Common Area. The Association, subject to the rights and responsibilities of the Owners set forth in this Declaration, upon transfer of the possessory interest in any portion of the Common Area shall be responsible for the exclusive management and control of such portion of the Common Area and all improvements thereon, and shall keep such portion of the

Common Area in good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

Section 8.02. Ownership and Acceptance of Property. The Association through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible property and real property, subject to the requirements of this Declaration. The Board of Directors, acting on behalf of the Association, must accept any real or personal property, leasehold, or other property interests within the Property conveyed to it on a temporary or permanent basis by the Declarant. Declarant has the right but not the obligation to transfer any or all of the Common Area to the Association at any time.

Section 8.03. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration and every other right to privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 8.04. Obligations. Notwithstanding anything to the contrary herein, the Association shall, timely and completely, perform all of the obligations imposed by Article XVII hereof and/or the IA, ITP and HCP.

ARTICLE IX **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 9.01 Creation of Lien and Personal Obligations for Assessments. Except as the assessment of the Declarant is limited by the provisions of Article IX of this Declaration, any Person who becomes an Owner of a Lot within the Property (*i.e.*, each Class A or B Membership of the Association) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association if applicable: (i) the Base Assessment, (ii) Assessment for Reserves and Capital Improvements, Repairs and Replacements, and (iii) Special Assessments (collectively, the "Total Assessments"). The Total Assessments shall be established and collected as hereinafter provided. The Total Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on and shall be a continuing lien upon the land against which such assessment is made. The Total Assessments, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment falls due. The personal obligation for delinquent Total Assessments shall not pass to successors in title unless expressly assumed.

Section 9.02. Base Assessments. The Board shall levy a Base Assessment to be used exclusively: (i) to promote the health, safety, and welfare of the residents of Lots within the Property, (ii) for the improvement and regular and routine maintenance of the Common Area, (iii) for compliance with the Delmarva fox squirrel conservation measures set forth herein, and (iv) as is otherwise consistent with the rights and responsibilities of the Association hereunder and for the benefit of the Members. The Base Assessment shall include, but is not limited to, the cost of maintaining Outparcel A, any entrance signage and landscaping, and any and all stormwater management facilities (including, without limitation, ditches, swales, ponds, basins

and drainage areas, whether such facilities are located within the Property, or not), and the monitoring, enforcement and reporting required by Article XVII.

Section 9.03. Assessment for Reserves and Capital Improvements, Repairs and Replacements. Certain improvements within the Common Area have been or may be constructed and paid for by the Declarant or the Association. The Board shall have the authority to levy an assessment for capital improvements, repairs and replacements or for reserves therefore, annually or from time to time.

Section 9.04. Special Assessment

(a) In addition to the assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, to meet any emergency or unforeseen expenses of the Association provided that any such assessment shall have the assent of two-thirds (2/3) votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

(b) The Association may also levy a special assessment against any Owner to reimburse the Association for any costs, legal and/or otherwise, incurred in providing services pursuant to Sections 5.01(d), 5.02, or bringing any Owner and his/her Lot into compliance with the provisions of the Declaration, any Supplementary Declarations, the Articles of Incorporation and the By-Laws of the Association. Such a special assessment may be levied upon the vote of the Board of Directors after notice to the Owner and an opportunity for a hearing before the Board of Directors.

Section 9.05. Notice and Quorum for Any Action Authorized under Section 9.04. Written notice of any meeting called for the purpose of taking an action authorized under Section 9.04(a) shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9.06. Uniform Rate of Assessment/Increases in Assessments. Unless otherwise expressly provided herein (including but not limited to the provisions of Section 9.04 (b)), assessments must be fixed at a uniform rate for all Lots and may be collected on a quarterly basis, or other periodic basis not more often than monthly, or less often than annually, as provided by the Board of Directors. The Board shall have the power and authority to increase each of the annual assessments described in Sections 9.02 and 9.03 of this Article, without a vote of the Lot Owners, by an amount not to exceed twenty percent (20%) of the maximum annual amount of each assessment for the immediately preceding year.

Section 9.07. Surplus Receipts. Unless otherwise expressly provided herein, any surplus of receipts over expenses, including reserves, of the Association for any fiscal year shall

be either applied to reduce the Assessments necessary to meet the budget adopted by the Association for the next fiscal year or refunded by the Association to each Owner, and the refund may be prorated among the Owners (and former Owners), including the Declarant based upon the portion of the previous fiscal year that each such Owner (or former Owners), including the Declarant, shall have held record title to the Lot, as determined by resolution of the Board of Directors.

Section 9.08. Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment of Assessments. (a) The Base Assessments provided for herein shall commence as to all Lots on January 1, 2009. The first Base Assessment shall be fixed by the Board of Directors and shall be adjusted according to the number of months remaining in the calendar year. Thereafter, the Board of Directors shall fix the amount of the Base Assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the Base Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an office of the Association setting forth whether the assessments on a specified Lot have been paid.

(b) Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum, and shall be subject to a late charge of Fifteen Dollars (\$15.00) or ten percent (10%) of the assessment, whichever is greater, and the Board of Directors shall have the right to declare the entire balance of the annual assessment and accrued interest thereon to be immediately due and payable. In addition, the Owner shall be liable for all costs of collecting any such assessment, including reasonable attorneys' fees and court costs. All such interest, late charges, and costs of collection shall be deemed to be an additional assessment hereunder. The Association may bring an action at law against the Owner personally obligated to pay the same or, without waiving any other right, may foreclose the lien against the Lot. The personal obligation of the Owner to pay such assessment shall remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration may be maintained without foreclosing or waiving the lien herein created to secure the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 9.09. Maryland Contract Lien Act. The Association may establish and enforce the lien for any assessment granted herein pursuant to the Maryland Contract Lien Act or any similar successor law. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damages, costs of collection, late charges permitted by law, and attorneys' fees provided for herein or awarded by a court for breach of any of the covenants herein.

Section 9.10. Lien Priority. The lien of the assessments, including interest, late charges and costs (including reasonable attorneys' fees) provided for herein shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

- (a) general and special assessments for ad valorem real estate taxes on the Lot; and

(b) the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage (or deed in lieu of foreclosure) shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage on a Lot obtains title, its successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Mortgagee. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses payable as a Base Assessment on pro-rata basis from all of the Lot Owners, including such Mortgagee, its successors and assigns.

Section 9.11. Assessment of Declarant. Notwithstanding anything herein to the contrary, the Declarant shall pay twenty-five percent (25%) of the rate of the Base Assessment and Special Assessment (which are referred to in this Section as the "Annual Assessment") levied upon the Lots owned by Class A and B Members, for the Lots owned by the Declarant, if any; provided, however, the Declarant shall contribute toward any deficit incurred by the Association (for the day-to-day maintenance and operating expenses, but excluding the obligation to fund any capital replacement reserves) until the lapse of the Class C memberships in an amount not to exceed the full rate of the Annual Assessment the Declarant would pay if the Lots owned by the Declarant were owned by Class A or B Members, and shall only be obligated to pay further assessments during that annual period in an amount equal to what would be due for such Lots had they been owned by a Class A or B Member, less the twenty-five percent (25%) already paid on such Lots. Such contribution shall be the pro-rata share of such deficiency based upon the number of Lots owned by the Declarant, subject to the limit on such contribution toward any deficiency provided for above. Any Lot owned by the Declarant upon which an occupied dwelling is situated shall pay the full Class A Member rate of the Annual Assessment.

Section 9.12. Working Fund. At the time of the initial conveyance by Declarant of any Lot, such initial Owner shall pay to the Association a one time, non-refundable contribution to the Association's Working Fund in the amount of Three Hundred Dollars (\$300.00). This payment shall be in addition to and shall not be credited toward the Base Assessment due from each Owner. The Working Fund may be used for capital items or to offset operating expenses of the Association.

ARTICLE X

ARCHITECTURAL REVIEW

Section 10.1. Establishment of the Architectural Review Committee. The Architectural Review Committee ("ARC") shall be composed of three (3) or more representatives appointed by the Declarant, so long as any Vacant Lot exists (*i.e.*, until a structure suitable for occupancy as a single-family residence has been constructed on every Lot), and thereafter by the Board of Directors.

Section 10.2. Architectural Change Approval. Except for construction or development by, for or under contract with the Declarant, and except for any improvements to any Lot or to the Common Areas accomplished by the Declarant concurrently with said construction and development, no Structure, exterior lighting or other improvement of any type or any nature (collectively, "Improvement") shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration thereto be made, commenced or maintained on any Lot (including, but not limited to, changes in color, materials, design changes and additions to driveway or walkway surfaces) which would alter the appearance of any Lot or any Improvement until the plans and specifications showing the nature, kind, shape, height, size, materials, type of construction and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and conformity with the design concept for the Property by the ARC.

In the event the ARC fails to approve or disapprove such design and location within sixty (60) days after said plans, specifications, applicable fee(s), and all other materials and information required by the ARC have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, however, the Lot and any Improvement thereon shall still comply with all other provisions of this Declaration. Plans may be disapproved by the ARC for any reason, including purely aesthetic reasons.

Approval by the ARC shall in no way be construed as to pass judgment on the conformity with any applicable governmental building codes, correctness of the location, structural design, suitability of water flow or drainage, location of utilities or other qualities of the items being reviewed or their suitability for a particular fitness or use. ARC approval shall not relieve any Owner from compliance with all governmental regulations or permits. Owner shall bear all costs, responsibilities and liabilities associated with application for, issuance of and compliance with necessary approvals and permits.

If changes in grade or other conditions which will affect drainage are anticipated, each must be identified. ARC approval will be denied if adjoining Lot(s) are adversely affected by changes in drainage.

ANY IMPROVEMENT OR EXTERIOR ADDITION, CHANGE OR ALTERATION MADE WITHOUT APPLICATION HAVING FIRST BEEN MADE AND APPROVAL OBTAINED AS PROVIDED ABOVE SHALL BE DEEMED TO BE IN VIOLATION OF THIS DECLARATION AND THE IMPROVEMENT ADDITION, CHANGE OR ALTERATION MAY BE REQUIRED TO BE RESTORED TO THE ORIGINAL CONDITION AT THE OWNER'S COST AND EXPENSE. In any event, no such Improvement or exterior addition to or change or alteration shall be made without approvals and permits therefor having first been obtained by the Owner from the applicable public authorities or agencies.

NOTWITHSTANDING ANY PROVISION OF THIS DECLARATION TO THE CONTRARY, THE PROVISIONS OF THIS ARTICLE SHALL NOT BE APPLICABLE TO THE DECLARANT OR ANY PART OF THE PROPERTY OWNED BY THE DECLARANT.

Section 10.3. Initiation and Completion of Approved Changes. Construction or alterations in accordance with plans and specifications approved by the ARC shall be commenced within six (6) months following the date upon which the same are approved by the ARC (whether by affirmative action or by forbearance from action as provided in Section 10.2), and shall be substantially completed within twelve (12) months following the date of commencement, or within such longer period as the ARC shall specify in its approval. In the event construction is not commenced within the period aforesaid, then the approval shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from plans and specifications approved by the ARC without the prior consent in writing of the ARC. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the ARC to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

Section 10.4. Certificate of Compliance. Upon completion of any Improvement or other construction or alteration in accordance with plans and specifications approved by the ARC, the ARC shall, at the request of the Owner thereof, issue a certificate of compliance which shall be *prima facie* evidence that such Improvement, construction or alteration referenced in such certificate have been approved by the ARC and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable.

Section 10.5. ARC Submittals. Three copies of all documents to be reviewed must be submitted to the ARC. Submittals should include a letter requesting the ARC's approval and listing the appropriate drawings contained in the submission. All drawings submitted shall include the following information:

- i. Title block, including Lot number, Owner name, project address project designer and general contractor.
- ii. Plans, sections, topography, elevations, and other materials necessary to clearly indicate location and nature of on-site utilities, the placement, orientation, height, massing and exterior finishes, materials and colors of buildings, driveways and parking, sidewalks, grading and drainage and exterior lighting.

Approvals, contingent approvals, and recommendations for re-submission will be confirmed by written notice. The ARC shall have the right to charge a reasonable fee for reviewing each application in an amount to be set by the Board of Directors from time to time. The amount of such review fee, which shall be paid to and for the benefit of the Association, shall be paid upon submission of the application. Failure by the applicant to pay such amount will result in the automatic denial of such request.

Section 10.6. Appeals. Any Owner dissatisfied with a decision of the ARC may, within fifteen (15) days after the rendering of such decision, make an appeal thereof to the Board of Directors. The Board of Directors shall conduct a hearing thereon at least fifteen (15) and before sixty (60) days after the noting of such appeal. Within fifteen (15) days of such hearing, the

Board of Directors may affirm, reverse, modify or remand the decision appealed. The Board of Directors is hereby authorized and empowered to promulgate reasonable rules of procedure for the conduct of such appeals and hearings. The decision of the Board of Directors shall be final.

ARTICLE XI
ARCHITECTURAL CONTROL, RESTRICTIONS AND CONDITIONS

Section 11.01. General Provisions

(a) *Building Height and Setbacks.* The maximum building height within each Lot shall be in accordance with the Dorchester County Zoning Ordinance. Building and parking setbacks shall conform to the greater of the minimum setbacks established on the Plat or applicable setbacks established by the Zoning Ordinance. No projection from a primary residence may intrude upon any building setback.

(b) *Utilities.* All proposed utilities shall be planned in accordance with all applicable County and State standards, or as shown on the approved improvement plans, whichever is more restrictive. No water, sewer, gas or drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any Structure; except for such items as installed by a utility company and cannot be buried and/or hidden from view.

(c) *Compliance Responsibility.* Lot Owners shall be responsible to see that their builders, agents, employees and subcontractors conform to this Declaration. In all cases, the Lot Owner shall be held accountable for the actions of its builders, agents, employees and subcontractors.

Section 11.02. Construction Design Standards. All construction within the Property shall comply with the following design standards, which shall be reviewed, interpreted and applied by the ARC:

(a) *Foundation* - Each single-family residential structure shall be constructed on a crawl-space foundation; no slab construction is permitted except for the garage component of the residence and approved accessory structures.

(b) *Walls and Materials* - All exterior material color combinations shall be approved by the ARC. Design requirements include:

i. Exterior Structure walls shall be finished in brick, stone, cedar, cementitious (*e.g.*, Hardiplank) or vinyl siding or similar materials, as approved by the ARC.

ii. Exposed foundation walls shall be of brick, brick-textured concrete painted to match siding of each home, or parged concrete block to finished grade.

(c) *Roof Areas* - Roof area pitches shall be 7/12 or greater. Lesser pitch is acceptable for canopy roofs, provided they are compatible with the architectural style. The following are permitted roof materials: standing seam metal, 20-year architectural shingles of 250-pound weight or greater, slate (true or synthetic), cedar shingles or shakes, or other comparable materials approved by the ARC.

(d) *Entrances, Porches, Patios, and Decks* - Entrances, porches, patios, and decks in public view must be compatible in material, scale, and design intent with the primary Structure. Design requirements include:

i. Patio materials shall be stone, slate, brick or concrete pavers, or poured concrete.

ii. Porch and deck railings shall be vinyl or a wood composite material, and must be painted, stained or integrally colored to match house trim.

iii. All decks, deck rails and deck steps must be vinyl or a wood composite material, and must be white or painted, stained or integrally colored to match the house color palate. Examples include Trex, TimberTech and DreamDeck, or other comparable material approved by the ARC.

iv. The area between all decks and the ground surface must be screened with vinyl or composite lattice that is white or matches the color of the deck and/or house.

(e) *Miscellaneous.*

i. Air Conditioners, Heat Pumps, Compressors and Fans. Heat pumps, air conditioning units or condenser elements are not permitted on the front façade and shall be screened in all locations. Window fans and air conditioner units are not permitted.

ii. Swimming Pools and Hot Tubs/Spas. No swimming pools, hot tubs, spas or jacuzzis (collectively "Pools") shall be erected, placed or permitted to remain on any Lot without the ARC approval. ARC review and approval of Pools shall include associated landscaping and accessory structures. Proposed Pools should be discussed with adjacent Lot Owners. Pools shall be located in rear yards. Pools shall be located within the building restriction lines contained in the Plat. Pools and any mechanical equipment shall be protected by a fence and otherwise screened from adjacent Lot views.

iii. Fence. No fence may be constructed on any Lot without prior ARC approval. All fence must be constructed of white vinyl or PVC material. Privacy fencing of not more than six feet (6') in height is permitted within the rear and side yards of any Lot. Except as provided otherwise herein with respect to privacy fencing, no fence within any Lot shall be more than four feet (4') in height. Thin wire fencing used in conjunction with (and installed internal to) a vinyl or PVC rail or similar type fencing for the purpose of enclosing pets is permitted. Chainlink fencing is specifically prohibited except that chainlink fencing may be used for construction of one dog kennel per Lot provided such kennel is not more than six (6) feet in

height or larger than 120 square feet. Any perimeter fence constructed within the rear-yard area of any Lot shall be of similar material and style as the section of privacy fencing, if any, within that Lot. Proposed fencing should be discussed with adjacent Lot Owners. Fencing provided around swimming pools to comply with applicable building or safety codes shall comply with the materials restrictions set forth herein, however, the ARC may approve variations of fence height and design if necessary to comply with such codes.

iv. Antennas. Antennas may be permitted in accordance with the provisions of Section 12.02(i). No other device, apparatus or decoration shall be permanently or temporarily attached to the exterior of the Structure without prior written approval of the ARC.

v. Site Lighting. Exterior lighting for Lots shall require ARC approval. Site lighting shall provide security and safety without casting glare or unwanted light onto adjoining Lots. Flood lighting from above ground shall be limited to rear yards. No exterior lighting, emanating from a Lot, may be directed outside the boundaries of the Lot without the prior written approval of the ARC.

ARTICLE XII

USE RESTRICTIONS AND CONDITIONS

In addition to all other covenants contained herein, the use of the Property and each Lot therein is subject to the following:

Section 12.01. Declarant's Use. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant or its assigns from the use of any Lot, Common Area or improvement thereon, for promotional or display purposes, or as "model homes," a sales, leasing, management and/or construction office, or the like, and the Declarant shall have an easement for access to such facilities.

Section 12.02. Use Restrictions, Prohibited Uses and Nuisances. Except for the activities of the Declarant, the following restrictions shall apply to the Property:

(a) Residential Purposes Only; Permitted Structures. All Lots and Structures shall be used for residential purposes only, and not for purposes of any profession, trade or business whatsoever. Structures erected on any one Lot shall consist of a main dwelling or residence for the occupancy of one family only and other structures appurtenant to the main residence or to be used in connection therewith. The principal improvement to be erected on any Lot shall be a detached single-family dwelling, which shall consist of a minimum finished living space of 1,500 square feet.

(b) No Noxious or Offensive Uses. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done or kept thereon which may be or become an annoyance or nuisance to the neighborhood or other Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or

maintained upon the exterior of any dwelling or upon the exterior of any other improvements constructed upon any Lot.

(c) Future Subdivision. No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not in any way apply to the Declarant, it being understood and agreed by each Owner that the Declarant is free to further divide or subdivide any portion of any Lot as long as the Declarant holds fee simple title to such Lot. The provisions of this subsection shall not apply to any subdivision or conveyance of a portion of a Lot as part of a minor boundary line adjustment between two (2) or more Lots which does not create a new Lot. Further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Declarant or any other person for any purpose.

(d) No Temporary Dwelling. No trailer, unlicensed vehicle, shack, tent or garage only or basement only shall be erected or allowed to remain on any Lot; nor shall the same at any time be used as a dwelling, temporarily or permanently; nor shall any structure of a temporary character be used as a dwelling.

(e) Outbuildings and Accessory Structures. Outbuildings, sheds, garages, workshops, equipment shelters and other similar structures shall be: (i) located only in the rear or side yards (behind the front façade of the dwelling unit) of any Lot, (ii) finished using roofing material and siding that matches the color of the primary residence on the Lot; and (ii) built in accordance with plans, specifications and illustrations approved by the ARC.

(f) Restoration After Fire or Casualty. Each Owner of a Lot covenants and agrees that in the event that the dwelling unit or other improvements on the Owner's Lot are damaged or destroyed by fire or other casualty, the Owner shall either: (1) after obtaining ARC approval, restore the dwelling unit or improvements to their condition just prior to the fire or other casualty within twenty-four (24) months from the date of the fire or casualty, or (ii) within six (6) months of the fire or casualty, completely demolish and raze the damaged or destroyed dwelling or improvements (including foundation, footers, slabs and walks), fill in all excavations, plant grass, and perform such other work as may be necessary to put and maintain the ground surface within the Lot in a clean, sightly, and safe condition. In either case, such Owner shall make a reasonable attempt to commence action within ninety (90) days after the fire or casualty and thereafter diligently prosecute such action to completion.

(g) Construction Activities. All construction activity shall be contained within the Lot for which a building permit has been issued. Daily clean up and maintenance procedures are required and shall insure the site is orderly and safe at all times. Any damage to adjacent Lots or facilities during construction shall be promptly restored to the original condition to the satisfaction of the ARC and adjacent Lot Owner. Upon completion of construction, all building debris must be removed from the Lot and surrounding area.

(h) Prohibited Vehicles. Except for parking within garages or as specifically approved on a vehicle-by-vehicle basis by the ARC, and except as herein provided, no farm

equipment, junk vehicles, abandoned vehicles (which shall be defined as vehicles which are not driven off the Project at least twice a month), school buses, Commercial Vehicles, or other vehicles requiring a Class B or C operating license (as defined by the Maryland Department of Motor Vehicles), unlicensed or inoperable motor vehicles (which shall include, without limitation, any vehicles which would not pass applicable State inspection criteria), tow trucks, limousines, house trailers or other similar machinery or equipment of any kind or character shall be kept upon the Property.

(i) Antennas. Antennas situated entirely within a dwelling unit and not visible from the exterior (*i.e.*, concealed attic-type antennas) are permitted. Except as specifically permitted by applicable federal governmental regulations, no exterior aerials or antennas of any type, including, but not limited to, satellite dishes for reception or transmission (collectively referred to as "Antenna" herein) may be erected, used or maintained on any Lot without the written approval of the ARC, which approval shall be granted provided: (i) no more than one Antenna may be installed and maintained on any Lot, (ii) the Antenna, as installed, is not visible from the front of the Lot or is disguised to resemble and is in fact visually indistinguishable from structures, devices or improvements otherwise permitted, and (iii) the Antenna does not exceed one (1) meter in diameter.

To the maximum extent possible, an Antenna shall be located or installed in a place that is shielded from public view and from the view of the other Lots. No Antenna shall be located or installed on the front wall or front roof-line of any Structure. No wires for such Antenna may be exposed to public view.

(j) Window Treatments. Bed sheets, plastic sheets, newspapers, plastic storm windows or other similar window treatments shall not be hung or placed in or on any window of any Structure located on any Lot.

(k) Family Day Care Provider. No structure may be used as a Family Day Care Home as that term is defined in Section 11B-111.1(a)(3) of the Real Property Article, Annotated Code of Maryland, or any successor law. This prohibition may be eliminated and Family Day Care Homes may be approved by a simple majority of the total eligible voters of the Association under the voting procedures contained in the Declaration and By-Laws of the Association.

(l) School or Church Use. No school or church shall be maintained or operated upon any portion of the Property.

(m) Pets and Animals. The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or other part of the Property, except that this shall not prohibit the keeping of dogs or cats as domestic pets, provided (i) they are not kept, bred or maintained for commercial purposes; (ii) such domestic pets are not a source of annoyance or nuisance to other Owners; and (iii) such pets are maintained in strict conformance to all laws and ordinances and this Declaration. Any animal outbuilding such as dog houses, kennels or runs or similar structures must be constructed, kept or maintained on any Lot in accordance with ARC approval.

No contractors or construction personnel may keep any pets on the Property. *No pets may be allowed within the On-Site Conserved Forestland unless they are leashed, chained or otherwise restrained.* No Owner or person associated with any Owner shall provide food or shelter for feral, free-roaming domestic animals (*i.e.*, “strays”), unless such animals are also restrained and controlled as described above. Any Owner who observes feral or stray dogs or cats on the Property is encouraged to report such observation(s) to the Association or the appropriate Dorchester County Animal Control Officer or Agency. In the event such observations are made by or reported to the Association, the Association shall report the observation to the appropriate County Animal Control Officer or Agency;

(n) Noise. The use of motorized lawn and garden equipment shall be prohibited before 7:00 a.m. and after 9:00 p.m. Electrical power tools may be used outdoors only between the hours of 7:00 a.m. to 9:00 p.m. No vehicle or machine may be operated within the Property without adequate noise suppression, nor shall any such device be operated in a manner to create excessive noise. The continued operation of an externally audible alarm system that malfunctions, emits false alarms and disturbs the peace of the Property is prohibited.

(o) Storage and Burning of Waste, Trash or Materials; Open Fires. No burning of any trash and no accumulation or storage of litter, debris, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted upon any Lot or other part of the Property, except that reasonable temporary accumulation of new building materials shall be permitted on a Lot, as necessary, during the construction of the primary dwelling on such Lot. No open-air fires are permitted except for: (i) cooking purposes, and (ii) during initial construction activities on the Property by Declarant or its contractors, employees or assigns, fires for the burning of woody debris, provided that such fires are at least 160 feet from any wooded area of the Property.

(p) Firewood Storage. Firewood may be stored only in the rear yard of each Lot.

(q) Garbage, Trash, Refuse and Recycling Containers. All garbage, trash, refuse and recycling materials shall kept indoors or placed in closed containers or receptacles (“Trash Receptacles”). Trash Receptacles may only be kept outdoors in the rear yard of any Lot and shall be screened from public view. Trash Receptacles may not be placed at the street prior 7:00 pm on the day prior to trash or recycling collection and shall be removed from the street prior to 7:00 pm on the day of such collection. Metal Trash Receptacles are prohibited. No incinerator shall be kept or maintained upon any Lot. Each Owner shall promptly remove or otherwise dispose of any accumulation of trash, garbage or rubbish and at all times shall maintain said Lot in a neat and sanitary condition.

(r) Equipment and Machinery. No lawn movers or other equipment or machinery shall be stored outside on any Lot.

(s) Recreational Equipment. No recreational or play equipment including, without limitation, basketball hoops, swing sets or other equipment associated with recreation, may be attached in any manner to the exterior of any dwelling.

(t) Outdoor Cooking Equipment. No grill, smoker or other outdoor cooking equipment may be maintained in the front yard of any Lot.

(u) Gardens. Any fruit and vegetable garden shall be placed in the rear portion of such Lot in such a manner as to not constitute a nuisance to adjoining Lot Owners.

(v) Clothes Lines. Outdoor clothes, wash or airing lines are not permitted.

(w) Signage. No signs may be displayed in any window of any vehicle or Structure or placed or maintained in any location or manner on the Property except the following:

i. Signs deemed desirable or necessary by the Declarant, including sales, marketing and lot identification signs;

ii. Directional signs and signs for traffic control or safety installed by the Declarant, Association or County.

(x) Hunting and Shooting Prohibited. Excepting authorized law enforcement personnel exercising their official duties, hunting and the shooting or discharging of firearms, air, pellet or BB guns, paintball guns, bows or crossbows within the Property are prohibited.

(y) Lawn Mowing and Landscape Maintenance. The Owner of each Lot shall be responsible for the maintenance of grass and weeds thereon. All lawns, landscape beds and shrubs shall be maintained in a neat and presentable condition.

In order to preserve or improve the views, to promote the free movement of air and to prevent the harboring of flies, vermin, mosquitoes and other insects, the Association and/or Declarant have the right to require the Owner of any Lot, upon fifteen (15) days written notice, mailed to the Owner at the address shown in the tax assessment records of Dorchester County, to trim any trees or shrubbery, to cut and remove any tall grasses greater than five (5) inches in height and weeds, or to remove any trash and litter standing on any part of such Lot which may furnish harboring places for flies, vermin, mosquitoes or other insects, and the Association and/or Declarant may trim, cut and remove such trees, shrubbery, grasses, weeds, trash and litter at the expense of the Owner in the event said Owner shall fail to do so within fifteen (15) days of the mailing of said notice.

(z) Compliance with all Laws. Each Owner shall promptly comply or cause compliance with all laws, statues, ordinances, rules and regulations of federal, state, county or municipal governments or authorities applicable to use, occupancy, construction and maintenance of any improvements upon any Lot.

(aa) Lot Coverage Limitations. The total area of man-made surfaces ("Lot Coverage") permitted on each Lot shall be limited to 10,420 square feet, excluding 0.24 acres of Lot Coverage associated with the access for Lots 4 and 5 across Lots 2-4, unless modified by the Declarant and approved by the Dorchester County Planning & Zoning Office.

(bb) **Tree/Forest Clearing Limitations.** Any plan submitted to the ARC shall specify the amount of existing cleared area on such Lot, the area of additional clearing and a certification by the Owner that the total cleared area will not exceed that permitted by the Plat, HCP, ITP or IA. The total area of forest clearing on each Lot shall be limited to the area specified for such Lot by the Lot Area Table of the Plat and the location of forest clearing shall be limited by the boundaries of the "Clearing Limits" and "10,000 S.F. ± Sewage Reserve Area" as depicted by the Plat. Following the initial clearing of each Lot (which shall be conducted in accordance with the provisions of this Declaration and applicable laws) and at all times thereafter, a sign not smaller than 9" x 12" shall be posted on such Lot at the boundary of the approved cleared area, which sign shall identify the remaining forested area as a "Forest Conservation Area." Such additional posts and signage as required by Section 17.03(a)(ii) shall also permanently remain on each applicable Lot.

(cc) **Tree/Forest Clearing Approval.** Prior to the cutting or clearing of any tree, Owner shall submit a plan depicting the location and area of proposed cutting and clearing to the ARC. Also prior to the cutting or clearing of any tree, Owner shall locate and stake, flag or otherwise designate the boundaries of the clearing area approved by the ARC. Any Lot Owner that cuts or clears more area on such Lot than permitted by the Plat, HCP, ITP or IA, regardless of whether such cutting or clearing was approved by the ARC, shall be responsible for all violations, penalties, fines, mitigation and/or replanting required or imposed under the ITP and applicable Federal, State or local laws.

(dd) **Wetland and Buffer Impacts.** Impacts to non-tidal wetlands and associated buffers are regulated by local, State and/or Federal law. Disturbance of the areas designated on the Plat as non-tidal wetlands or 25' non-tidal wetland buffers requires the approval of the ARC, Dorchester County Planning & Zoning Office, and Maryland Department of the Environment and/or U.S. Army Corps of Engineers.

(ee) **Stream and Tidewater Buffer Disturbances Prohibited.** Portions of Lots 3 through 9 are located within 100-foot stream and/or tidewater buffers and/or the expanded tidewater buffer, which are required by State and/or County law. Cutting or clearing of trees and new development activities (including structures, impervious surfaces and septic systems) are prohibited in these buffers except in strict accordance with State and County law and the HCP, ITP and IA.

Section 12.03. **Leasing and Transfers.** No portion of a Lot, other than an entire Lot, may be leased or rented. All leases shall provide that the terms of the lease are subject in all respects to the provisions of this Declaration and By-laws and Rules and Regulations of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. The Owner(s) of a leased Lot shall notify the Association in writing of the Owners' current address. The Owner(s) of a leased Lot shall be jointly and severally liable with his tenant(s) to the Association to pay any claim for injury or damage to persons or property caused by any action or omission, including, without limitation, the negligence of the tenant(s) and/or failure of tenant to comply with all provisions of this Declaration, the By-Laws or the

rules and regulations of the Association. Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into. The minimum term any Lot may be rented or leased shall be one (1) year.

Section 12.04. EXEMPTIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS ARTICLE AND EXCEPT FOR (bb)-(ee), THE RESTRICTIONS SET FORTH IN THIS ARTICLE SHALL NOT APPLY TO:

- (a) ANY LOT WHILE OWNED BY THE DECLARANT;
- (b) ACTIVITIES OF THE DECLARANT, ITS OFFICERS, EMPLOYEES, AGENTS OR ASSIGNS, IN THE DEVELOPMENT, MARKETING, LEASING AND SALE OF ANY LOT WITHIN THE PROPERTY, WHETHER OR NOT OWNED BY THE DECLARANT; OR
- (c) THE ASSOCIATION, ITS OFFICERS, EMPLOYEES AND AGENTS, IN CONNECTION WITH THE PROPER MAINTENANCE, REPAIR, REPLACEMENT AND IMPROVEMENT OF THE COMMON AREAS OR ENFORCEMENT OF THE FOREGOING RESTRICTIONS.

ARTICLE XIII **DURATION**

This Declaration shall be deemed covenants running with the land and/or charges and liens upon the land and any and every conveyance of any part of the Property shall be absolutely subject to the provisions hereof whether or not it shall be so expressed in the deed, lease or other conveyance thereof. The provisions of this Declaration shall inure to the benefit of and shall be enforceable by the Declarant and any Owner, their respective legal representatives, heirs, successor and assigns. This Declaration shall run with the land and shall be binding for a period of fifty (50) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended, modified or revoked pursuant to the provisions of Section 14.01 hereof.

ARTICLE XIV **AMENDMENTS**

Section 14.01. Amendment. The Declarant specifically reserves to itself, its successors and assigns, the right to amend the Declaration, or any portion thereof, on its own motion, from the date hereof until the expiration of the Class C membership under Section 4.02(c), so long as the voting power of existing Members is not diluted thereby, nor the method of making assessments of such existing Members raised or changed in any manner which would adversely affect such Members. After the expiration of Class C membership, all proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any

such proposed amendment shall be deemed approved if nine (9) or more votes are cast in favor of the amendment. If any amendment to this Declaration is made as set forth above, the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than sixty (60) days after the date when such amendment was adopted), and, if applicable, the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, and the total number of votes cast for and against the amendment. Such addendum shall be recorded in the Land Records of Dorchester County, Maryland. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class C Member without the written consent of the Declarant or the Class C Member, respectively (or the assignee of such right or privilege).

ARTICLE XV **NOTICES**

Section 15.01. Any notice required to be sent to any Member or Lot Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the address of record on file with the Secretary of the Association or, if there is not such record, to the last known address of the person or entity who appears as Owner in the Land Records of Dorchester County, Maryland, on the third day after the date the notice is mailed.

Section 15.02. Notice to one or two or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address.

Section 15.03. Any person who becomes an Owner and Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

ARTICLE XVI **ENFORCEMENT**

Section 16.01. Enforcement Generally. The Association, Declarant or any Owner(s) or any of them jointly or severally shall have the right, by any proceeding at law and/or in equity, to compel compliance with all restrictions, conditions, covenants, reservations, easements, or other obligations or terms now or hereafter imposed by the provisions of this Declaration terms, to prevent their violation or breach, to recover damages or to create any lien provided for in this Declaration. Failure by the Association, Declarant or any Owner(s) to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants, easements or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages. If the Association, Declarant or any Owner(s) successfully brings an action to

extinguish a violation or otherwise enforce the provisions of this Declaration, the direct and indirect costs of such action (and any subsequent appeals), including but not limited to legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall also be a lien upon the Lot of such Owner, provided that the requirements of the Maryland Contract Lien Act (Annotated Code of Maryland, Real Property Article, Section 14-201, et. seq., as amended) are substantially fulfilled, and which lien may be foreclosed in any manner provided by law.

Section 16.02. Enforcement by the Association and Declarant. The Association or the Declarant may engage a person or persons to respond to complaints received as to violations of the Declaration and shall inform the violators of such complaint. If the violation is not expeditiously terminated, the Declarant or Association may engage legal counsel to seek enforcement of the rights described by Section 16.01.

Section 16.03. Enforcement by the Association Related to Delmarva Fox Squirrel Conservation. In addition to the general enforcement rights, responsibilities and remedies set forth above, the Association shall monitor and enforce implementation by Owners of the provisions of Article XVII, except for those typically enforced by state or local authorities (such as speed limits). The Association shall notify the USFWS (and, where appropriate, Dorchester County) of any violation of the provisions of such Article.

ARTICLE XVII **HCP IMPLEMENTATION AND DELMARVA FOX SQUIRREL CONSERVATION**

Section 17.01. Roles and Responsibilities of the Association.

(a) *General.* Following completion of initial clearing, grading and construction of the Project and throughout the remainder of the term of the ITP, the Association shall have primary responsibility for:

- i. administering the ITP;
- ii. implementing Delmarva fox squirrel conservation and protection measures under the HCP, ITP, and this Declaration applicable to areas on the Property owned or managed by the Association (such as Outparcel A);
- iii. ensuring implementation of Delmarva fox squirrel conservation and protection measures under the HCP, ITP, and Declaration applicable to Lots and compliance with such measures by Owners;
- iv. monitoring in accordance with Section 17.08; and
- v. reporting in accordance with Section 17.10.

(b) *Information and Education.* Education and public awareness are essential to appropriate implementation of the terms and conditions of the HCP and ITP and to maintenance of On-Site Conserved Forestlands. Written materials attached as Exhibit C are intended to educate Construction contractors and supervisors regarding measures and restrictions to reduce the take of Delmarva fox squirrels on the Property. Exhibit C shall be distributed to each Owner and Construction contractor/supervisor with any ARC approval. The written materials attached

as Exhibit D are intended to educate Lot Owners regarding measures and restrictions to reduce the take of Delmarva fox squirrels on the Property during such Owners' occupancy and ownership of a Lot in the Project. Exhibit D shall be provided to each new Lot Owner by the Association immediately upon the Association's receipt of knowledge concerning the transfer of a Lot within the Project for the purpose of informing Owners of the terms and conditions of the HCP, ITP, and this Declaration and minimizing the impacts of occupancy and use of the Property on Delmarva fox squirrels. Such materials include a description of: (i) the Delmarva fox squirrel and its distribution and life history; (ii) legal protections afforded the species under the Endangered Species Act ("ESA") and penalties for violation of the ESA; and (iii) specific measures included in the HCP, ITP, and this Declaration to protect Delmarva fox squirrels and their habitats in the course of occupancy and use of the Property. The Association shall provide these materials to each initial purchaser of Lot(s) upon conveyance of such Lot. The Association shall also provide these materials to each subsequent purchaser of a Lot at the time of re-sale of any Lot.

Section 17.02. Designation of a Contact Representative. The Association shall designate a contact representative who will be responsible for coordinating with the USFWS concerning Delmarva fox squirrel-related issues and ensuring implementation of and compliance with the terms and conditions of the HCP, ITP and this Declaration (the "Contact Representative"). The Contact Representative may be an employee or an agent of the Association; if the latter, however, the responsibility for compliance and ensuring compliance with the terms and conditions of the HCP, ITP and Declaration remains with the Association. Similarly, prior to commencing any construction activity on a Lot, the Lot Owner shall designate a Contact Representative who will be responsible for coordinating with the USFWS and ensuring compliance with the HCP, ITP and this Declaration throughout the construction period.

Section 17.03. Identification and Protection of On-Site Forestland Conservation Area. The On-Site Conserved Forestland shall, at all times, be identified and protected by the Association and Owners in strict compliance with this Section.

(a) *Identification.*

i. Prior to Clearing and Initial Construction Activities. Prior to the commencement of Initial Construction Activities, the person(s) or entity responsible for such construction activities shall designate and isolate via temporary fencing the areas planned for clearing and construction from the On-Site Conserved Forestland, which shall remain undisturbed. All Initial Construction Activities shall occur within this fenced disturbance area and shall not encroach into On-Site Conserved Forestland. For purposes of this subsection, "Initial Construction Activities" is defined to mean all construction and related activities—such as land clearing, cutting and grading, and installation of road surfaces and pipelines—necessary for the establishment of project-related infrastructure (including Deer Drive and specified stormwater management facilities) and for Dorchester County to issue building permits for Lots within the Property. The initial construction fencing shall be installed along the outside boundary of the following three areas as depicted by the Plat: (i) 10' Utility & Drainage Easement running along both sides of Deer Drive, (ii) the "Clearing Limits", and (iii) the "10,000 S.F. ± Sewage Reserve Area". Such fencing shall consist of wooden stakes driven into

the ground (with 2 to 3 feet showing above ground), situated not more than 10 feet apart (or, if necessary, at a lesser distance dictated by individual circumstances), and connected by brightly-colored construction tape; or of any similar fencing so long as it is expressly designed to meet the purposes of this subsection.

ii. Permanent Delineation. On or before the earlier of: (1) thirty (30) days after the completion of Initial Construction Activities or (2) prior to the commencement of home construction on a Lot, the Owner of the Lot(s) shall install permanent signs or posts, as approved by the USFWS and Dorchester County Office of Planning & Zoning, along the boundary between the area of permitted clearing and the On-Site Conserved Forestland on such Lot(s). Each Owner shall be responsible for maintenance and replacement of any and all permanent indicators required by and installed pursuant to this Section (delineating the line of demarcation between the On-Site Conserved Forestland and unconserved parts of the Property) that occur along or within such Owner's Lot.

(b) Protection of On-Site Conserved Forestland. The On-Site Conserved Forestland shall remain in its natural state and undisturbed except as specifically permitted by Section 17.04(a). The area(s) of each Lot located outside of the On-Site Conserved Forestland may be modified and used in accordance with this Declaration, applicable laws, and otherwise at the discretion of each Lot Owner.

Section 17.04. Permitted and Prohibited Activities Within On-Site Conserved Forestland. In addition to the use restrictions set forth in Article XII, certain uses and activities are permitted or prohibited in the On-Site Conserved Forestland, as specified below. Where a conflict or inconsistency exists between the provisions of Article XII or applicable laws and the provisions of this Section, the more restrictive shall apply.

(a) Activities Permitted Within On-Site Conserved Forestland. Subject to State and local laws and the provisions of Article XII, the following activities and uses are permitted within the On-Site Conserved Forestland:

- i. construction and use of one pier over Secretary Creek on Lot 7;
- ii. clearing of a path not more than three (3) feet wide from a residence on Lots 5, 6 and 7 across such Lot to Secretary Creek using hand tools; and
- iii. active and passive recreation not resulting in significant damage to or degradation or alteration of On-Site Conserved Forestland on the site or its vegetation and substrates.

(c) Activities Prohibited Within On-Site Conserved Forestland. The following activities and uses are prohibited within the On-Site Conserved Forestland:

- i. Presence of domestic pets unless they are physically restrained (See Section 12.02(m));

ii. Construction, development, and associated grading or clearing activities including clearing of existing natural vegetation, tree-cutting, erection of structures, construction of new roads, parking areas, or other impervious surfaces, altering the slope of the land surface, and the placement of sewage disposal systems, except as provided herein;

iii. Placement of any structures attached to or in addition to an existing structure except as depicted by the Plat, including, without limitation, detached garages, accessory dwellings, sheds, barns, tennis courts, swimming pools, children's play houses or recreational structures or equipment, fences, dog kennels, clotheslines, fuel tanks, garbage cans, incinerators, and gardens; in addition, no construction activities, excavation, grading, clearing, cutting, installation of infrastructure or similar activities shall take place except as depicted in the Plat;

iv. Cutting or clearing of individual trees except: (1) to prevent trees from falling and blocking waterways or roadways, causing damage to dwellings or other structures, or causing accelerated erosion of the shoreline or streambank of Secretary Creek; (2) in conjunction with horticultural practices used to maintain the health of individual trees; (3) to install or construct a shoreline erosion protection device or measure subject to necessary governmental approval; (4) to protect On-Site Conserved Forestland from extensive pest or disease infestation or threat from fires if approved by the USFWS and Maryland Department of Natural Resources or the Maryland Department of Agriculture; and (5) to enhance the habitat of the Delmarva fox squirrel, if authorized by the USFWS and provided any such actions are approved by relevant state and/or county authorities; and

v. Placement of dredged spoil except as necessary for: (1) backfill for permitted shore erosion protection measures; (2) use in approved vegetated shore erosion projects; (3) placement on previously approved channel maintenance spoil disposal areas; and (4) beach nourishment.

Section 17.05. Timing of Forest Clearing. All permitted forest clearing on the Property shall be undertaken outside the Delmarva fox squirrel's primary breeding season, or from May 16th to December 31st (*i.e.*, shall not be undertaken during the fox squirrel's primary breeding season, or from January 1st to May 15th).

Section 17.06. Notice of Construction Activities. At least 30 days prior to planned or anticipated commencement of construction activities (relating to the Project generally or individual home(s)), the Owner of the Lot on which such construction activity will occur shall notify the USFWS in writing of the approximate date that construction is to begin.

Section 17.07. Speed Limits. A 15 mph vehicle speed limit shall be posted at the entrance to the Project and enforced by appropriate governmental authorities along the length of Deer Drive. The Association shall maintain, repair and replace appropriate speed limit signs consistent with Dorchester County requirements for residential neighborhood signage.

Section 17.08. Monitoring Responsibilities of Association and Owners. The primary monitoring responsibilities of the Association and Owners are threefold: (a) monitoring to ensure

compliance with the terms and conditions of the HCP and its associated ITP; (b) monitoring of the presence or discovery of dead, injured, or sick Delmarva fox squirrels (e.g., as a result of construction-related actions, vehicle strikes, pet depredations, etc.); and (c) monitoring of live Delmarva fox squirrels.

(a) *Compliance Monitoring.* Monitoring compliance with the HCP's terms and conditions shall be the responsibility: (i) of the Association with respect to the activities and actions of individual Owners and agents, contractors, or personnel hired by the Association; (ii) of Owners with respect to agents, contractors, or personnel they may hire; and (iii) of the Association and Owners with respect to their own activities and actions (i.e., through self-monitoring). In the event the Association or any Owner becomes aware of any circumstance, condition or action in violation of the HCP, ITP, IA or the provisions of Article XVII of this Declaration, the Association or such Owner shall take immediate action to remedy such circumstance, correction or action and to bring the same into strict compliance with the aforesaid documents.

(b) *Monitoring of Dead/Injured/Sick Delmarva Fox Squirrels.* Monitoring of the presence of dead, injured, or sick Delmarva fox squirrels under the HCP is not required to be undertaken systematically but shall occur opportunistically (e.g., during day-to-day construction or site occupancy and use activities) and episodically (e.g., during activities relating to a specific event or circumstance, such as the inadvertent escape of a pet into the On-Site Forestland Conservation Area). Nevertheless, the Association and all Owners shall be responsible for exercising due diligence in such monitoring (i.e., for being generally alert to the presence of dead, injured, or sick Delmarva fox squirrels on the project site overall or on individual properties on the site, as applicable). In addition, in the event that a dead, injured, or sick Delmarva fox squirrel is found or discovered on the Property at any time, the measures described in Section 17.09 shall be implemented.

(c) *Monitoring Live Delmarva Fox Squirrels.* Whenever possible and as opportunity arises, Owners should photograph Delmarva fox squirrels observed on or in the vicinity of their Lot (e.g., if fox squirrels are observed at bird feeders, in yards, during walks into wooded portions of a property, etc.) and submit such photographs to the USFWS. Accordingly, Owners should be alert to Delmarva fox squirrel photo opportunities, and, in the event any such Owner photographs a Delmarva fox squirrel (or any squirrel believed to be a Delmarva fox squirrel), should submit the photograph to the Branch Chief, Endangered Species Habitat Evaluation and Protection Division, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401, together with a description of the date, location, and time the photograph was taken. Delmarva fox squirrels observed but not photographed need not be reported.

Section 17.09. Reporting Live and Dead, Injured, or Sick Delmarva Fox Squirrels. Each Owner shall provide and report photographs of live Delmarva fox squirrels in accordance with Section 17.08(c). Each Owner, all builders and contractors working in the Project and all officers, directors, representatives and employees of the Association shall immediately notify the Contact Representative of the discovery of any dead, injured, or sick Delmarva fox squirrel anywhere on the Property and the circumstances surrounding the discovery of any such animal.

Within 24 hours of such notification, the Contact Representative shall notify the nearest USFWS Law Enforcement Officer of the discovery of the animal. In conjunction with these actions, the Contact Representative shall: (a) preserve any dead Delmarva fox squirrel and ensure that evidence intrinsic to determining the cause of death of the animal is also preserved to the maximum extent practicable; and (c) within five (5) calendar days of the discovery of a dead, injured, or sick fox squirrel, provide a written report to the USFWS describing, to the maximum extent practicable, the circumstances, location, etc. of any such finding, the cause of the death, injury, or sickness of the animal, if known, and the measures, if any, that will be taken to avoid further death or injury of fox squirrels.

Section 17.10. Annual Reporting. The Association shall submit to the USFWS a written annual report describing relevant activities under the HCP that it undertook or oversaw and activities reported by Lot Owners in the previous calendar year. Owner shall submit to the Association by January 1 of each year any information that should be included within the report. This report will be due, with respect to the previous calendar year, by February 15 of each year throughout the HCP's 50-year term, except that if the HCP is approved after July 1 of its first calendar year, activities implemented in that year may be reported in the following year's report. Each report submitted by the Association shall a summary of:

(a) Throughout the construction period, any and all known sale or sales of land occurring within the Property in the preceding calendar year, including sale of the entire Property or sale of unimproved Lots;

(b) Any events, occurrences, or circumstances in the preceding calendar year, if any, in which the HCP's terms and conditions were not fully or adequately implemented and what measures, if any, were taken to correct such events or circumstances or to prevent their recurrence in the future;

(c) Occurrences of Delmarva fox squirrel sightings, if any, on the Property in the previous calendar year, and, with respect to any such sighting(s):

- i. the date(s) the sighting(s) occurred;
- ii. the location of the sighting(s);
- iii. the number of individual animals observed;
- iv. the age-class of animals observed, if known (*i.e.*, adult or juvenile); and
- v. the events or circumstances surrounding the sighting(s).

(d) Occurrences of incidental take of Delmarva fox squirrels, if any, or of the finding or discovery of any dead, injured, or sick Delmarva fox squirrels, if any, in the previous calendar year, together with a description of:

- i. the date(s) any such taking or discovery of a fox squirrel occurred;
- ii. the number of specimens taken or found, if known; and
- iii. the activity or activities being conducted or carried out when the taking or discovery occurred or the events or circumstances surrounding the take or discovery; and

(e) Any other pertinent or available information concerning the carrying out of the HCP's covered activities and conservation program activities, the status of the Delmarva fox squirrel or its habitat on the project site, or other relevant or important information.

In addition, with respect to Paragraph (d) above, reporting of any dead, injured, or sick Delmarva fox squirrel or squirrels shall be undertaken in accordance with Section 17.09.

Section 17.11. Notification of Sale. Until a structure suitable for occupancy as a single-family residence has been constructed on each Lot, the Declarant or applicable Lot Owner shall inform the USFWS in writing of the pending sale of all or any part of the Property a minimum of ten (10) calendar days prior to the planned conclusion of any such sale at the following address:

U.S. Fish and Wildlife Service
Chesapeake Bay Field Office
177 Admiral Cochran Drive
Annapolis, Maryland 21401
ATTN: Cherry Keller

Section 17.12. Right of USFWS Access. During the term of the ITP, a non-exclusive easement for access to and inspection of each Lot is hereby granted to:

(a) USFWS employees at any reasonable time for the inspection and monitoring purposes specified in 50 CFR 13.21(e)(2) and for the purposes of monitoring and observing the on-site Delmarva fox squirrel population, monitoring implementation of and compliance with the HCP and its associated ITP, and undertaking such other activities as it may see fit to protect and conserve on-site Delmarva fox squirrel populations; provided, however, with respect to entry onto Lots, that USFWS employees have given notification to affected Owner(s) by phone, e-mail, regular mail or by leaving notification at the Owner's front door a minimum of 48 hours prior to such entry; and

(b) USFWS contractors or cooperators acting pursuant to a contract or agreement issued by the agency's Chesapeake Bay Field Office and relating specifically to the Project; provided, however, with respect to entry onto Lots, that such contractors or cooperators have given prior notification to affected Owner(s) by phone, e-mail, regular mail or by leaving notification at the Owner's front door. Such notification shall be given not less than two weeks in advance of such entry or the commencement of any subject activity and a copy of the subject contract or agreement shall be provided to the Association also not less than two weeks in advance of such entry or commencement of activity.

Notwithstanding anything herein to the contrary, the easements and rights established by this Section shall not permit or entitle the entry within the interior portion of any Structure or dwelling unit located on the Property or the entry into fenced, enclosed or other similar areas of the Property.

Section 17.13. No Amendments in Conflict with the HCP or Plat. Notwithstanding the provisions of Section 14.01, the Association shall not approve any conditions or changes to the Declaration that are in conflict with the HCP, ITP, or the Plat.

Section 17.14. Association Not to Be Dissolved. The Association shall not be dissolved without the express written approval of the USFWS. Such approval must specify that sufficient alternative procedures and funding mechanisms have been established to ensure implementation of the terms and conditions of the HCP and its associated ITP.

ARTICLE XVIII **GENERAL PROVISIONS**

Section 18.01. Severability. In case any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceable shall not affect any other provision hereof; and this Declaration shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 18.02. Interpretation. In all cases, the provisions of this Declaration shall be given that interpretation or construction which will best tend toward the consummation of the general plan of development of the Property. The provision of these covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance that allows a less restrictive use of the Property.

Section 18.03. Trespass. Whenever the Association, or the Declarant are permitted by this Declaration to correct, repair, clean, preserve, clear out or do any action on any Lot, Common Area, or easement areas adjacent thereto, entering such property and taking such action shall not be deemed a trespass.

Section 18.04. Successors and Assigns. Each grantee accepting a deed or other instrument conveying any interest in any Lot, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe, perform and be bound by this Declaration and to incorporate the same by reference in any deed or other conveyance of all or any portion of this interest in any real property subject hereto.

Section 18.05. Successors of Declarant. Any and all rights, reservations, easements, interests, exemptions, privileges and powers of the Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by the Declarant, with or without notice to the Association by an instrument specifically assigning them. This Section shall not limit, terminate or otherwise affect Declarant's rights to enforce the provisions of this Declaration.

Section 18.06. Headings; Rules of Construction and Interpretation The headings and captions used in this Declaration are for convenience and ease of reference only and shall not be used to interpret, expand or limit the terms hereof. The singular includes the plural; the

masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to this Declaration and not solely to the particular portion thereof in which any such word is used. Whenever the words "include", "includes" or "including" are used in this Declaration, they shall be deemed to be followed by the words "without limitation".

IN WITNESS WHEREOF, the Declarant has set its hand and seal as of the day and year first above written.

WITNESS: RB & JH PROPERTIES, LLC, a Maryland limited liability company

_____ By: _____ (SEAL)
Philip J. Harrington, III Managing Member

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 2008, before me, the undersigned, a Notary Public of the State of Maryland, personally appeared Philip J. Harrington, III, who acknowledged himself to be an Authorized Member of RB & JH Properties, LLC, a Maryland limited liability company, known to me (or satisfactorily proven), to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as Authorized Member of RB & JH Properties, LLC, a limited liability company.

AS WITNESS my hand and notarial seal.

My Commission Expires: _____

THIS IS TO CERTIFY that this instrument was prepared by Ryan D. Showalter, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Ryan D. Showalter

EXHIBIT A

The Property shall consist of all those lots, parcels or tracts of land situate in Dorchester County, Maryland and depicted as Lots 1-13 and Outparcel A of Pleasant Rifts on that plat prepared by Dennis & Baumgartner Land Surveyors, Inc., entitled "Final Pleasant Rifts Subdivision", dated February 2005 and bearing revision date March 8, 2008, and recorded among the Plat Records of Dorchester County at Plat Cabinet _____, Page ____.

EXHIBIT B

NOTIFICATION ADDENDUM - COVENANTS, CONDITIONS AND RESTRICTIONS

ADDENDUM dated _____ to Contract of Sale dated _____, 2008 between Buyer(s) _____, and Seller, RB & JH Properties, LLC, for Property located at _____ Secretary, MD.

NOTICE TO PURCHASER(S) OF LOT(S) IN PLEASANT RIFTS:

THIS PROPERTY IS SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS ESTABLISHED BY A DECLARATION DATED _____, 2008 AND RECORDED AMONG THE LAND RECORDS OF DORCHESTER COUNTY. THIS DECLARATION, THE SUBDIVISION PLAT AND FEDERAL, STATE AND LOCAL LAWS GOVERN THE DEVELOPMENT AND USE THIS PROPERTY AND INCLUDE SPECIFIC RESTRICTIONS ON THE USE OF WOODED PORTIONS OF THE PROPERTY AS DESCRIBED IN THE DECLARATION AND LIMITATIONS ON THE AREA AND LOCATIONS OF FOREST CLEARING AND AREA OF LOT COVERAGE PERMITTED ON THIS PROPERTY AS DEPICTED BY THE PLAT AND AS FOLLOWS:

LOT	Maximum Permitted Clearing (sq.ft.)	Lot Coverage (sq.ft.)
1	0	6,468
2	0	9,343
3	22,497	12,414
4	25,281	14,570
5	20,548	11,625
6	17,709	10,585
7	19,156	11,500
8	18,639	11,000
9	17,796	11,900
10	0	10,350
11	4,445	8,559
12	7,516	10,350
13	0	10,350

THE UNDERSIGNED BUYER(S) HEREBY ACKNOWLEDGE NOTIFICATION OF AND AGREE TO COMPLY WITH ALL PROVISIONS OF THE DECLARATION, SUBDIVISION PLAT AND APPLICABLE LAW.

Buyer(s)

Seller - RB & JH Properties, LLC

By: _____
Name & Title: _____

Date _____

Date _____

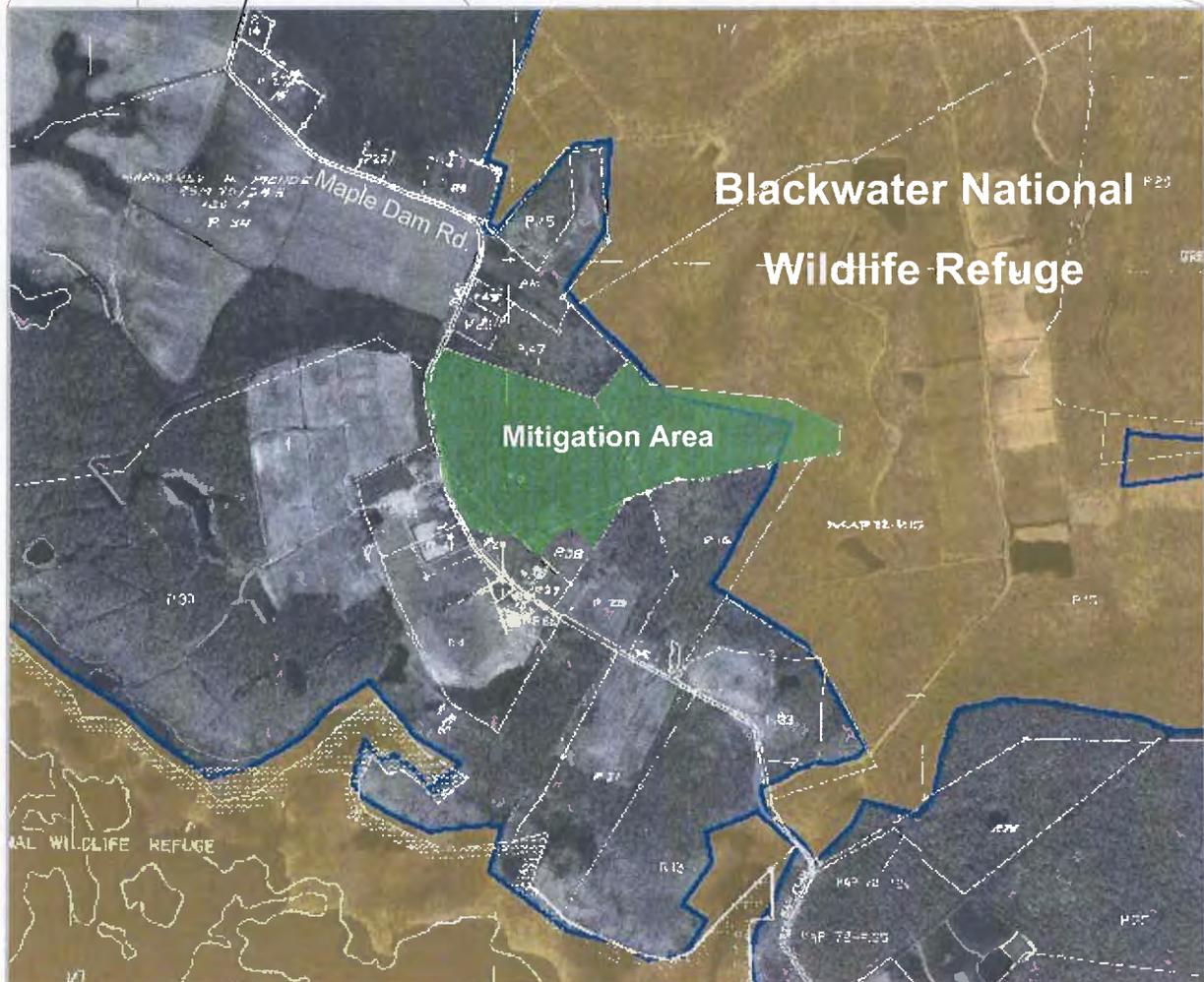
Appendix C:
**Map of Off-site Mitigation Parcel
and Vicinity**

Pleasant Rifts Mitigation Area



Note: The boundary overlap depicted below (boundaries of the mitigation area and Blackwater National Wildlife Refuge) is solely a result of the dataset used to produce this Exhibit. The mitigation area is privately-owned and is located adjacent to, but not within, the Refuge. The mitigation area is not protected as part of Blackwater National Wildlife Refuge, but will be protected in perpetuity for the benefit of the Delmarva fox squirrel as mitigation for Pleasant Rifts. Colored shading identifies protected lands.

To MD Rt. 16 (Cambridge)
8.5 miles



Appendix D

Pleasant Riffs Subdivision Plat

Appendix E

Summary of Take Minimization Measures – Construction

**Delmarva Fox Squirrel Take Minimization Measures for Construction
in Pleasant Riffs, Secretary, Maryland**

The forest within Pleasant Riffs is likely to be occupied by the endangered Delmarva fox squirrel (“DFS”). Generally, the killing, harm and harassment of DFS and disturbance of DFS habitat is prohibited by the federal Endangered Species Act (“ESA”), which is implemented and enforced by the U.S. Fish & Wildlife Service. Penalties for violation of the ESA include criminal sanctions and monetary fines. To comply with the ESA and minimize adverse impacts on DFS in Pleasant Riffs, all property owners and construction personnel shall follow and implement the measures described in detail by the Pleasant Riffs Habitat Conservation Plan (“HCP”) and Incidental Take Permit No. _____ (“ITP”). These minimization measures are summarized as follows:

1. Construction Approval, Contact Representative and Preconstruction Notification. No construction or grading activities may be conducted within Pleasant Riffs without prior approval the Architectural Review Committee (“ARC”). All proposed construction and grading must be consistent with the HCP, ITP and the Pleasant Riffs Homeowners Association’s Declaration of Covenants, Conditions and Restrictions (“CCRs”). At least 30 days prior to the planned commencement of any construction activity on a lot, the owner of the lot must notify the USFWS of: (i) the name, address and telephone number for a contact representative who will be responsible for coordinating with the USFWS and ensuring compliance with the HCP and its associated ITP throughout the construction period, and (ii) the approximate date that construction will begin.

2. Forest Clearing – Timing, Limits, Signage and Confirmation of Area of Permitted Clearing. Clearing of forest within Pleasant Riffs is only permitted in strict accordance with the recorded subdivision plat, the Declaration of Covenants, Conditions and Restrictions, the HCP and its related Incidental Take Permit.

(a) Forest clearing may only be completed between May 16th and December 31st.

(b) Prior to the commencement of any land clearing, cutting, grading or construction activities necessary for the establishment of the Pleasant Riffs infrastructure (Deer Run Drive and drainage and stormwater management facilities) (collectively, the “Initial Construction Activities”), the boundary of the forest area permitted to be cleared (totaling 4.83 acres) must delineated by temporary fencing. Such fencing shall consist of wooden stakes driven into the ground (with 2 to 3 feet showing above ground), situated not more than 10 feet apart (or, if necessary, at a lesser distance dictated by individual circumstances), and connected by brightly-colored construction tape.

(c) Within 30 days of completion of the Initial Construction Activities and prior to the commencement of home construction on any individual lot, permanent signs (approved by USFWS) shall be installed along the outer boundaries of the area of permitted clearing indicated by the Plat (*i.e.*, the outer boundaries of the “Clearing Limits” and the “10,000 S.F. ± Sewage Reserve Area”).

(d) Such signs shall not be disturbed or removed and shall be maintained by the owner of the property. No construction, grading, vegetation cutting or clearing or other activities may be conducted beyond the limits of permitted clearing indicated by the signs.

(e) Following completion of clearing activities on each lot, a survey of the cleared area shall be prepared to depict the area and location of the clearing on such lot and the fence line delineating the total boundaries of permitted clearing. The cleared area survey shall be delivered to the USFWS

HABITAT CONSERVATION PLAN FOR THE PROPOSED PLEASANT RIFTS HOUSING DEVELOPMENT
DORCHESTER COUNTY, MARYLAND

Annapolis Field Office, the Maryland Critical Areas Commission and Dorchester County Planning & Zoning.

3. Speed Limit. No vehicles within Pleasant Riffs may exceed a speed of 15 mph, except in the event of an emergency.

4. Activity Restrictions. Construction personnel working in Pleasant Riffs may not:

- (a) dump trash except into specified disposal containers,
- (b) ignite open-air fires for any purpose within 160 feet of the forested area of the Property,
- (c) bring any pet or domestic animal to any job site within Pleasant Riffs,
- (d) provide food or shelter for any stray or feral, free-roaming domestic animal, or
- (e) conduct any hunting activity or shoot or discharge any firearm, air pellet or BB gun, paintball gun, bow or crossbow.

5. Reporting Dead, Injured, or Sick Delmarva Fox Squirrels. All construction personnel shall notify the contact representative immediately of the discovery of any dead, injured, or sick Delmarva fox squirrel in Pleasant Riffs and the circumstances surrounding the discovery of any such animal. Within 24 hours of such notification, the contact representative shall notify the USFWS' Annapolis Law Enforcement Office (177 Admiral Cochrane Drive, Annapolis, Maryland 21401, (410) 573-4514) of the discovery of the animal. Any dead Delmarva fox squirrel and evidence intrinsic to determining the cause of death of the animal shall be preserved. Within five (5) calendar days of the discovery of a dead, injured, or sick fox squirrel, the contact representative shall provide a written report to the USFWS describing, to the maximum extent practicable, the circumstances, location, etc. of any such finding, the cause of the death, injury, or sickness of the animal, if known, and the measures, if any, that will be taken to avoid further death or injury of fox squirrels during Project-related construction.

6. Right of USFWS Access. Construction personnel should understand that USFWS employees have a right of access to Pleasant Riffs at any reasonable time for the inspection and monitoring the on-site Delmarva fox squirrel population and monitoring compliance with the HCP and its associated ITP. For entry within individual lots, USFWS employees must first provide notice to the Lot Owner as described by the HCP.

For more detailed information regarding restrictions and requirements applicable to construction activities within Pleasant Riffs, consult the HCP, ITP and the Pleasant Riffs Declaration of Covenants, Conditions and Restrictions.

Appendix F
Delmarva Fox Squirrel Fact Sheet
and
Contact Information



U.S. Fish & Wildlife Service

Delmarva Peninsula Fox Squirrel

Sciurus niger cinereus

Twice the size of the common gray squirrel, the Delmarva Peninsula fox squirrel may grow to 30 inches—with half of that as the tail—and weigh up to 3 pounds. Historically, the fox squirrel lived in the peninsula occupied by portions of Delaware, Maryland, and Virginia and bordered by the Chesapeake Bay and the Delaware River, Delaware Bay, and Atlantic Ocean.

Habitat loss and probably over-hunting at the turn of the century contributed to the marked decline of this fox squirrel subspecies. Clearing forests for agriculture and short-rotation timber production combined to reduce its distribution to less than 10 percent of the original range by the time the Delmarva fox squirrel was listed in 1967 as endangered under the Endangered Species Act.

Decades of conservation work by recovery partners have reversed the status of the squirrel. Its populations are now increasing.

Description, Habitat, and Behavior

The largest of all the tree squirrels, the Delmarva Peninsula fox squirrel has silver to whitish-gray slate hair and an unusually full, fluffy tail and white belly. The squirrel's coat varies in color from frosty silver-gray to almost black.

The Delmarva fox squirrel lives in mature forests of mixed hardwoods and pines with a closed canopy and open understory. Although it is a forest animal, the squirrel spends considerable time on the ground foraging for food, typically in woodlots of mixed loblolly pine and hardwoods such as oak, maple, hickory, walnut, and beech—trees that provide food including nuts and seeds. The squirrel will also take food from farm fields. Feeding on tree buds and flowers during the



Delmarva Peninsula fox squirrel caught on a motion-triggered camera.

Courtesy of the Delaware Natural Heritage Program.

spring, the squirrel will also eat fungi, insects, fruit, and seeds. In the summer and early fall, the squirrel enjoys eating mature, green pine cones. The animal generally lives in woodlands associated with farmland areas—not typically in suburban settings.

Less agile than the common gray squirrel, the Delmarva fox squirrel often ambles along the forest floor rather than leaping from branch to branch. The animal usually avoids confrontations by running away rather than climbing a tree but will do so to avoid a predator. The fox squirrel is also quieter than the gray squirrel. The home range of the fox squirrel varies, but averages about 40 acres.

The Delmarva fox squirrel may nest in tree cavities or build a leaf nest. Squirrels mate in late winter and early spring. About 44 days later in

February and March as many as four young are born. Females may give birth to two litters per year. They raise the young by themselves.

Imperiled Population

By the early 1900s, the range of the Delmarva fox squirrel was reduced to the Eastern Shore of Maryland. Current threats include predators, such as red and gray foxes, and eagles and other raptors, such as great horned owls. Accidental deaths by vehicles also occur.

When the U.S. Fish and Wildlife Service provided it with Endangered Species Act protection, the squirrel occupied only four counties in Maryland—Kent, Queen Anne's, Talbot, and Dorchester. Thanks to reintroduction efforts by the Service, Maryland Department of Natural Resources, the Delaware Natural Heritage Program, and the Virginia Department of Game and Inland

Fisheries, the squirrel can now be found in Delaware and Virginia and in all counties on the Eastern Shore of Maryland except Cecil.

Recovery Efforts

Habitat protection for the Delmarva Peninsula fox squirrel began in 1945 when the Maryland Department of Natural Resources bought LeCompte Wildlife Management Area in Dorchester County. Legal hunting for the squirrel was banned in 1971. Following the endangered listing, the Delmarva Peninsula Fox Squirrel Recovery Team began coordinating State and Federal conservation efforts. A major focus has been to increase the population size and distribution of this species through a reintroduction program to re-establish the squirrel throughout its range.

Of 16 reintroductions in Maryland, Delaware, Virginia, and Pennsylvania, 11 are succeeding more than a decade later. Much of the habitat now occupied is privately owned land. Fortunately, the Delmarva fox squirrel can thrive in a landscape that is managed for farming and sustainable timber harvest. Farmers can provide prime habitat by leaving uncut corn or soybeans along hedgerows for the squirrels' winter food. Developers can leave woodlot trees that produce nuts, seeds, and berries and can provide corridors from one woodlot to

another. Developers can also help fox squirrels by leaving buffers of trees and hedgerows between streams and development.

The Delmarva Peninsula fox squirrel receives additional protection under the Chesapeake Bay Critical Area Law of 1984, which requires endangered species habitat protection within critical areas—that is, 1000 feet landward of low mean high tide.

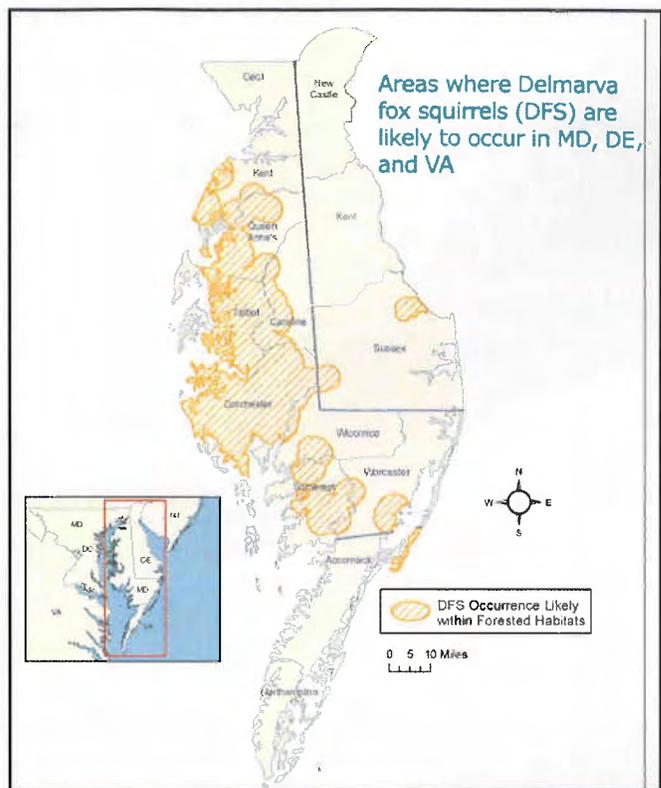
Monitoring

One of the principal criteria of the species' recovery is the stability or expansion of Delmarva Peninsula fox squirrel populations. The range is expanding. The animals are now found in new areas. Their distribution is determined by the locations where they have been observed, trapped, found in nest boxes, or photographed.

Motion-triggered cameras offer a new monitoring technique that enables evidence of their presence without the time and effort of trapping. Another technique under development is "hair-catching" at stations that can be baited and placed in the forest. Samples collected can be analyzed for their DNA. Research has determined that scientists can distinguish Delmarva fox squirrel hair from that of the gray squirrel.

Chincoteague National Wildlife Refuge

From 1969 to 1971, biologists relocated 30 Delmarva Peninsula fox squirrels to Chincoteague National Wildlife Refuge and released them in habitat surrounding the historic Assateague Lighthouse. Since then the population of squirrels at the Refuge has reached 300 to 350, with new populations dispersing on their own throughout the southern portion. Refuge biologists conduct an annual fox squirrel nesting box check to



monitor the population and tag new animals to help determine their long-term presence.

Where Can You See a Delmarva Fox Squirrel?

To see a Delmarva fox squirrel and learn more about this unique resident of the Delmarva Peninsula, visit any of the following National Wildlife Refuges in the area: Chesapeake Marshlands Complex (Dorchester County, MD), Chincoteague (Accomack County, Virginia), and Prime Hook (Sussex County, DE). Also, be on the look-out in the woods and field edges throughout its range.

**U.S. Fish and Wildlife Service
Endangered Species Program
4401 N. Fairfax Drive, Room 420
Arlington, VA 22203
703-358-2390
<http://www.fws.gov/endangered/>**

**U.S. Fish and Wildlife Service
Northeast Region
300 Westgate Center Drive
Hadley, MA 01035
413-253-8615
<http://www.fws.gov/northeast/>**

February 2008



Photo by M. Simon, Maryland Environmental Service

HABITAT CONSERVATION PLAN FOR THE PROPOSED PLEASANT RIFTS HOUSING DEVELOPMENT
DORCHESTER COUNTY, MARYLAND

Delmarva Fox Squirrel Contact Information

U.S. Fish & Wildlife Service

Chesapeake Bay Field Office

U.S. Fish & Wildlife Service
Chesapeake Bay Field Office
177 Admiral Cochrane Drive
Annapolis, MD 21401
Attn: Cherry Keller
(410) 573-4532

Local Law Enforcement Office

U.S. Fish & Wildlife Service
Law Enforcement Division
177 Admiral Cochrane Drive
Annapolis, MD 21401
(410) 573-4514

Regional Office

U.S. Fish & Wildlife Service
Northeast Region
399 Westgate Center Drive
Hadley, MA 01035-9589
(413) 253-8615

Maryland Department of Natural Resources

Glenn Therres, Associate Director, Natural Heritage Program
Department of Natural Resources
Wildlife & Heritage Service
Tawes State Office Building E1
580 Taylor Avenue
Annapolis, MD 21401-2397
(410) 260-8572

Critical Area Commission for the Chesapeake & Atlantic Coastal Bays

Julie Roberts, Natural Resources Planner
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
1804 West Street
Suite 100
Annapolis, MD 21401
(410) 260-3476

Dorchester County – Planning & Zoning

Steve Dodd, Director
Dorchester County Office of Planning & Zoning
501 Court Lane
Cambridge, Maryland 21613
(410) 228-3234

Appendix G

Summary of Take Minimization Measures – Lot Owners

**Delmarva Fox Squirrel Take Minimization Measures for Use and Occupancy
of Pleasant Riffs, Secretary, Maryland**

The forest within Pleasant Riffs is likely to be occupied by the endangered Delmarva fox squirrel (“DFS”). Generally, the killing, harm and harassment of DFS and disturbance of DFS habitat is prohibited by the federal Endangered Species Act (“ESA”), which is implemented and enforced by the U.S. Fish & Wildlife Service. Penalties for violation of the ESA include criminal sanctions and monetary fines. To comply with the ESA and minimize adverse impacts on DFS in Pleasant Riffs, all property owners and residents shall follow and implement the measures described in detail by the Pleasant Riffs Habitat Conservation Plan (“HCP”) and Incidental Take Permit No. _____ (“ITP”). These minimization measures are summarized as follows:

1. Construction Approval, Contact Representative and Preconstruction Notification. No construction or grading activities may be conducted within Pleasant Riffs without prior approval the Architectural Review Committee (“ARC”). All proposed construction and grading must be consistent with the HCP, ITP and the Pleasant Riffs Homeowners Association’s (“PRHA”) Declaration of Covenants, Conditions and Restrictions (“CCRs”). At least 30 days prior to the planned commencement of any construction activity on a lot, the owner of the lot must notify the USFWS of: (i) the name, address and telephone number for a contact representative who will be responsible for coordinating with the USFWS and ensuring compliance with the HCP and its associated ITP throughout the construction period, and (ii) the approximate date that construction will begin.

2. Forest Clearing – Timing, Limits, Signage and Confirmation of Area of Permitted Clearing. Clearing of forest within Pleasant Riffs is only permitted in strict accordance with the recorded subdivision plat, CCRs, HCP and ITP.

(a) Forest clearing may only be completed between May 16th and December 31st.

(b) The developer of Pleasant Riffs has installed permanent signs along the outer boundaries of the area of permitted clearing indicated by the Plat (*i.e.*, the outer boundaries of the “Clearing Limits” and the “10,000 S.F. ± Sewage Reserve Area”) to identify the area of forest that shall be conserved and remain undisturbed except as specially permitted by the HCP.

(c) Such signs shall not be disturbed or removed and shall be maintained by the owner of the property. No construction, grading, vegetation cutting or clearing or other activities may be conducted beyond the limits of permitted clearing indicated by the signs except as specifically authorized by the HCP.

(d) If the total area of clearing permitted for a specific lot was not completed initially, prior to conducting any clearing activity permitted by the Plat and HCP, the owner must obtain Architectural Review Committee approval and delineate the boundary of the forest area permitted to be cleared using by temporary fencing. Such fencing shall consist of wooden stakes driven into the ground (with 2 to 3 feet showing above ground), situated not more than 10 feet apart (or, if necessary, at a lesser distance dictated by individual circumstances), and connected by brightly-colored construction tape. Following completion of the clearing activities, a survey of the cleared area shall be prepared to depict the area and location of the clearing on such lot and the fence line delineating the total boundaries of permitted clearing. The cleared area survey shall be delivered to the USFWS Chesapeake Bay Field Office, the Maryland Critical Areas Commission and Dorchester County Planning & Zoning.

HABITAT CONSERVATION PLAN FOR THE PROPOSED PLEASANT RIFTS HOUSING DEVELOPMENT
DORCHESTER COUNTY, MARYLAND

3. Speed Limit. No vehicles within Pleasant Riffs may exceed the posted speed limit of Deer Drive, except in the event of an emergency.

4. Activity and Property Use Restrictions. Except as specifically permitted by the HCP, ITP and CCRs, residents in Pleasant Riffs may not:

(a) dump trash except into disposal containers,

(b) ignite open-air fires, except for cooking purposes,

(c) allow any domestic pet to enter the conserved forest (beyond the signs described in 2 above) unless it is leashed, chained or otherwise restrained,

(d) provide food or shelter for any stray or feral, free-roaming domestic animal (residents should report any strays to the appropriate Dorchester County animal control officer or agency),

(e) conduct any hunting activity or shoot or discharge any firearm, air pellet or BB gun, paintball gun, bow or crossbow,

(f) conduct any grading or clearing activities or construct, place or maintain any structure, equipment, garden or other object within the conserved forest (beyond the signs described in 2 above)

5. Reporting Dead, Injured, or Sick Delmarva Fox Squirrels. All residents shall notify the PRHA's contact representative immediately of the discovery of any dead, injured, or sick Delmarva fox squirrel in Pleasant Riffs and the circumstances surrounding the discovery of any such animal. Within 24 hours of such notification, the contact representative shall notify the local USFWS law enforcement office of the discovery of the animal. Any dead Delmarva fox squirrel and evidence intrinsic to determining the cause of death of the animal shall be preserved. Within five (5) calendar days of the discovery of a dead, injured, or sick fox squirrel, the contact representative shall provide a written report to the USFWS describing the circumstances and location of any such finding, the cause of the death, injury, or sickness of the animal, if known, and the measures, if any, that will be taken to avoid further death or injury of fox squirrels during use and occupancy of Pleasant Riffs.

6. Reporting Live Delmarva Fox Squirrels. Whenever possible and as opportunities arise, residents should photograph any squirrel believed to be a Delmarva fox squirrel observed on or in the vicinity of their properties (*e.g.*, if fox squirrels are observed at bird feeders, in yards, during walks into wooded portions of a property, etc.); and submit such photographs to the USFWS. Such photographs should be sent, together with a description of the date, location, and time the photograph was taken, to the Branch Chief, Endangered Species Habitat Evaluation and Protection Division, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401. Delmarva fox squirrels observed but not photographed need not be reported.

7. Right of USFWS Access. USFWS employees have a right of access to Pleasant Riffs at any reasonable time for the inspection and monitoring the on-site Delmarva fox squirrel population and monitoring compliance with the HCP and its associated ITP. For entry within individual lots, USFWS employees must first provide notice to the Lot Owner as described by the HCP.

For more detailed information regarding restrictions and requirements applicable to construction activities within Pleasant Riffs, consult the HCP, ITP and the Pleasant Riffs Declaration of Covenants, Conditions and Restrictions.

Appendix H
Off-Site Conservation Easement

LIBER 0865 FOLIO 645

After recording please return to:
North American Land Trust
P.O. Box 467
Chadds Ford, PA 19317

TWP FD SURE \$	20.00
REC FEE \$75.00	75.00
RECORD TAX	250.00
TR TAX COUNTY	187.43
TR TAX STATE	124.95
TOTAL	657.38
Rec# DC03	Rec# 37764
MLR RS	Blk # 356
May 13, 2008	08:45 am

**CONSERVATION EASEMENT
AND
DECLARATION OF RESTRICTIONS AND COVENANTS**

THIS CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS ("Conservation Easement") made MARCH 3, 2008 by and between ROBBIE J. AND ANNE G. WILLEY, husband and wife (collectively called "Owner"), having an address of 3819 Maple Dam Road, Cambridge, Maryland 21613, and NORTH AMERICAN LAND TRUST ("Holder"), a Pennsylvania non-profit corporation having an address of Post Office Box 467, Chadds Ford, PA 19317,

WITNESSETH THAT:

WHEREAS, Owner is the owner of three (3) parcels of real property in Dorchester County, Maryland that consist of 4.5 acres, more or less, 3.38 acres, more or less, and 42.46 acres, more or less, (hereinafter collectively called the "Property") as most recently described in a deed to Owner dated February 3, 2004 and recorded in the Land Records of Dorchester County at Liber 562, folio 257; and

WHEREAS, the Property includes, within its boundaries, land consisting of 49.215 acres, more or less, (the "Conservation Area") as depicted and identified as the "DFS Mitigation Easement" **consisting of 45.7 acres** and "Wetland Easement" **consisting of 3.515 acres** on the plan attached hereto as Exhibit "A"; and

WHEREAS, the United States Fish and Wildlife Service (the "Service") within the United States Department of the Interior, is authorized by Federal law to administer the Federal Endangered Species Act (hereinafter "ESA"), 16 U.S.C. 1531 et seq., and other laws and regulations; and

LIBER 0865 FOLIO 646

WHEREAS, the Delmarva Fox Squirrel (*Sciurus niger cinereus*) (the "Delmarva Fox Squirrel") has been listed as "endangered" by the Service under the ESA; and

WHEREAS, research of the Delmarva Fox Squirrel has revealed that throughout its range it is most often found in mature, mixed forest of hardwoods and pine with an open understory that contain a variety of nut and suitable seed-bearing trees (primarily oak, hickory, beech, walnut, and loblolly pine) and contain over-age trees with hollows useful as den sites; and

WHEREAS, removal or clearing of trees and conversion of forest for agricultural use or structural development (e.g., housing, industry, and roads) and the associated impacts from human occupancy and use constitute broad threats to Delmarva Fox Squirrel habitat and thus to the survival of Delmarva Fox Squirrel; and

WHEREAS, the ecological significance of the Conservation Area as Delmarva Fox Squirrel habitat and the Conservation Purposes (hereinafter defined) have been established in the reports, plans, accompanying photographs, documentation, and exhibits prepared by the Service and others and assembled by North American Land Trust (collectively called the Baseline Documentation); and

WHEREAS, the Service, after consulting with the United States Army Corps of Engineers, as required under Section 7 of the ESA, has issued a Biological Opinion dated September 8, 2006 (the "Biological Opinion") detailing reasonable and prudent measures, and terms and conditions, that must be undertaken to minimize impacts to the Delmarva Fox Squirrel in connection with a development to be known as "Blackwater Crossing" ("Development") for which an application has been made to the United States Army Corps for a Clean Water Act permit ("Permit") covering proposed activities in the Development; and

WHEREAS, one measure or condition for the issuance of the Permit and an Incidental Take Statement (the "Statement") from the Service is that 5.95 acres of Delmarva Fox Squirrel habitat shall be preserved by a perpetual conservation easement off-site of the Development and approved by the Service; and

WHEREAS, Owner has agreed, to grant and impose this Conservation Easement on the Conservation Area in order to satisfy the condition of the Permit and Statement and, in so doing, to provide conservation measures that off-set impacts to the Delmarva Fox Squirrel that may result from the development activities at the Development; and

WHEREAS, of the entire Conservation Area to be preserved under this Conservation Easement, 5.95 acres will be used to satisfy the off-site requirements of the Biological Opinion, Permit and Statement to compensate for or minimize impacts to Delmarva Fox Squirrels from the Development; and

WHEREAS, the Owner may, with the prior written approval of the Service, allocate or apply conservation credits in the remaining 39.75 acres within the Conservation Area **identified as the DFS Mitigation Easement**, to minimize or compensate for impacts to Delmarva Fox Squirrels from future projects; and

WHEREAS the ecological significance of the Conservation Area as wetlands habitat has been established in the reports, plans, accompanying photographs, documentation, and exhibits prepared and assembled by North American Land Trust; and

WHEREAS, the Owner may allocate or apply conservation credits in the remaining 3.515 acres within the Conservation Area identified as the Wetland Easement, to minimize or compensate for impacts to wetlands from future projects; and

WHEREAS, for the foregoing reasons the Service and Owner desire to establish the Conservation Area as an area for off-site conservation of Delmarva Fox Squirrel habitat; and

WHEREAS, Holder is a non-profit corporation, having a tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the Code'), which has been established as a public charity for the purpose of preserving and conserving natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes and which is a "qualified organization" under Section 170(h)(3) of the Code; and

WHEREAS, Owner and Holder desire to perpetually conserve the natural resources of the Conservation Area to accomplish the Conservation Purposes; and

WHEREAS, Owner intends to grant the easement and impose the restrictive covenants on the Conservation Area as set forth in this Conservation Easement to accomplish the Conservation Purposes; and

WHEREAS, the Real Property Article, Section 2-118 of the Annotated Code of Maryland permits the creation of conservation easements for the purposes of, among other things, fish and wildlife habitat preservation and the protection of trees, shrubs and other vegetation.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained in this Conservation Easement, and intending to be legally bound hereby, Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Holder, its successors and assigns, the easements, covenants, prohibitions and restrictions set forth in this Conservation Easement, in perpetuity, to accomplish the Conservation Purposes. Holder hereby accepts the grant of such easements and agrees to hold such easements exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Conservation Easement.

ARTICLE 1. CONSERVATION PURPOSES; GRANT OF EASEMENTS

- 1.1. Conservation Purposes. The purposes of this Conservation Easement (hereinafter the "Conservation Purposes") are to permanently preserve, protect, and maintain the Delmarva Fox Squirrel and its known or potential habitat on the Conservation Area, irrespective of the Delmarva Fox Squirrel's listing status, and to assure that the Conservation Area remains permanently in a natural and forested condition.

- 1.2. Grant of Easement. Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Holder, its successors and assigns, a perpetual easement in gross over the Conservation Area for the purpose of preserving and protecting the Conservation Purposes and enforcing the restrictive covenants set forth below.
- 1.3. Grant of Rights. Owner hereby grants and conveys unto Holder, its successors and assigns, the easements and rights of Holder and its agents to:
 - 1.3.1. enter upon and inspect the Conservation Area at any time and from time to time, with access over and across the Property if necessary or convenient, to assess or determine compliance with this Conservation Easement; and
 - 1.3.2. enter upon the Conservation Area, with access over and across the Property if necessary or convenient, and to install signs, none having a surface area (including display, information and decoration area) greater than two square feet, of the following types: (a) regulatory or directional signs informing persons of any of the restrictions contained in this Conservation Easement; (b) signs identifying the interest of Holder or the Service in the Conservation Area or informing of means of contacting Holder or the Service; and (c) signs identifying the Conservation Area as a Delmarva Fox Squirrel habitat;

provided, however, that Holder shall first attempt to give notice to Owner of any such visit or entry upon the Property or Conservation Area at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement or imminent threat to the Delmarva Fox Squirrel or habitat for the Delmarva Fox Squirrel in the Conservation Area.

ARTICLE 2. OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS

Owner, for Owner and Owner's heirs, successors and assigns, covenants and declares that the Conservation Area shall be, and hereby is, bound by and made subject to the following covenants and restrictions in perpetuity:

- 2.1. Use Restrictions. The Conservation Area shall not be used for any commercial, institutional or industrial purpose or purposes. Among the uses prohibited by the preceding sentence are, without limiting the meaning or interpretation of the preceding sentence, any of the following: (a) manufacture or assembly of any products, goods, equipment, chemicals, materials or substances of any kind or nature whatsoever; (b) sale of any products, goods, equipment, chemicals, materials, substances or services of any kind or nature whatsoever; (c) storage of any products, goods, equipment, chemicals, materials or substances of any kind or nature, except if stored for use upon the Property in connection with activities not

prohibited by this Conservation Easement; and (d) offices for persons involved in the sale, manufacture or assembly of goods or services or for the performance of services.

- 2.2. Limitation on Recreational Activities. No recreational activities shall occur within the Conservation Area except for low impact recreational activities such as walking, jogging, wildlife observation, photography, and horseback riding so long as any recreational activities are conducted at all times in a manner that, in Holder's judgment, (a) shall have no material adverse effect upon the Conservation Purposes and (b) are otherwise in conformance with this Conservation Easement.
- 2.3. Small Game Hunting Prohibited. The Conservation Area shall not be used for hunting small game or trapping mammals except as may be considered necessary by the Service or its agents or contractors. Owner shall inform any tenant or invitee who enters the Conservation Area for the purpose of hunting that the foregoing prohibition exists and shall be binding upon them; it being understood and agreed, however, that failure to so inform a tenant or invitee shall not limit the enforceability of this prohibition. Nothing in this Section shall be construed to prohibit hunting of deer or wild turkeys within the Conservation Area.
- 2.4. Dogs Prohibited. Owner shall not permit any dogs to roam freely within the Conservation Area. Without limitation of the foregoing, Owners shall take measures necessary to confine their dogs to areas outside the Conservation Area, except for dogs that are under the immediate control of the Owner by leash or otherwise.
- 2.5. Structures Prohibited. Except as expressly provided below, no Structure (hereinafter defined) of any kind shall be built, erected, installed, placed, affixed or assembled within or upon the Conservation Area or upon any trees or other natural features upon the Conservation Area. "Structure" shall mean any assembly of material forming a construction for occupancy or use for any purpose and erected upon or attached to the ground including, for example but not to limit the foregoing definition, the following: building, platform, shed, bin, shelter, dam, dike, tower, tank, antenna, and bulkhead. Structures permitted in the Conservation Area, with the prior written approval of Holder, are:
- 2.5.1. Fences that do not have the effect of preventing or impeding the movement of the Delmarva Fox Squirrel.
- 2.5.2. Structures necessary for drainage control of the Conservation Area provided that such Structures are designed for the purpose of preserving wetland areas, if any, existing as of the date of this Conservation Easement.
- 2.5.3. A reasonable number of tree stands or ground blinds for wildlife observation or hunting as permitted in this Conservation Easement.

- 2.6. Forest Management. No cutting, removing, destroying, harvesting, pruning or relocating of trees, shrubs or other vegetation shall be permitted upon or within the Conservation Area, except as follows:
- 2.6.1. Trees, shrubs or other vegetation that have been damaged or disturbed by forces of nature or otherwise may be pruned or removed with the prior written approval of Holder.
 - 2.6.2. Trees, shrubs or other vegetation may be pruned or removed, with the prior written approval of Holder, for the purpose of disease control.
 - 2.6.3. Understory trees, shrubs or other vegetation may be pruned or removed, with the prior written approval of Holder, to the most limited extent necessary for the installation and maintenance of trails permitted under Section 2.7.
 - 2.6.4. Dead trees that pose a hazard to persons or property may be cleared and removed; provided that clearing or removal of dead trees having a diameter of greater than 18 inches at a height four feet above ground level shall require prior written approval of Holder.
 - 2.6.5. Trees, plants and early successional species may be selectively thinned, removed or harvested but only if done in accordance with forest management practices and a forest management plan all of which have been approved in advance in writing by Holder and the purpose of which are to preserve the Conservation Area as a Delmarva Fox Squirrel habitat. Holder shall provide to the Service a copy of Owner's forest management plan prior to approving any such plan and shall consult with the Service in the course of rendering its approval or disapproval of Owner's plan.
 - 2.6.6. No removal or pruning of live trees shall be permitted under any of the preceding provisions unless it is demonstrated to the Holder's satisfaction that such removal or pruning is being conducted in accordance with applicable regulations of the Maryland Department of Natural Resources, or a successor agency performing the same functions with respect to forests, and with the approval of such Department or agency if required by law.
- 2.7. Roads, Driveways, Etc. There shall not be constructed, cut, created or placed on the Conservation Area any road, driveway, cartway, path or other means or right of passage across or upon the Conservation Area, except as follows: Owner may install on the Conservation Area pedestrian trails for recreational or nature education use with surfaces of natural materials that are pervious to water infiltration. Such trails shall be designed and shall be subject to, and the use thereof may be conditioned upon, (a) the prior written approval of Holder, (b) compliance with rules and regulations established from time to time by Holder, in

order to prevent any adverse effects upon the Conservation Purposes, and (c) compliance with other requirements of this Conservation Easement including but not limited to Section 2.6.

- 2.8. Land Disturbance. There shall be no filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, rock, peat, minerals or other materials, upon or from the Conservation Area except as approved in advance by Holder for the purpose of installing and maintaining a Structure permitted under Section 2.5 or a trail permitted under Section 2.7.
- 2.9. Dumping. There shall be no dumping, release or disposal upon the Conservation Area of ashes, trash, garbage, pesticides, chemicals, sawdust, vehicles, equipment, or any other materials not consistent with maintaining the natural appearance, environment and ecology of the Conservation Area.
- 2.10. No Subdivision. Insofar as the Conservation Area is a relatively small area of land and the Conservation Purposes will be best served by unified ownership and management of the Conservation Area, there shall be no subdivision of, or conveyance of a fee simple interest in an area that is less than all of, the Conservation Area.
- 2.11. Change of Topography. There shall be no material change in the topography of the Conservation Area in any manner.
- 2.12. Water Courses. There shall be no dredging, channelizing or other manipulation of natural water courses or any water courses existing within the Conservation Area as of the date of this Conservation Easement.
- 2.13. Livestock. There shall be no livestock grazing in the Conservation Area.
- 2.14. Non-Native Plant Species. Owner shall not introduce plant or animal species into the Conservation Area except those native to the area in which the Conservation Area is located.
- 2.15. Transfers of Development Rights or Development Density Credits. The Conservation Area may not be used as open space for purposes of obtaining or qualifying for governmental approval of any subdivision or development on lands outside the boundaries of the Property nor, without limitation of the foregoing, may the Conservation Area be used in the calculation of the amount or density of housing units or other construction or development on lands outside the boundaries of the Property.
- 2.16. Notice Required. Owner shall notice Holder prior to taking any action which may have an adverse effect on the Conservation Purposes.

- 2.17. Preservation of Conservation Area. The parties recognize that this Conservation Easement cannot address every circumstance that may arise in the future, and the parties agree that the purpose of this Conservation Easement is to preserve the Conservation Area predominantly in its present condition, and to protect or enhance the environmental systems of the Conservation Area's environmental systems for the protection, promotion and fulfillment of the Conservation Purposes. Without limiting the preceding covenants and restrictions, any use or activity and which is inconsistent with the Conservation Purposes or which materially threatens the Conservation Purposes is prohibited.
- 2.18. Restrictions Cumulative. The prohibitions and restrictions in this Conservation Easement shall be considered cumulative. No prohibition or restriction contained herein shall be interpreted as a limitation on the meaning, effect, interpretation or enforceability of another prohibitive or restrictive provision.
- 2.19. Validity and Enforceability. None of the following shall have any effect or bearing upon the validity or enforceability of this perpetual Conservation Easement:
- 2.19.1. The presence or absence of the Delmarva Fox Squirrel within the Conservation Area at the time of this Conservation Easement or at any time in the future.
 - 2.19.2. The presence or absence of any conditions considered important as habitat of the Delmarva Fox Squirrel within the Conservation Area at any time in the future.
 - 2.19.3. The continued listing of the Delmarva Fox Squirrel as an endangered species by the United States Government.
 - 2.19.4. The amendment or repeal of the Endangered Species Act or other change of law.
 - 2.19.5. The adoption or creation of a Conservation Bank Agreement or any other arrangement allowing for the sale or use of any mitigation credits or other rights or privileges associated with the preservation of the Conservation Area under this Conservation Easement.
 - 2.19.6. The ability to obtain approval of the Service or any other government agency for the use or establishment of, or the ability to market or sell, any mitigation credits from the land preserved by this Conservation Easement.
 - 2.19.7. The payment or non-payment of any consideration from developers to Owner.

ARTICLE 3. RESERVED RIGHTS

- 3.1. Notice and Approval Before Exercise of Certain Reserved Rights. Wherever any provision of Article 2 of this Conservation Easement requires the approval of Holder before undertaking any use, action or activity on the Conservation Area (hereinafter called a "Reserved Right"). Owner shall first satisfy the following conditions and requirements:
- 3.1.1. Owner shall notify Holder in writing before undertaking any Reserved Right on the Conservation Area and provide Holder with any plan or other document required by this Conservation Easement.
 - 3.1.2. Owner shall comply with the procedures in this Article 3.
 - 3.1.3. The Holder must be satisfied, as shall be evidenced only by its prior written approval of the Owner's exercise of the Reserved Right that the exercise of the Reserved Right will have no material adverse effect on the Conservation Purposes or on the significant environmental features of the Conservation Area described in the Baseline Documentation.
 - 3.1.4. Written approval of the Service shall be obtained for exercise of the Reserved Rights for which Holder approval is required in Paragraph 2.6.4 and 2.6.5 and in considering such approval the Service shall follow the procedure in Section 3.2.
- 3.2. Mitigation Credits for Delmarva Fox Squirrel Impacts. With the written consent of the Service, the Owner may allocate portions of the Property as mitigation credits for impacts to Delmarva Fox Squirrels at other locations and on properties owned by individuals or other entities other than the Owner.
- 3.3 Mitigation Credits for Wetlands Impacts. The Owner may allocate portions of the Wetland Easement as mitigation credits for impacts to Wetlands at other locations and on properties owned by individuals or other entities other than the Owner.
- 3.4. Notice of Exercise of Reserved Rights. As required by 26 C.F.R. § 1.170A-14(g)(5)(ii), Owner shall notify Holder in writing before exercising any Reserved Right that may impair the conservation interests associated with the Conservation Area.
- 3.5. Procedure for Obtaining Approval. Holder's prior written approval of the exercise of Reserved Rights shall be obtained, conditionally obtained or declined according to the procedure provided in this Section. At least ninety (90) days before Owner begins, or allows, any exercise of Reserved Rights on the Conservation Area Owner must notify Holder in writing of Owner's intentions to do so. Such notice must include plans depicting, in such detail as Holder requests, the construction or other use or activity, and location thereof, which Owner intends to undertake. Holder may request additional information or details not

provided by Owner regarding Owner's proposed exercise of Reserved Rights as Holder reasonably believes necessary to determine compliance with this Article. Holder shall have sixty (60) days from receipt of the notice or, if later, any additional information regarding the proposed use or activity requested by Holder, in which to make one of the following determinations:

- 3.5.1. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right solely in accordance with the notice and other information submitted to Holder; which covenant shall be enforceable by Holder as fully as if set forth in this Conservation Easement.
 - 3.5.2. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner but subject, however, to such qualifications and conditions as Holder may impose in its notice of approval. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right, if at all, only in accordance with the notice and other information submitted to Holder, as modified or supplemented by the qualifications and conditions that Holder imposed; which covenant shall be enforceable by Holder as fully as if set forth in this Conservation Easement.
 - 3.5.3. Decline to grant approval of Owner's proposed exercise of a Reserved Right on the basis of the notice and other materials submitted.
- 3.6. Limits on Time To Exercise Approved Reserved Right. Unless a longer period is expressly provided in writing by the Holder, any activity involving the exercise of any of the Reserved Rights approved by the Holder as aforesaid shall be completed within five years after the Holder's written determination of approval of the activity. If such approved activity has not been completed within such live year period then Owner must reapply for approval by the Holder according to the procedure set forth in this Article. Owner may request Holder's approval of a period longer than five years and so long as such request is not, in the Holder's sole judgment, inconsistent with the Conservation Purposes, such approval shall not be unreasonably withheld.
- 3.7. Repeated Requests. Owner shall be free to make further requests for approval of the exercise of Reserved Rights; provided, however, that Holder may decline to accept repetitive submissions not materially modified from prior submissions not accepted by Holder.

- 3.8. Deposit for Review. Holder may condition consideration of a proposal for exercise of Reserved Rights upon the deposit of a sum of money with Holder to secure payment of Holder's reasonable costs of review. The time period for Holder's consideration of the Owner's request shall not run until such deposit is made.
- 3.9. Costs and Expenses of Review and Approval. Owner shall be responsible, as a condition of the right to exercise the Reserved Rights, for payment of the Holder's reasonable costs and expenses, including legal and consultant fees, associated with review of the Owner's request for approval.
- 3.10. Limitation of Liability. No assurance is given that any of the above Reserved Rights may be exercised, in such manner as Owner might propose, without having an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area. The foregoing procedure is established for the purpose of making that determination. The Reserved Rights may not be exercised unless and until Holder is satisfied that the exercise of the Reserved Right for which approval is sought, and in the manner proposed by the Owner, can be done without an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area and that sufficient safeguards, such as a feasible management plan, are in place to assure ongoing protection of the Conservation Purposes. Owner hereby waives, for Owner, and Owner's heirs, successors, legal representatives, and assigns, to the fullest extent allowed by law, any and all right to seek or recover damages from Holder in any litigation or other legal action arising from a dispute over Holder's exercise of its rights, obligations or interpretations under this Article 3 and agrees that the sole remedy or legal right to seek redress arising from any decision of the Holder pursuant to this Article 3 shall be to seek a declaratory judgment or other legal declaration by a court of competent jurisdiction as to the rights of Owner hereunder.

ARTICLE 4. HOLDER'S COVENANTS

- 4.1. Best Efforts to Enforce. Holder shall use its best efforts to enforce both the rights granted to it and the restrictions imposed upon the Conservation Area under this Conservation Easement.
- 4.2. Inability to Enforce: Procedure. If at any time Holder or any successor or assignee is unable to enforce this Conservation Easement in full or fails to do so, or if Holder or any successor or assignee ceases to exist or ceases to be a "qualified organization" (as defined in the Code) and if, within a reasonable period of time after the occurrence of any of these events, Holder or any successor or assignee fails to assign all of its rights and responsibilities under this Conservation Easement to a "qualified organization" and "holder", then the rights and responsibilities under this Conservation Easement shall become vested in and fall upon another qualified organization as designated by the Service or, upon the

failure of the Service to so designate, in accordance with a cy pres proceeding in any court of competent jurisdiction.

- 4.3. Assignment by Holder. Notwithstanding the foregoing or anything else in this Conservation Easement to the contrary, Holder and its successors and assigns shall have the right to assign, either wholly or partially, its right, title and interest hereunder provided that the assignee is: (a) acceptable to the Service; (b) a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder; and (c) has legal authority to acquire and hold conservation easements under the laws of Maryland. Holder shall give Owner and the Service at least thirty (30) days prior written notice of a proposed assignment of this Conservation Easement. As a condition of such transfer, Holder, or any subsequent transferees, shall require that any transferee agree in writing to fully enforce the terms and Conservation Purposes of this Easement. The term "Holder" as used in this Conservation Easement shall mean the above-named Holder and any of its successors and assigns during such period as any such entity is the holder of the rights granted to the Holder in this Conservation Easement. Should the assignee and holder of the rights and obligations of Holder under this Conservation Easement be a government body, agency or authority having any legal regulatory jurisdiction over the Property, the covenants and restrictions contained in this Conservation Easement shall neither constitute nor be construed as a limitation on its legal or regulatory jurisdiction or authority.
- 4.4 Mitigation Credits for Delmarva Fox Squirrel Impacts. Holder acknowledges that the Owner may allocate portions of the Property as mitigation credits for impacts to Delmarva Fox Squirrels at other locations and on properties owned by individuals or entities other than the owner.
- 4.5 Mitigation Credits for Wetlands Impacts. Holder acknowledges that the Owner may allocate portions of the Wetland Easement as mitigation credits for impacts to wetlands at other locations and on properties owned by individuals or entities other than the owner.

ARTICLE 5. REMEDIES AND ENFORCEMENT

- 5.1. Remedies Generally. Holder shall have the right to enforce by proceedings at law or in equity each and every one of the covenants and restrictions set forth in this Conservation Easement. The foregoing shall not limit any of the rights or remedies available to Holder as specifically set forth in any law or in this Conservation Easement.

- 5.2. Remedy of Damages. If Owner violates this Conservation Easement in such a manner as to cause damage to, extract or remove any trees, mineral resources, pond, wetland, stream, or other natural resource protected by this Conservation Easement, including violation resulting from failure to obtain Holder's approval, Holder shall be entitled to payment of damages in the amount of the value of the protected natural resource. Holder may seek payment and recovery of such damages by any means available at law. The value of the protected natural resource shall be the greater of (a) the market value of the resource or, (b) the cost of immediate restoration of the Conservation Area and all resources to its condition prior to the violation. If such immediate restoration is not reasonably possible then the market value of the resource shall be the amount of damages. If the resource does not have a readily determinable market value then the amount of damages shall be the amount which a court having jurisdiction may determine, taking into account the importance of the resource to the fulfillment of the Conservation Purposes.
- 5.3. Remedy of Specific Performance. Without limitation of any other rights of Holder in this Conservation Easement, Holder's right of enforcement of this Conservation Easement shall include (a) the right to seek specific performance by Owner of the restoration of the Conservation Area to its original condition as established in the Baseline Documentation or to its condition prior to any activity that violates this Conservation Easement or as otherwise may be necessary to remedy any violation of any easement, covenant, prohibition or restriction in this Conservation Easement, as Holder may elect, and (b) the right to institute suits to enjoin any breach or enforce any covenant by ex parte, temporary or permanent injunction, or any of these, either prohibitive or mandatory.
- 5.4. Remedy: Failure to Pay Certain Taxes. If Owner fails to pay taxes or other governmental assessments which may become a lien on the Conservation Area, Holder may, but shall have no obligation to, pay such taxes or assessments or any part thereof upon ten (10) days after sending written notice to Owner, according to any bill, statement, or estimate procured from the appropriate public office. Payment made by Holder shall become a lien on the Conservation Area in favor of Holder upon payment by Holder and shall bear interest until Holder is paid by Owner at the rate of eighteen percent (18%) per annum or at the highest rate of interest per annum as is allowed by applicable law, whichever is less.
- 5.5. Right to Enforce. This Conservation Easement may only be enforced by the parties hereto, and their respective successors and assigns, except for the rights of enforcement granted to the Service in Article 6 of this Conservation Easement. Neither any third party beneficiary rights, including but not limited to third party rights of enforcement (except as provided for the Service in Article 6), nor any trust for the benefit of or enforceable by members of the public are intended to be created by this Conservation Easement.

- 5.6. Reimbursement of Expenses of Enforcement. In the event that Holder acts after notice to Owner, to enforce this Conservation Easement or any obligation hereunder, all reasonable expenses incurred by Holder shall be charged to and paid by the Owner, including reasonable attorneys' fees regardless of whether an action or proceeding is commenced. All such expenses, together with costs of collection (including reasonable attorneys' fees) if the Owner is determined by a court to have violated this Conservation Easement), shall be recoverable by Holder and be liens upon the Conservation Area, and collection thereof may be enforced by foreclosure and sale of the Conservation Area, notwithstanding anything to the contrary, this Conservation Easement shall not merge with any interest in the Conservation Area upon such sale and title shall be transferred subject hereto in accordance with the laws of the state in which the Property is located.
- 5.7. Reimbursement of Expenses of Litigation. Should the Owner or anyone acting by, through, under or on behalf of Owner, commence litigation against Holder to enforce any rights hereunder or to dispute any actions or inaction of the Holder, to enforce any alleged duty or obligation of Holder hereunder or to seek damages or specific performance against the Holder then unless the Holder is finally determined by a court of competent jurisdiction, beyond right of appeal, to have acted in an arbitrary or capricious manner and contrary to the terms of this Conservation Easement, then Owner shall reimburse the Holder on demand for all costs and expenses, including attorneys fees, reasonably incurred by Holder in its defense in such litigation. Holder shall not be considered to have acted in an arbitrary or capricious manner solely based on the fact that Holder did not prevail in legal proceedings or that Holder was determined to have acted contrary to the terms of this Conservation Easement.
- 5.8. No Waiver of Rights of Enforcement. The failure of Holder to exercise any of its rights under this Conservation Easement on any occasion shall not be deemed a waiver of said rights and Holder retains the right in perpetuity to require full compliance by Owner of the covenants and restrictions in this Conservation Easement.
- 5.9. Remedies Cumulative. Holder's remedies described in this Article shall be cumulative and concurrent and shall be in addition to all remedies now or hereafter available or existing at law or in equity.
- 5.10. Conflict with Laws. In the event that any applicable State or federal law imposes affirmative obligations on owners of land which, if complied with by Owner, would be a violation of this Conservation Easement, the Owner shall:

- 5.10.1. if said law requires a specific act without any discretion on the part of the Owner, comply with said law and give the Holder and the Service written notice of the Owner's compliance as soon as reasonably possible, but in no event more than fifteen (15) days from the time Owner begins to comply; or
- 5.10.2. if said law leaves to Owner's discretion over how to comply with said law, in consultation with Holder, use the method most likely to protect existing, or promote the establishment of, forest and other Delmarva Fox Squirrel habitat within the Conservation Area and in furtherance of the Conservation Purposes of this Conservation Easement, and shall notify Holder and the Service at least seven (7) days before Owner intends to begin to comply.

ARTICLE 6. U.S. FISH & WILDLIFE SERVICE

- 6.1. Grant of Interest. Owner and Holder agree that the Service's duties and powers arising under the ESA and consistent with the terms and conditions and reasonable and prudent measures identified in the Biological Opinion give the Service a clear and substantive interest in the preservation and enforcement of this Conservation Easement. Therefore, Owner and Holder grant to the Service, its agents, successors and assigns, the rights and standing granted in this Article.
- 6.2. Grant of Rights. Owner hereby grants and conveys unto Service, its agents, successors and assigns, without limitation of any rights of the Service under law, the easements and rights to:
- 6.2.1. enter upon and inspect the Conservation Area at any time and from time to time, with access over and across the Property if necessary or convenient, to assess or determine compliance with this Conservation Easement; and
- 6.2.2. enter upon and inspect the Conservation Area at any time and from time to time, with access over and across the Property if necessary or convenient, for the purpose of assessing the Delmarva Fox Squirrel population status and the condition of the vegetative habitat in accordance with the Biological Opinion and the Service's legal authority under the ESA; and
- 6.2.3. enter upon the Conservation Area, with access over and across the Property if necessary or convenient, and to install signs, none having a surface area (including display, information and decoration area) greater than two square feet, of the following types: (a) regulatory or directional signs informing persons of any of the restrictions contained in this Conservation Easement; (b) signs identifying the interest of the Service in the Conservation Area or informing of means of contacting the Service; and (c) signs identifying the Conservation Area as a Delmarva Fox Squirrel habitat; provided, however, that the Service shall first attempt to give

notice to Owner of any such visit or entry upon the Property or Conservation Area at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement or of federal law or imminent threat to the Delmarva Fox Squirrel or habitat of the Delmarva Fox Squirrel on the Conservation Area.

- 6.3. No Public Access. Nothing in this Conservation Easement is intended to create any right of access in, over or across the Conservation Area or the Property by the public.
- 6.4. Required Notice. The Service shall be given copies of any notice sent to or by Holder relating to this Conservation Easement, including but not limited to notices relating to violation of this Conservation Easement or relating to approval of the exercise of Reserved Rights pursuant to Section 3.1.4.
- 6.5. Required Approval. The written approval of the Service shall be obtained before the exercise of the Reserved Rights of Owner as provided in Section 3.
- 6.6. Enforcement Rights. The Service shall have the right, but not the obligation, to enforce and enjoy the benefits of the covenants, restrictions and easements established by this Conservation Easement only as follows:
 - 6.6.1. The Service may enforce the covenants, restrictions and easements established by this Conservation Easement only (a) upon written request by Holder or (b) if the Holder fails to do so.
 - 6.6.2. Prior to the Service taking any action under clause 6.6.1(b) to enforce any covenant or restriction established by this Conservation Easement, the Service shall notify Holder in writing of the Service's intention and shall afford Holder a reasonable opportunity to negotiate a remedial action and settlement with Owner or commence enforcement of such covenant or restriction.
 - 6.6.3. Any action by the Service to enforce any of the covenants or restrictions established by this Conservation Easement shall be at the sole cost and expense of the Service or the Owner and the Owner shall indemnify and defend the Holder from and against any loss, cost, liability, suit, action, claim or damage which arises, is suffered by the Holder or is incurred by the Holder as the result of any action taken by the Service under or pursuant, wholly or partially, to this Conservation Easement.
 - 6.6.4. Should Service elect to undertake enforcement of this Conservation Easement as provided in this Article, Service shall have all of the rights and remedies of Holder set forth in Article 5 or as are otherwise available at law or in equity, and in such event any reference in such provisions to "Holder" shall be deemed to refer as well to the Service.

- 6.7. Fines, Damages, Etc. In the event that any action by the Service hereunder results in monetary damages being collected from the Owner, its successors or assigns, said monetary damages shall be either applied directly to restoration or improvement of the Conservation Area or, if restoration or improvement is not necessary or practicable in the judgment of the Service, paid over to Holder for the benefit of the Conservation Area and the support of Holder's monitoring, stewardship and enforcement of this Easement.
- 6.8. No Waiver of Rights of Enforcement. The failure of the Service to exercise any of its rights under this Conservation Easement on any occasion shall not be deemed a waiver of said rights and the Service retains the right in perpetuity to require full compliance by Owner of the covenants and restrictions in this Conservation Easement in the manner provided herein.

ARTICLE 7. GENERAL PROVISIONS

- 7.1. Vesting of Real Property Interest. This Conservation Easement gives rise to a real property right and interest immediately vested in Holder. For purposes of this Conservation Easement, the fair market value of Holder's right and interest shall be equal to the difference between (a) the fair market value of the Conservation Area as if not burdened by this Conservation Easement and (b) the fair market value of the Conservation Area burdened by this Conservation Easement.
- 7.2. Allocating Proceeds Following Extinguishment of Conservation Easement. It is the intention of Owner and Holder that no change in conditions including, for example but not for limitation of the foregoing, changes in the use of properties adjoining or in the vicinity of the Property or Conservation Area, the presence or absence of the Delmarva Fox Squirrel or any conditions considered important to its survival, the continued listing of the Delmarva Fox Squirrel as an endangered species by the United States Government or the amendment or repeal of the ESA, or loss of or significant injury to habitat for the Delmarva Fox Squirrel due to circumstances including for example but not for limitation fire, flood, storm, disease or seismic events, will at any time or in any event result in the extinguishment of any of the covenants, restrictions or easements contained in this Conservation Easement.
- 7.3. Rules of Construction and Interpretation. The parties recognize the environmental, scenic, and natural values of the Conservation Area and have the common purpose of preserving these values. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Conservation Purposes, the policies and purposes of Holder and the Biological Opinion. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the Conservation Purposes that would render the provision valid should be favored over any interpretation that would render it invalid. If any provision of this

Conservation Easement is determined by final judgment of a court having competent jurisdiction to be invalid, such determination shall not have the effect of rendering the remaining provisions of this Conservation Easement invalid. The parties intend that this Conservation Easement, which is by nature and character primarily prohibitive (in that the Owner has restricted and limited the rights inherent in ownership of the Conservation Area), shall be construed at all times and by all parties to effectuate the Conservation Purposes.

- 7.4. Indemnification. Owner covenants and agrees to indemnify, defend, reimburse, and hold harmless Holder, its directors, officers and employees from, for and against any Loss (hereinafter defined) to the extent such Loss arose from an Indemnified Cause (hereinafter defined). A "Loss" shall mean any loss, cost, liability, penalty, fine, or damage of any kind or nature whatsoever which Holder or any of its directors, officers or employees may reasonably be concluded to have suffered, paid or incurred. The term "cost" shall include, but shall not be limited to, reasonable attorneys' fees and witness and court fees. An "Indemnified Cause" shall mean any of the following: the violation or alleged violation of any law in, upon or involving the Conservation Area by Owner or anyone acting by, for, through or under the direction of Owner, including but not limited to any tenant, contractor, agent, licensee or invitee of Owner; any breach of covenants and restrictions in this Conservation Easement by Owner or anyone acting by, for, through or under the direction of Owner, including but not limited to any tenant, contractor, agent, licensee or invitee of Owner; any tax or assessment upon the Conservation Area or upon this Conservation Easement or the rights it represents or that it grants to Holder; any death or injury to any person occurring on or about the Conservation Area; any lien or attempts to enforce a lien asserted against the Conservation Area; the costs of performing any work on the Conservation Area; any loss or damage to any property on or about the Conservation Area; any dispute involving Owner and Holder regarding the interpretation or enforcement of this Conservation Easement as to which the interpretation or enforcement of Holder is upheld; or any lawsuit (even if initiated by Owner or Holder) or governmental administrative or law enforcement action which is commenced or threatened against Holder or any of its directors, officers or employees or to which any of the foregoing are made a party or called as a witness; but "Indemnified Cause" shall not include any cause which results from Holder's own acts which are finally determined by a court to have been the result of bad faith, negligence or willful misconduct of Holder. It is further agreed that no person shall have an indemnification obligation or liability under this Section as to any Indemnified Cause which arises entirely and solely from events which occurred after such person is no longer the legal or equitable owner of the Conservation Area or any part thereof and is no longer in possession of the Conservation Area or any part thereof (it being understood that one or more subsequent Owners shall have such indemnification, defense, reimbursement, and holding harmless obligation).

- 7.5. Responsibilities and Liabilities of Owner. Without limitation of anything herein to the contrary, Owner shall (a) retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operations, upkeep, and maintenance of the Conservation Area, including the general liability insurance coverage and obligation to comply with applicable law and (b) continue to pay all taxes, levies and assessments and other governmental or municipal charges which may become a lien on the Conservation Area, including any taxes or levies imposed to make those payments.
- 7.6. Allocating Proceeds. If, notwithstanding the intention of this Conservation Easement as expressed in Section 7.2 or other provisions in this Conservation Easement, this Conservation Easement is extinguished or a material term or provision hereof is stricken or invalidated by judicial proceeding Holder shall be entitled to receive, on the occurrence of any subsequent sale, exchange or involuntary conversion of the Conservation Area, a portion of the proceeds of sale equal to the greater of: (a) the Fair Market Value of this Conservation Easement (hereinafter defined) on or about the date of this Conservation Easement; (b) Holder's Proportionate Share (hereinafter defined) of the proceeds of sale, exchange or involuntary conversion of the Conservation Area; and (c) the full proceeds of this Conservation Easement sale, exchange or involuntary conversion, without regard to contrary terms of this Conservation Easement, if state law provides that Holder is entitled to the full proceeds. "Fair Market Value of this Conservation Easement" shall mean the difference between (i) the fair market value of the Conservation Area as if not burdened by this Conservation Easement and (ii) the fair market value of the Conservation Area burdened by this Conservation Easement. "Holder's Proportionate Share" shall mean the fraction derived from (x) the Fair Market Value of this Conservation Easement on or about the date hereof, as a numerator, and (y) the fair market value of the Conservation Area if not burdened by this Conservation Easement, on or about the date hereof, as a denominator. "Proceeds of sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of, the Conservation Area minus the actual bona fide expenses of such transaction and an amount attributable to the improvements constructed upon the Conservation Area pursuant to the Reserved Rights hereunder, if any. All such proceeds received by Holder shall be used to promote the establishment or protection of habitat for the Delmarva Fox Squirrel, either within or not within the within the Conservation Area in Holder's discretion.
- 7.7. Allocating Proceeds of Condemnation. Whenever all or part of the Conservation Area is taken by exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Owner and Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by the Owner and Holder, including reasonable attorneys' fees, in any such action shall be paid out

of the recovered proceeds. Holder shall be entitled to Holder's Proportionate Share of the recovered proceeds and shall use such proceeds in a manner consistent with the purposes of this grant.. The respective rights of the Owner and Holder set forth in Section 7.6 and this Section 7.7 shall be in addition to and not in limitation of, any rights they may have in common law with respect to a modification or termination of this Conservation Easement by reason of changed conditions or the exercise of powers of eminent domain as aforesaid.

- 7.8. Amendment or Modification of Conservation Easement. Owner and Holder recognize that circumstances could arise which would justify the modification of certain of the restrictions contained in this Conservation Easement. To this end, Holder and the legal owner or owners of the affected portion of the Conservation Area at the time of amendment shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the Conservation Purposes; provided, however, that any such amendment shall require the express approval of the Service, shall be subject to any procedural requirements imposed upon Owner and Holder by law and shall be recorded among the Land Records of Dorchester County, Maryland.
- 7.9. Covenants, Etc. Run With The Land. This Conservation Easement and all of the covenants, indemnifications, releases, easements and restrictions set forth in this Conservation Easement shall run with the land and be binding upon Owner and Owner's successors and assigns, unless otherwise expressly provided in this Conservation Easement. The term "Owner" used in this Conservation Easement shall mean and include the above-named Owner and any of Owner's successors or assigns that are the legal owners of the Conservation Area or any part thereof. The term "Holder" used in this Conservation Easement shall mean and include the above-named Holder and of its successors and assigns, it being understood and agreed that any assignee of the rights of Holder hereunder must be a "qualified organization" as defined in Section 170(h) of the Code, as amended, and shall carry out the obligations of Holder and the intent of this Conservation Easement.
- 7.10. Limitation on Owner Liability. Owner shall be and remain liable for any breach or violation of this Conservation Easement only if such breach or violation occurs during such time as Owner is the legal or equitable owner of the Conservation Area or any part thereof or is in possession of the Conservation Area or any part thereof.
- 7.11. Effect On Mortgages and Other Liens. All mortgages, deeds of trust and other liens or encumbrances upon all or any part of the Conservation Area which either come into existence or are recorded in the place for the recording of such liens or encumbrances after the date of this Conservation Easement will be subject to and subordinate to this Conservation Easement.

- 7.12. Right of Conveyance Retained; Notice Required. Nothing in this Conservation Easement shall limit the right of Owner, its successors or assigns to grant or convey the Conservation Area, provided that any such grantor conveyance shall be under and subject to this Conservation Easement. Owner shall notify Holder in writing of any sale, transfer, lease or other disposition of the Conservation Area or any part thereof, whether by operation of law or otherwise, at least 30 days after such disposition, such notice shall include a copy of the deed, lease, or other declaration of transfer, the date of transfer, and the name or names and addresses for notices of the transferee.
- 7.13. Managerial Control Retained by Owner. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability of Holder to exercise physical or managerial control over day-to-day operations of the Conservation Area, or any of the Owner's activities on the Conservation Area, or otherwise to become an operator with respect to the Conservation Area within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- 7.14. Compliance With Law. Notwithstanding provisions hereof to the contrary, if any, Owner shall be solely responsible for complying with all federal, state and local laws and regulations in connection with the conduct of any use of the Conservation Area or the erection of any Structure permitted hereunder, and Owner shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith. The covenants and restrictions contained in this Conservation Easement shall neither constitute nor be construed as a limitation on or relief from the legal or regulatory jurisdiction of any federal, state, county or municipal governmental department, body, agency, officer or other authority or upon the duties or obligations of the Owner under law as the same may be enforced or applied by any such department, body, agency, officer or other authority.
- 7.15. Notices. All notices required of Owner under the terms of this Conservation Easement, and all requests for the consent or approval of Holder, shall be in writing and shall be deemed to have been given when either served personally or sent by certified mail, with return receipt requested and postage prepaid, addressed to Holder at the address set forth on the first page of this Conservation Easement or such other address provided by notice from Holder or Owner to the other for the purpose. All notices required to be given to the Service under the terms of this Conservation Easement, and all requests for the consent or approval of the Service, shall be in writing shall be deemed to have been given when either served personally or sent by first class mail, with postage prepaid, addressed to: Field Supervisor, Chesapeake Bay Field Office, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, MD 21401 or such other address provided by notice from the Service to Holder and Owner.

- 7.16. Headings. The underlined headings preceding the Sections in this Conservation Easement are intended for convenience of reference only and shall not be applied in the construction or interpretation of the substance of this Conservation Easement nor shall any such headings be construed to add to, detract from or otherwise alter the substance, meaning, force or effect of any of the Sections in this Conservation Easement.
- 7.17. Availability or Amount Of Tax Benefits. Holder makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to Owner or any other person or entity under United States or any state, local or other tax law to be derived from the donation of this Conservation Easement or other transaction associated with the donation of this Conservation Easement. This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. Holder makes no warranty, representation or other assurance regarding the value of this Conservation Easement or of the Conservation Area. As to all of the foregoing, Owner is relying upon Owner's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon Holder or any legal counsel, accountant, financial advisor, appraiser or other consultant of Holder. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs effecting Owner or Owner's successors or assigns or other similar matter then Holder shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Holder in responding or replying thereto.
- 7.18. Governing Law. This Conservation Easement shall be enforced, interpreted and performed in accordance with the laws of the state in which the Property is located as well as applicable federal laws, including but not limited to the ESA, as amended.
- 7.19. Baseline Documentation. The Baseline Documentation includes, among other things:
- 7.19.1. The Biological Opinion.
 - 7.19.2. Base Map of the Conservation Area.
 - 7.19.3. Environmental Conditions Map of the Conservation Area.
 - 7.19.4. Photographs of the Conservation Area.
 - 7.19.5. Photographic Index Map of the Conservation Area.

- 7.20. Warranties of Owner. By signing this Conservation Easement, Owner acknowledges, warrants and represents to Holder that:
- 7.20.1. Owner has received and fully reviewed the Baseline Documentation in its entirety.
 - 7.20.2. The Baseline Documentation is an accurate representation of the condition of the Conservation Area.
 - 7.20.3. OWNER HAS BEEN REPRESENTED BY COUNSEL OF OWNER'S SELECTION, AND FULLY UNDERSTANDS THAT OWNER IS HEREBY PERMANENTLY RELINQUISHING PROPERTY RIGHTS WHICH WOULD OTHERWISE PERMIT THE OWNER TO HAVE A FULLER USE AND ENJOYMENT OF THE CONSERVATION AREA.
 - 7.20.4. The undersigned individual or individuals signing as or on behalf of the Owner has all legal authority to enter into this Conservation Easement and perform all of the obligations of the Owner hereunder, as the binding act of the Owner.
 - 7.20.5. Owner is seized of the Conservation Area in fee simple title. Owner has the right to grant and convey this Conservation Easement. The Conservation Area is free and clear of any and all liens and encumbrances except liens for taxes not yet due and payable and mortgage or deed of trust liens that are subordinate to this Conservation Easement by virtue of the executed form of Joinder and Consent of Mortgagee attached hereto and incorporated herein.
- 7.21. No Limitation of Governmental Rights or Powers. Nothing in this Conservation Easement shall limit any of the rights or powers of the Service or of the government of the United States under law. The provisions of this Easement do not replace, abrogate, or otherwise set aside any local, state or federal laws, requirements or restrictions applicable to the Property or Conservation Area.
- 7.22. Recording. Holder shall record this Conservation Easement promptly in the Land Records of Dorchester County, Maryland and may re-record it at any time as may be required to preserve the rights under this Conservation Easement.

TO HAVE AND TO HOLD the easements and rights set forth in this Conservation Easement unto Holder, its successors and assigns, for its own use and benefit forever.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owner(s) and Holder have executed this Conservation Easement as of the day and year first above written:

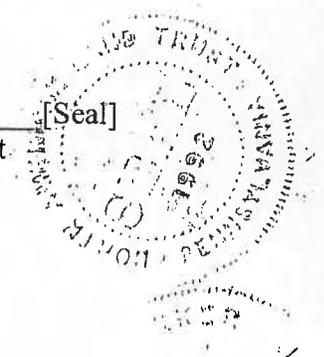
Witness: Kim Jackson Robbie J. Willey
Robbie J. Willey

Witness: Kim Jackson Anne G. Willey
Anne G. Willey

NORTH AMERICAN LAND TRUST, a non-profit corporation

Attest: Paul J. Hill
VICE PRESIDENT

By: Andrew L. Johnson
Andrew L. Johnson, President

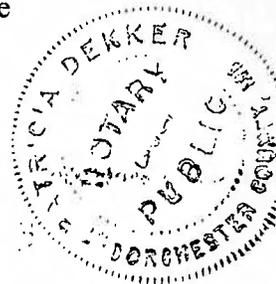


STATE OF MARYLAND, COUNTY OF DORCHESTER, to wit:

On this, the 2nd day of April, 2008, before me, the undersigned officer, personally appeared Robbie J. Willey of the State (County or City as the case may be) of Cambridge, MD known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Patricia Dekker
Notary Public
My commission expires: 2/18/09



STATE OF MARYLAND, COUNTY OF DORCHESTER, to wit:

On this, the 2nd day of April, 2008, before me, the undersigned officer, personally appeared Anne G. Willey of the State (County or City as the case may be) of Cambridge, MD known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Patricia Dekker
Notary Public
My commission expires: 2/18/09



STATE OF PENNSYLVANIA COUNTY OF CHESTER, to wit:

On this, the 3rd day of MARCH, 2008, before me, a Notary Public in and for the State of Pennsylvania, the undersigned officer, personally appeared Andrew L. Johnson, who acknowledged himself to be the President of North American Land Trust, a Pennsylvania Non-Profit Corporation, and that he as such officer, being authorized to do so, executed the foregoing conservation easement for the purposes therein contained by signing the name of the corporation by himself as President.

In witness whereof, I hereunto set my hand and official seal.

Karen M. Mazza
Notary Public
My commission expires: AUG. 22, 2010



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Karen M. Mazza, Notary Public
Pennsbury Twp., Chester County
My Commission Expires Aug. 22, 2010
Member, Pennsylvania Association of Notaries

JOINDER AND CONSENT OF LIENHOLDER

MidAtlantic Farm Credit ACA (collectively "Lienholder"), the holder of the Deed of Trust dated January 31, 2005 encumbering the Conservation Area in the amount of \$ 125,000.00 recorded at County Records Book 0628 , Page 0499 in the records of Dorchester County, State of Maryland (the "Lien") hereby consents to the terms of this Conservation Easement and agrees that the Lien shall be fully subordinate to this Conservation Easement and the rights of the Holder to enforce this Conservation Easement . Without limitation of the foregoing, Lienholder agrees that, in the event of foreclosure of the Lien or a judgment obtained under the Lien or any promissory note secured thereby, the Conservation Area described in the Conservation Easement shall remain under and subject to the covenants and restrictions set forth in this Conservation Easement, as fully as if the Lien was executed, delivered and recorded after the dates of execution, delivery and recording of this Conservation Easement. This Joinder and Consent of Lienholder shall be binding upon Lienholder's successors and assignees as holders of the Lien and any amendment thereof.

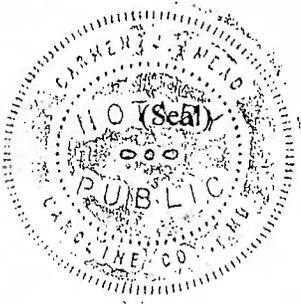
Attest: Cecilia J. Meard

By: Lloyd R. Webb
Name: Lloyd R Webb
Title: Senior Vice President

STATE OF Maryland :
:
COUNTY OF Caroline :

On this, the 4th day of March, 2008, before me, a Notary Public in and for the State of Maryland, the undersigned officer, personally appeared Lloyd R Webb, who acknowledged himself to be the Senior Vice President of MidAtlantic Farm Credit ACA, a Lending Institution, and that he as such Senior Vice President, being authorized to do so, executed the foregoing Joinder and Consent of Mortgagee for the purposes therein contained by signing the name of the corporation by himself as Senior Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Cecilia J. Meard
Notary Public
My commission expires: 07-01-08

AFFIDAVIT OF CONSIDERATION

THE UNDERSIGNED HEREBY CERTIFIES, under the penalties of perjury, that consideration in the amount of Twenty-Four Thousand Nine Hundred Ninety Dollars (\$24,990.00) has been paid to the Grantors for mitigation credits in connection with the foregoing grant of a perpetual easement to the Grantee named herein.

WITNESS:

Hamat Bender

Anne G. Willey (SEAL)
ANNE G. WILLEY

WITNESS:

Hamat Bender

Robbie J. Willey (SEAL)
ROBBIE J. WILLEY