



WHEREAS, the description of the Property described in **Exhibit "A"** shall be referred to and identified as, in its entirety, as the "Mitigation Area"; and

WHEREAS, the protection of the Wetlands and the Mitigation Area from destruction or degradation constitutes the "Conservation Purpose" of this Deed Restriction; and

WHEREAS, "Owner" desires to perpetually conserve the natural, benefits and functions of the Mitigation Area to accomplish the Conservation Purpose.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained in this Deed Restriction, and intending to be legally bound hereby, "Owner" hereby voluntarily, unconditionally and absolutely grants the easements, covenants, prohibitions and restrictions set forth in this Deed Restriction, in perpetuity, to accomplish the Conservation Purpose.

#### **ARTICLE 1. GRANT OF EASEMENTS**

Owner hereby grants and conveys unto NYSDEC, its successors and assigns, the right of the NYSDEC and its agents to access, enter upon and inspect the Mitigation Area, with access over and across the Property if necessary, for the purpose of enforcement and compliance with this Deed Restriction at any time and from time to time, provided that Owner is first given notice of any such visit, at least seven (7) days *in* advance, except in cases of suspected or known violations of this Deed Restriction.

#### **ARTICLE 2. OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS**

Owner, for Owner and Owner's successors and assigns, covenants and declares that the Mitigation Area shall be, and hereby is, bound by and made subject to the following covenants and restrictions in perpetuity, subject to and excepting only the Reserved Rights set forth in Article 3 of this Deed Restriction:

- 2.1. Use Restrictions. The Mitigation Area shall not be used for a residence or for any residential, commercial, institutional, industrial or agricultural 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: (1) construction or occupancy of any dwellings; (2) manufacture or assembly of any products, goods, equipment, chemicals, materials or substances of any kind or nature whatsoever; (3) sale of any products, goods, equipment, chemicals, materials, substances or services of any kind or nature whatsoever; (4) 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 Deed Restriction; and (5) offices for persons involved in the sale, manufacture or assembly of goods or services or for the performance of services.
- 2.2. Structures Prohibited. No Structure (hereinafter defined) of any kind shall be built, erected, installed, placed, affixed or assembled within or upon the Mitigation Area or

upon any trees or other natural features upon the Mitigation 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.

- 2.3. Avoidance of Sensitive Habitats. Without limitation of the requirements of Article 3, Owner shall present to NYSDEC for review and approval, prior to undertaking any of the following activities, any plans for mowing, plant removal, planting of trees or other vegetation, land disturbance activity, or trail or other construction pursuant to Article 3 so that the Department may advise and instruct Owner to prevent damage to or endangerment of sensitive natural habitat, including but not limited to plant species located on the Mitigation Area that are classified as endangered or threatened by the federal or state government.
- 2.4. Limitation on Recreational Activities. No recreational activities shall occur within the Mitigation Area. Owner will prohibit use of off-road vehicles on Mitigation Area and undertake efforts to prevent any such vehicles from traversing same.
- 2.5. Wetland Protection Area. There shall be no clearing, cutting or removal of live or dead trees, other clearing or removal of vegetation, clearing or removal of leaf litter or other natural detritus, or digging, earth movement or other alteration of the earth surface or topography within the banks of any permanent or intermittent watercourse within the Mitigation Area (excluding manmade storm water swales not fed by a spring, natural pond or other natural source).
- 2.6. Removal of Ground or Surface Water from Mitigation Area. No ground or surface water from the Mitigation Area shall be removed, collected, impounded, stored, transported, diverted or otherwise used for any purpose or use outside the boundaries of the Mitigation Area nor for any purpose or use within the boundaries of the Mitigation Area that is prohibited by this Deed Restriction.
- 2.7. Roads. Driveways. Etc. There shall not be constructed, cut, created or placed on the Mitigation Area any road, driveway, cartway, path or other means of right of passage across or upon the Mitigation Area nor may any road, driveway, cartway, path or other means or right of passage located on the Mitigation Area be used, for access to any use (whether or not upon the Mitigation Area) which is prohibited by this Deed Restriction.
- 2.8. Live or Dead Trees. No cutting, removal or destruction of live or dead trees shall be permitted upon or within the Mitigation Area. Dead trees that have fallen shall be allowed to remain where they have fallen unless a dead tree blocks a path or trail or threatens the safety of persons or property, in which case it may be moved to the extent necessary to prevent such blockage or threat.

- 2.9. Signs and Similar Structures. No signs, billboards or outdoor advertising structures shall be placed, erected or maintained within the Mitigation Area.
- 2.10. 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 Mitigation Area.
- 2.11. Dumping. There shall be no dumping of ashes, trash, garbage, or any other unsightly or offensive materials at any place on, under or within the Mitigation Area.
- 2.12. Change of Topography. There shall be no material change in the topography of the Mitigation Area in any manner that is inconsistent with the NYSDEC approved mitigation plan.
- 2.13. Water Courses. There shall be no dredging, channelizing or other manipulation of natural water courses or any water courses existing within the Mitigation Area as of the date of this Deed Restriction. There shall be no discharge of chemicals, waste water or other pollutants into any permanent or intermittent water course.
- 2.14. INTENTIONALLY OMITTED.
- 2.15. Soil Erosion and Sedimentation Control. All activity on the Mitigation Area shall be conducted so as to avoid the occurrence of soil erosion and sedimentation of streams or other water courses. Without limitation of the foregoing, Owner and Department shall, in identifying practices that will prevent soil erosion and sedimentation, refer to the soil conservation practices as then established or recommended by the Natural Resources Conservation Service of the United States Department of Agriculture or any successor governmental office or organization performing the same function within the United States government, as approved by the Department.
- 2.16. Livestock. There shall be no livestock grazing in the Mitigation Area.
- 2.17. Non-Native Plant Species. There shall be no introduction of plant species within the Mitigation Area except those that are native to the area in which the Mitigation Area is located or that are recognized as non-invasive horticultural specimens or fruit orchard trees.
- 2.18. Transfers of Development Rights or Development Density Credits. Except as previously approved, the Mitigation 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 Mitigation Area nor, without limitation of the foregoing, may the Mitigation Area be used in the calculation of the amount or density of housing units or other construction for development on lands outside the boundaries of the Mitigation Area or for sale by Owner. The foregoing shall not prohibit the use of created

wetlands as a mitigation credit as approved by the Department.

- 2.19. Notice of Exercise of Reserved Rights. Owner shall give reasonable notice to the Department before exercising any Reserved Right that may impair the conservation interests associated with the Mitigation Area.
- 2.21. Preservation of Mitigation Area. The parties recognize that this Deed Restriction cannot address every circumstance that may arise in the future, and the parties agree that the purpose of this Deed Restriction is to preserve the Mitigation Area predominantly in its natural condition, protect or enhance the Mitigation Area's rare, threatened, or exemplary natural communities, usefulness to rare or threatened species, and contributions to improved water quality. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in Article 3 of this Deed Restriction and which conflicts with the Conservation Purpose or which materially threatens the Conservation Purpose is prohibited.
- 2.22. Restrictions Cumulative. The prohibitions and restrictions in this Deed Restriction 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.

### **ARTICLE 3. RESERVED RIGHTS**

Owner reserves for Owner and Owner's, successors and assigns who may now or hereafter be owner of all or part of the Mitigation Area the rights set forth in this Article 3 (the "Reserved Rights"). Owner intends that these Reserved Rights and the activities and uses which are described below as the Reserved Rights are narrow exceptions to the prohibitions and restrictions set forth in Article 2 and, hence, may be conducted as described below notwithstanding the prohibitions and restrictions of Article 2 without having a materially adverse effect on the Conservation Purpose.

- 3.1. Pond. may construct and maintain a pond or other impoundment of water only if:
  - 3.1.1. in accordance with any work performed and approved by permit issued by the Department.
- 3.2. Mitigation Area. Discharging of fill, damming, diking, draining, filling or alteration of springs, streams, ponds or wetlands as would otherwise be prohibited by this Deed Restriction may occur as approved by permit issued by the Department. Disturbed wetlands and waterways pursuant to such permit shall be restored to their original condition within 30 days of completion of the work permitted by such permit.
- 3.3. Fence and Markers. Owner reserves the right to install and thereafter maintain a fence and markers on and around the boundary of the Mitigation Area.

- 3.4. Signs. Owner may install a reasonable number of signs of the following types:
- 3.4.1. regulatory or directional signs including, for example but not for limitation of the foregoing, "no trespassing" signs, "no gunning" signs, or "no hunting" signs;
  - 3.4.2. signs identifying the interest of Owner in the Conservation Area; and
  - 3.4.3. signs educating the public as to the ecology of the area.
- 3.5. Wetlands Plant Removal. Owner shall have the right to remove non-native, invasive plant species from the wetlands, such as *Phragmites australis*, in accordance with a revegetation plan, which plan shall include the replacement of the removed species with native wetland plant or tree species, prepared by an experienced botanist or wetlands biologist and approved in advance by the Department. Owner shall be responsible for obtaining all necessary government permits and approvals for such activity and Department shall have the right, but not the obligation, to require that such permits and approvals be produced for inspection by Department before approval is granted. Without limitation of the foregoing, Owner is advised that removal of plant species by means other than hand equipment may be regulated and require a permit.
- 3.6. Maintenance of Roads, Trails, Etc.. Owner may maintain in passable condition the paths, trails, roads or walkways existing within the Mitigation Area at the date of this Deed Restriction if they are required to maintain the proper functioning of the Mitigation Area. Included within this right of maintenance, without limitation, are: the right to hand prune trees or other vegetation which threaten the safety of persons or property who may use or maintain the road, trail or walkway; the right to install or apply materials necessary to correct or impede erosion; non-mechanical grading of earth to maintain a passable condition or to control or impede erosion; replacement of existing culverts, water control structures and bridges; and maintenance of roadside ditches.
- 3.7. Notice of Exercise of Reserved Rights. Owner shall notify NYSDEC in writing before exercising the Reserved Rights described in 3.1, 3.2 and 3.6.

#### **ARTICLE 4. REMEDIES AND ENFORCEMENT**

- 4.1. Remedies Generally. The Department 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 Deed Restriction. The foregoing shall not limit any of the rights or remedies available to the NYSDEC as specifically set forth in any law or in this Deed Restriction. NYSDEC'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.

- 4.2. Remedy of Specific Performance. Without limitation of any other rights of the NYSDEC in this Deed Restriction, the Department's right of enforcement of this Deed Restriction shall include the right to seek specific performance by Owner of the restoration of the Mitigation Area to a functioning condition Deed Restriction or to its condition prior to any activity that violates this Deed Restriction or as otherwise may be necessary to remedy any violation of any easement, covenant, prohibition or restriction in this Deed Restriction, as the NYSDEC may elect.
- 4.3. Remedy of Damages. If Owner violates this Deed Restriction 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 Deed Restriction, including violation resulting from failure to obtain the Department's approval, the Department shall be entitled to payment of damages as provided for under the Environmental Conservation Law, or payment in the amount of the value of the protected natural resource; provided, however, that if the natural resource affected by Owner's violation of this Deed Restriction can be restored to its condition prior to the violation and if Owner does restore the natural resource to its condition prior to the violation within 90 days after notice of violation from the Department then the Department shall accept such restoration in lieu of damages. The Department 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 Mitigation 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 Purpose.
- 4.4. Rights and Remedies in Relation to Persons Other than Owner. NYSDEC shall have the right, without limitation of any rights herein as against Owner, to assert and enforce any of the rights and remedies in this Deed Restriction against any person or entity other than Owner that engages in any action upon the Mitigation Area that constitutes a violation of any of the covenants or restrictions of this Deed Restriction, whether such person or entity enters upon the Mitigation Area as a tenant, guest or invitee of Owner, an act of trespass or by any claim of right and Owner shall reasonably cooperate with the Department by joining in any action or proceeding commenced by the Department for such purpose.
- 4.5. Certain Events Not a Violation. Notwithstanding anything herein to the contrary, the Department shall not bring any action seeking to enforce this Deed Restriction against Owner nor shall this Deed Restriction be considered to have been violated by Owner, as a result of any damage to the Mitigation Area if such damage was solely the result of: (a) a natural event such as an earthquake or flood, wind, lightning

or other storm event, including those events commonly referred to as "acts of God"; (13) damage by persons trespassing upon the Mitigation Area that could not have been prevented by reasonable on-going efforts to prevent trespass; or (c) any emergency measures reasonably and prudently taken by Owner to abate or mitigate significant injury to the Mitigation Area as a result of any such natural event or trespass.

- 4.6. No Third Party Right of Enforcement. This Deed Restriction may only be enforced by the Owner or the Department, and their respective successors and assigns, and no third party beneficiary rights, including but not limited to third party rights of enforcement, are created hereby.
- 4.7. No Waiver of Rights of Enforcement. The failure of the NYSDEC to exercise any of its rights under this Deed Restriction on any occasion shall not be deemed a waiver of said rights and the Department retains the right in perpetuity to require full compliance by Owner of the covenants and restrictions in this Deed Restriction.

## **ARTICLE 5. GENERAL PROVISIONS**

- 5.1. Owner and NYSDEC Further Defined. The term "Owner" used in this Deed Restriction shall mean Shelby Crushed Stone, Inc. and any of Shelby Crushed Stone, Inc.'s successors or assigns, whether one or more, that are the legal owners of the Mitigation Area or any part thereof. The term "NYSDEC" used in this Deed Restriction shall mean and include the above-named Department and its successors and assigns.
- 5.2. Rules of Construction and Interpretation. The Owner recognizes the environmental, scenic, and natural values of the Mitigation Area and the purpose of preserving these values. Any general rule of construction to the contrary notwithstanding, this Deed Restriction shall be liberally construed to promote, protect and fulfill the Conservation Purpose. If any provision in this Deed Restriction is found to be ambiguous, an interpretation consistent with the Conservation Purpose that would render the provision valid should be favored over any interpretation that would render it invalid. If any provision of this Deed Restriction 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 Deed Restriction invalid. The Owner intends that this Deed Restriction, which is by nature and character primarily prohibitive (in that Owner has restricted and limited the rights inherent in ownership of the Mitigation Area), shall be construed at all times and by all parties to promote, protect and fulfill the Conservation Purpose.
- 5.3. 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 Mitigation Area, including the general liability insurance coverage and obligation to comply with applicable law and (b) pay all taxes, levies and assessments and other governmental or municipal charges which may become a lien on the Mitigation Area or upon this Deed Restriction or the rights it represents or that it grants to the NYSDEC.

- 5.3. Amendment or Modification of Deed Restriction. Owner and NYSDEC recognize that circumstances could arise which may justify the modification of certain of the restrictions contained in this Deed Restriction. To this end, NYSDEC and the legal owner or owners of the Mitigation Area or, if the Mitigation Area has been legally subdivided, the Owner of that portion of the Mitigation Area affected by such amendment at the time of amendment shall mutually have the right, in their sole discretion, to agree to amendments to this Deed Restriction which are not inconsistent with the Conservation Purpose.
- 5.5. Covenants, Etc. Run With The Land. This Deed Restriction and all of the covenants, indemnifications, releases, easements and restrictions set forth in this Deed Restriction shall run with the land and be binding upon Dockside and Dockside's successors and assigns, unless otherwise expressly provided in this Deed Restriction.
- 5.6. Intentionally Omitted
- 5.7. Limitation on Owner Liability. Shelby Crushed Stone, Inc. shall beand remain liable for any breach or violation of this Deed Restriction only if such breach or violation occurs during such time as Shelby Crushed Stone, Inc. is the legal or equitable ownerof the Mitigation Area or any part thereof or is in possession of the Mitigation Area orany part thereof.
- 5.8. Effect On Mortgages and Other Liens. All mortgages, deeds of trust and other liens or encumbrances upon all or any part of the Mitigation 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 Deed Restriction will be subject to and subordinate to this Deed Restriction.
- 5.9. Right of Conveyance Retained: Notice Required. Nothing in this Deed Restriction shall limit the right of Shelby Crushed Stone, Inc., its successors or assigns to grant or convey the Mitigation Area, provided that any such grant or conveyance shall be under and subject to this Deed Restriction. Shelby Crushed Stone, Inc. shall notify the Department in writing of any sale, transfer;lease or other disposition of the Mitigation Area or any part thereof, whether by operation of law or otherwise, not later than 30 days after such disposition and 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.

- 5.10. Managerial Control Retained by Owner. Nothing in this Deed Restriction shall be construed as giving rise to any right or ability of the NYSDEC to exercise physical or managerial control over day-to-day operations of the Mitigation Area, or any of Owner's activities on the Mitigation Area.
- 5.11. Compliance With Law. Notwithstanding provisions hereof to the contrary, if any, Owner shall be solely responsible for complying with the NYSDEC Order and Permit, and all federal, state and local laws and regulations in connection with the conduct of any use or activity on the Mitigation Area, and Owner shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.
- 5.12. Public Access Not Created. Nothing in this Deed Restriction shall be construed to create any right of access to the Mitigation Area by the public.
- 5.13. Notices. All notices required of Owner under the terms of this Deed Restriction, and all requests for the consent or approval of the Department, 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 the Department at such address provided by notice from the Department or Owner to the other for this purpose. Notices by the Department to an Owner need only be given to the Owner of the portion of the Mitigation Area that is the subject of the notice.
- 5.14. Headings: The underlined headings preceding the Sections in this Deed Restriction are intended for convenience of reference only and shall not be applied in the construction or interpretation of the substance of this Deed Restriction 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 Deed Restriction.
- 5.15. Governing Law. This Deed Restriction shall be governed by and construed under the law of the State of New York.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owner has executed this Deed Restriction as of the day and year first above written:

IN THE PRESENCE OF:

“Owner” Declarant

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW YORK )

) ss.:

COUNTY OF ORLEANS )

On this \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me personally appeared “Owner” personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed in the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC – STATE OF NEW YORK

## Exhibit A

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Shelby, County of Orleans, State of New York, and being part of Lot 15, Township 14, Range 4 of the Holland Land Company Survey (so!called), bounded and described as follows:

COMMENCING AT the northwest corner of Lot 15; said point being also 1915.32 feet deed addition southerly measured along the west line of Lot 16 from its intersection with the centerline of Blair Road;

RUNNING THENCE: Southerly, along the west line of Lot 15, a distance of 425.17 to the Point or Place of Beginning of the parcel herein described;

RUNNING THENCE: N-59E-12'-30"-E, a distance of 28.74 feet to a point being 25.00 feet easterly measured at right angles to the west line of Lot 15;

RUNNING THENCE: S-03E-13'-11"-E, parallel with the west line of Lot 15 and 25.00 feet easterly therefrom measured at right angles thereto, a distance of 272.30 feet to a point;

RUNNING THENCE: N-72E-40'-04"-E, a distance of 265.77 feet to a point;

RUNNING THENCE: N-72E-42'-08"-E, a distance of 275.79 feet to a point;

RUNNING THENCE: N-72E-35'-51"-E, a distance of 314.08 feet to a point;

RUNNING THENCE: N-73E-50'-49"-E, a distance of 180.44 feet to a point;

RUNNING THENCE: N-72E-38'-59"-E, a distance of 331.94 feet to a point;

RUNNING THENCE: N-72E-43'-23"-E, a distance of 381.65 feet to a point;

RUNNING THENCE: N-72E-16'-02"-E, a distance of 445.74 feet to a point located 25.00 feet westerly of the east line of Parcel "C" of lands conveyed to Shelby Crushed Stone, Inc. by deed recorded in the Orleans County Clerk's Office in Liber 763 of Deeds at Page 146;

RUNNING THENCE: N-01E-06'-19"-W, parallel with the east line of parcel "C" of said Shelby Crushed Stone, Inc. lands, a distance of 148.00 feet to a point located 25.00 feet southerly measured at right angles to the north line of Parcel "C" of said Shelby Crushed Stone, Inc. lands;

RUNNING THENCE: S-83E-11'-14"-W, parallel with the north line of Parcel "C" of said Shelby Crushed Stone, Inc. lands, a distance of 107.27 feet to a point;

RUNNING THENCE: N-13E-25'-23"-E, a distance of 26.64 feet to a point on the north line of said Parcel "C" of said Shelby Crushed Stone, Inc. lands;

RUNNING THENCE: N-83E-11'-14"-E, along the north line of said Parcel "C", a distance of 125.67 feet to the northeast corner of Parcel "C" of said Shelby Crushed Stone, Inc. lands;

RUNNING THENCE: S-01E-06'-19"-E, along the east line of Parcel "C" of said Shelby Crushed Stone, Inc. lands, a distance of 1808.70 feet to the southeast corner thereof;

RUNNING THENCE: S-79E-15'-50"-W, along the south line of Parcels "B" & "C" of said Shelby Crushed Stone, Inc. lands, a distance of 2186.10 feet to the west line of said Lot 15;

RUNNING THENCE: N-01E-13'-11"-W, along the west line of said Lot 15, a distance of 1644.02 feet to the POINT OR PLACE OF BEGINNING, containing 74.99 Acres, be the same, more or less.

BEING AND INTENDED TO BE a portion of lands conveyed to Shelby Crushed Stone, Inc. by deed recorded in the Orleans County Clerk's Office in Liber 763 of Deeds at Page 146.

(Note: this description was prepared from deeds of record and is subject to any state of facts that a boundary survey or further title research may reveal).