

STATE OF _____

COUNTY OF _____

**MODEL
CONSERVATION EASEMENT
AND ACCEPTANCE
(For Use with Mitigation Banks)**

THIS INDENTURE, is made this ____ day of _____, 20____, by _____ ("Grantor(s)"), in favor of _____ ("Holder").

WHEREAS, Grantor is the owner in fee simple of certain real property located in _____, State of _____, more particularly described in Attachment 1 hereto which is incorporated and made apart hereof as if fully set forth herein ("Protected Property");

WHEREAS, the Protected Property possesses significant ecological values of aesthetic and environmental benefit to the people of the State of _____ and the United States, and of great importance to the Grantor and the Holder;

WHEREAS, the Protected Property has been approved by the Third-Party for use as a mitigation bank, to be known as the _____ Mitigation Bank, ("_____MB"), the purpose of which is to generate credits for sale to compensate for wetlands and stream impacts pursuant to Section 404, Clean Water Act and Section 10, Rivers and Harbor Act permit actions;

WHEREAS, the natural condition of the Protected Property will be restored, enhanced and preserved pursuant to the Mitigation Banking Instrument ("MBI") for the _____ Mitigation Bank., a copy of which is on file at the Mobile District Office of the Corps of Engineers;

WHEREAS, Grantor desires to convey to the Holder a conservation easement, thereby placing certain limitations and affirmative obligations on the Protected Property for the protection of wetlands, scenic, resource, environmental, and other values, and in order that the Protected Property shall remain substantially in its natural condition, forever;

WHEREAS, Grantor desires by this instrument to convey to Holder the right to conserve and protect the conservation and environmental values of the property in perpetuity;

WHEREAS, Holder agrees by accepting this conveyance to honor the intentions of the Grantor stated herein and to conserve and protect in perpetuity the conservation values of the Protected Property in accordance with the terms of this Conservation Easement for the benefit of this generation and the generations to come;

WHEREAS, Holder is an entity qualified to hold conservation easements;

WHEREAS, the term “natural condition” shall mean the condition of the Protected Property at the time of this grant, and as restored, enhanced, and preserved pursuant to the MBI of the _____ MB, and shall be evidenced in part by a surveyed plat of the Protected Property showing all relevant property lines, and major, distinct natural features such as waters of the United States, on file with Third Party and Holder, aerial photographs of the Protected Property taken as close as possible to the date the donation is made, and after completion of the restoration, enhancement and preservation activities required by the MBI; and on-site photographs taken at appropriate locations on the Protected Property, including of major natural features.

WHEREAS, Grantor and Holder agree that third-party rights of enforcement shall be held by the U.S. Army Corps of Engineers, Mobile District (“Third-Party” or “Corps,” to include any successor agencies), and may be exercised through the appropriate enforcement agencies of the United States, and that these rights are in addition to, and do not limit, the rights of enforcement under Department of the Army Permit No. _____, or any permit or certification issued by the Third-Party to Grantor in regards to the Protected Property;

NOW THEREFORE, for the foregoing consideration, and in further consideration of the restrictions, rights, and agreements herein, Grantor hereby conveys to Holder, its successors and assigns, forever and in perpetuity, a conservation easement over the Protected Property consisting of the following:

A. PURPOSE

It is the purpose of this Conservation Easement to assure that the Protected Property will be retained forever in a natural state, that the scenic and natural character of the property will be maintained as it currently exists, and as restored and enhanced pursuant to the MBI of the _____ MB, and to prevent any use of the Protected Property that will impair or interfere with the conservation values of the Protected Property. Grantor intends that grant of this Conservation Easement will assure that the Protected Property will be used only for such activities as are consistent with the conservation purpose of this easement.

B. DURATION

This Conservation Easement shall be perpetual, in gross, run with the land and be binding on Grantor’s heirs, successors, administrators, assigns, lessees, or other occupiers and users, forever.

C. RIGHTS OF THE HOLDER

To accomplish the purpose of this Conservation Easement, the following rights are conveyed to the Holder and the Third-Party:

1. **General.** The Holder and the Third-Party shall have the right to conserve and protect the conservation values of the Protected Property in perpetuity. The Holder and the Third-Party shall have the right to prevent any activity or use of the Protected Property that is inconsistent with the

purpose of the Conservation Easement, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section F herein.

2. **Rights of Access and Entry.** Holder and Third-Party shall have the right to enter and go upon the Protected Property for purposes of inspection, and to take actions necessary to verify compliance with the Restrictions as set out herein. Holder and Third-Party shall also have the rights of visual access and view, and to enter and go upon the Protected Property for purposes of making scientific or educational observations and studies, and taking samples, in such a manner as will not disturb the quiet enjoyment of the Protected Property by Grantor. However, this Conservation Easement conveys no right of access or entry by the general public to any portion of the Protected Property.

D. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity upon, or use of, the Protected Property inconsistent with the purposes of this Conservation Easement is prohibited. The following activities and uses are expressly prohibited:

1. **General.** There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials; and, no alteration of the topography in any manner except as specifically set forth herein and as specifically provided for in the MBI of the _____MB.
2. **Waters and Wetlands.** There shall be no draining, dredging, damming or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, except as specifically set forth herein and as specifically provided for in the MBI of the _____MB.
3. **Trees/Vegetation.** There shall be no clearing, burning, cutting or destroying of trees or vegetation, except as expressly authorized in the Reserved Rights; there shall be no planting or introduction of non-native or exotic species of trees or vegetation except as specifically set forth herein and as specifically provided for in the MBI of the _____MB.
4. **Uses.** No agricultural, industrial, or commercial activity shall be undertaken or allowed.
5. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, nor any additions to existing structures except as specifically set forth herein.
6. **New Roads.** There shall be no construction of new roads, trails or walkways without the prior written approval of the Third-Party and Holder, including of the manner in which they are constructed.
7. **Use of Off Road Vehicles.** There shall be no use of off road vehicles, 4-wheel drive

vehicles, all terrain vehicles or similar vehicles except on existing roads and trails and except as necessary to manage the Property.

8 **Utilities**. There shall be no construction or placement of utilities or related facilities without the prior written approval of Third-Party and Holder except as specifically set forth herein.

9 **Pest Control**. There shall be no application of pesticides or biological controls, including for problem vegetation, without prior written approval from the Third-Party and Holder.

10. **Other Prohibitions**. Any other use of, or activity on, the Protected Property which is or may become inconsistent with the purposes of this grant, the preservation of the Protected Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

[11. *Additional case specific restrictions may need to be inserted.*]

E. GRANTOR'S RESERVED RIGHTS

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, its successors and assigns the following Reserved Rights, which may be exercised upon providing prior written notice to Holder and to Third-Party, except where expressly provided otherwise:

1. **Landscape Management**. Landscaping by the Grantor to prevent severe erosion or damage to the Protected Property or portions thereof, or significant detriment to existing or permitted uses, is allowed, provided that such landscaping is generally consistent with preserving the natural condition of the Protected Property.

2. **Forest Management**. Harvesting and management of timber by Grantor is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects or infectious organisms or is otherwise required by sound management practices. Such timber harvest and management shall be carried out in accordance with Best Management Practices approved by the Alabama Forestry Commission or successor agency, as amended.

3. **Recreation**. Grantor reserves the right to engage in any outdoor, non-commercial recreational activities, including hunting (excluding planting or burning) and fishing, with cumulatively very small impacts, and which are consistent with the continuing natural condition of the Protected Property. No written notice is required.

4. **Mineral Interests**. Grantor specifically reserves a qualified mineral interest (as defined in Section 170(h)(6) of the Internal Revenue Code) in subsurface oil, gas or other minerals and the right to access such minerals. However, there shall be no extraction or removal of, or exploration for, minerals by any surface mining method, nor by any method which results in subsidence or which

otherwise interferes with the continuing natural condition of the Protected Property.

5. **Road Maintenance.** Grantor reserves the right to maintain existing roads, trails or walkways. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel, crushed) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and, maintenance of roadside ditches.

6. **Other Reserved Rights.** Grantor reserves the right to engage in all acts or uses not prohibited by the Restrictions, and which are not inconsistent with the conservation purposes of this grant, the preservation of the Protected Property substantially in its natural condition, and the protection of its environmental systems.

7. **Rights of Grantor.** The Protected Property has been approved by the Third-Party for use as a mitigation bank, the purpose of which is to generate credits for sale to compensate for wetlands and stream impacts resulting from permit actions. This will be accomplished by the restoration, enhancement and preservation in perpetuity of the Protected Property as specifically provided for in the MBI. Grantor reserves the sole and unrestricted right to sell credits or other entitlements or interests in the Protected Property in order to perfect and carry out the purpose of a mitigation bank. In addition to any other provision contained herein, the terms and provisions of the MBI shall be applicable. In the event there is any inconsistency between this Easement and the terms and conditions of the MBI, the MBI shall govern.

F. ENFORCEMENT

1. **Notice of Violation ; Corrective Action.** If Holder or the Third-Party determines there has been a breach or violation of the terms of this Conservation Easement, by Grantor or another party, the Third-Party and/or Holder shall give written notice to the Grantor of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan to be approved by the Holder and Third-Party.

2. **Injunctive Relief.** If the Grantor fails to cure the violation within thirty (30) days after receipt of such notice to thereof, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing said violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the Third-Party and/or Holder may undertake such actions, including legal proceedings, as are necessary to effect such corrective action, including to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

3. **Emergency Enforcement.** If, however, the Holder or the Third-Party, solely by the exercise of its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, Holder and/or Third-Party may pursue remedies under this Easement without prior notice to Grantors, or waiting for the period provided for cure to expire.

4. **Damages.** Third-Party and Holder shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values.

5. **Costs of Enforcement.** The costs of a breach or violation, correction or restoration, including the Third-Party and/or Holder expenses, court costs, and attorneys' fees, shall be paid by Grantor, unless Grantor ultimately prevails in a judicial enforcement action, in which case each party shall bear their own costs.

6. **Forbearance.** Enforcement shall be at the discretion of the Third-Party and/or Holder, and any forbearance to exercise rights under this Easement shall not be deemed or construed to be a waiver of such terms or of any subsequent breach of the same or any other term of this Easement or of any of the Holder or Third-Party's rights under this Easement. No omission or delay in the exercise of any rights or remedies shall constitute a waiver of any enforcement right, or in any way impair any right or remedy.

7. **General.** These enforcement rights are cumulative and are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification.

8. **Events Beyond Grantor's Control.** Nothing herein shall be construed to authorize the Third-Party or Holder to institute any proceedings against Grantor for any changes to the Protected Property caused by acts of God or circumstances beyond the Grantor's control such as earthquake, fire, flood, storm, war, civil disturbance, strike, the unauthorized acts of third persons, or similar causes. However, if the acts of God or circumstances beyond the Grantor's control do not preclude the Grantor from maintaining the Protected Property in its natural condition without unreasonable expense, then it shall not be relieved of its obligations under this document.

H. GENERAL PROVISIONS

1. **Obligations of Ownership.** Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Protected Property. Grantor shall keep the Protected Property free of any liens or other encumbrances for obligations incurred by Grantor. Holder and Third-Party shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance,

upkeep, or maintenance of the Protected Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits which may apply to the exercise of the Reserved Rights.

2. **Hold Harmless.** Grantors shall hold harmless, indemnify and defend Third-Party and Holder and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorneys fees arising from or in any way connected with the existence or administration of this Easement.

3. **Extinguishment.** In the event that changed conditions render impossible the continued use of the Protected Property for the conservation purposes, this Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding.

4. **Eminent Domain.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu of purchase and all direct or incidental damages resulting there from. This Conservation Easement constitutes a real property interest immediately vested in Holder. In the event that all or a portion of this Protected Property is sold, exchanged, or involuntarily converted following the extinguishment or the exercise of eminent domain, Holder shall be entitled to the fair market value of this Conservation Easement. Holder shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Easement.

5. **Notification.** Any notice, request for approval, or other communication required under this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Grantor: _____ To Holder: _____

To Third-Party: U.S. Army Corps of Engineers
Mobile District Office
Regulatory Branch
P.O. Box 2288
Mobile, Alabama 36628-0001

6. **Assignment.** This Conservation Easement is transferable, but only to a qualified holder and subject to the approval of the Third Party. As a condition of such transfer, the transferee shall agree to all of the restrictions, rights, and provisions herein, and to continue to carry out the purposes of this Conservation Easement. Assignments shall be accomplished by amendment of this Conservation Easement under paragraph 9.
7. **Failure of Holder.** If at any time Holder ceases to be a qualified holder and if, within a reasonable period of time after the occurrence of one of these events, the Holder fails to make an assignment pursuant to paragraph 6, then the Holder's interest shall become vested in another qualified holder in accordance with an appropriate proceeding in a court of competent jurisdiction.
8. **Subsequent Transfer.** Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument which transfers any interest in all or a portion of the Protected Property. Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of transfer. The failure of Grantor to comply with this paragraph shall not impair the validity or enforceability of this Conservation Easement.
9. **Amendment.** This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Holder under any applicable laws, and is consistent with the conservation purposes of this grant.
10. **Severability.** Should a court of competent jurisdiction find any separable part of this Conservation Easement void or unenforceable, the remainder shall continue in full force and effect.
11. **Warranty.** Grantor warrants that it owns the Protected Property in fee simple, and that the Grantor either owns all interests in the Protected Property which may be impaired by the granting of this Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Protected Property which have not been expressly subordinated to this Conservation Easement. Grantor warrants that there is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property. Grantor further warrants that Holder shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.
12. **No Extinguishment Through Merger.** Grantor and Holder agree that should the Holder, or any successor in interest to the Holder, come to own all of a portion of the fee interest in the Protected Property subject to this Conservation Easement, (i) said owner shall observe and be bound by the obligations and restrictions imposed upon the Protected Property by this Conservation Easement, (ii) this Conservation Easement shall not be extinguished through the doctrine of merger

in whole or in part in view of the public interest in enforcement, and (iii) said owner shall promptly assign the Holder interest in the Conservation Easement to another entity or person qualified to hold conservation easements.

13. **Funding for Long-Term Maintenance.** Grantor has provided funds for the purpose of fulfilling Grantor’s obligations for the long-term operation and maintenance of the Protected Property in its natural condition as follows: *[Insert provisions for long-term maintenance of property.]*

14. **Recordation.** Grantor shall record this instrument in a timely fashion in the official records of _____ County, Mississippi, and shall re-record it as may be required to preserve this Conservation Easement.

15. **Marking of Property.** The perimeter of the Property shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

TO HAVE AND TO HOLD, unto the Holder, its successors and assigns, forever. The covenants agreed to and the terms, restrictions and purposes imposed as aforesaid, shall be binding upon Grantor, his personal representatives, heirs, successors and assigns, and shall continue as a servitude running with the land in perpetuity with the property.

IN WITNESS WHEREOF, Grantor and Holder have executed this Conservation Easement, and the Third-Party has approved this Conservation Easement, on the date written above.

EXECUTION BY GRANTOR

By: _____

Its: _____

THE STATE OF _____)

COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said State hereby certify that,

_____ is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the

conveyance, he, with full authority, executed the same voluntarily for and as the act of said corporation. Given under my hand this the ____ day of _____, 20__.

Notary Public

(NOTARIAL SEAL)

My Commission Expires: _____

EXECUTION BY HOLDER

By: _____

Its: _____

THE STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said State hereby certify that

_____ is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the ____ day of _____, 20__.

Notary Public
My Commission Expires: _____

(NOTARIAL

SEAL)

