

March 7, 2024

**U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT**

**MODEL CONSERVATION EASEMENT**

The following "Model Conservation Easement" ("CE") document is provided for drafting purposes. Please check the Savannah District, Regulatory Division website to view and access the most current draft CE language and instructions.

The website is located at: <http://www.sas.usace.army.mil>. Within the header, find the word "Missions", scroll down to "Regulatory", then "Mitigation." Select "Permittee-Responsible Mitigation." Scroll down until you see the files: (1) Model Conservation Easement and (2) Qualified Conservation Easement Holder Standards. The website is updated periodically.

Do not rely on out-of-date hard copies of previous draft models, templates, or old versions that you may have saved to your computer files, as they may be obsolete. Please contact the Savannah District Office of Counsel, listed below, should you have questions or wish to consult regarding any of the procedures involved in the processing of this legal document.

If the property is already protected for its conservation functions by an existing conservation easement, by statute, as a park, recreational area or green space owned by the state, county, city or other local department or agency, or if the property is secured by a Deed to Secure the Debt, then it may not be eligible as Clean Water Act Section 404 mitigation. All existing recorded instruments must be subordinated to the CE and must not conflict with its terms for a property already protected to be considered for Clean Water Act Section 404 mitigation.

Consult with the (1) owner of the property, (2) environmental consultant, (3) surveyor, and (4) Project Sponsor's attorney to provide all the information required.

**SUBMIT FOR REVIEW PRIOR TO RECORDING**

The attorney for the Project Sponsor for the permittee responsible mitigation site, mitigation bank, or in-lieu fee project should request a review of the draft CE and exhibits, via email (preferred), or regular or express mail addressed as follows:

U.S. Army Corps of Engineers  
Office of Counsel  
100 W. Oglethorpe Avenue  
Savannah, Georgia 31401-3604

Tel: 912-652-6126 (Attorney)  
Tel: 912-652-5125 (Support Staff)

The draft CE, associated exhibits, and other required documents may be submitted via email (preferred), or regular or express mail to the Savannah District Office of Counsel at the address above. **Please be advised that Office of Counsel will not begin its review until all exhibits, required documents, and an attorney point of contact has been provided.**

If submitted electronically, please submit the draft CE in Microsoft Word format to allow the Office of Counsel to recommend any necessary revisions. **Please be advised that substantial deviations from the Model CE will not be permitted without prior coordination with and approval from the Office of Counsel.** Please submit required exhibits and other documents in Adobe PDF format. If submissions are too large to submit via email, arrangements can be made for an electronic file transfer.

In the request and draft document, please reference the U.S. Army Corps of Engineers permit number/banking instrument/in lieu fee project number. The number is set out on correspondence from the Regulatory Division and generally has 9 digits.

Provide the name, telephone number, email address, and mailing address of the attorney who is the point of contact for this draft document and the name, telephone number, email address, and mailing address for the environmental consultant. **Please be advised that a CE is a recordable instrument in which legal rights are secured, therefore the CE must be drafted by or under the supervision of an attorney licensed to practice law in the State of Georgia. Non-attorneys or non-Georgia licensed attorneys who draft and record a CE may be engaging in the unauthorized practice of law.**

**Do not execute and record the CE and exhibits until approved in writing by the Office of Counsel (this includes the surveys).** Office of Counsel will review and provide a written approval with information regarding recording. For questions regarding this document, call the Savannah District Office of Counsel at 912- 652-6126.

## LOCATION OF INSTRUCTIONS

Instructions for use with this Model CE **are in brackets and bolded** in the text or on separate instruction pages below. Enter data into the draft language where required. Follow instructions and then delete instructions no longer needed for draft text. See the list of exhibits required below.

## EXHIBITS REQUIRED

Please provide the following exhibits for the CE. Additional exhibits may be required based on the specific facts of the project. Please coordinate with the Regulatory Division to determine if inclusion of additional exhibits is necessary.

1. A platted survey showing metes and bounds of the boundary of the parcel/s subject to the CE prepared by a registered Georgia surveyor. By legend key, show approximate location of wetlands, streams and buffers located within the boundaries. Show existing structures such as roads and utility lines.

2. A legal description of the parcel or tract subject to the CE. If metes and bounds shown on survey are extensive, the legal description can reference the survey.

3. A copy of the signed permit, permit letter, the after-the-fact permit letter, settlement agreement, the letter approving of the in-lieu fee project, or the letter authorizing the Banking Instrument ("B.I."), along with the B.I. **The Grantor must be the owner of the property that will be subject to the CE. If the permittee or bank sponsor is not the owner of the property, please coordinate with the Corps Project Manager and Office of Counsel prior to submitting a draft CE for review.**

4. A baseline assessment report of the existing and/or proposed Conservation Functions and Services of the protected site as preservation, restoration, establishment and enhancement. This should be prepared by the Grantee.

5. A resolution and adoption by a governmental entity authorizing the placement (as the Grantor) or holding (as the Grantee) of a CE on the property as required by a permit or banking instrument.

6. The consent and subordination signed by the financial lender, if applicable.

### **Directions for Signature Page**

**(1) As required for Georgia real estate records, provide for signature(s) to be signed, sealed and delivered in the presence of (A) an unofficial witness and (B) a notary public affixing seal. Provide that the (Declarant) personally appeared before (the notary public), the undersigned witness, and notary makes oath that (he/she) saw the within named, sign the Conservation Easement, and that (he/she) with the other witness named above, witnessed the execution thereof. Type the name, the street address, city, state, and zip code, of the owner. Prepare a draft signature page but do not have it executed until the entire document and exhibits are approved.**

**(2) Prepare the signature page according to the legal authority of the Declarant to sign and state the capacity in which the person/s is signing and the entity for which it is signed. The document should be executed by the Owner(s)-Declarant(s). All holders of title to the property should sign. If owner is married, both spouses should sign. Type the full names(s) and title below the signature line. If the owner is an estate, then the authorized trustee or administrator should sign and provide authorization documents.**

**(3) If the owner is a corporation, provide a copy of the Secretary of State page from the Secretary of State website that shows that the corporation status is active, the address of the corporation, and provide a list of the corporate officers. Provide a Certificate of Corporate Resolutions and Authority authorizing the officers of the company, or any of them, to execute and record the Conservation Easement. This may be a short one-page document. The Declaration should be signed by the president and one other officer, or both.**

**(4) If signing for a partnership, church, or so forth, the document should be signed by the president or vice-president, a general partner, trustee or person who has authority to sign on behalf of the legal entity. Provide a Resolution and Adoption of the Conservation by the governing entity.**

**(5) If prior approval by resolution and adoption of a county commission, governing body of a municipality or other government entity is required, provide copies of the resolution and adoption documents. The County Commissioner or Chairman of the Board should sign on behalf of the government if so authorized.**

**DRAFT MODEL LANGUAGE BEGINS NEXT PAGE**

**CROSS REFERENCE TO:**

Deed Book \_\_\_\_, Pages \_\_\_\_, and  
Deed Book \_\_\_\_, Pages \_\_\_\_.  
\_\_\_\_\_ County, Georgia Records.

**THIS INSTRUMENT  
PREPARED BY AND TO BE  
RETURNED TO:**

**Insert Preparer Name and  
Address**

STATE OF GEORGIA  
COUNTY OF \_\_\_\_\_

**DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT (herein referred to as this "Conservation Easement") is made this \_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a Georgia limited liability company, his/her/their/its personal representatives, beneficiaries, heirs, successors and assigns, having an address at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (together the "Grantor"), in favor of \_\_\_\_\_, a Georgia **[SELECT: non-profit corporation/governmental entity]**, its successors and assigns, having an address at \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, the Grantor is sole owner in fee simple of certain real property in \_\_\_\_\_ County, Georgia, being recorded with the Clerk of the Superior Court of \_\_\_\_\_ County, Georgia, at Deed Book \_\_\_\_\_, Pages \_\_\_\_\_, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference, \_\_\_\_\_ more or less (the "Property" or "Protected Property") and

WHEREAS, the Property in its present state has not been developed and possesses significant open space, forested, watershed, wildlife, relatively-natural and relatively-undeveloped condition, (collectively the "Conservation Values"). In particular, the Conservation Values include those values described in full in the Mitigation Banking Instrument("MBI") for the **[INSERT name of bank]** a/k/a Action No. **[INSERT bank project number]**, which was established pursuant to § 404 of the Clean Water Act (33 U.S.C. § 1344) and § 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 401).

WHEREAS, said Conservation Values are of great importance to Grantor, the people of **[INSERT county name]** County, the people of the State of Georgia, and the public in general, and are worthy of preservation; and

WHEREAS, protection of the Property by conservation easement is legally enabled by the Georgia Uniform Conservation Easement Act, O.C.G.A. §§ 44-10-1, et seq.; and

WHEREAS, the protection of the Property in substantially its present state and/or the restoration of the Property through the implementation of the MBI will clearly enhance and preserve the Conservation Values; and

WHEREAS, the Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee and referred to as the "Baseline Documentation Report," which is incorporated herewith as **Exhibit "B,"** but is not recorded in full due to its length, which consists of a collection of reports, maps, photographs, and other documentation that both parties agree provide, collectively, an accurate representation of the Property at the time of this Conservation Easement, and is intended to serve as "Documentation" within the meaning of Treas. Reg. § 1.170A-14(g)(5)(i) and as an objective information baseline for monitoring compliance with the terms of this Conservation Easement; and

WHEREAS, Grantor intends to convey to Grantee the right to preserve and protect the Conservation Values of the Property, in perpetuity, in substantially its present state as existing at the time of the Conservation Easement and/or as permitted through the implementation of the MBI; and

WHEREAS, by this Conservation Easement, Grantor and Grantee mutually intend that the Property be preserved in perpetuity in substantially its present state as existing at the time of this Conservation Easement and/or as permitted through the implementation of the MBI, thereby furthering the Purpose of this Conservation Easement and the Conservation Values of the Property set forth herein, and yielding a significant public benefit; and

**[REMOVE section if not relevant to site]** WHEREAS, Grantee is a domestic non-profit, publicly-funded, tax-exempt, qualified organization under §§ 501(c)(3) and 170(b)(1)(A)(vi) of the Code. Grantee is registered with the Georgia Secretary of State. Grantee is authorized by the laws of the State of Georgia to accept, and is willing to accept, conservation easements for the purpose of preserving and protecting natural, scenic, educational, recreational, or open-space values of real property, and Grantee has the resources and commitment to preserve those values and to enforce the restrictions of this Conservation Easement. Grantee has adopted, by Resolution of its Board of Directors, the Land Trust Alliance's *Land Trust Standards and Practices*, published in 2017. Grantee is a "qualified organization" within the meaning of § 170(h)(3) of the Code, an "eligible donee" within the meaning of Treas. Reg. § 1.170A-14(c)(1), and a "Grantee" within the meaning of O.C.G.A. § 44-10-2(2); and

**[REMOVE section if not relevant to site]** WHEREAS, Grantee is a governmental entity that qualifies as a "holder" pursuant to the Georgia Uniform Conservation Easement Act, O.C.G.A. 44-10-1 et seq. and amendments thereto. Grantee is an entity of **[INSERT county or municipality]** that **[has/will]** pass a resolution adopting the terms and conditions set forth in this Conservation Easement; and

WHEREAS, Grantee agrees, by accepting this Conservation Easement, to honor the intentions of Grantor stated herein and to preserve and protect, in perpetuity, the Conservation Values of the Property for the benefit of this generation and the generations to come; and

WHEREAS, the Protected Property has been approved by the USACE for use as a mitigation site pursuant to the terms of the MBI, which is included as **Exhibit "C"**, though not

recorded in full herewith due to its length, a complete copy of which is on file at the offices of Grantee; and

WHEREAS, prior to the granting of this Deed of Conservation Easement, the Protected Property was encumbered via a certain "Declaration of Conservation Covenants and Restrictions," said document being recorded with the Clerk of the Superior Court of \_\_\_\_\_ County, Georgia, at Deed Book \_\_\_\_\_, Pages \_\_\_\_\_ (the "DCCR"). the Property remains subject to the restrictions set out in the DCCR, which is incorporated and made part of this Conservation Easement by reference and included herewith as **Exhibit "D,"** though not recorded in full due to their length, a complete copy of which is also available on file at the offices of the Grantee; and

**[REMOVE section when not applicable]** WHEREAS, **[INSERT Bank Sponsor]**, a \_\_\_\_\_, its successors and assigns, having an address at \_\_\_\_\_ (the "Bank Sponsor") is the Bank Sponsor for the **[INSERT Name]** Mitigation Bank and has the rights and obligations to carry out the responsibilities of the Bank Sponsor under the MBI and associated agreements with the USACE. Accordingly, **[INSERT Bank Sponsor]**, in its role as Bank Sponsor, reserves the right to access the entire Protected Property to perform mitigation work and monitoring under the MBI. **[INSERT Bank Sponsor]**, in its role as Bank Sponsor, joins in the granting of this Conservation Easement to evidence its intent and consent to grant this Conservation Easement over the Protected Property; to evidence its intent and consent to be subject to all the terms and conditions of this Conservation Easement; and to subordinate its interests in the Protected Property except as explicitly provided for herein; and

NOW, THEREFORE, Grantor, with no monetary consideration, but in consideration of the covenants, mutual agreements, conditions, and promises herein contained, as well as in consideration of contractual obligations and promises made by the Grantor to the United States Army Corps of Engineers under the terms of the MBI, does unconditionally and irrevocably hereby grant and convey unto Grantee, its successors and assigns, forever, a conservation easement as defined in the Georgia Uniform Conservation Easement Act, O.C.G.A. §§ 44-10-1 et seq. (without intending that the existence of this Conservation Easement be dependent on the continuing existence of such laws), in perpetuity, over the Property, of the nature and character and to the extent hereinafter set forth, including the right to preserve and protect the Conservation Values of the Property. Grantee, by its execution hereof, accepts the foregoing grant of the Conservation Easement, and the recordation of this Conservation Easement shall constitute a "recordation of the acceptance" by Grantee within the meaning of O.C.G.A. § 44-10-3(b). Upon the recordation hereof, Grantee shall be entitled to enforce the Conservation Easement pursuant to O.C.G.A. § 44-10-4.

#### **A. PURPOSE**

It is the Purpose of this Conservation Easement to assure that the Protected Property will be retained forever in its "natural condition" and that the Conservation Values of the Protected Property will be monitored and conserved. 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 Purpose of this Conservation Easement.

#### **B. DURATION**

**Successors and Assigns; Covenants, Etc. Run With Land.** The covenants, terms, conditions, and restrictions of this Indenture shall be binding upon, and shall inure the benefit of,

the parties hereto, including the Bank Sponsor, and their respective heirs, executors, administrators, personal representatives, successors, long-term steward (as established in the MBI) and assigns, and shall continue as an easement and servitude running with the Protected Property in perpetuity and enforceable against Grantor and all present and future owners, tenants, and other Grantees of interest in the Protected Property.

### **C. RIGHTS OF THE GRANTEE**

To accomplish the Purpose of this Conservation Easement, the following rights are conveyed to the Grantee:

1. **General.** The Grantee shall have the right to conserve and protect the Conservation Values of the Protected Property in perpetuity. The Grantee 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 Protected 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.** Grantee shall, upon notice to Grantor, have the right to enter the Protected Property for purposes of conducting periodic site visit inspections and to verify compliance with the Restrictions as set out herein. In addition, Grantee shall, at reasonable times and upon notice to Grantor, have the right to enter the Protected Property if the Grantee has reasonable cause to believe that a violation of this Conservation Easement is occurring or may have occurred, except in emergency cases where the Grantee reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Conservation Easement. Grantee may, with prior permission from the Grantor, conduct scientific or educational observations and studies, and take 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. RIGHTS OF USACE AND US ENVIRONMENTAL PROTECTION AGENCY**

The USACE, and/or the US Environmental Protection Agency, their assigned agents and contractors, shall at reasonable times and upon notice to the Grantor, have the right to enter the Protected Property to inspect the Property and ascertain compliance with the requirements of the DCCR executed pursuant to the terms of the MBI.

### **E. PROHIBITED AND RESTRICTED ACTIVITIES**

Any activity upon, or use of, the Protected Property inconsistent with the Purpose of this Conservation Easement is prohibited, except as necessary (1) to carry out wetland/stream and/or buffer restoration, enhancement, and/or establishment in keeping with the mitigation plan set forth in the MBI as approved by the USACE; or (2) to fence the Protected Property, with the express written approval of the USACE, to keep out livestock, domestic animals, trespassers, or for protection or enhancement of the Property; or (3) to, with the express written approval of the USACE, carry out management and maintenance of the Property, to include routine vegetation management activities associated with the removal of non-native vegetation that is damaging or degrading to the overall wetland, stream, riparian, and upland buffer. Routine vegetation



management activities associated with the removal of non-native vegetation may include, but are not limited to, herbicide application and use by the narrowest spectrum, least persistent material for the target species, mowing, clearing, bush hogging, and burning. Except as otherwise specifically set forth above, uses incompatible with the conservation values of the Protected Property and prohibited by this conservation easement shall include, but shall not be limited to the following:

1. Clearing, removing, burning, mowing, or the cutting of trees or other vegetation;
2. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;
3. Placement of refuse, wastes, sewage, dredged spoil, solid waste, toxic and hazardous wastes, incinerator residue, garbage, sewage sludge, oil or oil products and wastes, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, vehicle bodies or parts, junk, or agricultural waste on the Protected Property;
4. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;
5. Diverting or affecting the natural flow of surface or underground waters within, or out of the Protected Property; manipulating or altering any natural water course, body of water or water circulation and any activities or uses detrimental to water quality;
6. Mining, drilling, hydraulic fracturing, dredging, or removing from the Protected Property soil, loam, peat, gravel, oil, gas or other mineral resources or natural deposit;
7. Burning, systematically removing or cutting timber, or otherwise destroying any vegetation. Upon approval from the USACE, selective pruning or removal of unsafe trees or exotic non-native vegetation may occur in accordance with current scientific best management practices as set out by the U.S. Forest Service or the Georgia Forestry Commission;
8. Spraying with biocides or use of herbicides or pollutants that violate water quality standards;
9. Introducing non-native species on the Protected Property, altering the natural state of the wetlands or streams or causing erosion or sedimentation;
10. Grazing or use by domesticated animals;
11. Use of motorized or mechanized vehicles, including, but no limited to, off-road vehicles, is prohibited, except on "existing roads" as identified in the Man-Made Features Map of the Baseline Documentation Report, for the sole purpose of monitoring or maintaining the Property.
12. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, temporary signs indicating the Property is for sale, signs identifying the trees, vegetation, wetlands, or conservation values of the Property and/or signs identifying the owner of the Property.

## **F. GRANTOR'S RESERVED RIGHTS**

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, and his personal representatives, beneficiaries, heirs, successors and assigns, the following Reserved Rights, which may be exercised upon providing prior written notice to USACE and Grantee, except where expressly provided otherwise:

1. **Conservation and Wildlife Management Plans:** Upon notice to USACE and Grantee, conservation and wildlife habitat management plans may be implemented by the Georgia Department of Natural Resources Wildlife Resources Division, U.S. Forest Service, conservation land trusts holding conservation easements, or other conservation management entities where the management does not result in any impacts to the wetlands/streams/riparian corridors and its buffers, or to property protected for its historical cultural and/or archeological value, and where the proposal would enhance the management of the Protected Property for its conservation use.
2. **Improvements:** Grantor may construct and/or maintain, with the express written approval of the USACE and notice to the Grantee: (1) narrow pedestrian walking trails in the uplands or upland buffer using pervious materials (not to exceed two feet in tread width and three feet in total width), and (2) minimal structures (i.e., benches and boardwalks) for the observation of wildlife and wetland/stream ecology.
3. **Recreational Rights.** Grantor reserves the right to engage in the following low-impact recreational activities: (1) hunting, (2) fishing, and (3) any other passive recreational pedestrian use such as hiking, wildlife observation, and wildlife photography. Additional low impact recreational activities may be conducted with the written approval of the USACE and notice to Grantee, so long as such activities are not inconsistent with the Conservation Values and/or the terms of the MBI and the DCCR.

These recreational rights shall specifically include:

- The right to install and utilize temporary hunting stands within the uplands of the Protected Property. To be considered a temporary stand, the stand must be of a size and weight that it could reasonably be expected to be moved in its fully assembled form by two adult persons (i.e., ladder stands, hang-on stands, self-climbing stands, and ground blinds).
- **[INSERT any other existing permanent structures used for recreation here that are permitted under the MBI]**

No written notice will be required from the Grantor to the Grantee or the USACE to exercise these recreational rights.

4. **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 Conservation Easement, the preservation of the Protected Property substantially in its natural condition, and the protection of the Protected Property's environmental systems. No notice is required for such acts or uses which do not create a risk of adverse impacts to the Conservation Values set forth herein.

5. **[REMOVE section if not needed for the site] Recreational Leases and Recreational Licenses.** Grantor reserves the right to lease and/or license the Property for low-impact

recreational activities as set forth in Section F.3. ("Recreational Rights") above, subject to the following conditions:

- Grantor shall remain responsible under the terms of this Conservation Easement for the actions of Recreational Lessees, Recreational Licensees and/or their invitees and guests.
- Prior to entering any Recreational Lease or Recreational License, Grantor shall provide the prospective Recreational Lessee or Recreational Licensee with a copy of the recorded Conservation Easement as well as a Map of the Property in digital and paper form. The Map shall depict "Existing Roads" and "Existing Trails" and shall demarcate all protected areas within the Property.
- All Recreational Leases and Recreational Licenses must be in writing, must be signed by both the Recreational Lessee or Recreational Licensee and the Grantor, and must incorporate the following language in substantially similar form:

*"Recreational Lessee/Recreational Licensee acknowledges a portion of the leased/licensed property is subject to the terms of a certain "Deed of Conservation Easement" entered between Landowner and the Georgia-Alabama Land Trust, Inc. The land subject to the Deed of Conservation Easement is hereinafter referred to as the "Conservation Easement Area." Recreational Lessee/Recreational Licensee has reviewed the Deed of Conservation Easement and agrees to abide by all terms and conditions set forth therein. In particular, Recreational Lessee/Recreational Licensee acknowledges that the following activities within the Conservation Easement Area are strictly prohibited:*

- The use of any motorized or mechanized vehicles within the Conservation Easement Area by Recreational Lessee/Recreational Licensee and/or its invitees is strictly prohibited, except on "Existing Roads" identified on the Map provided to Recreational Lessee/Recreational Licensee by Landowner for the purpose of monitoring or maintaining the Property.*
- The removal or disturbance of any vegetation within the Conservation Easement Area by a Recreational Lessee/Recreational Licensee and/or its invitees or guests for any purpose, including for the purposes of cultivation of wildlife openings, the clearing of shooting lanes, or removal of downed game, is strictly prohibited.*
- With the exception of temporary hunting or wildlife observation stands located within upland areas as permitted under Section F.3. of the Conservation Easement, the placement or utilization of any hunting or wildlife observation stands within the Conservation Easement Area by Recreational Lessee/Recreational Licensee and/or its invitees or guests is strictly prohibited.*

*Recreational Lessee/Recreational Licensee acknowledges that any violation of the terms of the Deed of Conservation Easement by Recreational Lessee/Recreational Licensee and/or its invitees may lead to the immediate termination of the Recreational Lease/Recreational License by the Grantor as well as civil liability for Recreational Lessee/Recreational Licensee.”*

- Copies of any Recreational Lease or Recreational License must be provided to both Grantee and the USACE within seven (7) days of execution.

Upon discovery of any violation of the terms of the Conservation Easement by a Recreational Lessee, Recreational Licensee, and/or their invitees or guests, Grantee may demand the immediate termination of the Recreational Lease or Recreational License in question.

The provisions of this Section (“Recreational Leases and Recreational Licenses”) govern arrangements where Grantor allows outside part(ies) to access the Property for recreational purposes in exchange for financial consideration and shall not apply to arrangements where the Grantor allows its invited guests to access the Property for recreational purposes without financial consideration. Likewise, invited guests of Grantor who do not provide Grantor with any financial consideration in exchange for the right to access the Property shall not be treated as a “Recreational Lessee” or a “Recreational Licensee” under this Section (“Recreational Leases and Recreational Licenses”).

6. **Notice and Approval of Reserved Rights:** Notices to Grantee shall be submitted by Grantor and/or Bank Sponsor at least 30 days prior to implementing any reserved right requiring Grantee’s approval. Grantee shall respond to Grantor’s and/or Bank Sponsor’s requests for approval within 30 days of receipt of notice. Grantor and/or Bank Sponsor shall be responsible for seeking any required USACE approval per the USACE mandated procedures. In the instance where USACE approval is required prior to implementing a given reserved right, any approval issued by Grantee shall be conditional on the separate approval of said reserved right by the USACE.

Grantor shall provide written notice to the USACE, Grantee, and Bank Sponsor within three (3) business days of receipt of notice of any condemnation action affecting the Protected Property.

## **G. ENFORCEMENT**

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

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 Grantee 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 Protected Property to the condition that existed prior to any such injury.

3. **Emergency Enforcement.** If, however, the Grantee, 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, Grantee may pursue remedies under this Conservation Easement without prior notice to Grantor, or waiting for the period provided for cure to expire.

4. **Damages.** The Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation 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 Grantee's 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 Not a Waiver.** Any forbearance to exercise rights under this Conservation 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 Conservation Easement or of any of the Grantee's rights under this Conservation 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. **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.

9. **Events Beyond Grantor's Control.** Nothing herein shall be construed to authorize the Grantee 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, or similar causes. In the event of any changes to the Protected Property caused by an act of God or a circumstance beyond the Grantor's control, the Grantor shall notify the Grantee and the USACE immediately upon discovery such an event. 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 Grantor shall not be relieved of its obligations under this document. The acts of Grantor's guests, invitees, lessees, and licensees who have been authorized to enter the Property by Grantor shall not constitute an "event beyond Grantor's control" for the purposes of this Section

("Events Beyond Grantor's Control").

## **H. FUNDING FOR EASEMENT DEFENSE**

Grantor has provided funds to Grantee for the purposes of stewardship **[REMOVE "stewardship" when not applicable]**, monitoring, management and legal defense, which Grantee shall deposit in a fund separate from the Grantee's operational funds or keep as a line item separate from other budgetary categories, for the purpose of supporting Grantor's enforcement of the terms of this Conservation Easement. Said easement monitoring and defense funding is separate from any monies allocated for the long-term management or maintenance of the Property, and this Conservation Easement does not create any duty or obligation in the Grantee to fund, support, or partake in the long-term management or maintenance of the Property.

Grantee will monitor the Property onsite, in person at least every two (2) calendar years, and via remote sensing on an annual basis.

## **I. GENERAL PROVISIONS**

1. **Extinguishment of Development and Subdivision Rights.** Grantor and Grantee agree that the Property shall not be divided, subdivided, or partitioned, and any transfer of the Property must include all comprising tracts. Grantor and Grantee agree that all development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property are terminated and extinguished, and shall not be used on or transferred to any other property or used for the purpose of calculating permissible lot yield of the Protected Property or any other property. Therefore, the Protected Property shall be held together as a single and undivided property.

2. **[REMOVE section if grantor is a governmental entity] Obligations of Ownership; Taxes; Costs and Liabilities; Marking the Protected Property.** 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. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or **[ONLY INCLUDE the following clause if there are no stewardship responsibilities:]** 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.

3. **[REMOVE if grantor is a governmental entity] Hold Harmless.** Grantor shall hold harmless, indemnify, and defend the Grantee 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 attorney's fees arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, or the existence or administration of this Conservation Easement.

4. **Extinguishment.** If circumstances arise in the future such as to render the Purpose of this Conservation Easement impossible to accomplish, the Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceeding in a court of competent jurisdiction pursuant to O.C.G.A. § 44-10-4(c).

5. **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.

6. **No Extinguishment Through Merger.** Grantor and Grantee agree that should the Grantee, or any successor in interest to the Grantee, 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 Grantee interest in the Conservation Easement of record to another Grantee in conformity with the requirements of a "qualified organization" under § 170(h) of the Code or a Federal, state or local governmental agency or other entity, and in compliance with O.C.G.A. §§ 44-10-2, 44-10-3, and 44-10-4.

7. **Condemnation; Eminent Domain.** It is the intent of this Conservation Easement that the aquatic resources it protects shall not be altered or impacted by eminent domain. If all or any part of the Protected 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 Conservation Easement, in whole or in part, Grantor, Grantee, and Bank Sponsor (if applicable) shall act jointly to recover the full value of their interests in the Protected Property subject to the taking and all direct, consequential, or incidental damages resulting there from. This Conservation Easement constitutes a real property interest immediately vested in Grantee. In the event that all or a portion of this Protected Property is sold, exchanged, or involuntarily converted following the extinguishment of the Conservation Easement or the exercise of eminent domain, subject to any Internal Revenue Code, Treasury Regulations, or other applicable non-profit laws or regulations regarding the fair market value of the interest held by the Grantee, then Grantor, Grantee, and Bank Sponsor (if applicable) shall be entitled to their relative interests as determined by the court of competent jurisdiction over the condemnation action taking into account, among relevant factors, the value of the Conservation Easement, the value of the encumbered property, and remaining mitigation credit potential. Grantee shall use its share of the proceeds in a manner consistent with the Purposes of this Conservation Easement.

If any or part of the protected property is taken by exercise of the power of eminent domain, so as to terminate this Conservation Easement, in whole or in part, the USACE shall be given 60-day notification prior to the commencement of any condemnation proceeding for the purpose of providing the condemnor and the court authorizing the action, with the value and cost of the consequential damages or the costs of replacement in kind of the ecological units and the conservation functions, services and values of Clean Water Act jurisdictional or non-jurisdictional mitigation on the Property. Subject to approval by the USACE, options for replacement of consequential environmental impacts due to eminent domain are governed by the Clean Water Act, Section 404, and/or the Rivers and Harbors Act of 1899, Section

10, and their implementing regulations. Options for payment of consequential damages to waters of the United States impacted by the eminent domain taking may include: (1) re-recordation of the USACE model Conservation Easement signed by the new owner, thereby preserving the existing waters of the U.S and their buffers on the site without impact; (2) payment of funds sufficient for the acquisition and protection of alternative real property in the same hydrologic watershed providing equivalent conservation functions, services and values of wetlands, streams, creeks, shorelines, other waters of the U.S. and their buffers; or (3) if available, the option to fund the purchase of conservation mitigation credits from an authorized wetland/stream mitigation bank sufficient to replace the conservation mitigation functions, services and values of the wetlands, streams, creeks, shorelines, and other waters of the U.S. and their buffers; (4) payment of funds to an in-lieu fee mitigation wetlands/streams trust account approved by the USACE in an amount sufficient to purchase and protect alternative real property in the same hydrologic watershed that would provide the equivalent mitigation conservation functions, services and values, as the property impacted by eminent domain; or (5) any other alternative consequential damages aquatic conservation mitigation as may be approved by the USACE, in compliance with the regulations and requirements. Failure of the proponent to provide consequential damages through alternative mitigation due to impact(s) to aquatic resources protected under the Clean Water Act associated with eminent domain shall be referred to the U.S. Department of Justice for legal action.

Nothing contained within this Section shall be interpreted to limit the obligation of a condemnor to provide alternative mitigation for consequential damages to the waters of the United States resulting from the exercise of the power of eminent domain or a purchase in-lieu of condemnation, and any such obligation of a condemnor to provide alternative mitigation as set forth in Section 14 of the DCCR is independent of and separate from the obligation of a condemnor to provide just compensation to Grantor, Grantee, and Bank Sponsor (if applicable) in relation to their exercise of the power of eminent domain.

Grantor shall provide written notice to the USACE, Grantee, and Bank Sponsor within three (3) business days of receipt of notice of any condemnation action affecting the Protected Property.

8. **Assignment.** This Conservation Easement is transferable only with written consent of the Grantor, which consent shall not be unreasonably withheld. Grantee may assign its rights and obligations under this Conservation Easement only to an organization that is a "qualified organization" at the time of the transfer under § 170(h) of the Code or a Federal, state or local governmental agency or other entity, and the applicable regulations promulgated thereunder, and also authorized to acquire, hold and enforce conservation easements under O.C.G.A. §§ 44-10-2, 44-10-3, and 44-10-4. As a condition precedent to any such transfer, Grantee and its successors and assigns shall require a specific written assumption of, and agreement to be bound by, this Conservation Easement from each transferee hereunder, which assumption shall state that the Purposes that the Conservation Easement is intended to advance shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to Grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor.

9. **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 to the USACE a minimum of (60) sixty days prior to the date of transfer and to the Grantee 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.

10. **Failure of Grantee.** If at any time Grantee ceases to be a qualified Grantee and if, within a reasonable period of time after the occurrence of such an event, the Grantee fails to make an assignment pursuant to Section 1.8., then the Grantee's interest shall become vested in another qualified Grantee solely in accordance with an appropriate proceeding in a court of competent jurisdiction.

11. **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 Section):

To Grantor:

To Grantee:

To Bank Sponsor:

To USACE:                   United States Army Corps of Engineers  
                                  Attn: Office of Counsel – Savannah District  
                                  100 West Oglethorpe Avenue  
                                  Savannah, GA 31401

12. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of [INSERT county], Georgia, and shall re-record it as may be required to preserve this Conservation Easement. If the name of either or both of the mitigation projects changes, this Conservation Easement may be re-recorded to reflect the new/changed name(s).

13. **Amendment.** This Conservation Easement may be amended, but only in writing signed by all parties hereto, and with prior written approval of the USACE, provided such amendment does not affect the perpetual effect of the Conservation Easement with regard to the Protected Property or otherwise affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the conservation purposes of this Conservation Easement.

14. **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Georgia.

15. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to affect the Purpose of this Conservation Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

16. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations,

understandings, or agreements, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an Amendment that complies with Section I.13. hereof.

17. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

18. **Joint Obligation.** The obligations imposed by this Conservation Easement upon Grantor shall be joint and several.

19. **Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest pursuant to the terms of Sections I.7, I.8., I.9. and/or I.10. hereof, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

20. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

21. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

22. **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. All financial liens or financial encumbrances existing as of the date of this Conservation Easement have been subordinated via the "Consent, Non-Disturbance, and Subordination Agreement to Deed of Conservation Easement" attached hereto as **Exhibit "E."** By executing this Deed of Conservation Easement, Grantor and Grantee hereby covenant and agree to the terms of the "Consent, Non-Disturbance, and Subordination Agreement to Deed of Conservation Easement" attached as **Exhibit "E."** The 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 Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

23. **Hazardous Substances, Toxic Waste.** Grantor covenants and represents that, to the best of its knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are no underground storage tanks located on the Protected Property. If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor shall take all steps reasonably necessary and as required by law to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefore. Nothing in this Conservation

Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability to Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and any corresponding state statute.

24. **Baseline Documentation Report, Exhibit B.** In order to establish a present, natural condition of the Protected Property and its Conservation Values so as to be able to properly monitor, Grantee has prepared the Baseline Documentation Report prepared [INSERT date]. Grantee acknowledges, by its acceptance of this Conservation Easement, that Grantor's historical and current uses of the Protected Property as documented in the Baseline Documentation Report are compatible with the Purpose of this Conservation Easement and that the condition of the Protected Property. Grantor and Grantee acknowledge and agree that, in the event that a controversy arises with respect to the nature and extent of Grantor's historical and present use or the physical condition of the Protected Property subject to this Conservation Easement, the parties may look beyond the Baseline Documentation Report, if necessary, to other relevant or material documents, surveys, reports, and other evidence showing conditions at the time of execution of this Conservation Easement to assist in the resolution of the controversy. Any characterization of the terms of this Conservation Easement contained in the Baseline Documentation Report shall not be interpreted so as to alter, amend, or otherwise modify this Conservation Easement. In any conflict or inconsistency between the terms of this Conservation Easement and the Baseline Documentation Report, the terms of this Conservation Easement shall prevail.

[Remainder of this page left intentionally blank; signatures begin on the following page.]

TO HAVE AND TO HOLD this Conservation Easement unto Grantee and its successors and assigns, together with all and singular the rights, members, and appurtenances thereof to the same being, belonging or in anywise appertaining, to the only proper use and benefit of Grantee forever. The covenants agreed to, and the terms, conditions, restrictions, and purposes imposed as aforesaid shall not only be binding upon Grantor but also his/her/their/its personal representatives, heirs, executors, administrators, successors and assigns, and shall continue as an easement and servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor and Grantee have executed this document the day and year written below.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:

**[GRANTOR NAME]**

a \_\_\_\_\_

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

[Type Name Here]

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Signed, sealed, and delivered  
in the presence of:

\_\_\_\_\_  
Witness Date

\_\_\_\_\_  
Notary Public Date

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(NOTARY SEAL)

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTEE:

**[INSERT land trust name & description]**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Type Name Here]  
Its: \_\_\_\_\_

Signed, sealed, and delivered  
in the presence of:

\_\_\_\_\_  
Witness Date \_\_\_\_\_

\_\_\_\_\_  
Notary Public Date \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(NOTARY SEAL)

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BANK SPONSOR:

**[INSERT sponsor name]**

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

\_\_\_\_\_

[Type Name Here]

Its: \_\_\_\_\_

Signed, sealed, and delivered  
in the presence of:

\_\_\_\_\_  
Witness Date \_\_\_\_\_

\_\_\_\_\_  
Notary Public Date \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(NOTARY SEAL)

## **SCHEDULE OF EXHIBITS**

**[Add or remove exhibits as needed/appropriate]**

EXHIBIT A—LEGAL DESCRIPTION OF PROTECTED PROPERTY SUBJECT TO  
CONSERVATION EASEMENT

EXHIBIT B—BASELINE DOCUMENTATION REPORT—An Exhibit hereto on File at Grantee's  
office but not recorded in full herewith due to length.

EXHIBIT C—**[INSERT BANK NAME]** MITIGATION BANKING INSTRUMENT—An Exhibit  
hereto on File at Grantee's office but not recorded herewith due to length.

EXHIBIT D—DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS — An  
Exhibit hereto on File at Grantee's office but not recorded herewith due to length; recorded on  
Pages \_\_\_\_ in Deed Book \_\_\_\_\_, **[INSERT County]**, Georgia, Records.

EXHIBIT E— CONSENT, NON-DISTURBANCE, AND SUBORDINATION AGREEMENT TO  
DEED OF CONSERVATION EASEMENT

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROTECTED PROPERTY SUBJECT TO  
CONSERVATION EASEMENT**



**EXHIBIT "B"**

**BASELINE DOCUMENTATION REPORT**

[An Exhibit hereto on File at Grantee's office but not recorded in full herewith due to length]

**EXHIBIT "C"**

**[INSERT BANK NAME] MITIGATION BANKING INSTRUMENT**

[Incorporated herein completely by this reference for all purposes, but not recorded herewith in full due to its length, a complete copy of which is on file at the offices of Grantee]

**EXHIBIT "D"**

**DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS**

[Incorporated herein completely by this reference for all purposes, but not recorded herewith in full due to its length, a complete copy of which is on file at the offices of Grantee and recorded at Book \_\_\_\_\_, Pages \_\_\_\_\_, **[INSERT County]**, Georgia Records]

**Exhibit “E”**

**CONSENT, NON-DISTURBANCE, AND SUBORDINATION AGREEMENT TO DEED OF  
CONSERVATION EASEMENT (“AGREEMENT”)**