



DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
100 WEST OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

March 7, 2024

Regulatory Division

PUBLIC NOTICE
Savannah District

The U.S. Army Corps of Engineers, Savannah District, Regulatory Division (Corps), announces the publication of the revised Model Declaration of Conservation Covenants and Restrictions (Model DCCR), Property Assessment and Warranty (PAW), revised Amendments to Declaration of Conservation Covenants and Restrictions (Amendments to DCCRs), revised Qualified Conservation Easement Holder Standards (CE Holder Standards), and Model Conservation Easement (Model CE), all dated March 7, 2024. The revised Model DCCR, PAW, and revised Amendments to DCCRs have been developed by the Corps for the purpose of recording and amending DCCRs on proposed and existing stream and wetland compensatory mitigation sites pursuant to Section 404 of the Clean Water Act, as amended (33 United States Code 1344). The revised CE Holder Standards and Model CE have been developed for legal protection of compensatory mitigation sites in addition to the recording of DCCRs, as determined appropriate by the Corps. This public notice is being distributed to all interested stakeholders as notification of the implementation of the revised guidance, and to solicit additional public input for program consideration.

The revised Model DCCR, PAW, and Amendments to DCCRs are effective as of the date of this public notice. As of the effective date, the revised Model DCCR and Amendments to DCCRs will supersede the Corps' existing versions of the respective documents, dated March 30, 2023, and apply to all regulatory actions that propose to establish a new mitigation project (e.g., mitigation banks, in-lieu-fee mitigation projects, and permittee-responsible mitigation sites) that will require a DCCR as a component of the legal property protection of the mitigation site, or proposed modifications to an existing DCCR for an approved mitigation project.

The revised CE Holder Standards and Model CE will be initially implemented for a minimum of one year prior to finalization. The initial effective date for these revisions is 30 days from the date of this public notice. During this initial implementation period, the Corps will accept public comments on the revised CE Holder Standards and Model CE.

As of the effective date, the revised CE Holder Standards will supersede the Savannah District's existing version of the respective document, dated March 2010, and the revised CE Holder Standards, and Model CE will apply to all regulatory actions that

propose to establish a new or modified mitigation project (e.g., mitigation banks, in-lieu-fee mitigation projects, and permittee-responsible mitigation sites) that will require a CE as a component of the legal property protection of the mitigation site.

Other Evaluation Factors: The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Native American tribes, and other interested parties to consider and evaluate the impacts of this revised District compensatory mitigation guidance. Any comments received will be considered by the Corps to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors.

Comment Period: Anyone wishing to comment on this public notice should submit written comments to: Commander, U.S. Army Corps of Engineers, Savannah District, Regulatory Division, Attention: Mr. Justin A. Hammonds, P.O. Box 528, Buford, Georgia 30515, no later than 13 months (April 6, 2025) from the date of this notice. Comments may also be submitted electronically to justin.a.hammonds@usace.army.mil. Please refer to the Qualified CE Holder Standards and Model CE (dated March 7, 2024) in your comments. All supporting documents associated with the Model Declaration of Conservation Covenants and Restrictions (Model DCCR), Property Assessment and Warranty (PAW), and revised Amendments to Declaration of Conservation Covenants and Restrictions (Amendments to DCCRs), Qualified Conservation Easements Holder Standards (CE Holder Standards), and Model Conservation Easement (Model CE) are available at the following link to the Savannah District's Regulatory In-Lieu Fee and Banking Information Tracking System (RIBITS) webpage: https://ribits.ops.usace.army.mil/ords/f?p=107:27:981797155701::NO::P27_BUTTON_KEY:10.

If you have any further questions concerning this public notice, please contact Mr. Justin A. Hammonds, Chief, Special Projects Team at (678) 804-5227, or via email at justin.a.hammonds@usace.army.mil.

Enclosures

1. Model Declaration of Conservation Covenants and Restrictions
2. Property Assessment and Warranty
3. Amendments to Declaration of Conservation Covenants and Restrictions
4. Qualified Conservation Easements Holder Standards
5. Model Conservation Easement

March 7, 2024

U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT

MODEL DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS

The following “Model Declaration of Conservation Covenants and Restrictions” (“Declaration” or “DCCR”) document is provided for drafting purposes. Please check the Savannah District, Regulatory Division website to view and access the most current draft Declaration 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) Declaration of Conservation Covenants and Restrictions and (2) Amendments to the Declaration of Conservation Covenants and Restrictions. The website is updated periodically.

Do not rely on out-of-date hard copies of previous draft models 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 unless recorded instruments are subordinated to the Declaration of Conservation Covenants and Restrictions and do not conflict with its terms.

Consult with the (1) owner of the property, (2) the environmental consultant, and (3) the surveyor, to provide all the information required.

SUBMIT FOR REVIEW PRIOR TO RECORDING

The attorney for the permittee or the mitigation bank or in-lieu fee project sponsor should request a review of the draft Declaration of Conservation Covenants and Restrictions 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 Declaration of Conservation Covenants and Restrictions, associated exhibits, and other required documents may be submitted via email (preferred) 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 Declaration in Microsoft Word format to allow the Office of Counsel to recommend any necessary revisions. **Please be advised that substantial deviations from the model Declaration 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 by calling the Savannah District Office of Counsel.

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 since a Declaration is a recordable instrument in which legal rights are secured, the Declaration 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 Declarations may be engaging in the unauthorized practice of law.**

Do not execute and record the Declaration 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 draft Declaration **are in bold type** 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

1. A platted survey showing metes and bounds of the boundary of the parcel/s subject to the Declaration 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. See instructions in text. See instruction page for surveyors, infra.

2. A legal description of the parcel or tract subject to the Declaration. 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 Declarant must be the owner of the property that will be subject to the Declaration. 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 Declaration for review.**

4. A one-page summary 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 environmental consultant. See one-page instructions and guidance for Exhibit C, infra.

5. A resolution and adoption by a corporation or governmental entity authorizing the placement of a Declaration of Conservation Covenants and Restrictions on the property as required by a permit or banking instrument.

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

7. Additional exhibits may be required based on the particular facts of each permit or project.

DOCUMENTS TO BE FORWARDED FOR REVIEW ONLY

In addition to the required exhibits above, the Office of Counsel requires the following documents in order to fully review the draft Declaration of Conservation Covenants and Restrictions.

1. Following a title search, provide a copy of the **deed of title** showing the owner of the property or, in the alternative, a court order with citation, style of the case, forum, date and court assigned number showing the title holder. Title insurance is not required.

2. A complete **Property Warranty and Assessment**, a template and instructions for which can be found on Savannah District’s Regulatory Fee and Banking Information Tracking System (RIBITS) website: https://ribits.ops.usace.army.mil/ords/f?p=107:27:981797155701::NO::P27_BUTTON_KEY:10. Attach copies of all **recorded easements** or, if numerous, a list of easement

holders and the nature of the easement with citation of recorded location. Note, only those easements or rights-of-way that go on or across or otherwise encumber the parcel/s subject to the Declaration need be shown on the survey. If there are third party holders of **mineral or timber** rights, the conservation property will not be approved for use as mitigation.

3. **Drawing of developmental design**, if any, for purposes of showing that property subject to the Declaration is not part of any residential, commercial or other subdivided lots but is an open and common area or a separate parcel. Note that **no tracts of land or lots may be sold** from a planned residential or commercial development until such time as the Declaration is recorded such that the Declaration will be in the chain of title for all subsequent owners of lots in the development.

4. Provide county, state, and/or federal **land conservation use documents** or **conservation easements** that pertain to the property, if any. State if the property is a public park, greenway or is protected statutorily for its conservation land use.

5. Obtain a copy of the **mitigation plan** or a copy of the **banking instrument** from the environmental consultant. "Mitigation" means the methodology of restoration, enhancement, establishment and preservation of wetlands, streams, buffers and is calculated using a credit system. In permits, the mitigation requirement may be set out in the permit itself.

6. A copy of **Deeds to Secure the Debt**, any liens of record, or leases, if any.

7. Copy of **Secretary of State listing of the corporation** if owner is a corporation. This may be printed from the Secretary of State website. Please provide a list of the corporate officers and their mailing addresses. Provide a copy of a certificate of corporate resolution, authority and adoption of the Declaration by the corporation with signature by the corporate officer(s) authorized to sign the Declaration.

8. If Declarant is a **governmental body** (county commission, water authority or city council) provide a copy of a resolution and adoption of the Declaration by the governing body.

COMPLETION OF DECLARATION REQUIREMENT

Once approved and recorded, the recorded Declaration of Conservation Covenants and Restrictions will be returned to the attorney listed on the top of the first page of the Declaration. A copy of the recorded document should be forwarded to Savannah District Office of Counsel. Upon receipt by the Savannah District Office of Counsel of a copy of the properly executed and recorded Declaration of Conservation Covenants and Restrictions, showing book and page numbers of its recorded location, the restrictive covenant requirement of the permit action, banking instrument or

settlement agreement will be complete. If not forwarded, then the permit holder may be out of compliance with the permit action.

DRAFT MODEL LANGUAGE BEGINS NEXT PAGE

(Leave 2" space for court clerk to stamp)

Return to (Name of Attorney), Esq. (Address)

STATE OF GEORGIA
COUNTY OF _____

Cross reference to that certain ___ (deed) _____ dated _____ and recorded in Deed Book _____, Pages _____ (Name of County) County Records. Enter the Grantor/Grantee recorded deed(s) relevant to place this document in the chain of title.

DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS

THIS DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS (this "Declaration") is hereby made by _____ (Insert the name(s) of the owner(s) of the property as shown on the deed of title) (further describe the owners, i.e., a Georgia limited liability company, a governmental entity, or other legal entity) the undersigned "Declarant." Declarant is the owner in fee simple of a certain tract or parcel of real property lying in ___ G.M.D, (County), Georgia. This tract of land was conveyed on (date) from (Grantor to Grantee) recorded in Deed Book ___, Page ___, (_____) County Records.). Declarant comes now and, for good and valuable consideration, declares conservation use restrictions on (if less than all the property cross-referenced above as having been conveyed by Grantor to Grantee, then state, "a portion of") the property hereinafter described. A legal description of the specific parcel or parcels of Property subject to this Declaration is more particularly described in Exhibit "A" hereto attached and made a part hereof. The Declaration hereinafter stated shall apply to Property described in Exhibit "A" and is by reference, incorporated herein for a description and for all other legal purposes.

Exhibit A is a legal description of each parcel subject to the Declaration. It is generally a portion of some larger parcel(s). The permit, mitigation bank, or mitigation plan should be reviewed with the environmental consultant and/or owner to determine the specific property to be surveyed.

If the metes and bounds on the survey are extensive, then the legal description can reference the platted survey. For example, the legal description can state, "All that tract or parcel of land situate, lying and being in the ___ District, G.M., ___ County, Georgia, and being shown as ___ acres +/- on a plat entitled _____, dated _____, prepared by _____, GRLS # _____, recorded _____ in Plat Book ___, Page ___, in the Office of the Clerk of the Superior Court of ___ County, Georgia.

PREMISES

WHEREAS, Declarant (select one: (1) was issued a permit, dated _____, (2) was issued a permit letter, dated _____, (3) was authorized by that certain letter dated _____ to implement a Banking Instrument, (4) was subject to an enforcement action, (5) has entered into an agreement with _____ ("Bank Sponsor") to establish a mitigation bank on the property authorized (6) was authorized by that certain letter dated _____ to construct an in-lieu fee project by the U.S. Army Corps of Engineers ("USACE") Action Number (enter permit number, banking instrument number, enforcement action number) pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344), and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 401), under the administrative regulatory authority of the USACE Savannah District, Regulatory Division, setting forth authorization for certain dredge and/or discharge of fill activities in waters of the United States, including wetlands and streams; and,

Note

The Declarant should be both the permit holder ("permittee") and/or the sponsor of the mitigation bank ("bank sponsor") and/or the sponsor of the in-lieu fee project and the owner of the mitigation property. If the person or entity to whom the permit/banking instrument is issued, is NOT the owner of the land subject to the Declaration, or does not intend to acquire fee title to the land, please coordinate with the Savannah District Corps of Engineers Project Manager and Office of Counsel in advance of submitting a draft Declaration. The owner may contract with an agent or sponsor to manage the bank or in-lieu fee site. If that is the case, it should be so stated.

If the owner is a subsidiary of a corporation, a holding company or a real estate management company, and the permittee is a parent corporation--but the two legal entities have the same managing partners or corporate officers, then draft a paragraph explaining the relationship between the two entities and list the names of the president and one other officer that are common to both. The president and one other officer may sign the declaration on behalf of both corporations.

Suggested language for various scenarios:

WHEREAS, the permit/banking authorization letter was issued to “X”. X is acting as agent for “Y,” the owner of the property. (Have both owner and agent sign the declaration)

WHEREAS, the (permit or banking authorization letter) was issued to “X” Corporation. X Corporation is the parent company of “Y” Corporation, the owner of the property to be protected. X and Y Corporations have the same officers— (list). The officers will sign the declaration on behalf of both X and Y corporations (permittee/sponsor and owner of the property).

WHEREAS, the (select one) (permit, permit letter, banking instrument, settlement agreement, in-lieu fee project approval) dated _____, is attached hereto as Exhibit “B” and by this reference is made a part hereof; and,

Exhibit B - Attach the substantive document(s) (1) letter or document authorizing the permitted activity, "the permit" (2) letter or document conditionally authorizing the permitted activity, "the conditional permit," (3) letter authorizing an after-the-fact permit and the settlement agreement, (4) a letter approving and authorizing a banking instrument and the banking instrument, or (5) letter approving the in-lieu fee project. An executive summary of the banking instrument may be used as Exhibit B in-lieu of the entire banking instrument if reviewed and approved by the Savannah District Office of Counsel. The entire banking instrument will be incorporated by reference. Do not rely on the USACE Regulatory Division to furnish copies of the authorizing letters, permit, or banking instrument for use as Exhibit B. Please obtain the necessary documents from the permit holder, bank/in-lieu fee project sponsor, environmental consultant, or entity with whom the USACE corresponded.

WHEREAS, dredge and/or discharge of fill material in jurisdictional waters of the United States including wetlands and streams pursuant to the Clean Water Act, Section 404, and/or Rivers and Harbors Act of 1899, Section 10, requires compensatory mitigation and perpetual protection of the mitigation property; and,

WHEREAS, a dated platted survey with seal affixed by a Georgia registered surveyor of the bearings and distances and coordinate values of the boundary of the Property, referenced as Exhibit “A”, has been recorded at **(plat book, drawer, page or otherwise)** (the “Survey”). The survey approximately shows the actual or planned wetland, stream and buffer areas within the Property. The property contains _____ acres in _____ parcels of land. The property further contains approximately _____ acres of wetlands and _____ linear feet of a **(select one or more if relevant: first, second or third order)** tributary with buffer. The survey is made a part of this Declaration and is incorporated by reference. **For requirements for survey, see separate page for instructions. Do not record survey until reviewed and approved by the Savannah District Office of Counsel.**

WHEREAS, the Conservation Functions and Services are summarized and described in Exhibit “C”, attached hereto and made a part hereof; and **(Note: the Conservation Functions and Services document is to be prepared by the wetland/stream consultant using the directions for Exhibit C--See instruction page infra.)**

Note: Select one of the following five paragraphs below:

WHEREAS, **(1) Use this paragraph only with single permits and not with mitigation banks.)** the Property is being preserved, restored, established or enhanced as a wetland, buffer to wetlands, stream, streamside buffer, and/or upland buffer to jurisdictional waters of the United States, as well as to non-jurisdictional waters of the United States where such property has been accepted as compensatory mitigation pursuant to the permit; and,

WHEREAS, **(2) this paragraph is to be used only with a commercial wetland mitigation bank and not with permits – if Declarant land owner is not the bank sponsor, substitute “Declarant” with “Bank Sponsor” in this paragraph and in Section 6 Affirmative Duties** the Property is approved as a commercial wetland and/or stream mitigation bank pursuant to the terms and conditions of the **(Insert the name of the banking instrument and date)**, the document being incorporated by reference. The purpose of the bank is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on Section 404, Clean Water Act, or Section 10 Rivers and Harbors of 1899, permit actions. The banking instrument sets forth the success criteria required of the ecological project and the credit releases allowable. **Declarant/Bank Sponsor** agrees to be responsible for certain restoration, enhancement, establishment and preservation of wetlands and/or stream and streamside lands on the Property pursuant to the banking instrument and any subsequent modifications. Credits from the bank are sold by the Bank Sponsor in return for a fee agreed upon by the bank sponsor and the permit holder where the USACE has approved the use of banking credits as mitigation in whole or in part on permits issued. Each time credits are sold, the **Declarant/Bank Sponsor** shall provide the USACE with an accounting of the total number of credits in the bank, the number of credits released, and the permit action associated with each release of credits. The Property is to remain subject to this Declaration of Conservation Covenants and Restrictions in perpetuity; and

WHEREAS, **(3) this language is to be used with a mitigation bank owned by a governmental entity only and not with permits.** the Property is approved as a wetland and/or stream and streamside mitigation bank pursuant to the terms and conditions of the **(Insert the name of the banking instrument and date)**, the document being incorporated by reference. The purpose of the bank is to generate credits for use by **(insert the governmental department, county or municipal entity)** as mitigation on permit actions where wetland impacts have been determined unavoidable after consideration of avoidance and minimization pursuant to Section 404, of the Clean Water Act, or Section 10 of the Rivers and Harbors Act of 1899. Credits

from the bank are used as mitigation in part or in whole on permit actions approved by USACE. The banking instrument sets forth the success criteria required and the determination of credit releases allowable. Declarant agrees to be responsible for certain restoration, enhancement, establishment and preservation of wetlands, or stream and streamside lands on the Property. Declarant will provide USACE with a report of the total amount of credits available for release, credits already released with prior issued permits, and the permit number associated with the credit release, until all credits have been released. The Property is to remain subject to this Declaration of Conservation Covenants and Restrictions in perpetuity; and,

WHEREAS, **(4) this language is to be used with a sole source user of a bank, for use with mitigation with multiple permit actions by the owner/sole user. Do not use where there is only one permit action. Use when the sole user intends to use the property with several permitted actions either now or in the future.)** the Property is approved as a wetland, wetland buffer, upland and/or stream or streamside tract for use by **(name the sole source user)** as compensatory mitigation in part or in full, on multiple present and future permits, where wetland/stream impacts have been determined unavoidable after consideration of avoidance and minimization pursuant to the Clean Water Act, Section 404, or Rivers and Harbors Act of 1899, Section 10. Permits identified to date as having identified a portion of this tract for compensatory mitigation use are **(Identify permits, if any, by number where credits or acreage where used as mitigation from this sole source tract.)** The Declarant agrees to certain restoration, enhancement, establishment and preservation of wetland, stream and buffers on the Property pursuant to a mitigation plan. Declarant shall keep a total of all credits available for release and the number of credits released on previous permits. A report shall be provided to USACE each time credits is released referencing the associated permit action, and the amount of credits/acreage remaining. The Property is to remain subject to this Declaration of Conservation Covenants and Restrictions in perpetuity; and,

WHEREAS, **(5) this language is to be used with an approved in-lieu fee project - if Declarant land owner is not the in-lieu fee project sponsor, substitute “Declarant” with “Project Sponsor” in this paragraph and in Section 6 Affirmative Duties)** the Property is approved as a wetland and/or stream mitigation site pursuant to the terms and conditions of the **(insert name of approved In-Lieu Fee Program Sponsor)’s** In-Lieu Fee Program Instrument. The purpose of the project is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on Section 404, Clean Water Act, or Section 10 Rivers and Harbors of 1899, permit actions. The Site Mitigation Plan sets forth the success criteria. **Declarant/Project Sponsor** agrees to be responsible for certain restoration, enhancement, establishment and preservation of wetlands and/or stream and streamside lands on the Property. The Property is to remain subject to this Declaration of Conservation Covenants and Restrictions in perpetuity; and

WHEREAS **(Use this paragraph if the conservation property is part of a planned community and if the planned community/development/subdivision**

restrictive covenants have been recorded) the Property is part of a planned community known as _____, which is subject to the provisions of **(General Restrictive Covenants or Charter or other document)**, recorded at Book _____, Page _____, *et seq.*, in the Office of the Clerk of the Superior Court of _____ County, Georgia. This Declaration will be incorporated into the overall master land use plan; and,

WHEREAS, **(Include this paragraph only if applicable) (Name of lender)**, is the owner and holder of a lien or deed to secure debt secured by the Property. The deed to secure debt from **(name)** to **(name)** is recorded at Deed Book _____, page _____, _____, County, Georgia. A Consent and Subordination has been executed by entities who have a security interest in the property in order to evidence its consent to the subordination of the security deed to this Conservation Declaration, the Consent and Subordination having been attached hereto and by this reference is made a part hereof. **(See suggested language for use with a Consent and Subordination on separate page, infra)**

WHEREAS, **(Include this paragraph only if applicable to historic/archeological protection of the property)** certain cultural, archaeological, or historic properties identified on the survey **(Identify parcels as shown on survey)** have been determined to be eligible for inclusion in the National Register of Historic Places and are being preserved and protected pursuant to Section 106 of the National Historic Preservation Act, as regulated by the Georgia State Historic Preservation Division, and as required by a special condition of the permit. **(If there is a Memorandum of Agreement executed by the owner, USACE and the Georgia State Historic Preservation Division, reference it and incorporate it by reference.)**

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Declarant and each and every subsequent owner and occupant of the real property, and as required mitigation for dredge and/or discharge of fill material in waters of the United States including wetlands and streams, Declarant has promised to place certain restrictions on the Property exclusively for conservation purposes, in order that it shall remain substantially in its restored, enhanced, preserved, open, natural and/or scenic condition, in perpetuity.

1

Transfers, Amendments & Extinguishment

Declarant does hereby declare that all of the Property described hereinafter shall be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the covenants, easements and affirmative obligations all of which shall run with the Property and will be binding on all persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title or interest in said Property, or any part thereof, their heirs, executors, administrators, successors and assigns. The terms and conditions of this Declaration of Covenants and Restrictions

shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the conservation property. It shall set forth the terms and conditions of this document either by reference to this document and its recorded location or by attachment and incorporation by reference. The Declaration shall not be amended or extinguished except by written approval of the USACE, or its successor in administration of the Clean Water Act or the Rivers and Harbors Act of 1899. Amendments to the Declaration for the purpose of proposing additional impact are not favored and will be considered only in rare circumstances following the USACE policy and procedures. Should an amendment be accepted, mitigation required will be at a substantially higher ratio. Amendments shall be signed by the USACE and shall be recorded in the official records of the county in which the Property is located.

2

Property as Open and Common Area

The Property is set aside for conservation use and shall be designated as an undeveloped lot, buffer, open and common area or greenway and will not now, nor in the future, be made part of any single lot or lots in a residential or mixed use subdivision or a subdivided commercial development, but rather the Property shall be held, maintained and managed by the owner, developer, corporation, homeowner or business association as an open, common and undeveloped conservation area. There shall be no legal or de facto division, subdivision or partitioning of the protected Property used as mitigation unless approved by the USACE and addressed in the permit or banking instrument.

3

Prohibited Uses

Except as necessary (1) to carry out wetland/stream and/or buffer restoration, enhancement and/or establishment in keeping with the mitigation plan of the permit or banking instrument, as approved by the USACE; or, (2) to carry out management and maintenance of the Property, as approved in writing by the USACE; the uses incompatible with the conservation values of the Property prohibited by this Declaration shall include, but shall not be limited to the following:

A. Clearing, removing, burning, mowing, or cutting of trees or other vegetation (except for the control and removal of non-native vegetation, as set forth in a mitigation plan approved by the USACE, or with prior written consent by the USACE). If such control or removal involves the use of insecticides, herbicides, or other biocides, such application shall be by the narrowest spectrum, least persistent material appropriate for the target species, and shall be consistent with the conservation values of the Property and the purpose of this Declaration;

B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;

- C. 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 Property;
- D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;
- E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Property; manipulating or altering any natural water course, body of water or water circulation and any activities or uses detrimental to water quality;
- F. Mining, drilling, hydraulic fracturing, dredging, or removing from the Property soil, loam, peat, gravel, oil, gas or other mineral resources or natural deposit;
- G. Burning, systematically removing or cutting timber, or otherwise destroying any vegetation. Upon approval from the USACE, selective pruning of unsafe trees or exotic non-native vegetation may be removed in accordance with current scientific best management practices as set out by the U.S. Forest Service or the Georgia Forestry Commission;
- H. Spraying with biocides or use of herbicides or pollutants that violate water quality standards;
- I. Introducing non-native species on the Property, altering the natural state of the wetlands or streams or causing erosion or sedimentation;
- J. Grazing or use by domesticated animals;
- K. Construction of any kind in the wetlands, streams, buffers or upland, whether temporary or permanent.
- L. Use of motorized or mechanized vehicles, including, but not limited to, off-road vehicles is prohibited, except on existing roadways for the sole purpose of monitoring or maintaining the Property.
- M. As permitted or approved in writing by the USACE the Property may have: (1) a narrow pedestrian walking trail in the uplands or upland buffer using pervious materials (not to exceed two feet in tread width and three feet in total width), and/or (2) minimal structures and boardwalks for the observation of wildlife and wetland/stream ecology; all in a manner in keeping with the conservation values, services, and functions of the Property.
- N. 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.

O. Conservation and wildlife habitat management plans may be implemented by the Georgia Department of Natural Resources Wildlife Resource Division, U.S. Forest Service, conservation land trusts holding conservation easements, or other conservation management entities where the habitat, wildlife or forest 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 Property for its conservation use.

Note:

Do not add exceptions to A-O if they have not been approved and/or referenced in the mitigation plan or banking instrument.

4

Easements

A. The Property is free and clear of any and all liens, loans, claims, restrictions, easements and encumbrances, except as otherwise identified in this document and its exhibits.

B. Existing utility line easements, roads, rights-of-way, access easements and structures on the property, if any, are shown on the survey.

Show easements on survey and identify by easement holder or right-of way entity. Show structures and roads that are on or cross the property.

If the property subject to the Declaration, or some portion of it, is to be used for a land application site, storm water outfall, a detention or retention pond, or used for water treatment or filtration, so state and describe.

C. Environmental impacts, if any, caused by existing easements such as roads, utility lines or pipelines, where such easements are in place as of the date of the recording of this Declaration, and where the easements are shown on the survey, shall not be considered as causing any prohibited impacts to the Property by their use and maintenance.

Notes:

Provide copies of easements or rights of way for review by USACE only as to easements that run across the property protected by the Declaration. If a large parcel is encumbered by numerous easements, provide a list of the easements, the nature of the easement, the holder of the easement and its recorded location.

Property subject to this Declaration may not be eligible for use as mitigation if the property is subject to any prior recorded easements held by third

parties that would conflict with the intent of this Declaration. An example would be easements or leases granting mineral rights, timbering or water rights to a third party that could affect the preservation intent of the protection of the wetlands/streams. In those cases, the applicant may want to have the easements extinguished, file an action to Quiet Title regarding the mineral rights or otherwise obtain title to the mineral rights, i.e., pursuant to O.C.G.A. § 44-5-168.

D. Should an easement or legal right of use of the Property, not listed in Paragraph (4)(A), or not meeting the criteria of Paragraph (4)(A), and prior in time and recording to this Declaration, be exercised in such a manner that it conflicts with the prohibited uses of the Property set out in this Declaration, then the owners of the Property, whether the Declarant of this Declaration or any heirs, executors, administrators, successors or assigns, shall be responsible for providing alternative conservation mitigation in such amounts and of such service and function as the USACE, or any enforcer of this covenant, shall determine in accordance with the terms of the permit/banking instrument and with Section 404 of the Clean Water Act, or Section 10 of the Rivers and Harbors Act of 1899, and their implementing regulations.

Proposed Future Impacts to Property

(E. Optional paragraph.) Set out proposed easements if they meet the criteria discussed in the instructions following. If the USACE is made aware by the applicant of reasonably foreseeable proposed impacts on the Property subject to the Declaration due to infrastructure plans by the developer or by the county/city/water and sewer authority, and the location and acreage of those future proposed easements can be shown approximately on the survey and deducted from the calculation of mitigation credits associated with the permit/mitigation bank, then the proposed easements may be described in this paragraph and should be shown on the survey as “Proposed Easements.” This will make it less likely that the Declaration would need to be amended in the future even though a Clean Water Act permit may be required for the proposed future impacts.

As an added precaution, the owner should make reasonable attempts to determine if any county/municipal proposed projects in the foreseeable future will likely impact the protected Property (i.e., storm water/drainage ditches or underground utility pipes). If the property is adjacent to a road or bridge, the owner should make a reasonable attempt to determine if widening is planned by Georgia Department of Transportation or the County Transportation Department in the foreseeable future or, as a precaution, pull the survey line back to allow for a widening in the future. In addition, the USACE can consider corridors needed for future linear projects such as road crossings, utility lines, electric, and water and/or sewer lines and discuss options with the developer to be shown on the survey. Use of corridors should be discussed with the Regulatory Division early in the permit process.

5 Representations

Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

B. There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned;

C. The Property is in compliance with all federal, state and local laws, regulations and permits and there is no pending or threatened litigation in any way affecting, involving or relating to the Property and its use.

D. The Property is not land-locked and there is access to the Property by road, dedication of pathway or by an access easement.

6 Affirmative Duties

A. Declarant/Owner will take action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Property or that are otherwise inconsistent with this Declaration.

B. A management plan shall be developed by **Declarant/Bank/Project Sponsor**, and coordinated with the USACE, for the Declarant's, and its successors' and assigns', management of the Property and for describing the conservation duties in managing the Property. Adequate financial resources shall be allocated by **owner of the mitigation property/Bank/Project Sponsor** for protection of the Property. **Declarant and Bank/Project Sponsor** shall take immediate action to cure violations of this Declaration.

7 Exclusive Possession

Declarant, its (personal representatives, heirs, executors, administrators) (successors and assigns), reserve all other rights accruing from its ownership of the Property, including, but not limited to, the exclusive possession of the Property, the right to transfer or assign their interest in the same, the right to take action necessary to prevent erosion on the Property, to protect the Property from losing its conservation functions and services, or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purposes of this Declaration.

8

Benefits to the General Public

It is expressly understood and agreed that this Declaration does not necessarily grant or convey to members of the general public, any rights of ownership, interest in, or use of the protected property unless so designated by the owner for such purpose, as approved by the USACE. Nonetheless, the Property has significant aesthetic and conservation value in its present or restored state as a predominately natural area which has not been subject to extensive development or exploitation. The protection of jurisdictional and non-jurisdictional waters of the United States, their buffers and uplands, floodplains, vegetation, scenic, open space, aquatic and wildlife habitat are considered of great importance to the well-being of the general public and to all citizens of Georgia and are worthy of preservation and conservation.

9

Enforcement

The USACE and/or the U.S. Environmental Protection Agency, or its successors, as third-party beneficiaries hereof, are hereby specifically granted the authority to enforce the provisions of this Declaration pursuant to the Clean Water Act, Section 404, and the Rivers and Harbors Act of 1899, Section 10, and their implementing regulations. Appropriate remedy for violation of this section is contemplated to include, without limitation, injunctive relief to restrain such violation, restoration, administrative, civil or criminal penalties as well as any other remedy available under law or equity. However, no violation of this Declaration shall result in a forfeiture or reversion of title. It shall not be a defense, for purposes of this Declaration, that the conservation functions and services of the Property were impacted without the owner's knowledge or consent, or that the waters on the Property are deemed to be non-jurisdictional waters of the United States either by their function or by statute. The Property was offered and accepted as mitigation and is therefore subject to the contractual terms of the permit/banking instrument and this Declaration. Loss of conservation functions and services shall not be required to be replaced if damage is due to "acts of God," as it generally is referenced, so long as there has been completion of the mitigation requirements of the permit/banking instrument as to restoration, enhancement, establishment and monitoring.

10

Right of Ingress and Egress

The USACE, and/or the U.S. Environmental Protection Agency, their assigned agents and contractors, shall at reasonable times and upon notice to the owner, have an access easement for the right of ingress and egress to inspect the Property in order to monitor and to ascertain whether there has been compliance with this Declaration. Posted signs declaring the Property to be conservation property shall be posted by the owner in order to provide notice of the land use designation.

11

Declaration Runs with the Land in Perpetuity

This Declaration shall not terminate upon some fixed amount of time but shall run with the land in perpetuity both as to benefit and as to burden and shall be enforceable against Declarant and all present and future owners, tenants, and other holders of any interest in the Property. This Declaration is established for the purpose of preserving, enhancing and conserving wetlands and streams, non-jurisdictional wetlands and streams accepted as mitigation, buffers, uplands, open areas and the associated conservation values, services and functions. Furthermore, this Declaration carries out the statutory requirement of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, and their implementing regulations.

12

Intent of Clean Water Act

The intent of the Clean Water Act, Section 404, is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. The intent of this document is that the Property be perpetually protected as conservation lands.

13

Written Notice of Legal Action against Property

Pursuant to the Clean Water Act, the District Engineer, c/o Office of Counsel, United States Department of the Army, Corps of Engineers, Savannah District, Savannah, Georgia, shall be provided with a 60-day advance written notice of any legal action concerning this Declaration, or of any action to extinguish, void or modify this Declaration, in whole or in part. The Declaration is intended to survive foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the property. A copy of this recorded document shall accompany the notice.

14

Eminent Domain

It is the intent of this conservation Declaration that the aquatic resources it protects shall not be altered or impacted by eminent domain. However, if any or part of the protected property is taken by exercise of the power of eminent domain, so as to terminate this Declaration, 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-recording of the USACE model Declaration of Conservation Covenants and Restrictions on the Property 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.

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.

15

Removal to U.S. Federal District Court

The USACE reserves the right to recommend to the U.S. Department of Justice that the legal action, as it relates to the Clean Water Act, be removed to the United States Federal District Court in the district where the Property lies.

16

Recordation of Instrument

Declarant shall execute and record this instrument in a timely fashion in the official records of the Office of the Clerk of Superior Court in the county in which this Property lies and shall provide the USACE with a copy of the recorded Declaration and exhibits. Declarant may re-record this instrument at any time as may be required to preserve its rights.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration on this the _____ day of _____.

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 Declaration of Conservation Covenants and Restrictions, 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 Declaration of Conservation Covenants and Restrictions. 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 Declaration of Conservation Covenants and Restrictions 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.

See next page for further instructions regarding subordination and exhibits.

Directions for Deed to Secure the Debt

If the property is encumbered with a deed to secure debt, prepare a "Consent and Subordination" signature page for purposes of having the holder of a deed to secure debt, consent and join in this Declaration of Restrictive Covenant. Suggested language for use is provided below:

Consent and Subordination

The undersigned, _____ ("Lender"), beneficiary under a Deed to Secure Debt dated _____ and recorded in Deed Book __, Pages ____, in the _____ County, Georgia records, for itself, its successors and assigns, consents to the foregoing Declaration of Conservation Covenants and Restrictions ("Declaration"). Lender agrees that, upon recordation of the Declaration, the restrictive covenants contained in the Declaration will run with the land which serves as security for the debt evidenced by the Security Deed and further agrees that any foreclosure or enforcement or any other remedy available to Lender under the Security Deed will not render void or otherwise impair the validity of the Declaration. The undersigned acknowledges that it has received and reviewed a copy of the Declaration and exhibits.

Title of Lending Agency
By: _____
Its: _____

(Type name and agency and

sign)
Signed, sealed and delivered
This __ day of _____, in
The presence of:

Notary Public _____

Witness _____

My Commission Expires:
(Notary Seal)

(See Next Page)

INSTRUCTIONS AND GUIDANCE FOR EXHIBIT C - FOR USE AND PREPARATION BY THE ENVIRONMENTAL CONSULTANT--FUNCTIONS AND SERVICES

Exhibit C to the Declaration should be prepared by the wetland/stream consultant.

This document should not be a recital of, or copy of, the mitigation plan. It should be prepared as a short one-page exhibit for the purpose of briefly describing the conservation values and services that exist (preservation) or that will exist on the property assuming the restoration, establishment or enhancement is successful. Below are some questions to help frame this exhibit. They are not intended to be the sole functions and services associated with wetlands/streams/waters of the United States.

What is the larger geological area within which is this property if located? What watershed and Hydrologic Unit Code is it in? Does this site contribute to an approved watershed management plan? How? Is the site in a heavily developed, metropolitan, agricultural, rural or isolated area? Will it provide shoreline protection? What is the length of stream or acreage of wetland protected? Is it first or second order streams? Is it a perennial or intermittent stream? Does it include headwaters? Will the buffer span both sides of the river or encircle the entire wetland? What benefit does the open and green space provide?

Describe the physical and hydrological restoration that will result in reestablishing a functional wetland and/or a stream. Will the tributary provide valuable aquatic habitat for macroinvertebrates? What are or will be its functions as a stream? Does it improve steam flow or restore an original course of a tributary? Is the stream/wetland part of a larger system? Will it establish a hydrologic and/or geomorphic connection to streams/wetlands on adjacent properties? Will it enhance a swamp area? Will it function to improve water quality? Will it remove or retain inorganic nutrients? Will it function to reduce suspended sediments? Will it reduce sediment transport? Will it increase carbon export and aquatic drift?

Is the soil permeable and does it absorb rain thereby reducing storm water run-off? Does the wetland/stream function to counteract the rate and/or volume of surface water runoff from pavement and buildings? Will it impede movement of flood water and distribute it more slowly? What percent of the tract is in the 100-year floodplain? Will it reconnect wetlands/streams to the historical river/wetland floodplain? Will it reduce velocities during storm events or floods and provide temporary surface water storage? Is it a storm water /detention/retention/management pond? Is there a plan to oxygenate the pond? How?

Will it perform water purification functions by holding or transforming nutrients, sediments and pollutants? Does it serve to filter surface water? Will it replenish groundwater? Will it retain rainwater that may percolate into aquifers? Will it serve to improve a portion of a degraded stream? Will it hold soil in place with its root system or vegetation? Will it prevent water logging of agricultural lands? Will it convert pasture to a functioning stream and riparian zone? Will it help to attenuate downstream flooding?

Is it a forested wetland, scrub-shrub and/or emergent wetland? Is it a mature bottomland hardwood forest? Is it an isolated wetland, interdune wetland, cypress or gum pond, bog, swamp or other type of wetland community? Describe the canopy. Will it be reforested? Will the reforestation consist of native trees and shrub? Will it be a hardwood ecosystem? Does it have biodiversity? Will it provide essential nesting, wintering, feeding and resting grounds for species of migratory waterfowl or other water birds? Will it provide habitat for any aquatic species, plants, wildlife, migrating birds, endangered or threatened species? What habitat opportunities will the vegetation and/or forested parcel provide? Will it serve as a migration corridor? What vegetative species will be planted?

Does it have any unique features? Is it the only conservation property within a development? Are there any other parcels of land protected for their conservation values adjacent, upstream or downstream? Could the property serve as a conservation education setting? Will it be used for hunting or education/wildlife management? Who will manage the property for its conservation functions and services? How will its use be protected? Fencing? Posting signs? Land use plan?

United States Army Corps of Engineers, Savannah District

PROVIDE TO SURVEYOR

Instructions for Survey for use with Declaration of Covenants and Restrictions

Do Not Record the survey until approved by the Department of the Army, Corps of Engineers, Office of Counsel. Provide the platted survey to the attorney preparing the Declaration on behalf of the owner of the property. For questions call Office of Counsel, Corps of Engineers, Ellen Spicer, 912-652-6126.

Surveys must contain the seal of a Georgia Registered Land Surveyor. The surveyor should determine the survey plat size approved or required by the land records office in the county where the land lies.

The survey should be a metes and bounds boundary survey of those parcels of land that will be subject to the Declaration. Within the boundary survey is generally located wetland, streams and buffers. This property generally contains all property referenced as mitigation, including preservation, restoration, establishment and enhancement. Note that this may be different from a jurisdictional survey that would only show metes and bounds of jurisdictional wetlands or streams.

The bearings & distances should be tied in to at least one known coordinate, with a statement of precision closure <1:10,000. Use NAD 1983 DATUM.

State the total number of acres of each tract/parcel.

Use a legend to approximately identify the location of the wetlands, wetland buffers, streams or upland.

The legal description may reference the platted survey. For example:

"All that tract or parcel of land situate, lying and being in the _____ District, G.M., _____ County, Georgia, and being shown as _____ acres +/- on a plat entitled _____, dated _____, prepared by _____, GRLS # _____, recorded in Plat Book _____, Page _____, in the Office of the Clerk of the Superior Court of _____ County, Georgia.

Show easements, rights-of-way, roads and structures that go on or across the parcels subject to the Declaration. Provide the width and length of the easement if known, and the holder of the easement.

Surveyor shall enter "Note" on survey that provides:

"Wetlands, Streams and Buffers may be under the jurisdiction of the U.S. Army Corps of Engineers, permit number (enter permit/banking instrument number), and are protected by a recorded Declaration of Covenants and Restrictions." (Note: The permit/banking number can be obtained from the environmental consultant or the Regulatory Division of the U.S. Army Corps of Engineers.)

Provide a minimum of three or four latitude/longitude coordinates which, when connected, will form a polygon that approximately circumscribes the mitigation area. This is for use with GIS mapping.

Provide a vicinity map identifying roads adjacent to the site.

The property subject to the Declaration may be land-locked and if there is no road/path to the property, the owner must dedicate an access easement to and from the property.

NOTE: The following Property Assessment and Warranty is provided by the U.S. Army Corps of Engineers, Savannah District, as a standard template document for compensatory mitigation projects. The Property Assessment and Warranty must be completed and returned to the Corps with all attachments included. Any modifications to this template must be identified using track changes or other electronic comparison and explained in an attached addendum. This template should not be construed or relied upon as legal advice or opinion on any specific facts or circumstances. (Template Version Date: **March 7, 2024**)

PROPERTY ASSESSMENT AND WARRANTY

This Property Assessment and Warranty (“Property Assessment”) is made as of this _____ day of _____, 20__, by **[insert full legal name(s) of property owner(s)]** (“Property Owner”), for the benefit of the **[insert if an in-lieu fee program or mitigation bank: Interagency Review Team (“IRT”) chaired by the]** Savannah District of the U.S. Army Corps of Engineers (“Corps”). Property Owner acknowledges that this Property Assessment and the statements in it may be conclusively relied upon by **[choose the former if permittee- responsible mitigation; the latter if an ILF program or mitigation bank: the Corps or the IRT]** in approving **[choose one: the permit application for the _____ Project or the Department of the Army Permit No. _____ or the _____ Project as an amendment to the In-Lieu Fee (Stream/Wetland) Mitigation Program or the Mitigation Banking Instrument (“MBI”) for the _____ Bank].**

This Property Assessment provides a summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, the Protected Property (as defined below), including, without limitation, each exception listed in the Preliminary Report issued by **[insert title company name], [insert title report date], [insert title report number]** (the “Preliminary Report”), covering the Protected Property, as described in **Attachments 1 and 2** attached hereto and incorporated by this reference. Specifically, this Property Assessment includes a narrative explaining each lien, encumbrance, interest or other exception to title and the manner in which it may affect the site protection instrument to be recorded against the Protected Property (the “Declaration of Conservation Covenants and Restrictions (DCCR) and/or “Conservation Easement” (CE)) pursuant to the **[choose one: approved mitigation plan or MBI].**

Property Owner covenants, represents, and warrants to **[choose one: the Corps or each of the IRT members]** as follows:

1. Property Owner is the sole owner in fee simple of certain real property containing approximately _____ acres located at **[insert address]** in _____ County, State of Georgia, designated as Parcel Number(s) **[insert parcel number(s)]** (the “Protected Property”), as legally described in the Preliminary Report. Property Owner has, and, upon the recordation of the DCCR and/or CE, Property Owner will have, good, marketable and indefeasible fee simple title to the Protected Property subject only to any exceptions approved in advance of recordation, in writing, by the **[choose one: the Corps or the IRT]**.
2. The Protected Property is available to be burdened by the DCCR and/or CE for the conservation purposes identified in the DCCR and/or CE, in accordance with the **[choose one: approved mitigation plan or MBI]**.
3. The Protected Property includes legal access to and from **[insert name of public street or road]**. **[Note: if special access rights are required to reach the Protected Property, those access rights must also be addressed in this Property Assessment.]**
4. A true, accurate and complete listing and explanation of each recorded or unrecorded lien or encumbrance on, or possessory or non-possessory interest in, the Protected Property is set forth in **Attachment 3**, attached to and incorporated by reference in this Property Assessment. Except as disclosed in **Attachment 3**, there are no outstanding mortgages, liens, encumbrances or other interests in the Protected Property (including, without limitation, mineral interests). **Attachment 4**, attached hereto and incorporated in this Property Assessment by reference, depicts all relevant and plottable property lines, easements, dedications, etcetera, on the Protected Property.
5. Prior to recordation of the DCCR and/or CE, Property Owner will certify to the **[choose one: the Corps or the IRT]** in writing that this Property Assessment remains true, accurate and complete in all reports.
6. Property Owner has no knowledge or notice of any legal or other restrictions upon the use of the Protected Property for conservation purposes, or affecting its Conservation Values, as described in the DCCR and/or CE, or any other matters that may adversely affect title to the Protected Property or interfere with the establishment of a mitigation **[choose one: project or bank]** thereon.
7. Property Owner has not granted any options, or committed or obligated to sell the Protected Property or any portion thereof, except as disclosed in writing to and agreed upon in writing by the Corps.

8. The following attachments are incorporated by reference in this Property Assessment.

- a. Attachment 1 – Preliminary Report;
- b. Attachment 2 – Encumbrance Documents;
- c. Attachment 3 – Summary and Explanation of Encumbrances; and
- d. Attachment 4 – Map(s)

[Note: Attachment 2 must include copies from the official records of the office of the county register of deeds setting forth all recorded exceptions to title (e.g., leases or easements). Attachment 4 must include (a) map(s) illustrating the area of the Protected Property affected by each exception to title.]

PROPERTY OWNER

[Insert property owner full legal name(s)]

Date

ATTACHMENT 3
Sample format for the Summary and Explanation of
Encumbrances

MONETARY LIENS

Note: Any deeds of trust or other monetary lien(s) must be released or subordinated to the DCCR and/or CE by a recorded subordination agreement approved by the Corps.

- Preliminary Report Exception or Exclusion No.:
- Amount or obligation secured:
- Term:
- Date:
- Trustor:
- Trustee:
- Beneficiary:
- Description:
- ___ acres of Protected Property subject to lien
- ___ acres of Protected Property not subject to lien

EASEMENTS AND RIGHTS OF WAY

- Preliminary Report Exception or Exclusion No.:
- Date:
- Grantor:
- Grantee:
- Holder (if different than Grantee):
- Description:
- Analysis: [whether or how this exception will affect the DCCR and/or CE or the Conservation Values of the Protected Property]
- ___ acres of Protected Property subject to easement
- ___ acres of Protected Property not subject to easement

LEASES

- Preliminary Report Exception or Exclusion No.:
- Date:
- Landlord/Lessor:
- Tenant/Lessee:
- Premises:
- Term:
- Description/Purpose of Lease:
- Analysis: [whether or how this exception will affect the DCCR and/or CE or the Conservation Values of the Protected Property]

- ____ acres of Protected Property subject to lease
- ____ acres of Protected Property not subject to lease

COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS

- Preliminary Report Exception or Exclusion No.:
- Dated:
- Grantor or Declarant:
- Grantee (if applicable):
- Description:
- Analysis: [whether or how this exception will affect the DCCR and/or CE or the Conservation Values of the Protected Property]
- ____ acres of Protected Property subject to exception/exclusion
- ____ acres of Protected Property not subject to exception/exclusion

OTHER INTERESTS (INCLUDING MINERAL, TIMBER OR OTHER SEVERED INTERESTS) Holder:

- Description: [must address whether or not the interest includes any surface rights and, if applicable, a description of those rights]
- Analysis: [whether or how this exception will affect the DCCR and/or CE or the Conservation Values of the Protected Property]
- ____ acres of Protected Property subject to interest
- ____ acres of Protected Property not subject to interest

U.S. Army Corps of Engineers, Savannah District

Amendments to Declarations of Conservation Covenants and Restrictions

Policy

Compensatory mitigation required either as a special condition of permits issued under the Clean Water Act, Section 404, ("CWA") and the Rivers and Harbors Act of 1899, Section 10 or to establish a mitigation bank under same, requires perpetual protection of real property by a Declaration of Conservation Covenants and Restrictions (DCCR). The intent of this requirement is to restrict any further development on the property and to eliminate further impacts whether to wetlands, streams or their buffers including upland buffers. The policy of the Savannah District is to prevent future impacts to a protected mitigation property. If the Savannah District does approve of a request to amend a DCCR, the following procedures are applicable. The proponent may be required to replace lost mitigation resources at significantly higher ratios due to the protected status of the property. The preferred replacement for property extinguished from the restricted area will be by the purchase of credits from an approved commercial compensatory mitigation source.

Typical Scenarios Giving Rise to Amendments to DCCRs

1. The proponent is the original or subsequent holder of the CWA permit that owns the property and wants to amend the restrictive covenant. The owner or original permit holder requests an amendment to the restrictive covenant from the Corps.
2. The proponent is not the owner or permit holder, but a third party. In this scenario, the owner of the restricted property must submit the request for the proposal for an amendment.
3. The proponent is a legal entity with condemnation authority, and ownership of the restricted property has already been obtained by eminent domain. (Note that unless regulated activities planned to occur within an existing mitigation site are proposed to be evaluated under a Section 404 Standard Individual Permit, the condemnation process must be completed prior to requesting the amendment.)

Requirements

1. The proponent must submit an alternatives analysis. The analysis should state why the impact to protected mitigation property is preferred over alternatives where impacts to property are not protected by a recorded restrictive covenant or conservation easement. Cost, although a factor, is not the most significant consideration where there is an alternative that avoids the protected property. In addition, it is not relevant that the portion of the mitigation property proposed for impact is a buffer or upland rather than as wetland or stream, or that it is a non-jurisdictional wetland or stream. The mitigation property was incorporated as a component of the approved mitigation plan after deliberation by the Savannah District

after public and/or agency comment and was accepted for the functions and values it provides on the entire property site.

2. If the Savannah District consents to the amendment of a DCCR, the credit ratio for the removal of the DCCR from the protected area will be a minimum of double that calculated using the current version of the District's Standard Operating Procedure for Compensatory Mitigation (SOP). It is possible that the replacement mitigation will be at significantly higher mitigation ratios (>2:1), at the discretion of the Savannah District, depending on the conservation values of the protected property and scope and location of the proposed impacts. Generally, Savannah District will not consent to amendment of a DCCR for impacts associated with new alignment projects extending through the interior of approved mitigation banks, In-Lieu Fee program mitigation sites, and permittee responsible mitigation sites. In addition to any compensation required for the removal of the DCCR, future permitted impacts will also require compensatory mitigation as per the current version of the District's SOP. The owner or original permit holder should explore the best mitigation to replace the values and functions impacted rather than simply offer mitigation for the numerical acreage or linear feet of impact to wetlands and streams. The owner or original permit holder should propose acquisition of wetland and stream mitigation credits from an authorized mitigation bank, or if one is not available, coordinate with an approved In Lieu Fee program.

3. Submit a written proposal to amend the original (a) permit and/or (b) DCCR, stating the alternatives considered and the proposed impacts to the property, (c) the values and functions of the property to be impacted and, (d) the proposed replacement mitigation for the impacts to a protected area (refer to Flow Chart 1, which outlines the pathway for the recommended assessment for calculating replacement mitigation associated with amendment of a Restrictive Covenant and Conservation Easement). Attach copies of the permit and recorded DCCR.

4. The proposal to amend will go out on Public Notice for comment and/or to the participating agencies for comment. The notice should provide information about the alternatives, the proposed impact to the restricted property, and the mitigation proposed.

5. If an amendment to a DCCR is approved, the attorney for the permittee and/or property owners should prepare a draft "First Amendment to Declaration of Covenants and Restrictions" and submit the draft, along with the following:

- a. A copy of the original permit,
- b. A copy of the recorded DCCR showing the deed book and page numbers of its recorded location at the county clerk's office,
- c. A legal description of the property to be extinguished from the restrictive covenant by metes and bounds,
- d. A platted survey showing the property to be released from the DCCR area. This can be done as an overlay on the original platted survey.

6. The document must be reviewed and approved by the Savannah District Office of Counsel prior to recordation in the clerk's office in the county in which the protected property lies. Submit amendment packages by email to Savannah District Office of Counsel. If packages are too large to email, arrangements can be made for an electronic file transfer. The execution and recording of the amendment to the DCCR, and required replacement mitigation, shall be completed prior to incurring impacts to the property.

U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
REGULATORY PROGRAM

QUALIFIED CONSERVATION EASEMENT HOLDER STANDARDS

Conservation Easements Following Recordation of Restrictive Covenants

The Corps of Engineers, Savannah District, Regulatory Division (the “Corps”) generally requires that real property associated with compensatory mitigation pursuant to a banking instrument, in-lieu fee program instrument, or permit under the Clean Water Act, Section 404 or Section 10 of the River and Harbors Act of 1899 be protected in perpetuity and restricted by the owner of the property, utilizing the Corp’s Model Declaration of Covenants and Restrictions (the “DCCR”). The DCCR is recorded with the Clerk of the Superior Court in the county in which the land is located.

Following recordation of the DCCR, the Corps will generally require the granting of a conservation easement by the owner of the property to a qualified third party for purposes of long-term management, monitoring and/or stewardship. The Corps requires review of the conservation easement prior to the recording to determine continuity with the intent and purpose of the DCCR. The Corps has established the following criteria for charitable land trusts desiring to qualify as potential conservation easement holders associated with the compensatory mitigation process.

Land Trust Criteria

For the purposes of a conservation easement, the landowner will be the grantor and the land trust will be the grantee. To be considered qualified, all land trust organizations that intend to hold a conservation easement on a Corps-approved compensatory mitigation bank must meet and provide documentation of compliance with the following criteria:

1. Grantee must be a tax-exempt qualified organization under Section 501(c)(3) of the Internal Revenue Code and be registered with the Georgia Secretary of State’s Office.
2. Grantee must be authorized by the laws of the state of Georgia to accept, and be willing to accept, a conservation easement under the terms of the easement, and be a “qualified organization” and an “eligible donee” within the meaning of Section 170(h)(3) of the Internal Revenue Code.
3. Grantee must be a qualified holder pursuant to the Georgia Uniform Conservation Easement Act, O.C.G.A. §44-10-1 et seq.

4. Grantee organization's Board of Directors should have in its corporate resolutions, the adoption of the Land Trust Alliance's Statement of Land Trust Standards and Practices (the "LTA Statement") as guiding the practices of the organization. The Statement is available from the Land Trust Alliance ("LTA") 1250 H Street, NW, Suite 600, Washington, DC 20005, telephone (202) 638-4725 or from its website at landtrustalliance.org. If the land trust has not adopted the LTA Statement, the land trust must provide written explanation of why it has not been adopted or that the land trust has substantially similar standards and practices notwithstanding the adoption of the LTA Statement.

5. Grantee organization's Board of Directors, officers, and staff must not have a conflict of interest regarding the mitigation bank, in-lieu fee mitigation site, or permit issued by the Corps. The land trust must provide a copy of its Conflict of Interest Policy along with written certification that the land trust board of directors, officers, and staff, as holders of conservation easements, will not receive benefit, financial or otherwise, from the issuance by the Corps of the underlying banking instrument, in-lieu fee program instrument, or permit.

6. The Grantee must be willing to accept the conservation easement, which must adhere to the "Criteria for an Approved Conservation Easement" set forth below.

7. Grantees may be asked to provide a copy of the articles of incorporation, bylaws, a tax-exempt status document and other documents as may be required. The list of qualified land trusts will be made available and provided to applicants and bank sponsors as requested.

8. The grantee should be willing to use the Corps' provided model conservation easement as a starting point of drafting the conservation easement for the mitigation bank at issue.

Governmental Holders of Conservation Easements

Federal, state, and local governments may agree to be a holder of a conservation easement in Georgia. The following requirements pertain to governmental holders of conservation easements for purposes of credit toward compensatory mitigation.

1. The property owner, after recording a DCCR, may contact a governmental entity to determine interest regarding the granting of a conservation easement by the owner.

2. The governmental entity must qualify as a "holder" pursuant to the Georgia Uniform Conservation Easement Act, O.C.G.A. 44-10-1 et seq. The Corps may require governmental entities to provide additional information regarding potential conflicts of interest, the phone number, titles, and qualifications of personnel who will

monitor and enforce the terms of the conservation easement, and any other information deemed necessary.

3. The conservation easement must adhere to the “Criteria for an Approved Conservation Easement” set forth below.

4. The conservation easement may not conflict with the terms and conditions set forth in the recorded DCCR granted in accordance with the Section 404/Section 10 Corps of Engineers permit, mitigation banking instrument, and/or in-lieu fee program instrument.

5. If the governmental entity holding the conservation easement is a branch or division of a county or municipality, the governing body of the county or municipality shall pass a resolution adopting the terms and conditions set forth in the conservation easement and attach said resolution to the conservation easement.

Criteria for an Approved Conservation Easement

A conservation easement generally means an interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for open space use, and protecting its natural resources (See O.C.G.A § 44-10-2). For purposes of use with the Corps’ permitting program, including banking and in-lieu fee program instruments, a conservation easement also means an interest in real property the purpose of which includes the long-term protection, preservation, maintenance, and enhancement of the waters of the United States including wetlands, streams, streamside buffers and the natural habitat.

An approved conservation easement must meet the following criteria:

1. **Recordation.** The conservation easement references the location by book and page numbers in the county of record the DCCR recorded by the permit holder or bank sponsor as a condition of the mitigation plan and provide that the restrictions set out in the DCCR shall be incorporated into the conservation easement by reference. A copy of the DCCR may also be an attachment to the conservation easement.
2. **Funding.** In order for the conservation easement holder to provide long-term management, monitoring and/or stewardship of the real property, obligations must be funded. Grantee must receive from the Grantor, or must allocate, funds sufficient for the purpose of stewardship, monitoring, management, and legal defense. The use of these funds is restricted to these purposes and shall be deposited in a fund separate from the Grantee's operational funds or as a line item separate from other budgetary categories. Governmental entities should place funds in a special revenue account.

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 I.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")**