

CONSERVATION EASEMENT AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF _____ §

This Conservation Easement Agreement (this "Agreement") is executed as of _____ (the "Effective Date"), by and between _____ ("Grantor"), and _____ ("Grantee").

Recitals:

A. Grantor is the record owner of fee simple title to certain parcels of real property consisting of _____ acres located and situated in _____ County, Texas and more particularly described in **Exhibit "A"** (legal description of the "Property") attached hereto and made a part hereof. The Property is also referenced in Permit No. _____ Compensatory Mitigation Plan dated _____ and entitled _____.

B. Grantee is qualified to hold a conservation easement, and is either:

(a) a governmental body empowered to hold an interest in real property under the laws of this State or the United States; or

(b) a charitable, not-for-profit or educational corporation, association, or trust, qualified under Section 501(c)(3) and Section 170(h) of the Internal Revenue Code of 1986, as amended, the purposes or powers of which include one or more of the Purposes described in **Recital D** below.

C. The preservation of the Property is a condition of the Department of the Army Section 404/10 Project Number _____, authorization dated _____, or a revision thereof (the "Permit"), and attached hereto as **Exhibit "B"**. The Permittee Responsible Mitigation Plan (PRMP) or Mitigation Banking Instrument (MBI) attached hereto as **Exhibit "C"** requires certain restrictions to be placed on the Property in order to provide compensation for unavoidable adverse impacts to waters of the United States. It is the intent of this Agreement and the Conservation Easement granted herein to assure that the Property will be retained and maintained forever in the vegetative and hydrologic condition described in the success criteria of the PRMP or MBI. Any activities not included in the PRMP or MBI that may be conducted on the Property and that will affect the vegetative and hydrologic conditions outlined in the success criteria of the PRMP or MBI, must be approved in writing by the United States Army Corps of Engineers (the "USACE"), Fort Worth District, Regulatory Branch, prior to initiation. The Conservation Easement granted by this Agreement is created pursuant to the Texas Uniform Conservation Easement Act of 1983 contained in Chapter 183 of the Texas Natural Resources Code.

D. WHEREAS, the purpose of the Conservation Easement includes but is not limited to one or more of the following (the "Purposes");

- (a) retaining or protecting natural, scenic, or open-space aspects of the Property;
- (b) ensuring the availability of the Property for recreational, educational, or open-space use;
- (c) protecting natural resources;
- (d) maintaining or enhancing air and water quality;

- (e) To serve as a mitigation area or mitigation bank pursuant to the regulation and guidelines of the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE) promulgated under authority of Section 404 of the Clean Water Act (33 USC § 1344, et seq.) and Section 10 of the Rivers and Harbors Act of 1899 (33 USC § 403, et seq.). Any uses of the Property that may impair or interfere with these Purposes of the Conservation Easement are expressly prohibited.

E. The preservation of the Property is a condition of the Permit and/or MBI, required to mitigate for unavoidable adverse impacts to waters of the United States. Grantor and Grantee agree that third-party rights of enforcement shall be held by the USACE, Fort Worth District, and any successor agencies, and that such rights are in addition to, and do not limit, the rights of enforcement under the Permit and/or MBI.

F. The following Exhibits are attached to this Conservation Easement and incorporated by reference:

- Exhibit A** Legal Description of the Property
- Exhibit B** U.S. Army Corps of Engineers Permit
- Exhibit C** Permittee Responsible Mitigation Plan or Mitigation Banking Instrument
- Exhibit D** Baseline Documentation Report

Agreement:

NOW THEREFORE, for good and valuable consideration paid by Grantee, the receipt and legal sufficiency of which are hereby acknowledged by Grantor, and in consideration of the covenants, mutual agreements and conditions herein contained, Grantor has TRANSFERRED, BARGAINED, GRANTED, SOLD, CONVEYED, ASSIGNED, SET OVER and DELIVERED, and by these presents does TRANSFER, BARGAIN, GRANT, SELL, CONVEY, ASSIGN, SET OVER and DELIVER, to Grantee a conservation easement on, over, under, across, along and through the Property on the terms set forth herein, together with all other rights reasonably necessary or desirable to accomplish the objectives of the Mitigation Plan and the rights granted under this Agreement (the "Conservation Easement"), subject to the following terms, reservations, covenants, limitations and exceptions:

1. **Duration of Easement.** The Conservation Easement shall be perpetual. The Conservation Easement is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, and Grantor's successors, assigns, lessees, agents, and licensees.

2. **Property Description.** In addition to the metes and bounds legal description of the Property set forth in **Exhibit "A"** and incorporated herein by reference for all purposes are metes and bounds surveys of the Property by a Texas Registered Professional Land Surveyor. In connection with the application for the Permit, Grantor has previously provided to the USACE a copy of a wetland survey map which delineates all waters of the United States, including wetlands, within the Property. In addition to the wetland survey, Grantor has also provided photographs of the Property.

3. **Present Condition of the Property.** Neither Grantor, its agents, assigns, successors, or personal representatives, nor any purchasers, lessees, or other users of the Property may use, disturb, or allow through intent or negligence, the use or disturbance of the Property in any manner that is inconsistent with the Purposes of the Conservation Easement. The waters of the U.S. and other aquatic resources, scenic, resource, environmental, and other natural characteristics of the Property, and its

current use and state of improvement, are described in the Baseline Documentation Report, attached hereto as **Exhibit "D"**, prepared by Grantor and acknowledged by the Grantor and Grantee to be complete and accurate as of the date hereof. Both Grantor and Grantee have copies of this report. It will be used by the parties to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

4. **Prohibited Activities.** Any activity on, or use of, the Property inconsistent with the purpose of the Conservation Easement is prohibited. The Property shall be preserved in its natural condition and restricted from any development that would impair or interfere with the conservation values of the Property. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted, or reserved as indicated hereunder:

(a) **Vegetation:** There shall be no removing, destroying, cutting, trimming, mowing, shredding, burning, harming, or altering of any vegetation, or disturbing or changing in any way the natural habitat existing on the Property except as expressly allowed in the MP and in order to fulfill the objectives and standards of that plan. Grantor may remove diseased, invasive or non-native trees, shrubs, or plants; cut and mow firebreaks and existing road rights-of-way; and remove trees, shrubs, or plants to accommodate maintenance of permitted improvements or other uses expressly permitted under the terms of this Conservation Easement. With written approval of Grantee and Third Party (ies), Grantor may remove potentially invasive plants from the Property for habitat management purposes consistent with the intent of this Conservation Easement. Except as necessary for activities expressly permitted in this Conservation Easement and with written permission from Grantee and Third Party (ies), there shall be no farming, tilling, or destruction and removal of native vegetation on the Property. There shall be no planting of invasive or potentially invasive non-native plant species anywhere on the Property. Grantee will provide a list of potentially invasive species upon request. There shall be no use of pesticides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except as expressly allowed in the PRMP or MBI.

(b) **Predator and Nuisance Species Control:** Grantor, with written approval of Grantee and Third Party (ies), shall have the right to control, destroy, or trap predatory, exotic, invasive, and problem animals that pose a material threat to people, livestock, other animals, or habitat conditions in accordance with applicable state and federal laws and requirements.

(c) **Uses:** No agricultural, residential or industrial activity shall be conducted upon the Property. There shall be no storing or dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Property that may negatively impact or be detrimental to the Property or to the surface or subsurface waters of the Property. Livestock animals shall not be allowed on the Property. Any right of passage for any activity or use set forth in this paragraph is also prohibited.

(d) **Subdivision:** The Property may not be further divided, subdivided, or partitioned.

(e) **Topography:** There shall be no change in the topography of the Property except as expressly provided in the PRMP or MBI. There shall be no surface mining, filling, excavating, grading, dredging, mining or drilling upon the Property, and there shall be no removing of topsoil, peat, sand, gravel, rock, minerals or other materials from the Property except to restore natural topography or drainage patterns.

(f) Soil or Water Degradation: There shall be no use of, or the conducting of any activity on, the Property that causes or is likely to cause soil degradation, erosion, depletion or pollution of, or siltation on, any surface or subsurface waters of the Property, and there shall be no change to the surface or subsurface hydrology of the Property in any manner. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding, or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Property by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. It is understood that with respect to the prohibited activities set forth in this Section 4(f), Grantor may not and will not engage in any such prohibited activities on the Property or on any other real property owned by Grantor and adjacent to the Property (the "Grantor Land").

(g) Construction: There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock, or any other temporary or permanent structure or facility or any other man-made structures on the Property except in connection with the repair, maintenance, or replacement (but not expansion) of any structures and other improvements located on the Property as of the Effective Date of this Agreement. Grantor shall have the right to maintain, renovate, and repair existing buildings, structures, fences, pens, wells, dams and reservoirs, utilities, soft-surface roads, and other improvements, and in the event of their destruction, to reconstruct any such existing improvement with another of similar size, function, capacity, location, and material.

(h) Roads: There shall be no construction of roads, trails, or walkways on the Property; nor any enlargement, widening, improvement or modification to any existing roads, trails, or walkways or any other rights of way on the Property. Maintenance of existing roads shall be limited to removal of dead vegetation, necessary pruning or removal of obstructing trees and plants, and/or application of permeable materials (e.g., sand, gravel, and crushed stone) as necessary to correct or prevent erosion.

(i) Waters: There shall be no polluting, altering, manipulating, depleting or extracting of surface or subsurface water (including, but not limited to, ponds, creeks or other water courses) or any other water bodies on the Property, and there shall be no conducting or (to the extent in Grantor's control) allowing any entity or person to conduct activities on the Property that would be detrimental to water purity or that alter the natural water level or flow in or over the Property (including, but not limited to, damming, dredging or construction in any free flowing water body, nor any manipulation or alteration of natural water courses, fresh water lake and pond shores, marshes or other water bodies). It is understood that with respect to the prohibited activities set forth in this Section 4(i), Grantor may not and will not engage in any such prohibited activities on the Property.

(j) Vehicles: Use of vehicles shall be limited to access to the site for monitoring, maintenance, fire protection/emergency action, or other approved activities, as specified in the PRMP or MBI. Off road vehicular access is expressly prohibited.

(k) Easements: There shall be no granting or conveying of any easements on, over, under, across, along or through the Property, including, but not limited to, access easements and utility easements; provided, however, that pursuant to the Conservation Easement and in order to access the Property to take such actions which are consistent with the Conservation Easement and the Permit, Grantee and the USACE have the right of pedestrian and vehicular ingress and egress to and from the Property.

(l) Mineral Extraction. There shall be no exploration, development, production, extraction, or transportation of oil, gas or other mineral substances (whether such other mineral substances be part of the mineral estate or part of the surface estate) on, from, or across the Property (“Mineral Activities”) except in accordance with this Section; provided, however, that this Section does not apply to water, which is addressed elsewhere in this Conservation Easement.

(a) No Surface Mining. Landowner shall not conduct surface mining by any surface mining methods, including, without limitation, the mining of gravel, sand or caliche.

(b) No Surface Use. Landowner has the associated rights and retains its interests, if any, in all oil, gas and other mineral substances (whether such other mineral substances be part of the mineral estate or part of the surface estate) in and under the Property; provided, however, it is understood and agreed by Landowner, Holder, and Third Party Beneficiaries that, in conducting any Mineral Activities on the Property, Landowner shall not use or occupy any portion of the surface estate of the Property and shall not place any facilities, fixtures, equipment, building, structures, pipelines, rights of way or personal property of any kind or nature whatsoever on the surface of the Property or in the subsurface within the depth interval of 1000 feet below the surface of the Property or on or in any portion thereof. Landowner agrees that any and all Mineral Activities shall be conducted by directional or horizontal drilling below said subsurface interval from a surface location off the Property, and Landowner hereby waives any rights whatsoever to the use of the surface and said subsurface interval of the Property in connection with any Mineral Activities on the Property. Notwithstanding anything above to the contrary, Landowner shall not be prohibited from conducting exploratory activities that are non-invasive, do not otherwise damage or negatively impact the watersheds or aquifer, and do not significantly impair or interfere with the Conservation Values. To the extent Landowner elects to explore for or extract or exploit any oil, gas or other minerals in or under the Property from a surface location off the Property, Landowner shall use reasonable efforts to minimize any damage or other negative impact on the watersheds or aquifer underlying the Property by such activity.

Holder and Third Party Beneficiaries must be given written notice of any actual or proposed Mineral Activities that Landowner intends to conduct or authorize at least forty-five (45) days prior to Landowner entering into any contract with or lease to any third party for mineral exploration, and, if no such contract or lease, prior to Landowner beginning any work. In addition to the above surface waiver requirements, Landowner shall, prior to entering into any contract or lease (or prior to beginning any work if there is no contract or lease), consult with Holder and Third Party Beneficiaries and make reasonable efforts to incorporate conditions or restrictions as Holder and Third Party Beneficiaries may reasonably determine are required in order to prevent a significant impairment or interference with the Conservation Values of the Property. Holder and Third Party Beneficiaries reserve the right to attend and participate in all meetings, negotiations or discussions regarding activities associated with the exploration for, extraction of, or translocation of any actual or proposed Mineral Activities in order to protect their interest in the Conservation Easement.

Any and all mineral contracts, mineral conveyances, and mineral leases subsequent to the date of this Agreement to which Landowner is a party shall be bound by the provisions hereof.

- (c) **Third-Party Minerals.** All or part of the oil, gas or other mineral substances (whether such other mineral substances be part of the mineral estate or part of the surface estate) are owned by third parties as of the date of the grant of this Conservation Easement. The following provisions shall apply to such third party oil, gas and other mineral substances to the extent this Conservation Easement is deemed subordinated (by law or otherwise) to such oil, gas and other mineral substances ownership rights and in such event, only to the extent that Landowner has the legal right to comply with these provisions:
- i) Holder and Third Party Beneficiaries recognize that Landowner may not receive notice of Third Party Mineral Activities proposed to occur on the Property. Landowner shall promptly notify Holder and Third Party Beneficiaries upon receiving written notice or such other notice that Landowner reasonably believes to be objectively credible of any Third Party Mineral Activities proposed to occur on the Property by any such third parties (or their lessees).
 - ii) Whenever such third party owners are required by applicable law or pursuant to any existing or future contract, conveyance or lease to obtain any consent from Landowner with respect to any access to, operation on, physical alteration of, or improvement to the Property, Landowner shall, prior to giving any such consent, notify and consult with Holder and Third Party Beneficiaries and shall incorporate the conditions or restrictions set forth in section 2.3(b) on such consent to the extent allowed by law. In instances where the Landowner does not have the unilateral right to impose the conditions and restrictions set forth in section 2.3(b), the Landowner will use reasonable efforts to negotiate protection of the Conservation Values by third-party mineral owners.
 - iii) In the event Landowner at any time becomes the owner of any of such third party ownership rights, then such rights shall be deemed immediately subject to this Conservation Easement (including without limitation, paragraphs (a) and (b) of this Section), and any and all subsequent Mineral Activities, contracts, conveyances and leases of or relating to such ownership rights shall be bound by the provisions of this Conservation Easement.

(m) **Signage:** Construction or placement of any signs, billboards, or other advertising displays on the Property is not permitted, except that signs whose placement, number, and design do not significantly diminish the scenic character of the Property may be placed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate permitted on-site activities, to advertise the Property for sale or rent, to post the Property to control unauthorized entry or use, or to identify the property as being protected by this Conservation Easement.

(n) **Development Rights:** No development rights that have been encumbered or extinguished by this Agreement or the Conservation Easement granted herein shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

(o) **Hunting:** Grantor and Grantor's lessees and guests may conduct hunting, fishing or trapping activities in accordance with appropriate federal, state and local laws and restrictions that conform to terms of this Conservation Easement and the Permit and Mitigation Plan. Grantor may expressly construct hunting blinds, the size, design, location, and number of which shall be subject to Grantee's prior written approval. No non-native animal species may be introduced to the Property.

(p) **Dumping:** There shall be no dumping or storing of any material, such as trash, wastes, ashes, sewage, garbage, scrap material, sediment discharges, oil and petroleum by-products, leached compounds, toxic materials or fumes, or any "hazardous substances" (as hereinafter defined). For the purposes of this paragraph, the phrase "hazardous substances" shall be defined as in the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 *et seq.*) and/or a substance whose manufacture, processing, distribution in commerce, use, possession, or disposal is banned, prohibited, or limited pursuant to the federal Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

(q) **Other Prohibitions:** Any other use of, or activity on, the Property which is or may become inconsistent with the purposes of the Conservation Easement granted herein, the preservation of the Property in its natural condition, or the protection of its environmental systems, is prohibited.

5. **Rights Reserved to Grantor.** The Grantor expressly reserves for itself, its successors and assigns, the right of access to and the right of continued use of the Property for all purposes not inconsistent with this Agreement and the Conservation Easement granted herein, including, but not limited to, the right to quiet enjoyment of the Property, the rights of ingress and egress with respect to the Property, the right to fence the Property and to prohibit public access thereto, and the right to the right to sell, transfer, gift or otherwise convey the Property, in whole or in part, provided such sale, transfer, or gift conveyance is subject to the terms of, and shall specifically reference, the Conservation Easement. Except as may be expressly provided otherwise in this Agreement, neither this Agreement nor the Conservation Easement granted herein in any way limits, restricts or in any way affects any property of Grantor other than the Property, including without limitation, any property adjacent to, surrounding or near the Property. The rights conveyed by this Agreement and the Conservation Easement granted herein do not constitute a conveyance of a fee interest in the Property, nor of any of the mineral rights therein and thereunder. The rights retained by Grantor as set forth in this Section 5 are referred to hereinafter as the "Reserved Rights".

6. **Rights of Grantee.** Grantee or its authorized representatives, successors, and assigns, and the USACE, shall have the right to enter the Property at all reasonable times for the purpose of inspecting the Property to determine if the Grantor or any of its successors and assigns is complying with the terms, conditions, restrictions, and Purposes of the Conservation Easement. The easement rights granted herein do not include any public access rights. Grantee shall indemnify, defend and hold harmless Grantor and its affiliates, partners, members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them from and against any and all liability, loss, cost or damage arising out of or in connection with Grantee's exercise of its rights under the Conservation Easement. Nothing construed herein shall constitute an agreement by USACE to indemnify, defend or hold harmless either Party, or any of the above-listed parties, from and against any liability, loss, cost or damage.

7. **Liens and Taxes.** Grantor shall keep the Property free of any and all liens, including, without limitation, liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, and shall upon written request by Grantee furnish Grantee with satisfactory evidence of payment.

8. **Enforcement.** In the event of a breach of this Agreement by Grantor, the Grantee, any third party or any third party working for or under the direction of Grantor or the Grantee, the Parties and the USACE shall be notified immediately. If USACE becomes aware of a breach of this Agreement, USACE will notify the Grantee and Grantor of the breach.

Grantor shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to correct the conditions constituting the breach. If the conditions constituting the breach are corrected in a timely and reasonable manner, no further action shall be warranted or authorized. If the conditions constituting the breach are such that more than thirty (30) days are required to cure the breach, Grantor shall not be in default hereunder if Grantor undertakes the cure of such breach during the thirty (30) day period following notice of the breach and diligently pursues the cure of the breach to completion. If Grantor fails to initiate such corrective action within thirty (30) days or fails to complete the necessary corrective action, the Grantee may enforce the Conservation Easement by appropriate legal proceedings, including an action for damages, injunctive and other relief. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive relief or other appropriate relief if the breach of any provision of the Conservation Easement is materially impairing or would irreversibly or otherwise materially impair the benefits to be derived from the Conservation Easement. Grantor and the Grantee acknowledge that under such circumstances, damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with the Conservation Easement. The costs of a breach of this Agreement and the costs of any correction or restoration, including the Grantee's expenses, court costs and attorney's fees, shall be paid by Grantor. The USACE shall have the same right to enforce the terms and conditions of the Conservation Easement as the Grantee.

Any forbearance or failure on the part of the Grantee or the USACE to exercise its rights in the event of a violation shall not be deemed or construed to be a waiver of either Grantee's or the USACE's rights hereunder. Nor shall forbearance or failure to enforce any covenant or provision hereof shall discharge or invalidate such covenant or provision or any other covenant, condition, or provision hereof or affect the right to the Grantee and the USACE to enforce the same in the event of a subsequent breach or default.

Nothing contained in this Agreement or the Conservation Easement granted herein shall be construed to entitle the Grantee to bring any action against Grantor for any injury to or change in the Property, or for any violation of any covenant or provision of this Agreement, resulting from any prudent action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from any of such causes.

9. **Duration.** The burdens of this Agreement and the Conservation Easement shall run with the Property and shall be enforceable against Grantor and all future interests in and to the Property in perpetuity. Grantor agrees that the future transfer or conveyance of any interest in or to the Property shall at all times be subject and subordinate to the terms, conditions, restrictions and purposes of the Conservation Easement and a reference to this Agreement shall be included in each instrument of transfer or conveyance of any interest in or to the Property from and after the Effective Date; provided, however, that nothing in this Agreement shall be construed to in any way limit Grantee's ability to freely sell, convey, assign, or otherwise transfer the property interest and rights, or any portions thereof, granted by this Agreement to any other person or entity.

10. **General Provisions.**

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

To Grantor:

To Grantee:

To the USACE:

Regulatory Branch
Fort Worth District
U.S. Army Corps of Engineers
P. O. Box 17300
Fort Worth, Texas 76102

(b) **Severability.** In the event any provision of this Agreement is determined by the appropriate court to be void and unenforceable, all remaining terms shall remain valid and binding.

(c) **Agreement Binding.** The terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of Grantor, Grantee and their respective executors, administrators, heirs, legal representatives, successors and assigns. Notwithstanding the foregoing, Grantee not may assign (i) this Agreement, or (ii) any rights or interests in this Agreement, without the prior written approval of Grantor and the USACE.

(d) **Warranty.** Grantor warrants, covenants, and represents that it owns the Property in fee simple, and that Grantor either owns all interests in the Property which may be impaired by the granting of the Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Property which have not been expressly subordinated to the Conservation Easement. Grantor further warrants that Grantee shall have the use of and shall enjoy all the benefits derived from and arising out of the Conservation Easement, and that Grantor will warrant and defend title to the Property against all persons claiming by, through or under Grantor, but not otherwise.

(e) **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Agreement and the Conservation Easement in any deed or other legal instrument that transfers any interest in all or any portion of the Property. Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of the transfer. Grantor and Grantee agree that the terms of the Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof and shall not be amended, modified or terminated without the prior written consent and approval of the USACE.

(f) Assignment or Transfer. The parties recognize and agree that the benefits of the Conservation Easement are in gross and assignable by the Grantee; provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns the Conservation Easement, the organization receiving the interest will be a qualified holder under applicable state and federal law. The Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this Agreement.

(g) Obligations of Ownership. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with any federal, state, or local laws, regulations and permits that may apply to the Property in connection with the exercise by Grantor of the Reserved Rights.

(h) Extinguishment. In the event that changed conditions render impossible the continued use of the Property for the conservation purposes as contemplated by this Agreement, the Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding in any court of competent jurisdiction.

(i) Eminent Domain. Whenever all or any part of the Property is taken in the exercise of eminent domain so as to substantially abrogate the restrictions imposed by this Agreement and the Conservation Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

(j) Proceeds. The Conservation Easement constitutes a real property interest immediately vested in Grantee. In the event that all or a portion of the Property is sold, exchanged, or involuntarily converted following an extinguishment of all or any portion of the Conservation Easement, or following the exercise of eminent domain, Grantee shall be entitled to the fair market value of the Conservation Easement. The parties stipulate that the fair market value of the Conservation Easement shall be determined by multiplying the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the Effective attributable to improvements) by the ratio of the value of the Conservation Easement as of the Effective Date to the value of the Property (without deduction for the value of the Conservation Easement) at the time of this grant. The values as of the Effective Date and as referenced in this Section 9(l) shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended (whether eligible or ineligible for such a deduction). Grantee shall use its share of any proceeds in a manner consistent with the purposes of the Conservation Easement.

Nothing herein shall constitute a grant of real property or proceeds to the USACE.

(k) Failure of Grantee. If at any time Grantee is unable or fails to enforce the Conservation Easement, or if Grantee ceases to be a qualified grantee, and if within a reasonable period of time after the occurrence of any of such events, Grantee fails to make an assignment of its interest pursuant to the

Conservation Easement, then Grantee's interest shall become vested in another qualified grantee in accordance with and as provided by an appropriate and final, non-appealable proceeding in a court of competent jurisdiction.

(1) Amendment. This Agreement and the Conservation Easement granted herein may be amended, but only in a writing signed by the Parties hereto; provided, however, that such amendment does not affect the qualification of the Conservation Easement or the status of the Grantee under any applicable laws, is consistent with the conservation purposes of this Agreement and the Conservation Easement granted herein, and does not conflict with the Permit No. _____ or its related PRMP or MBI. Notice of such amendment shall be provided to the USACE.

TO HAVE AND TO HOLD the Conservation Easement for the purposes herein described, subject, however, to the matters herein set forth and to all matters of record with respect to the Property, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself, its successors and assigns to warrant and defend the Conservation Easement and the rights granted herein, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

[SIGNATURE PAGE FOLLOWS]

EXECUTED And DELIVERED to be effective as of the Effective Date.

GRANTOR:

GRANTEE:

[ACKNOWLEDGMENTS FOLLOW]

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20__ by
_____, on behalf of _____.

Name:
Notary Public, State of Texas
My commission expires:_____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20__ by
_____, on behalf of _____.

Name:
Notary Public, State of Texas
My commission expires:_____

After recording return to:

Exhibit A
to
Conservation Easement Agreement

Metes and Bounds Legal Description of the Property

[TO BE PROVIDED]

Exhibit B
to
Conservation Easement Agreement

The Permit

[TO BE ATTACHED]

Exhibit C
to
Conservation Easement Agreement

Permittee Responsible Mitigation Plan
or
Mitigation Banking Instrument

[TO BE PROVIDED]

Exhibit D
to
Conservation Easement Agreement

Baseline Documentation Report

[TO BE PROVIDED]