**CONSERVATION SERVITUDE HANDOUT**

The following document is the accepted form for the conservation servitude to be filed with compensatory mitigation projects. Please insert the appropriate information in the applicable area.

**NOTE:** Any modifications of the language contained therein must be clearly identified in the submission of the draft for consideration by the U.S. Army Corps of Engineers.

**Signature Authority:**

For individuals, all parties identified on the PROPERTY title must sign.

For someone signing on behalf of a corporation or LLC, they need to show that they have authority to sign on behalf of that entity. For example, if the entity is a LLC, we need to have documentation attached to the conservation servitude showing that the person signing is authorized to execute the document on behalf of the LLC. The Articles of Organization for the LLC will indicate whether a manager of the LLC has authorization to sign for the LLC. If person signing is a manager and has authorization pursuant to the Articles, a Certificate of Authorization demonstrating his/her authority to sign the servitude on behalf of LLC will be necessary. That Certificate would be attached to the servitude. If the LLC articles of organization do not contain an authorization for a manager to sign for the LLC, it may be necessary for all members of the LLC to sign a certificate of authority.

Most companies should have a draft authorization they use in transactions. Such a document would likely be sufficient. A copy of the Articles of Organization for the LLC should be provided.

For corporations, the person signing the servitude will need to attach a corporate resolution to the servitude agreement that shows he/she is authorized to sign on behalf of the corporation. Most corporations should already have a draft resolution they use for transactions.

 revised August 15, 2019

**CONSERVATION SERVITUDE**

**UNITED STATES OF AMERICA**

**STATE OF LOUISIANA**

**PARISH OF (INSERT PARISH NAME)**

**BE IT KNOWN**, that on this \_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, the undersigned Notary Public, duly commissioned and qualified in and for the State and Parish aforesaid, and in the presence of the undersigned competent witnesses, personally came and appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who, after being duly sworn by me, Notary Public, did depose and state that he (she) is the duly authorized representative of (Limited Liability Company, corporation, etc), and that said (Limited Liability Company, corporation, etc) is a business licensed and located in the State of Louisiana, whose mailing address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “GRANTOR”), and who declares:

1. That GRANTOR, in consideration of the mutual benefits to be derived in the establishment of the Permittee Responsible Mitigation Plan for Permit no. MVN# \_\_\_\_\_\_\_\_\_\_\_\_\_ and pursuant to LA.R.S. 9.1271 et seq., does by these presents, grant, transfer, convey and deliver unto GRANTEE, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter “HOLDER”) represented herein by its duly authorized representative, \_\_\_\_\_\_\_\_\_\_\_\_\_, whose mailing address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with all legal warranties and with full subrogation and to all rights and actions in warranty which GRANTOR has or may have against all preceding owners and vendors, possession and delivery of a certain CONSERVATION SERVITUDE, in, on, over, upon and across the following described property:

PROPERTY DESCRIPTION FOR PERMITTEE RESPONSIBLE MITIGATION SITE FOR PERMIT NO. MVN# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(a survey of the tract conservation lands must be attached as Exhibit “A” and referenced in the PROPERTY description)

(hereinafter the “PROPERTY”)

2. GRANTOR warrants that it owns the PROPERTY in fee simple and that said PROPERTY is free from any mortgage, lien, judgment or encumbrance that will or may conflict with the purposes of this CONSERVATION SERVITUDE.

3. HOLDER is qualified to hold this CONSERVATION SERVITUDE by virtue of being (Identify which of the below qualifies HOLDER; delete the rest):

a) A governmental body empowered to hold an interest in immovable property under the laws of the State of Louisiana or the United States of America; or

b) a non-profit corporation organized pursuant to Louisiana’s Non-Profit Corporation Law, Title 12, Sections 201-269 of the Louisiana Revised Statues, the purposes or powers of which include:

1) retaining or protecting the natural, scenic, or open-space values of immovable property;

2) assuring the availability of immovable property for agricultural, forest, recreational of open-space use;

3) protecting natural resources;

4) maintaining or enhancing air or water quality; or

5) preserving the historical, archaeological or cultural aspects of unimproved immovable property.

4. Except as provided in the Permittee Responsible Mitigation Plan for permit number MVN\_\_\_\_\_\_\_\_\_\_\_ establishing the Permittee Responsible Mitigation Site for permit \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,** a copy of which is attached hereto as Exhibit “B” and made a part hereof, the PROPERTY is henceforth set aside and reserved in its natural state, and GRANTOR will take no action or allow any action which diminishes the PROPERTY’S natural state or convert it to another use. Actions prohibited on the PROPERTY without written authorization from U.S. Army Corps of Engineers, New Orleans District (CEMVN), pursuant to this CONSERVATION SERVITUDE include, but are not limited to:

1. construction of any structure or structures on said PROPERTY;
2. cutting, burning, removal or destruction of vegetation (including trees) on said PROPERTY except in accordance with the terms specified in the Permittee Responsible Mitigation Plan, and permits which may be required from the U.S. Army Corps of Engineers, New Orleans District at the time the cutting is proposed;
3. building or allowing others to build or develop roads, trails or paths on said PROPERTY;
4. partitioning the PROPERTY with fencing or constructing perimeter or boundary fencing designed to impede the movement of terrestrial wildlife to and from said PROPERTY or designed to contain terrestrial wildlife within said PROPERTY;
5. changing the elevation of or contours (excavate or deposit dredged material) of said PROPERTY except in accordance with terms specified in the Permittee Responsible Mitigation Plan, and permits which may be required from the U.S. Army Corps of Engineers, New Orleans District at the time the changes are proposed ;
6. pumping, draining or causing said PROPERTY to be drained in any way;
7. placing, filling, storing, or dumping refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such items on the PROPERTY;
8. land clearing or deposition of soil, shell, rock or other fill on the PROPERTY;
9. grazing of animals including cattle or other domestic livestock on said PROPERTY;
10. commercial, industrial, agricultural, mineral exploration and extraction or residential uses said PROPERTY;
11. operating of any vehicle on said PROPERTY in a manner such that its use destroys/removes vegetation or alters the natural contours of the surface elevation except in accordance with the Permittee Responsible Mitigation Plan, and permits which may be required from the U.S. Army Corps of Engineers, New Orleans District at the time the changes are proposed; or,
12. any other activities, which are inconsistent with the establishment, maintenance and protection of said PROPERTY as identified in the Permittee Responsible Mitigation Plan, and permits which may be required from the U.S. Army Corps of Engineers, New Orleans District at the time the changes are proposed

5. No later than December 31st of each calendar year, the HOLDER shall provide to the U.S. Army Corps of Engineers a statement regarding compliance with the requirements of Section 4 indicating the dates and extent of the inspection(s) conducted. This statement shall be mailed to U.S. Army Corps of Engineers, New Orleans District ATTN: Regulatory Branch, CEMVN-RG, 7400 Leake Avenue, New Orleans, Louisiana, 70118-3651.

6. Neither the PROPERTY nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Servitude for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Servitude shall be transferred to any other lands pursuant to a transferable development rights, scheme cluster development arrangement or otherwise. The PROPERTY shall not be divided, partitioned, subdivided or conveyed except in its current configuration in its entirety

7. The U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and Louisiana Department of Wildlife & Fisheries and all other agencies that are a party to the attached Permittee Responsible Mitigation Plan are granted third party rights of enforcement.

8. HOLDER and those with third party rights of enforcement shall have the right to enter and go upon the PROPERTY for purposes of inspection, verifying compliance with this CONSERVATION SERVITUDE, and to enforce the provisions of this CONSERVATION SERVITUDE. GRANTOR retains a right of entry to the PROPERTY to perform routine maintenance, restoration or reconstruction as authorized by the attached Permittee Responsible Mitigation Plan. No right of access or entry by the general public to any portion of the property is conveyed by this CONSERVATION SERVITUDE.

9. Should GRANTOR, its heirs and assigns, and all subsequent owners, purchasers, lessees, grantees, and licensees fail to comply with the requirements of this CONSERVATION SERVITUDE, HOLDER and those with third party rights of enforcement may undertake legal proceedings to insure compliance. Among other relief, HOLDER and those with third party rights of enforcement may seek the complete restoration of any breach of this CONSERVATION SERVITUDE. Breaches of this CONSERVATION SERVITUDE may be actionable without notice. The costs of correcting a breach or costs of restoration, including expenses, court costs and attorneys’ fees, shall be paid by the GRANTOR or its heirs and assigns, and all subsequent owners, purchases, lessees, grantees, and licensees. Enforcement shall be at the discretion of the HOLDER and those with third party rights of enforcement, and no omission or delay in acting shall constitute a waiver of any enforcement right. These enforcement rights 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.

10. Modification of this document is permissible, subject to notice and final approval by the U.S. Army Corps of Engineers, New Orleans District. Any modification to this document, or to the rights and obligations created under this agreement, requires GRANTOR to provide to the U.S. Army Corps of Engineers, New Orleans District, ATTN: Regulatory Branch, CEMVN-RG whose address is 7400 Leake Avenue New Orleans, Louisiana 70118-3651, at least 60-day notice of any proposed modification for the district engineer’s approval. Transfer of property is also permissible, subject to the same approval and notification terms as specified above.

 11. Upon incapacity, death, disqualification or expiration of the HOLDER, GRANTOR agrees to affirmatively modify this instrument by appointing a replacement HOLDER, subject to the terms stated in Paragraph 3. Appointment of a replacement HOLDER requires a 60-day advance notice to be provided to the U.S. Army Corps of Engineers, New Orleans District and subsequent approval by the same of the proposed new HOLDER as directed in Paragraph 10, above.

12. This CONSERVATION SERVITUDE is transferable, but only to a qualified HOLDER as identified in Paragraph 3, above. Transfer of this CONSERVATION SERVITUDE is only permissible following 60-day advance notice to the U.S. Army Corps of Engineers, New Orleans District and approval by the same of the proposed transfer, as directed in Paragraph 10, above.

13. This CONSERVATION SERVITUDE is binding in perpetuity on GRANTOR, its heirs and assigns, and all subsequent owners, purchasers, lessees, grantees, and licensees.

14. This Agreement may be executed simultaneously in one or more counterparts each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

**IN TESTIMONY WHEREOF**, the parties hereto have signed, executed and acknowledged this instrument as their free and voluntary acts, in multiple originals, in the presence of the undersigned competent witness, and me, Notary Public, on this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ , at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Louisiana.

**GRANTOR**

WITNESSES: **SPONSOR NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

 My commission expires: \_\_\_\_\_\_\_\_\_.

**ACCEPTANCE**

WITNESSES: **HOLDER NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

 My commission expires: \_\_\_\_\_\_\_\_\_.