

## Florida DEP Rules on Financial Responsibility

### **62-342.700 Financial Responsibility.**

(1) To provide reasonable assurances that the proposed Mitigation Bank will meet the requirements of Section 373.4136, F.S., this section and the associated permit conditions, non-governmental bankers shall provide proof of financial responsibility for: (a) the construction and implementation phase of the bank, and (b) the perpetual management of the bank, as required in this section. Governmental entities shall provide proof of financial responsibility under subsection 62-342.700(12), F.A.C. The amount of financial responsibility provided in the mechanisms required in this section shall be based on the cost estimates determined under subsection 62-342.700(10), F.A.C.

(2) Submitting Financial Responsibility Documentation. The applicant shall provide draft documentation of the required financial responsibility mechanisms described below with the permit application, and shall submit to the Department the executed or finalized documentation within the time frames specified in the permit. The provisions of this section shall also apply for any modifications to the Mitigation Bank Permit.

(3) General Terms for Financial Responsibility Mechanisms. In addition to the specific provisions regarding financial responsibility mechanisms for construction and implementation in subsection 62-342.700(4), F.A.C., and perpetual management in subsection 62-342.700(9), F.A.C., the following terms shall be complied with:

(a) The financial responsibility mechanisms shall be payable at the direction of the Department to its designee or to a standby trust agreement. The financial responsibility mechanism shall be retained by the Department if it is of a type which is retained by the beneficiary according to industry standards.

(b) Demonstration of financial responsibility shall be continuous until complete satisfaction of the applicable permit conditions and approved release of financial responsibility by the Department.

(c) All financial mechanisms must guarantee that the banker will perform all of its obligations under the permit, provide alternative financial assurance of a type allowed by this section, and obtain the Department's written approval of the alternative assurance provided within 90 days after receipt by both the banker and the Department of a notice of cancellation of a bond or intent not to extend the expiration date of a letter of credit.

(d) A banker may satisfy the requirements of this section by establishing more than one acceptable financial mechanism per Mitigation Bank.

(e) A banker may use a financial assurance mechanism allowed under this section for more than one Mitigation Bank. The amount of funds available through the mechanism must be no less than the sum of funds that would be available through separate mechanisms acceptable for each Mitigation Bank.

(f) A banker must notify the Department by certified mail within 10 days after the commencement of a voluntary or involuntary proceeding:

1. To dissolve the banker,
2. To place the banker in receivership,
3. For entry of an order for relief against the banker under Title 11 of the United States Code, or
4. A general assignment of its assets for the benefit of creditors under Chapter 727, F.S.

A banker may not assign its assets for the benefit of creditors. A banker will be without the required financial assurance in the event of a bankruptcy of the trustee of any trust provided under this rule, or the suspension or revocation of the authority of any trustee to act as trustee, or in the event of a bankruptcy of the issuing institution of any bond or letter of credit, or the revocation of the authority of such institution to issue such instruments. The banker must notify the Department within 10 days, and establish other financial assurance within 60 days after such an event.

(4) Financial Responsibility for Construction and Implementation.

(a) No financial responsibility shall be required where the construction and implementation of the Mitigation Bank, or a phase thereof, is completed and successful prior to the withdrawal of any credits.

(b) Financial responsibility for the construction and implementation of each phase of the Mitigation Bank may be established by surety bonds, performance bonds, irrevocable letters of credit, or trust funds. If a bond or an irrevocable letter of credit is used as the financial mechanism, a standby trust fund shall be established, in which all payments under the bonds or irrevocable letter of credit shall be directly deposited.

(c) The amount of financial responsibility established shall equal 110% of the cost of construction and implementation of the Mitigation Bank (or each phase of the Mitigation Bank) which is being constructed and implemented. When the bank (or appropriate phase) has been completely constructed, implemented, and is trending toward success in compliance with the permit, the respective amount of financial responsibility shall be released.

(d) The financial responsibility mechanism shall become effective prior to the release of any mitigation credits.

(5) Surety or Performance Bond.

(a) A banker may satisfy the requirements of subsection 62-342.700(4), F.A.C., by obtaining a surety or performance bond that conforms to the requirements of this subsection. The company issuing the bond must be licensed to do business in Florida, and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury, or a Florida-domiciled surety or insurance company with at least an A rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus. The banker shall provide proof that the bond company meets these requirements.

(b) The surety or performance bond shall be worded in substantial conformance with Form 62-342.900(1). Deviations from the form shall be identified and submitted to the Department for review and approval.

(c) Under the terms of the bond, the surety shall become liable on the bond obligation when the mitigation banker fails to perform under the terms of the Mitigation Bank Permit. In all cases, the surety's liability shall be limited to the sum stated in the bond.

(d) The mitigation banker who uses a surety or performance bond to satisfy the requirements of subsection 62-342.700(4), F.A.C., must establish a standby trust fund when the surety or performance bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund for distribution by the trustee in accordance with the Department's instructions. The standby fund agreement must meet the requirements specified in subsection 62-342.700(7), F.A.C.

(e) The bonding company shall provide notice of cancellation of a bond by certified mail to the banker and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the banker and the Department, as evidenced by the return receipt.

(f) A bond may be canceled by the banker if the Department has given prior written consent. The Department shall provide such consent when either the banker substitutes alternative financial assurance allowed under this rule and such alternate financial assurance is approved by the Department and is effective or the Department releases the banker from the requirements of this subsection.

(6) Irrevocable Letter of Credit.

(a) A mitigation banker may satisfy the requirements of subsection 62-342.700(4), F.A.C., by obtaining an irrevocable letter of credit that conforms to the requirements of this subsection. The irrevocable letter of credit shall be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" as defined in Section 38 of the Federal Deposit Insurance Act (12 USC 1831(o)). The banker shall submit proof of such capitalization to the Department.

(b) The irrevocable letter of credit shall be worded in substantial conformance with Form 62-342.900(2). Deviations from the form shall be identified and submitted to the Department for review and approval.

(c) A mitigation banker who uses an irrevocable letter of credit to satisfy the requirements of

subsection 62-342.700(4), F.A.C., must also establish a standby trust fund when the irrevocable letter of credit is acquired. Under the terms of the irrevocable letter of credit, all amounts paid pursuant to a sight draft by the Department will be deposited by the issuing institution directly into the standby trust fund to be distributed by the trustee in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in subsection 62-342.700(7), F.A.C.

(d) Letters of credit must be irrevocable and issued for a period of at least one year, and the expiration date must be automatically extended for a period of at least one year unless, at least 120 days prior to the expiration date, the issuing institution notifies both the banker and the Department by certified mail of a decision not to extend the expiration date. The terms of the irrevocable letter of credit must provide that the 120 days begins on the date when both the banker and the Department have received the notice, as evidenced by the return receipts.

(7) Standby Trust Fund.

(a) A mitigation banker using a surety or performance bond or irrevocable letter of credit shall contemporaneously establish a standby trust fund. The trustee of the standby trust shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal agency or an agency of the state in which the fund is established. The banker shall provide proof of such regulation and examination to the Department.

(b) The standby trust agreement shall be worded in substantial conformance with Form 62-342.900(3). Deviations from the form shall be identified and submitted to the Department for review and approval.

(8) Trust Fund.

(a) A mitigation banker may satisfy the requirements of subsection 62-342.700(4), F.A.C., by establishing a trust fund that conforms to the requirements of this section. The trustee of the trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal agency or an agency of the state in which the fund is established. The banker shall provide proof of such regulation and examination to the Department.

(b) The trust agreement must be worded in substantial conformance to Form 62-342.900(4). Deviations from the form shall be identified and submitted to the Department for review and approval.

(9) Financial Responsibility for Perpetual Management.

(a) A banker shall establish either a trust fund or an irrevocable letter of credit or surety or performance bond with a corresponding standby trust fund to provide financial responsibility for the perpetual management of the Mitigation Bank, or phase thereof. When a trust fund is used, the requirements of subsection 62-342.700(8), F.A.C., must be met. When a surety or performance bond or irrevocable letter of credit is used with a standby trust fund, the requirements of subsections 62-342.700(6), 62-342.700(5), and 62-342.700(7), F.A.C., respectively, must be met, except all references to construction and implementation shall be changed to perpetual management. Trust fund agreements for perpetual management shall be worded in substantial conformance with Form 62-342.900(5). Deviations from the form shall be identified and submitted to the Department for review and approval.

(b) The amount of financial responsibility provided shall be sufficient to be reasonably expected to generate annual revenue equal to the annual cost of perpetual management, established under subsection 62-342.700(10), F.A.C., at an assumed average rate of return of six percent per annum, for the bank, or for banks constructed in phases, for all phases for which credits have been released.

(c) The financial responsibility mechanism must be in effect prior to the withdrawal of credits from the Mitigation Bank, or applicable phase thereof.

(10) Cost estimates.

(a) For the purposes of determining the amount of financial responsibility that is required in this section, the banker shall submit a detailed written estimate, in current dollars, of the total cost of construction and implementation and of the cost of perpetual management of the Mitigation Bank. The written cost estimate shall be certified by a licensed professional whose license authority in the State of Florida includes the ability to provide such certified written estimates.

(b) The cost estimate for construction and implementation shall include all costs associated with completing construction and implementation of the Mitigation Bank, or phase thereof, including, as applicable, earthmoving, planting, exotic/nuisance vegetation removal, land surveying, structure installation, consultant fees, taxes, monitoring activities and reports.

(c) The cost estimate for the perpetual management of the Mitigation Bank shall be based on the costs of maintaining and operating any structures, controlling nuisance or exotic species, fire management, consultant fees, monitoring activities and reports, taxes, and any other costs associated with perpetual management. The amount of financial responsibility shall equal the cost of perpetual management for the bank, or, for banks constructed in phases for all phases for which credits have been released.

(d) The banker shall submit written cost estimates, together with verifiable basis for the estimates to the Department along with the financial responsibility mechanism.

(e) The costs shall be estimated based on a third party performing the work at the fair market value of services. The source of any cost estimates shall be indicated.

(11) Cost adjustments.

(a) Every two years, the banker shall undertake an estimate of the costs of the remaining construction, implementation, and perpetual management. The banker shall submit the estimate to the Department in writing certified by a licensed professional whose license authority in the State of Florida includes the ability to provide such certified written estimates accompanied by supporting documentation. Construction, implementation, and perpetual management costs shall be listed separately. The Department shall review the cost adjustment statement and supporting documentation to determine if they reflect all construction, implementation, and perpetual management costs. If the cost adjustment statement and supporting documentation accurately reflects a good faith estimate of all construction, implementation and perpetual management costs, the Department shall approve the cost adjustment statement.

(b) At each cost adjustment, the banker shall revise the construction, implementation, and perpetual management cost estimate for inflation and changes in the costs to complete or undertake the current phase of the Mitigation Bank or appropriate phase thereof.

(c) Revised cost estimates shall be used as the basis for modifying the financial mechanism. If the value of the financial mechanism is less than the total amount of the current construction and implementation and perpetual management cost estimates, the banker shall, upon Department approval of the cost adjustment statement, increase the value of the financial mechanism to reflect the new estimate within 60 days. If the value of the funding mechanism is greater than the total amount of the current cost estimate, the banker may reduce the value of the funding mechanism to reflect the new estimate upon receiving Department approval of the cost adjustment statement.

(d) The Department shall require adjustment of the amount of financial responsibility provided for construction, implementation or perpetual management at times other than the cost adjustment period when the estimated costs associated with compliance with the permit conditions exceed the current amount of financial responsibility and such financial assurances are deemed necessary to ensure compliance with the permit conditions.

(e) The banker may provide revised cost estimates more frequently than every two years. If at any time the banker learns that actual costs exceed estimated costs by more than 25 percent, the banker shall provide a revised cost estimate and adjust the corresponding amount of financial responsibility under this section.

(12) Financial Responsibility for Governmental, Non-Department and Non-Water Management District, Mitigation Banks.

(a) Governmental entities other than the Department or Districts shall demonstrate reasonable assurances that it can meet the construction and implementation requirements in the Mitigation Bank Permit by any of the mechanisms in subsection 62-342.700(4), F.A.C., above, or by other financial mechanisms which are sufficient to meet the requirements of this section.

(b) Governmental entities other than the Department or District shall establish a trust fund for the perpetual management of the Mitigation Bank which meets the requirements of subsection 62-342.700(9),

F.A.C., above. The trust fund for perpetual management may be funded as Mitigation Credits are withdrawn, provided that the trust fund is fully funded when all Mitigation Credits are withdrawn. Governmental entities shall comply with the cost adjustment provisions in subsection 62-342.700(11), F.A.C.

*Specific Authority 373.4136(11) FS. Law Implemented 373.4135, 373.4136 FS. History--New 2-2-94, Formerly 17-342.700, Amended 12-12-94, 9-12-95, 5-21-01.*

**MITIGATION BANK PERFORMANCE BOND TO DEMONSTRATE  
CONSTRUCTION AND IMPLEMENTATION FINANCIAL ASSURANCE**

Legal Name and Business Address of Mitigation Banker

Surety(ies):

Name(s) and Business Address(es)

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, that we, the Principal and Surety(ies) hereto are firmly bound to the St. Johns River Water Management District in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be full amount of the penal sum.

WHEREAS, said Principal is required, under Section 373.4136, Florida Statutes, as amended, to have a permit in order to construct, implement and manage the mitigation bank identified above, and

WHEREAS, said Principal is required by Section 373.4136, Florida Statutes, and the administrative rules of the District to provide financial assurance for construction and implementation of the mitigation bank as a condition of the permit(s) as further described in the scope of coverage above, and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully construct and implement the \_\_\_\_\_ mitigation bank, for which this bond guarantees construction and implementation, as required by District permit number \_\_\_\_\_ and the plans approved by such permit, as such permit and plans may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance, as specified in the administrative rules of the District, and obtain the District's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the District from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of (insert banker's name) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of (insert banker's name) arising from, and in the course of, employment by (insert banker's name);
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by (insert banker's name) that is not the direct result of a construction or implementation activity for the \_\_\_\_\_ mitigation bank required pursuant to District permit number \_\_\_\_\_;
- (e) Bodily injury or property damage for which (insert banker's name) is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Director of the Department of Resource Management of the District that the Principal has been found in violation of the requirements of permit number \_\_\_\_\_ by failing to perform the construction and implementation activities for the \_\_\_\_\_ mitigation bank for which this bond guarantees performance, the Surety(ies) shall, within 60 days of receiving such notice, either perform such construction and implementation in accordance with the permit and other permit requirements and pursuant to the written directions of the District, or place the bond amount guaranteed for the \_\_\_\_\_ Mitigation Bank (the total penal sum of this bond) into the standby trust fund as directed by the District.

Upon notification by the Director of the Department of Resource Management of the District that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the District during the 90 days following receipt by both the Principal and the District of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the \_\_\_\_\_ Mitigation Bank (the total penal sum of this bond) into the standby trust fund as directed by the District.

The Surety(ies) hereby waive(s) notification of amendments to the \_\_\_\_\_ Mitigation Bank plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the District; provided, however that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the District, as evidenced by the return receipts.



The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the District.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond every two years so that it guarantees increased or decreased construction and implementation cost provided that no decrease in the penal sum takes place without the written permission of the District.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this Performance Bond is substantially similar to Form No. 40C-4.900(5) in Appendix N of the Applicant's Handbook: Management and Storage of Surface Waters which form has been incorporated by reference as an administrative rule in Section 40C-4.900, Florida Administrative Code.

PRINCIPAL

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type Name and Title

Corporate Seal

CORPORATE SURETY(IES)

For each co-surety provide the following

\_\_\_\_\_  
Name and Address

\_\_\_\_\_  
State of Incorporation

\_\_\_\_\_  
Liability Limit \$

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type Name and Title

Corporate Seal

STATE OF FLORIDA

MITIGATION BANK TRUST FUND AGREEMENT  
TO DEMONSTRATE CONSTRUCTION AND  
IMPLEMENTATION FINANCIAL ASSURANCE

THIS TRUST AGREEMENT, the "Agreement," is entered into as of \_\_\_\_\_ by and  
Date  
between \_\_\_\_\_  
Name of Mitigation Banker  
a \_\_\_\_\_ (the Grantor,) Name of State Insert "corporation, partnership, association, or proprietorship",  
and \_\_\_\_\_  
Name and Address of Corporate Trustee  
\_\_\_\_\_ (the Trustee.)  
Insert "incorporated in the State of \_\_\_\_\_" or "a national bank"

WHEREAS, Grantor is the owner of certain real property in \_\_\_\_\_ County, Florida, and has received from the St. Johns River Water Management District ("District") that certain permit number 4- ("mitigation bank permit") which authorizes the construction and implementation of the \_\_\_\_\_ Mitigation Bank;

WHEREAS, the District, a Florida public entity created under Chapter 373, Florida Statutes, has established certain regulations applicable to the Grantor, requiring that a mitigation bank permittee shall provide assurance that funds will be available when needed for corrective action if Grantor fails to construct and implement that mitigation bank,

WHEREAS, the Grantor has elected to establish this trust fund agreement to provide such financial assurance for the \_\_\_\_\_ Mitigation Bank identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the \_\_\_\_\_ who enters into this Agreement  
Name of Mitigation Banker  
and any successors or assigns of the Grantor.
- (b) The term "Trustee" means \_\_\_\_\_ the Trustee who enters into this Agreement and  
Trustee's Name  
any successor Trustee.
- (c) The term "District" means the St. Johns River Water Management District, a public entity in the State of Florida or any successor thereof.
- (d) The term "investment obligations" means:

- (i) United States of America Treasury and Federal agency securities or other obligations issued or unconditionally guaranteed as to principal and interest by the United States of America, in each case with maturities of not more than one year from the date acquired;
- (ii) Demand deposits, certificates of deposit, bankers acceptances and time deposits of any bank organized or licensed to conduct a banking business under the laws of the United States of America or any state thereof having capital, surplus and undivided profits of not less than \$100,000,000, and whose deposits are insured by the Federal Deposit Insurance Corporation or any successor thereof;
- (iii) Securities of entities incorporated under the laws of the United States of America or any State thereof commonly known as "commercial paper" that at the time of purchase have been rated and the ratings for which are not less than "P1" if rated by Moody's Investors Services, Inc., and not less than "A1" if rated by Standard and Poor's Corporation, in each case with maturities of not more than one year from the date acquired;
- (iv) State or local government securities, which debt obligations at the time of purchase are rated investment grade by one or more nationally recognized rating agencies, in each case with maturities of not more than one year from the date acquired;
- (v) Repurchase obligations with any banking or financial institution described in clause (ii) above which are fully collateralized at all times by any of the foregoing obligations;
- (vi) Corporate fixed income securities whose ratings at the time of purchase are rated not less than "A-" if rated by Standard and Poor's Corporation and "A3" if rated by Moody's Investors Services, Inc. in each case with maturities of not more than one year from the date acquired; and
- (vii) Investments in any one or more professionally managed money market funds generally regarded as investment grade with a portfolio size of not less than \$100,000,000.

Section 2. Identification of Cost Estimates. This Agreement pertains to the cost estimate for construction and implementation of the \_\_\_\_\_ mitigation bank identified in Attachment A hereto.

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund (the Fund), for the benefit of the District. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established by the Grantor's deposit of \$ \_\_\_\_\_ into the Fund. Such monies and other monies subsequently placed in the Fund are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, for the benefit of the District as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the District.

Section 4. Payment for Completing Construction and Implementation. The Trustee shall make payments from the Fund as the Director of the District's Department of Resource Management shall direct in writing to provide for the payment of the costs of completing construction and implementation of

the mitigation bank covered by this Agreement pursuant to the requirements of the mitigation bank permit. The Trustee shall reimburse persons specified by the District from the Fund for construction and implementation expenditures in such amounts as the District shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the District specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of Grantor under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of Grantor arising from, and in the course of employment by Grantor;
- (c) Bodily injury or non-realty property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by Grantor that is not the direct result of the construction and implementation of the mitigation bank;
- (e) Bodily injury or property damage for which Grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

Section 5. Additional Payments to Fund. After the initial deposit of principal into the Fund, the Grantor shall increase the principal if so required by the District pursuant to its administrative regulations and the requirements of the mitigation bank permit.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund in one or more investment obligations and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the mitigation bank, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Power of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or a State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trust shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the District a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the fund. The failure of the Grantor or the District to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the District shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. Grantor shall pay the Trustee any necessary fees for services rendered. Where the Grantor is no longer in existence, the Trustee is authorized to charge against the Trust its published Trust fee schedule in effect at the time services are rendered. However, all Trustee compensation charged against the Trust shall be paid from trust income, unless the District authorizes payment from the trust principal in writing.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee, the successor is approved by the District, and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the District may appoint a successor. If the District does not act, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the District, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 12.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by \_\_\_\_\_ or such other designees as the Grantor may designate by amendment to this Agreement. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the District to the Trustee shall be in writing, signed by the District's Director of the Department of Resource Management, or the Director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the District hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the District, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the District, or by the Trustee and the District if the Grantor dies, is legally incapacitated, is administratively or judicially dissolved, or otherwise ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the District, or by the Trustee and the District, if the Grantor dies, is legally incapacitated, is administratively or judicially dissolved, or otherwise ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered pursuant to the written agreement terminating the trust, or where the Grantor has ceased to exist, then to the District.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the District issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Florida.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

\_\_\_\_\_  
Signature of Grantor

\_\_\_\_\_  
Signature of Trustee

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Attest:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Seal

Seal

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a Florida corporation, on behalf of the corporation. Such person did not take an oath and:

\_\_\_\_\_ is/are personally known to me  
\_\_\_\_\_ produced a current Florida driver's license as identification  
\_\_\_\_\_ produced \_\_\_\_\_ as identification

\_\_\_\_\_  
Signature of Notary

(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)  
Commission number (if not legible on seal) \_\_\_\_\_  
My commission expires: (if not legible on seal) \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ Bank, on behalf of the corporation. Such person did not take an oath and :

\_\_\_\_\_ is/are personally known to me  
\_\_\_\_\_ produced a current Florida driver's license as identification  
\_\_\_\_\_ produced \_\_\_\_\_ as identification

\_\_\_\_\_  
Signature of Notary

(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)  
Commission number (if not legible on seal) \_\_\_\_\_  
My commission expires: (if not legible on seal) \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary

(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)  
Commission number (if not legible on seal) \_\_\_\_\_  
My commission expires: (if not legible on seal) \_\_\_\_\_



**ATTACHMENT A**

[COST ESTIMATE FOR CONSTRUCTION AND IMPLEMENTATION]

### Conservation Easement

The Panther Island Mitigation Bank shall be preserved and protected in perpetuity in accordance with a conservation easement granted to the South Florida Water Management District and the Florida Department of Environmental Protection. A copy of the draft language to be used for this conservation easement is attached to this permit (Exhibit 20).

To ensure that the Conservation Easement for the Panther Island Mitigation Bank is conveyed without encumbrances that would affect the viability of the mitigation bank, the bank sponsor shall provide the following with the conservation easement:

- A. A title insurance policy updated to the date of conveyance, after the recording of the conservation easement for the bank.
- B. If liens on the property exist, as identified by the Title Commitment, subordination, release, or joinder agreements for each lien.
- C. A sketch and legal description of the area showing all existing easements and encumbrances, if any, as identified in the title document. This information shall be submitted in recordable form.
- D. A publicly recorded, certified copy of the conservation easement.

### Financial Assurances – Construction and Implementation

The bank sponsor shall provide the following financial responsibility mechanisms pursuant to the Federal Guidance and the District's mitigation banking rules:

Construction and Implementation Financial Mechanism(s): Thirty days prior to the debit of mitigation credits, the bank sponsor shall provide to the Corps/District a performance bond, or letter of credit and its associated Standby Trust Fund Agreement for each phase or subphase thereof that is in the form of Exhibits 21 to 23<sup>1</sup>. The financial assurance amount for the marsh reconstruction and Pine Flatwoods areas is \$5,553.00 per acre and for the fire-managed/herbicide areas is \$1,798.00 per acre. Financial assurance will not be required for the preservation areas. The following table summarizes the financial assurances per activity for each bank phase.

<sup>1</sup> The attached forms have been approved by the SFWMD Governing Board for rule making. Changes to indicate additional language regarding the federal interest are highlighted on the forms.

**Table 7 - Financial Assurance Table**

Phase/Primary Mitigation Activity		Phase Acreage	Financial Amount Assurance per acre
1.	Fire Managed/herbicide	376.14	\$1,798.00
2.	Fire Managed/herbicide	14.28	\$1,798.00
2.	Marsh Reconstruction	237.42	\$5,553.00
2.	Pine Flatwood Reconstruction	59.26	\$5,553.00
3.	Fire Managed/herbicide	95.56	\$1,798.00
3.	Marsh Reconstruction	100.44	\$5,553.00
3.	Pine Flatwood Reconstruction	15.87	\$5,553.00
4.	Fire Managed/herbicide	127.83	\$1,798.00
4.	Marsh Reconstruction	71.16	\$5,553.00
4.	Pine Flatwood Reconstruction	8.09	\$5,553.00
5.	Fire Managed/herbicide	103.20	\$1,798.00
5.	Marsh Reconstruction	50.10	\$5,553.00
5.	Pine Flatwood Reconstruction	10.58	\$5,553.00
6.	Preservation Area	755.79	\$0.00
7.	Preservation Area	752.43	\$0.00

#### Cost Estimates – Construction and Implementation

The financial responsibility for the construction and implementation phase shall be funded based on estimated costs certified by the Engineer of Record, Wilson Miller Barton & Peek. These cost estimates (Exhibit 25) are in current dollars, for the total cost of the work. The cost is estimated based on a third party performing the work at the fair market value of services.

#### Cost Adjustments- Construction and Implementation

For each phase or subphase thereof, the bank sponsor shall, every two years, adjust the amount of financial responsibility provided for the construction and implementation of the bank until such time as the project is complete and has been turned over to the perpetual manager. The cost adjustment, along with supporting documentation, shall be submitted to the SFWMD for review and approval. Any significant change in the cost estimate (>10%) may result in a modification to the required financial responsibility for the construction and implementation phase.

Draws Upon the Financial Mechanisms for Construction and Implementation:

The District may draw upon the financial mechanism required for the construction and implementation phase of the bank when the bank sponsor has materially failed to comply with the terms and conditions of the permit provided the sponsor has been notified in writing of the noncompliance and has failed to take remedial action within 180 days.

**Release Procedure for Financial Assurances - Construction**

When an activity within a phase or subphase of the bank has been completed for which the financial assurance has been provided, the Engineer of Record shall certify that the activity has been completed. The bank sponsor will then submit a written request for release of the financial assurance and that the Corps/District review the certification and conduct a compliance check to confirm work has been completed. The Corps/District will make a good faith effort, within 30 days of receipt of the written request for release of the financial assurance, to either, i.) release the requested financial assurance or, ii.) provide the bank sponsor with a written explanation of why the release has not been granted. The financial assurance for the completed activity shall be released as listed below in Table 8.

**Table 8- Financial Assurance Release Schedules**

<b>Fire-Managed / Herbicide Areas</b>	<b>Release %</b>	<b>Release \$ Per Acre</b>
Pine flatwood fuel reduction	30%	\$539.40
Pre-burn preparation and exotic eradication	30%	\$539.40
Prescribed burn and Time Zero monitoring report	30%	\$539.40
Success Criteria Level 1 attained	5%	\$ 89.90
Success Criteria Level 2 attained	2.5%	\$ 44.95
Success Criteria Level 2 attained for 2 years	2.5%	\$ 44.95

<b>Marsh and Pine Flatwood Reconstruction</b>	<b>Release %</b>	<b>Release \$ Per Acre</b>
Eradicate exotics from perimeter areas	30%	\$1,665.90
Re-contouring of marsh areas and fill drainage ditches	30%	\$1,665.90
Planting of marsh areas and Time Zero monitoring report	30%	\$1,665.90
Success Criteria Level 1 attained	5%	\$ 277.65
Success Criteria Level 2 attained	2.5%	\$ 138.82
Success Criteria Level 2 attained for Three consecutive Years for marsh, Success Criteria Level 3 Attained for pine flatwoods	2.5%	\$ 138.83

### *As Built Reports*

As built documentation of the earth work component of the project and/or exhibits delineating the completed areas of mitigation restoration shall be submitted on a phase or subphase basis in the request for the release of credits.

### *Financial Assurances – Perpetual Management*

Thirty days prior to the debit of mitigation credits, the bank sponsor shall establish a Standby Trust Fund Agreement to be funded by either a bond, letter of credit or cash for each phase or subphase thereof, in the amount of \$275.00 per acre and in the form of Exhibits 22 to 24<sup>2</sup> to implement the terms of the perpetual management plan for the bank. The withdrawal of funds shall only be in accordance with the MBI and attached permits.

### *Cost Estimates – Perpetual Management*

The financial responsibility for the perpetual management phase shall be funded based on estimated costs certified by the Engineer of Record, Wilson Miller Barton & Peek. These cost estimates (Exhibit 25) are in current dollars for the total cost of the work. The cost is estimated based on a third party performing the work at the fair market value of services.

### *Cost Adjustments – Perpetual Management.*

For each phase or subphase thereof, the bank sponsor shall, every two years, adjust the amount of financial responsibility provided for the perpetual management of the bank until such time as the project is complete and has turned over to the perpetual manager. The cost adjustment, along with supporting documentation, shall be submitted to the SFWMD for review and approval. Any significant change in the cost estimate (>10%) may result in a modification to the required deposits into the perpetual management funds.

### *Draws Upon the Financial Mechanisms:*

The District may draw upon the financial mechanism required for the perpetual management phase of the bank when the long term manager has materially failed to comply with the terms and conditions of the permit, provided the bank and/or long term manager has been notified in writing of the noncompliance and has failed to take remedial action within 180 days.

The interest earned from the principal deposited in the Standby Trust Fund Agreement for Perpetual Management will be withdrawn for use by the long term manager for perpetual management purposes when a phase has fully met the required success criteria and has been turned over to the long term manager. The request by the long term manager to the

<sup>2</sup> The bond and letter of credit forms are the same as for construction, except that the references to construction and implementation will be changed to perpetual management.

District for withdrawal of the funds may be made yearly. Within thirty (30) days of receipt of the prospective year's costs and withdrawal request, the District shall authorize the trustee of the Standby Trust Fund Agreement for Perpetual Management to withdraw funds from the trust for payment directly to the long term manager.

## ***OPERATION OF THE MITIGATION BANK***

### ***Mitigation Service Area***

The Mitigation Service Area for this Bank is primarily contained within the Estero, East Collier, and West Collier Basins, as defined by the SFWMD in August 1998, and is graphically defined in Exhibit 3. Linear projects outside the Mitigation Service Area, such as roadways, powerlines and pipelines, may be eligible to utilize the mitigation bank in accordance with the Federal Guidance and Section 373.4136, F.S. Impacts outside of the Mitigation Service Area may be considered on a case-by-case basis in accordance with the requirements of Federal Guidance and Section 373.4136, F.S. Out-of-kind mitigation and impacts not within the MSA may be considered for debit from PIMB on a case by case basis and upon specific approval of signatory agencies.

### ***Bank Assessment Methodology***

The MBRT and the bank sponsor agreed to use the July 1997 version of the Joint State/Federal Mitigation Bank Review Team Process for Florida. The Modified Wetland Rapid Assessment Procedure (MWRAP) contained in that document was utilized to evaluate and score wetland/habitat/wildlife functions in "with bank", "without bank", and "existing conditions" scenarios. The scoring of the site as approved by representatives of the ACOE, USFWS, EPA, SFWMD, NRCS and FGFWFC is summarized in Exhibit 26.

### ***Determination of Success***

#### ***Success Determination Criteria***

Success Criteria, as described below, are established to measure and evaluate the success of a given mitigation activity in restoring or enhancing the wetland functions of a given area. Sampling methodologies, frequency and report formats are addressed under the Maintenance and Monitoring Section.

**EXHIBIT 21**  
**STATE OF FLORIDA**

**MITIGATION BANK STANDBY TRUST FUND AGREEMENT  
TO DEMONSTRATE CONSTRUCTION/IMPLEMENTATION FINANCIAL ASSURANCE**

THIS TRUST AGREEMENT, the "Agreement," is entered into as of \_\_\_\_\_ by  
and \_\_\_\_\_  
between \_\_\_\_\_ Date \_\_\_\_\_  
a \_\_\_\_\_ Name of Mitigation Banker \_\_\_\_\_  
Name of State \_\_\_\_\_ Insert "corporation, partnership, association, or proprietorship", (the Grantor,) \_\_\_\_\_  
and \_\_\_\_\_ Name and Address of Corporate Trustee \_\_\_\_\_  
Insert "incorporated in the State of \_\_\_\_\_" or "a national bank" (the Trustee.) \_\_\_\_\_

WHEREAS, Grantor intends to operate a mitigation bank on the Property in \_\_\_\_\_ County, Florida, and has received from the South Florida Water Management District ("District") that certain permit number \_\_\_\_\_, the Department of the Army that certain permit number \_\_\_\_\_ and that Federal Mitigation Banking Instrument issued \_\_\_\_\_, 1998, to Grantor by Mitigation Banking Review Team members, the U.S. Army Corps of Engineers ("Corps"), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, ~~and the~~ Natural Resources Conservation Service and the Florida Game and Fresh Water Fish Commission ("mitigation bank permit") which authorizes the construction and implementation of the Panther Island Mitigation Bank;

WHEREAS, the District, a Florida public entity created under Chapter 373, Florida Statutes, has established certain regulations applicable to the Grantor, requiring that a mitigation bank permittee shall provide assurance that funds will be available when needed for corrective action if Grantor fails to construct and implement that mitigation bank,

WHEREAS, the Grantor has elected to establish \_\_\_\_\_ insert either a "surety bond" or "letter of credit" to provide all or part of such financial assurance for the \_\_\_\_\_ Mitigation Bank identified herein and is required to establish a standby trust fund able to accept payments from that instrument,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee, for good and valuable consideration, the sufficiency of which is hereby acknowledged, agree as follows:

**Section 1. Definitions.** As used in this Agreement:

(a) The term "Grantor" means the \_\_\_\_\_ who enters into this Agreement  
Mitigation Banker's Name  
and any successors or assigns of the Grantor.

(b) The term "Trustee" means \_\_\_\_\_ the Trustee who enters into this Agreement and  
any successor Trustee.  
Trustee's Name

(c) The term "District" means the South Florida Water Management District a public entity in the State of Florida or any successor thereof.

(d) The term "Corps" means the U.S. Army Corps of Engineers, an agency of the United States Government, or any successor thereof.

(e) The term "investment obligations" means:

(i) United States of America Treasury and Federal agency securities or other obligations issued or unconditionally guaranteed as to principal and interest by the United States of America, in each case with maturities of not more than one year from the date acquired;

(ii) Demand deposits, certificates of deposit, bankers acceptances and time deposits of any bank organized or licensed to conduct a banking business under the laws of the United States of America or any state thereof having capital, surplus and undivided profits of not less than \$100,000,000, and whose deposits are insured by the Federal Deposit Insurance Corporation or any successor thereof;

(iii) Securities of entities incorporated under the laws of the United States of America or any State thereof commonly known as "commercial paper" that at the time of purchase have been rated and the ratings for which are not less than "P1" if rated by Moody's Investors' Services, Inc., and not less than "A1" if rated by Standard and Poor's Corporation, in each case with maturities of not more than one year from the date acquired;

(iv) State or local government securities, which debt obligations at the time of purchase are rated investment grade by one or more nationally recognized rating agencies, in each case with maturities of not more than one year from the date acquired;

(v) Repurchase obligations with any banking or financial institution described in clause (ii) above which are fully collateralized at all times by any of the foregoing obligations;

(vi) Corporate fixed income securities whose ratings at the time of purchase are rated not less than "A-" if rated by Standard and Poor's Corporation and "A3" if rated by Moody's Investors Services, Inc., in each case with maturities of not more than one year from the date acquired; and

(vii) Investments in any one or more professionally managed money market funds generally regarded as investment grade with a portfolio size of not less than \$100,000,000.



Section 2. Identification of Financial Mechanism to Pay Into Fund. This Agreement pertains to the financial assurance mechanism, either surety bond or letter of credit, identified in Attachment A hereto.

Section 3. Standby Trust. This trust shall remain dormant until funded with the proceeds from the financial mechanism listed on Attachment "A". The Trustee shall have no duties or responsibilities beyond safekeeping this Document. Upon funding this trust shall become active and be administered pursuant to the terms of this instrument.

Section 4. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund (the Fund), for the benefit of the District. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as a standby to receive payments and shall not consist of any property. Payments made by the provider of financial assurance pursuant to the District's instructions are transferred to the Trustee and referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, for the benefit of the District as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the District.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee and shall consist initially of proceeds from the \_\_\_\_\_ identified in Attachment A hereto.

Insert "Letter of Credit" or "Surety Bond"

Section 6. Payment for Completing Construction and Implementation. The Trustee shall make payments from the Fund as the Director of the District's Natural Resource Management Division shall direct, in writing to provide for the payment of the costs of completing construction and implementation of the mitigation bank covered by this Agreement pursuant to the requirements of the mitigation bank permit. The Trustee shall reimburse persons specified by the District from the Fund for construction and implementation expenditures in such amounts as the District shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the District specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of Grantor under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- (b) Bodily injury to an employee of Grantor arising from, and in the course of employment by Grantor.
- (c) Bodily injury or non-realty property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by Grantor that is not the direct result of the construction and implementation of the mitigation bank;

(e) Bodily injury or property damage for which Grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

Section 7. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund in one or more investment obligations and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the mitigation bank, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 8. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 9. Express Power of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of

the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or a State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 10. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 11. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the District a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the fund. The failure of the Grantor or the District to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the District shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 12. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 13. Trustee Compensation. Grantor shall pay the Trustee any necessary fees for services rendered. Where the Grantor is no longer in existence, the Trustee is authorized to charge against the Trust its published Trust fee schedule in effect at the time services are rendered. However, all Trustee compensation charged against the Trust shall be paid from trust income, unless the District authorizes in writing payment from the trust principal.

Section 14. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee, the successor is approved by the District, and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the District may appoint a successor. If the District does not act, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the District, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 13.

Section 15. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by \_\_\_\_\_ or such other designees as the Grantor may designate by amendment to this agreement. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the District to the Trustee shall be in writing, signed by the District's Director of the Natural Resource Management Division, or the Director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the District hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the District, except as provided for herein.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the District, or by the Trustee and the District if the Grantor dies, is legally incapacitated, is administratively or judicially dissolved or otherwise ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the District, or by the Trustee and the District, if the Grantor dies, is legally incapacitated, is administratively or judicially dissolved or otherwise ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered pursuant to the written agreement terminating the trust, or, where Grantor has ceased to exist, then to the District.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the District issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Florida.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

\_\_\_\_\_  
Signature of Grantor

\_\_\_\_\_  
Signature of Trustee

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Seal

\_\_\_\_\_  
Seal

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_,  
the \_\_\_\_\_ of \_\_\_\_\_, a Florida corporation,  
on behalf of the corporation. Such person did not take an oath and:

\_\_\_\_\_  
is/are personally known to me

\_\_\_\_\_  
produced a current Florida driver's license as identification

\_\_\_\_\_ produced \_\_\_\_\_ as identification

\_\_\_\_\_  
Signature of Notary

(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)

Commission number (if not legible on seal) \_\_\_\_\_

My commission expires: (if not legible on seal) \_\_\_\_\_

STATE OF FLORIDA

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_,  
y \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ Bank, on behalf of the  
corporation. Such person did not take an oath and :

\_\_\_\_\_ is/are personally known to me  
\_\_\_\_\_ produced a current Florida driver's license as identification  
\_\_\_\_\_ produced \_\_\_\_\_ as identification

\_\_\_\_\_  
Signature of Notary

(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)

Commission number (if not legible on seal) \_\_\_\_\_

My commission expires: (if not legible on seal) \_\_\_\_\_

STATE OF FLORIDA

MITIGATION BANK PERFORMANCE BOND  
TO DEMONSTRATE CONSTRUCTION AND IMPLEMENTATION FINANCIAL ASSURANCE

Date bond executed: \_\_\_\_\_

Period of coverage: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: \_\_\_\_\_

\_\_\_\_\_  
Legal Name and Business Address of Mitigation Banker  
\_\_\_\_\_

Type of Organization:

\_\_\_\_\_ Individual  
\_\_\_\_\_ Joint Venture  
\_\_\_\_\_ Partnership  
\_\_\_\_\_ Corporation

State of Incorporation: \_\_\_\_\_

Surety(ies):

\_\_\_\_\_  
Name(s) and Business Address(es)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Scope of coverage: Construction and implementation of the \_\_\_\_\_ mitigation bank pursuant to the requirements of permit number \_\_\_\_\_ issued by the South Florida Water Management District including the plans approved by said permit.

Total penal sum of bond: \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, that we, the Principal and Surety(ies) hereto are firmly bound to the South Florida Water Management District in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be full amount of the penal sum.

WHEREAS, said Principal is required, under Section 373.4136, Florida Statutes, as amended, to have a permit in order to construct, implement and manage the mitigation bank -identified above, and

WHEREAS, said Principal is required by Section 373.4136, Florida Statutes, and the administrative rules of the District to provide financial assurance for construction and implementation of the mitigation bank as a condition of the permit(s) as further described in the scope of coverage above, and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully construct and implement the \_\_\_\_\_ mitigation bank; for which this bond guarantees construction and implementation, as required by District permit number \_\_\_\_\_ and the plans approved by such permit, as such permit and plans may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance, as specified in the administrative rules of the District, and obtain the District's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the District from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of (insert banker's name) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of (insert banker's name) arising from, and in the course of, employment by (insert banker's name);
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by (insert banker's name) that is not the direct result of a construction of implementation



activity for the \_\_\_\_\_ mitigation bank required pursuant to District permit number \_\_\_\_\_;

- (e) Bodily injury or property damage for which (insert banker's name) is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Director of the Natural Resource Management Division of the District that the Principal has been found in violation of the requirements of permit number \_\_\_\_\_ by failing to perform the construction and implementation activities for the \_\_\_\_\_ mitigation bank for which this bond guarantees performance, the Surety(ies) shall, within 60 days of receiving such notice, either perform such construction and implementation in accordance with the permit and other permit requirements and pursuant to the written directions of the District, or place the bond amount guaranteed for the \_\_\_\_\_ Mitigation Bank (the total penal sum of this bond) into the standby trust fund as directed by the District.

Upon notification by the Director of the Department of Resource Management of the District that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the District during the 90 days following receipt by both the Principal and the District of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the \_\_\_\_\_ Mitigation Bank (the total penal sum of this bond) into the standby trust fund as directed by the District.

The Surety(ies) hereby waive(s) notification of amendments to the \_\_\_\_\_ Mitigation Bank plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the District; provided, however that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the District, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the District.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond every two years so that it guarantees increased or decreased construction and implementation cost provided that no decrease in the penal sum takes place without the written permission of the District.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this Performance Bond is substantially similar to Form No. 1019, which form has been incorporated by reference as an administrative rule in Section 40E-1.659, Florida Administrative Code.

PRINCIPAL

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type Name and Title

Corporate Seal

CORPORATE SURETY(IES)

For each co-surety provide the following

\_\_\_\_\_  
Name and Address

\_\_\_\_\_  
State of Incorporation

\_\_\_\_\_  
Liability Limit \$

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type Name and Title

Corporate Seal

STATE OF FLORIDA

MITIGATION BANK IRREVOCABLE LETTER OF CREDIT  
TO DEMONSTRATE CONSTRUCTION/IMPLEMENTATION FINANCIAL ASSURANCE

South Florida Water Management District  
P.O. Box 24680  
West Palm Beach, FL 32178-1429

\_\_\_\_\_  
Address of Issuing Institution

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of

\_\_\_\_\_  
Mitigation Banker's Name and Address

up to the aggregate amount of \_\_\_\_\_

In Words

U.S. dollars \$ \_\_\_\_\_, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_, and either:

(2) a Certificate issued by the South Florida Water Management District in the form of Certificate I attached hereto and made a part hereof; or

(3) a Certificate issued by the South Florida Water Management District in the form of Certificate II attached hereto and made a part hereof.

This letter of credit may be drawn on to cover construction and implementation activities of the \_\_\_\_\_ mitigation bank as authorized and required by District permit number \_\_\_\_\_ as such permit may be amended and including all plans approved by such permit.

This letter of credit may not be drawn on to cover any of the following:

- a) Any obligation of [insert mitigation banker's name] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- b) Bodily injury to an employee of [insert mitigation banker's name] arising from, and in the course of employment by [insert mitigation banker's name];
- c) Bodily injury or non-realty property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert mitigation banker's name] that is not the direct result of the

construction or implementation of the \_\_\_\_\_ mitigation bank pursuant to District permit number \_\_\_\_\_;

e) Bodily injury or property damage for which [insert mitigation banker's name] is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This letter of credit is effective as of \_\_\_\_\_ and shall expire on \_\_\_\_\_ but such expiration date shall be automatically extended without amendment for additional periods of one year from the present or future expiration date unless, at least 120 days before an expiration date, we notify both you and [insert mitigation banker's name] by certified mail that we have decided not to extend this letter of credit for any such additional period. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [insert mitigation banker's name] as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the \_\_\_\_\_, in accordance with your instructions.  
Name of Trust Fund

We hereby waive notification of amendments to the \_\_\_\_\_ Mitigation Bank plans, permits, applicable laws, statutes, rules and regulations and agree that no such amendment shall in any way alleviate us of our obligation under this letter of credit.

We certify that the wording of this letter of credit is substantially similar to the wording specified in Form No. 1020, which form has been adopted by reference in Section 40E-1.659, Florida Administrative Code, as such regulations were constituted on the date shown immediately below.

\_\_\_\_\_  
Signature(s), Title(s) of Official(s) of Issuing Institution

\_\_\_\_\_  
Date

\_\_\_\_\_  
This credit is subject to \_\_\_\_\_

\_\_\_\_\_  
Insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code".

CERTIFICATE I  
TO  
\_\_\_\_\_  
BANK OF \_\_\_\_\_  
IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Issuing Bank's Name and Address  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Mitigation Banker's Name and Address  
\_\_\_\_\_

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, the Director of the Natural Resource Management Division of the South Florida Water Management District (the "District"), or \_\_\_\_\_, the Director's designee, hereby certifies to \_\_\_\_\_ (the "Bank") and \_\_\_\_\_, with reference to Irrevocable Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, (the "Letter of Credit"), issued by the Bank in favor of the District as follows:

1. The District has heretofore provided written notice by placing in the U.S. Mail to \_\_\_\_\_ of the District's present right to draw upon the Letter of Credit in accordance with the provisions of that certain Mitigation Bank Permit # \_\_\_\_\_, dated \_\_\_\_\_, issued by the District in favor of \_\_\_\_\_.
2. \_\_\_\_\_ has failed to comply with the terms and conditions of the Permit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the District as of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT

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

Name:

Director, Natural Resource Management or  
Designee

CERTIFICATE II  
TO  
FIRST NATIONAL BANK OF FLORIDA  
IRREVOCABLE NONTRANSFERABLE STANDBY  
LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_  
Issuing Bank's Name and Address  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Mitigation Banker's Name and Address  
\_\_\_\_\_

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, the Director of the Natural Resource Management Division of the South Florida Water Management District ("the District"), or \_\_\_\_\_ the Director's designee, hereby certifies to \_\_\_\_\_ (the "Bank")

and \_\_\_\_\_, with reference to irrevocable Letter of Credit No. \_\_\_\_\_  
Mitigation Banker's Name

\_\_\_\_\_, dated \_\_\_\_\_, (the "Letter of Credit"), issue by the Bank in favor of the District, as follows:

1. The Bank has heretofore provided written notice to the District and \_\_\_\_\_ of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof.  
Mitigation Banker's Name
2. The District has provided prior written notice by placing in the U.S. Mail to \_\_\_\_\_ of the requirement that \_\_\_\_\_ provide the District with substitute Financial Assurance in compliance with the provisions of that certain Mitigation Bank Permit # \_\_\_\_\_, dated \_\_\_\_\_, (the "Permit"), issued by the District.  
Mitigation Banker's Name Mitigation Banker's Name
3. \_\_\_\_\_ has failed to provide the District with substitute Financial Assurance in compliance with the provisions of the Permit within the ninety (90) days of receipt of the notice described in paragraph 1 above.  
Mitigation Banker's Name

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the District as of this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

**SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT**

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

Name:

Director, Natural Resource Management



STATE OF FLORIDA

MITIGATION BANK STANDBY TRUST FUND AGREEMENT  
TO DEMONSTRATE PERPETUAL MANAGEMENT FINANCIAL ASSURANCE

THIS TRUST AGREEMENT, the "Agreement," is entered into as of \_\_\_\_\_ by  
and \_\_\_\_\_  
between \_\_\_\_\_ Date \_\_\_\_\_  
a \_\_\_\_\_ Name of Mitigation Banker \_\_\_\_\_  
Name of State \_\_\_\_\_ Insert "corporation, partnership, association, or proprietorship", (the Grantor,) \_\_\_\_\_  
and \_\_\_\_\_ Name and Address of Corporate Trustee \_\_\_\_\_  
Insert "incorporated in the State of \_\_\_\_\_" or "a national bank" (the Trustee.) \_\_\_\_\_

WHEREAS, Grantor intends to operate a mitigation bank on the Property ~~is the owner of certain~~ real property in \_\_\_\_\_ County, Florida, and has received from the South Florida Water Management District ("District") that certain permit number 4- \_\_\_\_\_, the Department of the Army that certain permit number \_\_\_\_\_ and that Federal Mitigation Banking Instrument issued \_\_\_\_\_, 1998, to Grantor by Mitigation Banking Review Team members, the U.S. Army Corps of Engineers ("Corps"), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the Natural Resources Conservation Service ("mitigation bank permits") which authorizes the construction and implementation of the \_\_\_\_\_ Panther Island Mitigation Bank;

WHEREAS, the District, a Florida public entity created under Chapter 373, Florida Statutes, has established certain regulations applicable to the Grantor, requiring that a mitigation bank permittee shall provide assurance that funds will be available when needed for corrective action if Grantor fails to perpetually manage that mitigation bank pursuant to the requirements of the mitigation bank permit,

WHEREAS, the Grantor has elected to establish \_\_\_\_\_ to provide the perpetual management financial assurance for the \_\_\_\_\_ insert either a "surety bond" or "letter of credit" Mitigation Bank identified herein and is required to establish a standby trust fund able to accept payments from that instrument,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the \_\_\_\_\_ who enters into this Agreement  
Mitigation Banker's Name

and any successors or assigns of the Grantor.

(b) The term "Trustee" means \_\_\_\_\_ the Trustee who enters into this Agreement and any successor Trustee.  
Trustee's Name

(c) The term "District" means the South Florida Water Management District, a public entity in the State of Florida or any successor thereof.

(d) The term "Corps" means the U.S. Army Corps of Engineers, an agency of the United States Government, or any successor thereof.

Section 2. Identification of Funding Source.

\_\_\_\_\_ This Agreement pertains to the  
identify the financial assurance mechanism, either surety bond or letter of credit identified in Attachment A hereto, for  
which this standby trust fund is established to receive payments.

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund (the Fund), for the benefit of the District. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as a standby to receive payments and shall not consist of any property. Payments made by the provider of financial assurance pursuant to the District's instructions are transferred to the Trustee and referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, for the benefit of the District as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the District.

Section 4. Initial Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee and shall consist initially of proceeds from the

\_\_\_\_\_ identified in Attachment A  
Insert "Letter of Credit" or "Surety Bond"  
hereto.

Section 5. Payment for Undertaking Perpetual Management Activities. The Trustee shall make payments from the Fund as the Director of the District's Natural Resource Management Division shall direct in writing, to provide for the payment of the costs of undertaking activities to provide for the perpetual management of the mitigation bank covered by this Agreement pursuant to the requirements of the mitigation bank permit. The Trustee shall reimburse persons specified by the District from the Fund for perpetual management expenditures in such amounts as the District shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the District specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of Grantor under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of Grantor arising from, and in the course of employment by Grantor;
- (c) Bodily injury or non-realty property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by Grantor that is not the direct result of the construction and implementation of the mitigation bank;
- (e) Bodily injury or property damage for which Grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund in one or more investments and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge its duties with respect to the trust fund solely in the interest of the District and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the mitigation bank, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Power of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or a State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trust shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the District a statement confirming the

value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the fund. The failure of the Grantor or the District to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the District shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. Grantor shall pay the Trustee any necessary fees for services rendered. Where the Grantor is no longer in existence, the Trustee is authorized to charge against the Trust its published Trust fee schedule in effect at the time services are rendered. However, all Trustee compensation charged against the Trust shall be paid from trust income unless the District authorizes payment from the trust principal in writing.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee, the successor is approved by the District, and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the District may appoint a successor. If the District does not act, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the District, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 12.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by \_\_\_\_\_ or such other designees as the Grantor may designate by amendment to this agreement. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the District to the Trustee shall be in writing, signed by the District's Director of the Natural Resource Management Division, or the Director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the District hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the District, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the District, or by the Trustee and the District if the Grantor dies, is legally incapacitated, is administratively or judicially dissolved, or otherwise ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the District, or by the Trustee and the District, if the Grantor dies, is legally incapacitated, is administratively or judicially dissolved, or otherwise ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered pursuant to the written agreement terminating the trust, or where Grantor has ceased to exist, then to the District.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the District issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Florida.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

\_\_\_\_\_  
Signature of Grantor

\_\_\_\_\_  
Signature of Trustee

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Seal

\_\_\_\_\_  
Seal

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a Florida corporation,  
on behalf of the corporation. Such person did not take an oath and:

\_\_\_\_\_ is/are personally known to me  
\_\_\_\_\_ produced a current Florida driver's license as identification  
\_\_\_\_\_ produced \_\_\_\_\_ as identification

\_\_\_\_\_  
Signature of Notary

(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)  
Commission number (if not legible on seal) \_\_\_\_\_  
My commission expires: (if not legible on seal) \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ Bank, on behalf of the  
corporation. Such person did not take an oath and :

\_\_\_\_\_ is/are personally known to me  
\_\_\_\_\_ produced a current Florida driver's license as identification  
\_\_\_\_\_ produced \_\_\_\_\_ as identification

\_\_\_\_\_  
Signature of Notary

(Notary Seal)

\_\_\_\_\_  
Name of Notary (typed, printed or stamped)  
Commission number (if not legible on seal) \_\_\_\_\_  
My commission expires: (if not legible on seal) \_\_\_\_\_

ATTACHMENT A

SURETY BOND OR IRREVOCABLE LETTER OF CREDIT



# Projected Perpetual Management Costs

Exhibit 25


August 14, 1998

## **CERTIFICATION OF ESTIMATED COSTS FOR PERPETUAL MANAGEMENT:**

The following estimated costs for the long term perpetual management and maintenance of Panther Island Mitigation bank have been prepared under my direction and are based upon estimated costs of the work being performed by a third party at fair market value of services.

	Fire	Non Fire
Maintenance Supervisor/Biologist	\$16,560.00	\$16,560.00
Maintenance Tech	\$12,288.00	\$12,288.00
Temporary Labor	\$5,760.00	\$0.00
Exotic Maintenance		
Chemicals	\$7,500.00	\$7,500.00
Burning	\$7,500.00	\$0.00
Truck Expense		
Lease	\$3,300.00	\$3,300.00
Maintenance	\$1,500.00	\$1,500.00
Fuel- Field	\$2,500.00	\$2,500.00
Fence and Sign Maintenance	\$1,500.00	\$1,500.00
Settling Pond Maintenance	\$5,000.00	\$5,000.00
Miscellaneous	\$569.08	\$436.48
Contingency	\$1,279.54	\$1,011.69
Estimated Annual Manage	From \$65,256.52	to \$51,596.17

Perpetual Management Trust Fund											
	Totals	1	2	3	4	5	6	7	8	9	10
Principal @ \$275.00 pe	\$763,991.25	\$103,438.50	\$85,514.00	\$58,264.25	\$56,947.00	\$45,067.00	\$207,842.25	\$206,918.25	\$0.00	\$0.00	\$0.00
Interest @ 6 percent pe	\$347,514.79	\$6,206.31	\$11,709.53	\$15,907.96	\$20,279.25	\$24,200.03	\$38,122.56	\$52,825.01	\$55,994.51	\$59,354.18	\$62,915.44
Total Principal and Inte	\$1,111,506.04	\$109,644.81	\$206,668.34	\$281,040.54	\$358,266.80	\$427,533.82	\$673,488.64	\$933,241.90	\$989,236.42	\$1,048,590.80	\$1,111,506.04
Total Perpetual Managemen	\$1,111,506.04	Multiplied by 6% per annum equals			\$66,890.36						

  
 Timothy P. Durham, P.E.  
 Florida Registration No. 39454  
 Date: August 12, 1998