

XXXXX MITIGATION BANK

**BANKING INSTRUMENT or if an umbrella bank then use:
UMBRELLA BANKING INSTRUMENT instead**

Based on the 2018 CEMVN Template

**(HABITAT and MITIGATION TYPES; i.e. Bottomland Hardwood Re-establishment)
Project**

XXXXXXX Parish, Louisiana

Sponsored By:

XXXXXXX

NOTE for Drawings:

Follow the “Checklist for Mitigation Bank Drawings” located in RIBITS. In addition, maximize your drawings by removing unnecessary logos and information; by taking full advantage of the 8 ½” x 11” sheets so you can provide a better picture of the information being presented. Please include legends, scales, and north arrows on all drawings. Clearly identify wetland areas from non-wetland areas on one drawing. Break down areas to show mitigation types and habitats on a separate.

TABLE OF CONTENTS

I. PURPOSE OF MBI	4
II. LOCATION AND OWNERSHIP OF BANK PROPERTY (PROPERTY)	4
III. RESPONSIBILITIES OF PARTIES	4
A. <i>The Owner</i>	4
B. <i>The Sponsor</i>	5
C. <i>The IRT</i>	6
D. <i>The Holder of Conservation Servitude (Holder)</i>	7
E. <i>Long-Term Steward (Steward)</i>	7
IV. GOALS AND OBJECTIVES	7
V. PERFORMANCE STANDARDS	8
VI. MONITORING PLAN AND REPORTING PROTOCOLS	8
A. <i>Monitoring</i>	8
B. <i>Reporting Protocols</i>	9
VII. CONTINGENCIES AND REMEDIAL ACTIONS	9
A. <i>Adaptive Management</i>	9
B. <i>Notice of Deficiency</i>	9
C. <i>Conditions for Suspending Credit Sales</i>	9
D. <i>Catastrophic Events including Natural Disasters and Unlawful Acts</i>	10
E. <i>Financial Responsibilities</i>	11
VIII. INSPECTION BY IRT AND HOLDER	11
IX. FUNDING	11
A. <i>Construction and Establishment (C&E) Funds</i>	11
B. <i>Long Term Maintenance/Management Funds</i>	12
X. LONG-TERM PROTECTION AND MAINTENANCE	13
A. <i>Conservation Servitude</i>	13
B. <i>The Long-term Maintenance Plan</i>	15
XI. BANK USE	16
A. <i>Bank Service Area</i>	16
B. <i>Projects Eligible to Use the Bank</i>	16
C. <i>Determination of Bank Credits</i>	16
D. <i>Schedule of Credit Availability</i>	16
E. <i>Credit Transactions</i>	17
F. <i>Requirements for Initial Credit Release</i>	18
G. <i>Subsequent Credit Releases</i>	19
XII. MODIFICATION OF THIS MBI	19
A. <i>Minor Modification to MBI</i>	19
B. <i>Major Modifications to the MBI</i>	20
C. <i>Termination of This MBI</i>	21
D. <i>Termination of Participation</i>	23
XIII. TRANSFER OF PROPERTY OR SPONSORSHIP	23
A. <i>Transfers of Bank Property</i>	23
B. <i>Transfer of Sponsorship</i>	25
XIV. ESTABLISHMENT OF STEWARD	26
XV. BANK LIFE	27

XVI. OTHER PROVISIONS	27
A. <i>Disclaimer and Notice</i>	27
B. <i>Warranties and Representations of Owner/Sponsor/Holder</i>	27
C. <i>Compliance with Laws</i>	27
D. <i>Non-reporting NWP</i>	28
E. <i>Dispute Resolution</i>	28
F. <i>Overall Performance</i>	28
G. <i>Specific Language of MBI Shall Be Controlling</i>	28
H. <i>Notice</i>	29
I. <i>Entire Agreement</i>	29
J. <i>Invalid Provisions</i>	29
K. <i>Headings and Captions</i>	29
L. <i>Counterparts</i>	29
M. <i>Binding</i>	29
N. <i>Liability of Regulatory Agencies</i>	30
XVIII. Signature pages	31
XIX. Attachments	34
Attachment A – Mitigation Work Plan	

MITIGATION BANKING INSTRUMENT

[Name of Mitigation Bank]

This Mitigation Banking Instrument (MBI) establishing the **[BANK NAME]** Mitigation Bank (Bank) is made and entered into by and among **[SPONSOR NAME]** (Sponsor), **[THE PROPERTY OWNER]** (Owner) and the Interagency Review Team (IRT) composed of the U.S. Army Corps of Engineers New Orleans District (CEMVN), Region VI of the U.S. Environmental Protection Agency (EPA), **[ADD ANY OTHERS]** and the Louisiana Department of Wildlife and Fisheries (LDWF). This MBI is a binding agreement among the parties and incorporates the detailed Mitigation Work Plan and any other specified attachments to this MBI as a part hereof.

I. PURPOSE OF MBI

This MBI sets forth guidelines and responsibilities for the establishment, use, operation, protection, monitoring and maintenance of the Bank to assure the proposed work associated with the Bank produces the necessary mitigation credits to compensate for unavoidable impacts to waters of the United States, including wetlands, that result from activities authorized by the Department of the Army (DA) pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act (through DA permits), provided such activities have met all applicable requirements and are authorized by the appropriate regulatory agencies pursuant to 33 CFR 332.1 et seq. The Bank may also be used to satisfy the environmental requirements of other programs in accordance with the requirements and limitations of 33 CFR 332.3 and Section XI in this MBI and as such these environmental requirements are also subject to the requirements set forth in this MBI.

II. LOCATION AND OWNERSHIP OF BANK PROPERTY (PROPERTY)

Information specific to each site is located in the Mitigation Work Plan for that site.

III. RESPONSIBILITIES OF PARTIES

A. *The Owner*

1. The Owner shall furnish satisfactory evidence of clear title prior to the execution of this MBI unless such evidence of clear title was previously provided by a former owner of the site pursuant to this MBI.
2. The Owner shall grant a perpetual conservation servitude over the Property in accordance with the Louisiana Conservation Servitude Act La. R.S. 9:1271 et seq., and 33 C.F.R. § 332.8(t). Upon execution of the conservation servitude, the Owner shall record it with an attached copy of this MBI in the conveyance records of the Parish in which this mitigation bank site is located, unless such conservation servitude was

XXXXXX Mitigation Bank
Mitigation Banking Instrument

previously executed and properly recorded by a former owner pursuant to this MBI. Proof of such recordation will be provided to the IRT within 15 days of filing. Mitigation credits will not be released until proof of recordation is received.

3. The Owner shall not allow any Prohibited Uses (as hereinafter defined) of the Property as set forth in this MBI and the conservation servitude.
4. To help ensure the long-term protection, operation and management of the Bank, the Property is to remain free and clear of all mortgages and encumbrances, except those identified in Section II. D. above. The owner shall not identify the Property as collateral for any loan or other encumbrance not listed above placed on or discovered to burden the Property, the Owner shall take all actions necessary to clear such encumbrance, including bringing any legal action necessary to resolve the underlying debt or dispute and to clear the exception from the Property title. If an encumbrance other than those listed above is placed on or is discovered to burden the Property, the Owner shall notify CEMVN of such encumbrance within fifteen (15) days of discovery. In the notification the Owner shall specify a plan to clear the encumbrance from the Property title.
5. The Owner shall grant the Sponsor access to the Property. Any limitations on such access are to be a matter of contract between the Owner and the Sponsor. The Owner will also allow access to the Property to IRT members and the Holder of the conservation servitude (Holder) in accordance with this MBI.
6. The Owner shall make periodic inspections of the Property of not less than once per year to verify that use of the Property is consistent with this MBI and the conservation servitude, and to inspect for any damage caused by flood, fire, storm, wind, accident, vandalism, negligence or other act or event that causes damage to the Bank.
7. In the event the Owner discovers a prohibited use or any damage to the Property, it shall notify the IRT and Sponsor within 15 days of its discovery of such use or damage.
8. The Owner shall notify the Sponsor and the IRT of any proposed transfer of the Property in accordance with the provisions of this MBI.

B. The Sponsor

1. Through contractual agreement with individual permit recipients, the Sponsor agrees to provide compensation to offset wetland impacts as required in DA Permits. Sponsor commits to enhancing and restoring wetland functions and maintaining wetland habitats in accordance with 33 CFR Part 332 and the provisions of this MBI.
2. The Sponsor agrees to assume the legal responsibility for compensatory mitigation requirements of each DA permit for which it transfers credits once the permittee has secured the appropriate number and type of credits from the Sponsor. For each credit sale the Sponsor shall provide to CEMVN a signed declaration (MBI reference XI.E. and Attachment E) that the Sponsor has accepted the responsibility for providing the

XXXXX Mitigation Bank
Mitigation Banking Instrument

required compensatory mitigation required by the DA Permits. The declaration shall specify the permit number and the type(s) and amount(s) of credits sold. If the sponsor fails to provide a permit's required compensatory mitigation and/or if habitat represented by credits sold to a permittee fails to meet its success criteria and CEMVN determines that the Sponsor has failed to meet the requirements of this MBI with respect to such habitat, CEMVN may pursue enforcement measures against the Sponsor for noncompliance of the mitigation requirements of the corresponding DA permits.

3. The Sponsor agrees to perform all necessary work to establish, monitor and maintain aquatic habitats and buffers as described in the Mitigation Work Plan (Appendix C).
4. The Sponsor shall maintain accounting records, notify the CEMVN of credit sales, monitor the Bank for success, conduct remedial action as necessary to achieve success criteria, and provide this information to CEMVN in reports documenting Bank usage and the results of monitoring in accordance with 33 CFR Part 332 and the provisions of this MBI.
5. The Sponsor shall advise the IRT of any pending sale of the Bank or change in sponsorship at least 60 days prior to the effective date.
6. Prior to release of credits the Sponsor shall obtain all environmental documentation, permits, approvals and authorizations necessary to establish, operate and maintain the Bank. Approval of this MBI does not fulfill this requirement, or substitute, for such authorization.
7. Unless any of the responsibilities identified above are transferred, with prior approval of CEMVN, to a long-term steward. The Sponsor shall at all times remain responsible for: 1) the compensatory mitigation requirements for any DA permits for which it sold Bank credits; and 2) the long-term management, maintenance, monitoring and protection of the habitat represented by those credits as set forth in the MBI and the Mitigation Work Plan.

C. The IRT

CEMVN will serve as the chair of the IRT. For the Federal and State agency members of the IRT, participation in the review and oversight of this Bank is voluntary and subject to existing parameters of agency authority, agency regulations and agency funding. Concurrence with this MBI does not create any affirmative obligation to perform any specific action with respect to this Bank. Subject to the availability of staff and funds, the agencies represented on the IRT agree to:

1. Provide appropriate oversight in carrying out provisions of this MBI.

XXXXXX Mitigation Bank
Mitigation Banking Instrument

2. Provide comments on all project plans, proposed additions to land to the Bank, annual monitoring reports, credit review reports, contingency plans, and necessary permits for the Bank.
3. Review and confirm reports on evaluation of success criteria prior to approving credits or releasing escrow account funds.
4. Conduct compliance inspections as needed and recommend corrective measures (if any) to the Sponsor, until the terms and conditions of the MBI have been determined to be fully satisfied or until all credits have been sold, whichever is later.
5. Review, comment, and approve/disallow any modifications to this MBI.

D. The Holder of Conservation Servitude (Holder)

1. The Holder agrees to hold and enforce the conservation servitude placed on those lands within the Bank subject to recorded perpetual conservation servitude.
2. The Holder shall notify CEMVN within 24 to 48 hours of the discovery of prohibited use on the Property or any action taken to void or modify the conservation servitude. The Holder shall take all reasonable and prudent steps to cure and to clear any prohibited uses on the property.
3. The Holder shall perform yearly inspections and provide annual reports as to compliance with the terms of the conservation servitude, the existence of any prohibited use on the Property, and the actions taken to cure and/or to clear any identified prohibited uses.
4. The Holder may be the recipient of the financial assurance should the Sponsor be in default of this MBI and shall utilize such funds as directed by the IRT.
5. The Holder may serve as the Long-Term Steward should the Sponsor make arrangements for the Holder to act in this capacity.

E. Long-Term Steward (Steward)

Appointment of a long-term Steward is subject to the review and approval of CEMVN. If a long-term Steward is appointed, the Steward will assume the responsibilities of the Sponsor and will perform the long-term maintenance, management, monitoring and reporting responsibilities in accordance with this MBI.

IV. GOALS AND OBJECTIVES

Information specific to each site is located in the Mitigation Work Plan for that site.

V. PERFORMANCE STANDARDS

Authorization to sell credits to satisfy compensatory mitigation requirements in DA Permits is contingent on compliance with all of the terms of this instrument, including construction and operating the Bank in accordance with the Mitigation Work Plan, adhering to the requirements of the Conservation Servitude and maintaining sufficient financial assurances.

If, at any time, CEMVN determines that Sponsor is not in compliance with the terms of this instrument, credit sales may be suspended. If after consultation with Sponsor and the IRT, CEMVN determines that corrective action may remedy the deficiency, the Sponsor will be given the opportunity to bring the Bank into compliance with the terms of this instrument. If after consultation, CEMVN determines either that corrective action will not be effective to cure the deficiencies or that the Sponsor's efforts at further corrective action will not be sufficient to correct the deficiencies within a reasonable time, CEMVN in its sole discretion may terminate all credit sales.

Potential "corrective actions" include but are not limited to: modification or termination of the MBI, suspending credit sales, adaptive management, revisions to the credit release schedule, decreasing available credits, increasing the amounts of financial assurances, utilizing existing financial assurances, and/or providing alternative compensatory mitigation to satisfy any credits that have already been sold through the purchase of mitigation credits at another CEMVN approved mitigation bank. Determination of the appropriate corrective action for any particular deficiency lies solely within the discretion of the CEMVN, who will consult with the IRT and Sponsor before making the determination.

In order for the Bank to be considered acceptable for mitigating wetland impacts associated with DA permits, the Property will be restored in accordance with the Mitigation Work Plan such that it meets wetland criteria as described in the 1987 Corps of Engineers Wetland Delineation Manual (the 1987 Manual) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0). Performance standards used to measure the success of the Bank are provided in the Mitigation Work Plan (Attachment C).

VI. MONITORING PLAN AND REPORTING PROTOCOLS

A. Monitoring

The Sponsor agrees to perform all work necessary to monitor the Bank to demonstrate compliance with the success criteria established in this MBI. Monitoring guidelines are established in the Mitigation Work Plan.

B. Reporting Protocols

The Sponsor agrees to provide all monitoring reports as described in the Mitigation Work Plan.

VII. CONTINGENCIES AND REMEDIAL ACTIONS

A. Adaptive Management

In the event the CEMVN, in consultation with the IRT, determines adaptive management is needed, the Sponsor agrees to implement an approved Adaptive Management Plan in accordance with 33 CFR 332.4(c)(12) and 33 CFR 332.7(c) and Section XII of the Mitigation Work Plan.

B. Notice of Deficiency

1. If monitoring discloses that the Bank does not meet success criteria, the Sponsor shall provide a Notice of Deficiency to CEMVN that such success criteria have not been met. This notice shall be submitted with the monitoring report. Along with the notice the Sponsor shall provide a detailed explanation of the deficiency and propose specific measures and a timetable to correct the deficiency (ies). CEMVN, in consultation with the IRT, will determine the course of action required to correct deficiencies and will notify the Sponsor to engage in corrective actions pursuant to the Adaptive Management Plan or such other actions as CEMVN may deem necessary from time to time.

2. When a disaster (natural or man-induced) adversely affects the Bank, the Sponsor shall inspect the site and if necessary shall provide a Notice of Deficiency to CEMVN of such circumstance within two weeks of the event. The notice will identify the disaster and impacts to the Bank, specify measures to be taken to correct the impacts and a timetable to complete the work necessary to restore the Bank. CEMVN, in consultation with the IRT, shall review said information and determine if the disaster was beyond the control of the sponsor and if the damage is substantial. In circumstances where the disaster is determined to be beyond the control of the Sponsor and it is deemed to have caused substantial damage, the procedure outlined in Section VII.D. herein shall govern. In all other instances CEMVN will notify the Sponsor to engage in corrective actions pursuant to the Adaptive Management Plan or other action as the CEMVN, in consultation with the IRT, may warrant (See Paragraph VII.D. "Catastrophic Events", below).

C. Conditions for Suspending Credit Sales

All credit sales are contingent on meeting the standards and requirements of this instrument, adhering to the conservation servitude, and maintaining sufficient financial assurances.

1. Should the IRT determine that the Sponsor is in default of its obligations hereunder or the Bank is not performing in accordance with the standards and criteria set forth in this MBI, credit sales will be suspended. Sale of credits may not resume until such time as remedial action has been taken and the deficiencies have been cured to the satisfaction of CEMVN, in consultation with the IRT.

2. Sponsor's failure to complete implementation of any corrective action or remedial measure deemed necessary by CEMVN including any adaptive management to meet performance standards within one growing season (November 1 of the following year) following notification of deficiency will result in the revocation of any remaining mitigation credits. If at any time the CEMVN, in consultation with the IRT, determines that the Bank is operating at a deficit, the Sponsor at its full cost and expense shall make-up for the credit deficit by purchasing credits at a CEMVN approved mitigation bank. The perpetual conservation servitude will remain in place on the Property to protect the habitat/acreage represented by credits already sold.

D. Catastrophic Events including Natural Disasters and Unlawful Acts

In the event of substantial damage to the Bank caused by a natural or human-caused disaster or a deliberate and unlawful act, the CEMVN, in consultation with the Sponsor and the IRT, determines that prevention or mitigation of the disaster was beyond the control of the Sponsor, its agents, contractors, or consultants; the Sponsor may request, and CEMVN, in consultation with the IRT, may approve changes to the construction, operation, project milestones, performance standards or crediting formula of the Bank.

A natural catastrophic event includes, but is not limited to, a flood equal to or greater in magnitude than the 100-year flood event, earthquake, drought, debilitating disease, wildfire, depredation, regional pest infestation, or fluviomorphic change. A human-caused catastrophic event includes, but is not limited to, war, insurrection, riot, or other civil disorders, spill of hazardous or toxic substance, or fire. A deliberate and unlawful act includes, but is not limited to, the dumping of a hazardous or toxic substance as well as significant acts of vandalism or arson. If any such act occurs the IRT, in consultation with the Sponsor, will determine what changes to the Bank and/or this MBI will be in the best interest of the Bank and the aquatic environment.

In the event that such a disaster causes substantial damage to the Bank, sale of credits shall be immediately suspended pending determination by CEMVN, in consultation with the IRT, of:

1. The nature and extent of damage caused to the Bank and the measures necessary to remediate such impacts will determine:

a. Whether sufficient surviving mitigation exists to accommodate credits already sold from the Bank; and,

b. Whether conditions at the Property despite damage caused by the disaster are such that the sale of credits may resume.

2. The Sponsor shall implement adaptive management measures deemed necessary by CEMVN, in consultation with the IRT, to remediate identified impacts within one year of the event and shall implement any subsequent adaptive management measures deemed necessary by CEMVN, in consultation with the IRT, from time to time before the next growing season. Failure to comply with these provisions may result in the suspension of credit sales or revocation of credits as set forth in Section VII.C. Suspension of credit sales or revocation of credits does not relieve the Sponsor of its obligation to continue to operate, manage, and maintain the habitat/acreage represented by credits previously sold and to continue to monitor and report with respect to those areas.

E. Financial Responsibilities

In all instances the Sponsor shall bear the full cost and financial responsibility associated with the construction, operation, and management of the Bank and any and all corrective actions and remedial measures deemed necessary under the provision of this MBI. Although in appropriate instances financial assurances may provide a source of funds to remedy deficiencies and/or to provide for long-term management needs, the absence of sufficient financial assurances to correct deficiencies and/or to fund long-term management will not relieve Sponsor (or Long-term Steward) of its responsibilities pursuant to this MBI.

VIII. INSPECTION BY IRT AND HOLDER

The Sponsor and the Owner shall grant access to the Property to members of the IRT or their agents or designees, and the Holder for the purpose of inspection, compliance monitoring, adaptive management, corrective measures and remediation consistent with the terms and conditions of this MBI. Inspecting parties will give a three day minimum notice to the Sponsor and/or the Owner prior to any site visit.

IX. FUNDING

A. Construction and Establishment (C&E) Funds

1. Purpose

The Sponsor agrees to provide Financial Assurances sufficient to ensure satisfactory completion of the work described in the Mitigation Work Plan (Attachment C) and the Adaptive Management Plan (Section XII of the Mitigation Work Plan). The Sponsor further agrees to establish a Construction and Establishment (C & E) financial assurance to ensure the availability of sufficient funds to perform work required to attain long-term success criteria.

2. Estimate Of Funds Required

Section XIV of the Mitigation Work Plan outlines the method of assessing initial construction costs and ongoing management funds required for a third party to construct or manage and monitor the lands through the first 15 years for forested systems, the first five years for pine savannas, the first seven years for coastal prairie, and the first five years for marsh systems. Summaries of the construction costs, establishment costs, and itemization sheets will be provided as Attachment B of the Mitigation Work Plan.

3. C & E Funding Mechanism

The Sponsor is establishing the Construction and Establishment (C & E) financial assurance to assure sufficient funds are available to perform work required to construct and maintain the Bank through successful attainment of long term success criteria. An assessment of the initial and capital costs and ongoing management funds required to manage and monitor the Bank is included in the Mitigation Work Plan and provides an estimate of work and cost requirements for construction and establishment of the Bank through achievement of long term success criteria. The funding information for this account is provided in Section XIV (Funding) of the Mitigation Work Plan.

4. C & E Financial Assurances

- a.** The sponsor shall provide copies of the annual financial reports (statements) of the financial assurances to CEMVN upon request and/or in their monitoring reports.
- b.** The financial assurances shall guarantee payment to a third party, as determined appropriate by the CEMVN in consultation with the IRT, in the event that the Sponsor does not fulfill its obligations to perform, as specified in this MBI.
- c.** Payment to Sponsor, or if necessary, to a third party as identified by CEMVN, of a specified amount of the financial assurances shall be made upon written notification by CEMVN to the financial institution.

5. C & E Release Schedule

The Financial assurances shall be reduced as success criteria are achieved and the probability decreases that those funds would be needed according to the schedule as shown in Section XIV C. of the Mitigation Work Plan.

B. Long Term Maintenance/Management Funds

To ensure long-term sustainability of the resource, the Sponsor will describe the Maintenance/Management Funds needed in Section XIV. of the Mitigation Work Plan (attachment C) of this Mitigation Banking Instrument.

1. Annual Cost Estimate For Long-Term Needs¹

The cost of long-term management for years 16 to 50 (7 to 50 for marsh) and adjusted for inflation every five years is discussed in the Section XIV of the Mitigation Work Plan.

2. Long-Term Maintenance And Protection Funding Mechanism

The Sponsor shall establish a Long-Term Maintenance and Protection Fund as discussed in Section XIV of the Mitigation Work Plan.

X. LONG-TERM PROTECTION AND MAINTENANCE

A. Conservation Servitude

The Owner shall burden the Property with perpetual conservation servitude in accordance with Louisiana Conservation Servitude Act, La. R.S. 9:1271. et seq. The conservation servitude shall be signed, notarized and filed in the Parish conveyance records (within the parish that the mitigation bank is located) with an executed copy of the MBI attached. After filing, a copy of the recorded conservation servitude, clearly showing the book, page and date of filing, will be provided to CEMVN prior to the release of credits.

Prior to execution of the conservation servitude, the Owner shall provide evidence that the entity proposed to hold the conservation servitude is a CEMVN approved Holder by virtue of being either a governmental body empowered to hold an interest in immovable property under the laws of the State of Louisiana or the United States of America; or is a non-profit corporation organized pursuant to Louisiana's Non-Profit Corporation Law, Title 12, Sections 201-269 of the Louisiana Revised Statutes, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of immovable property; assuring the availability of immovable property for agricultural, forest, recreational or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, archaeological or cultural aspects of unimproved immovable property. Upon execution of the conservation servitude, the Holder shall hold and enforce the conservation servitude placed on the Property and the Property shall be protected in perpetuity.

Modification of the conservation servitude is not permissible without prior written authorization from CEMVN, in consultation with the IRT. Any request to modify the conservation servitude, or to the rights and obligations created under it, shall be made in writing and forwarded to CEMVN for review and approval. All requests must describe existing language and the requested modification.

¹ The deposit value per credit acre must reflect, at a minimum, the total fund value divided by no more than 90% of anticipated credits.

The Owner acknowledges and agrees that the conservation servitude applies to all of the Property, not just those portions of the Property identified as wetlands.

1. Prohibited Uses

No activities that result in the material degradation of habitat within the Bank (Prohibited Uses) shall be permitted without prior written authorization from CEMVN, following consultation with the IRT. Prohibited uses include but are not limited to:

- a.** Construct any structure or structures on the Property;
- b.** Cutting, burning, removing or destroying vegetation (including trees) on the Property except in accordance with CEMVN, in consultation with the IRT, approved plan for controlling invasive species;
- c.** Building or allowing others to build or develop roads, trails or paths on said Property except as authorized by CEMVN;
- d.** Partitioning the Property with fencing or constructing perimeter or boundary fencing so as to prevent or impede free exchange or migration of wildlife between the Property from adjacent areas, or would contain wildlife within the property.
- e.** Changing the elevation or contours (excavate or deposit dredged material) of the Property except in accordance with the Mitigation Work Plan or under an approved adaptive management plan;
- f.** Pumping, draining or allowing the Property to be drained in any way;
- g.** Placing, filling, storing, or dumping refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such items on the Property;
- h.** Land clearing or deposition of soil, shell, rock or other fill on the Property;
- i.** Grazing of animals including cattle or other domestic livestock on the Property;
- j.** Commercial, industrial, agricultural, mineral exploration and extraction or residential uses of the Property;
- k.** Operating of any vehicle on the Property in a manner such that its use destroys/removes vegetation or alters the natural contours of the surface elevation except in accordance with the Mitigation Work Plan or under an approved adaptive management plan;
- l.** Grazing of domestic or non-domestic livestock or conduct any form of animal husbandry for any purpose on the Property;

m. Any other activity, which is inconsistent with the establishment, maintenance and protection of the Property as identified in the Mitigation Work Plan.

2. Allowed Uses

The Owner/Sponsor shall not use or authorize the use of areas within the Bank for any purpose that interferes with its conservation purposes other than those exclusively specified below:

- a. Monitoring of vegetation, soils and water;
- b. Maintenance of wetlands, pre-existing trails, bridges, berms, dams, outlet and spillway structures, and other appurtenant facilities as identified in the Mitigation Work Plan;
- c. Licensed hunting, fishing, trapping and non-consumptive recreational uses (i.e., hiking bird watching, etc.);
- d. Ecological education that does not involve alteration, destruction or injury to any vegetation, habitat, trees, ground areas, etc;
- e. Compliance with federal regulations or appropriate court orders;
- f. Activities identified in Section VI (Description of Work to Be Performed) and Section VII. (Maintenance Plan) of the Mitigation Work Plan necessary to implement and maintain the development of the Bank in accordance with this MBI; and
- g. Any activity that has received authorization from CEMVN, in consultation with the IRT, through a DA permit.

The Owner and Sponsor understand that the construction, operation and abandonment of any authorized activity must be done in such a manner that minimizes direct, secondary and cumulative adverse impacts to the bank. At the termination of the authorized activity, the site will be restored to pre-project elevations and planted with a mixture of appropriate wetland species. The Owner and Sponsor acknowledge that such activities have the potential to reduce the total amount of credits available in the bank.

B. The Long-term Maintenance Plan

The Long-Term Maintenance Plan is outlined in the Mitigation Work Plan (Attachment C, to this MBI).

XI. BANK USE

Credits derived from the ecological benefits associated with implementation and maintenance of the Bank may be used as compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands, that result from activities authorized under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act provided such activities have met all applicable requirements. Additionally, these credits derived may be used as compensation for wetland impacts outside the New Orleans District or for other programs provided approval from CEMVN is obtained first. In instances where credits are used for purposes other than compensation for DA permits, the determination of amount of acres necessary to satisfy those compensatory requirements will be made by the agency in charge of that respective program. Regardless of the program for which an ecological credit is used that acreage is deducted from total acreage of the Bank and may not be used again.

A. Bank Service Area

Information specific to each site is located in the Mitigation Work Plan for that site.

B. Projects Eligible to Use the Bank

Only after CEMVN has determined that the Bank is appropriate can the Bank be used to satisfy a permittee's mitigation responsibilities. Generally, the Bank will not be appropriate for adverse impacts occurring outside the primary Bank service area and/or impacts that are to other wetland types. However, CEMVN may consider use of the Bank on a case-by-case basis if, after consulting with the other regulatory and resource agencies, they determine that the Bank offers ecologically preferable compensation to that available within the impacted watershed. To compensate for out-of-kind impacts and/or impacts in other watersheds may increase the amount of required mitigation.

C. Determination of Bank Credits

To determine the amount of acres required to offset a particular impact to wetlands, CEMVN will use either best professional judgment or a CEMVN approved assessment method to determine the number of credits per acre available at the bank and the number of credits lost as a result of an impact. The same assessment method will be used to calculate both credits available and credits lost.

Credit Determination is tied to the ecological restoration and/or enhancement outlined in the Mitigation Work Plan (Attachment C. Section XI).

D. Schedule of Credit Availability

Credit release is tied to achieving all the milestones within the success criteria at specific monitoring times as outlined in the Mitigation Work Plan, Section XI.

E. Credit Transactions

1. Stipulations Regarding Sale Of Credits

a. By entering the transaction into the Regulatory In-lieu Fee & Bank Information Tracking System (RIBITS), the Sponsor acknowledges and agrees to assume legal responsibility for the permittee's compensatory mitigation requirements identified in a permittee's DA permit. Immediately following this entry, the Sponsor will provide signed documentation (Attachment D) that confirms that he has accepted the legal responsibility for providing the required compensatory mitigation. In so doing, the Sponsor acknowledges that he has agreed to accept the legal responsibility for the establishment, long-term management, maintenance, monitoring and protection of the restored wetlands represented by the transferred credits. If the Sponsor fails to provide the required compensatory mitigation, CEMVN may pursue enforcement measures against the Sponsor to ensure compliance with the mitigation requirements of the Department of the Army Permit (DA Permit).

b. For each credit transaction the Sponsor shall complete and sign the written declaration (Attachment D) that the Sponsor accepts the responsibility to provide the compensatory mitigation required by the permittee's DA Permit. The declaration is to include the DA Permit number and is to specify the number and resources type(s) of credits that the Sponsor has transferred. The Sponsor will forward the declaration to CEMVN the same date it enters the transaction information into RIBITS.

c. Prior to the sale of credits, the Sponsor shall contact the appropriate CEMVN project manager for each DA Permit transaction in order to obtain approval to sell specified credits, and verify acreage requirements as well as necessary ledger information (associated with such credit transactions) for their ledger entry. Where a credit transaction is not related to a CEMVN DA Permit, the Sponsor must contact the CEMVN bank project manager for approval to sell those credits. Sale will generally be approved unless there is a DA Permit pending that proposes to use all or part of the requested credits. A credit transaction for a CEMVN DA Permit will take precedence over all other credit transactions. CEMVN will provide written confirmation of its decision.

d. The Sponsor shall not commit to providing mitigation that is not available or is committed for other projects. Should the number of credits sold exceed the number available, the Sponsor, at its own cost and expense, shall secure credits from another CEMVN approved mitigation bank within the watershed in an amount to necessary to fully offset the credit shortage.

e. Credits will be sold in no less than tenth acre increments.

2. Procedure For Selling Bank Credits

a. CEMVN, with input from interested resource agencies, will determine the number and types of mitigation credits that must be secured to fully compensate for a proposed project's wetland impacts when those impacts are associated with a DA Permit. The CEMVN project manager will provide the applicant with a list of CEMVN approved mitigation banks that are appropriate for offsetting the unavoidable adverse impacts associated with his proposed project. The amount of mitigation required is determined by the CEMVN project manager and will be rounded to the nearest one-tenth (0.1) acre.

b. If the permit applicant selects the Bank, the applicant will contact the Sponsor and arrange for the purchase of the necessary acres as determined by CEMVN. Prior to the sale of credits the Sponsor must obtain approval from CEMVN in accordance with the provisions of paragraph 1.a above.

3. Credit Sale Notification

a. Upon contracting for the credit sales, the Sponsor shall enter the necessary information into the RIBITS. The information will include the Corps jurisdiction, date of transaction, permittee name, credits debited, DA permit number, Coastal Use Permit (CUP) number (if applicable), wetland type impacted, acres impacted, impact project's USGS 8-digit HUC, and impact latitude and longitude.

b. The acreage required by the DA Permit will be deducted from the Bank's credit balance at the time it is entered into RIBITS. Sale terms including price and payment are matters of contract between Sponsor and permittees. For any credit transaction once the credits are debited, the Sponsor is legally responsible for provision of the compensatory mitigation required by the DA Permit. Any failure by the permittee to comply with the terms of the sale will not affect either the credit debiting or Sponsor's responsibility to provide the mitigation required by the DA Permit.

F. Requirements for Initial Credit Release

No Credits will be released until the Sponsor has provide a signed statement stating that all of the following requirements have been met and has provided copies of the following executed documents, as appropriate:

1. Permits: Obtain all necessary permits (including DA Permits), approvals, and authorizations required to construct, operate, and maintain the Bank. This MBI does not fulfill or substitute for such authorization.

2. Holder Qualifications: Evidence that the entity proposed to hold the conservation servitude is a CEMVN approved Holder.

3. Conservation Servitude: An executed perpetual conservation servitude with a copy of this MBI with proof of recordation in the Conveyances Records Office of the parish in which the Property is located.

4. Financial Assurance: Documentation establishing the C&E financial assurances stipulated in Section IX and the Long-Term Maintenance and Protection financial assurances described in Section X of this MBI and in Section XIV of the Mitigation Work Plan.

5. Property Ownership: A title search that identifies all known encumbrances including mortgages, liens, rights-of-way, servitudes, easements, etc. and documentation that the conservation servitude is not subordinate to any other easement or major lien. Sponsor shall provide a copy of the recorded document evidencing that any mortgages encumbering the property have been subordinated to the conservation servitude.

6. Execution of MBI: MBI signed by the Owner, Sponsor and CEMVN District Commander or his representative and approval by all participant IRT agencies; and

7. Work Schedule: Submission of the timetable for implementing work identified in the permit, Mitigation Work Plan or elsewhere in this MBI.

8. Baseline Reports-Submission of Baseline reports for grassland areas.

G. Subsequent Credit Releases

Prior to each credit release, the Sponsor shall provide to CEMVN an electronic copy of the monitoring report with information necessary to document successful attainment of required milestones. Following review of such documentation and a finding that required milestones were achieved. CEMVN will notify the Sponsor and the IRT in writing of its findings with respect to the Bank's attainment of its success criteria and determination for the number of credits approved for release.

XII. MODIFICATION OF THIS MBI

A. Minor Modification to MBI

1. This MBI is subject to written modification as mutually agreed to by the IRT and the Sponsor. The streamlined review process set forth in 33 CFR §332.8(g)(2) may be used for modifications that involve changes reflecting adaptive management for the Bank, credit release, changes in credit releases and credit release schedules, and changes that the district engineer determines not to be significant in accordance to procedures in 33 CFR §332.8(g)(2) *Streamlined Review Process*.

2. Should changes in this MBI be required by CEMVN that are not acceptable to the Sponsor, the Sponsor may elect to end his participation and close the Bank. At that time, the procedures outlined in Section XII.B. below will be followed.

B. Major Modifications to the MBI

1. Expansion of the Bank

Modification of the MBI for expansion of the Bank to include additional acreage will be processed in accordance with 33 CFR §332.8(d) and §332.8(g)(1). Requests to expand the Bank will be considered only in instances where (1) the additional acreage is located on the same parcel of land or on a parcel of land contiguous to the Bank and (2) CEMVN determines that the natural composition, structure, functions, and processes performed by the restored/enhanced wetland community are the same as those outlined in this MBI. For the modification of this MBI the amendment will contain the following:

- a.** Detailed description of existing conditions of the Property identifying existing and prior land uses, vegetation, hydrology alterations and soils;
- b.** A Mitigation Work Plan that details the proposed hydrologic and vegetative restoration/enhancement work that is necessary to produce the mitigation credits;
- c.** Drawings depicting the site showing its location to other mitigation sites authorized by this MBI, different mitigation types, soils and hydrology; also drawings depicting the work required; vicinity map, a plan view depicting the proposed work and typical cross-sections of that work;
- d.** A Department of the Army issued wetland determination;
- e.** A title opinion and survey clearly identifying any existing encumbrances on the Property;
- f.** A draft conservation servitude;
- g.** A draft of the mechanism to be used to secure the necessary Construction and Establishment financial assurance; and
- h.** A draft of the mechanism to be used to establish the necessary Long-Term Maintenance and Protection account.

CEMVN will determine if the work identified in the Mitigation Work Plan requires a DA permit. A DA permit application is not required with the prospectus, but the Sponsor may choose to submit an application at this time as obtaining any and all permits is a prerequisite to selling credits.

A public interest review will be required for each addendum. The prospectus, Mitigation Work Plan and drawings will be advertised by public notice for a minimum of thirty days to obtain public comments.

XXXXX Mitigation Bank
Mitigation Banking Instrument

CEMVN, in consultation with the IRT, will evaluate each proposed property. The evaluation will typically require an inspection of the property and review of the prospectus and restoration plan. If warranted, the IRT will recommend modifications to the proposed restoration plan. By signing this MBI, the agencies are under no obligation to accept future addenda. Each addendum will be evaluated on its own merit.

A separate credit assessment will be conducted to determine habitat values of each addendum.

The mutually agreed upon Mitigation Work Plan will be signed by designated authorities for each IRT member and included as an amendment to this MBI and subject to all its requirements, conditions and terms.

2. Exclusions of Approved Mitigation Site

The Sponsor may elect to exclude a portion of the Property on which no credits have been sold from the Bank. However, notification and approval by CEMVN must be obtained by the Sponsor prior to removal from the Bank.

Reduction in Bank size may adversely affect future releases of mitigation credits and financial assurances. Additionally, CEMVN, in consultation with the IRT, will re-evaluate the credit value per acre for the portion of the site remaining in the Bank. Should the re-evaluation of credits determine that debits exceed the available credits produced by the acres remaining in the Bank, CEMVN may require that a portion of the area to be excluded remain in the Bank to make up the credit difference caused by the reduction in Bank size.

After CEMVN, in consultation with the IRT, has approved the exclusion, the Owner may, with approval from the Sponsor, Holder and CEMVN, modify the conservation servitude to remove the servitude from that portion of the Property excluded, allowing however, as sufficient buffer to protect the integrity of the remaining bank.

C. Termination of This MBI

1. Should CEMVN, in consultation with the IRT, determine that the Sponsor is in material default of any provision of the MBI for this Bank, CEMVN may require such corrective actions as, it deems necessary. If CEMVN determines that the Sponsor (or its agents or employees) has engaged in any misrepresentation, misapplication, misappropriation, improper management, or non-disclosure of pertinent information, CEMVN may require termination of this MBI or such other corrective action as it deems appropriate. Owner and Sponsor acknowledge and agree that all obligations hereunder that pertain to the credits sold or transferred prior to termination of the MBI shall have no effect on the perpetual conservation servitude granted by Owner over the Property in accordance with Louisiana law La. R.S. 9:1271, et seq. and 33 CFR § 332.8(t) except as set forth in paragraph C.3. below.

XXXXX Mitigation Bank
Mitigation Banking Instrument

- 2.** In the event that the MBI is terminated, CEMVN will:
 - a.** Revise the Bank's credit allotment based on the work completed at closure
 - b.** Review the credits already sold by the Bank and the corresponding mitigation requirements for DA Permits assumed by the Sponsor; and
 - c.** Determine whether the success criteria achieved by the previously sold credits/acreage are sufficient to meet current and outstanding mitigation requirements or whether additional credits are required to satisfy the DA Permit mitigation obligations assumed by the Sponsor. Should additional credits be needed to satisfy the Sponsor's DA Permit mitigation obligations, those obligations (as determined by CEMVN) may be satisfied by either:
 - i).** Completion of implementation of the Mitigation Work Plan and achievement of the performance standards set forth in the Mitigation Work Plan on additional acreage within the Bank; or
 - ii).** The purchase of appropriate mitigation credits from another CEMVN approved Bank.
- 3.** Upon termination of this MBI, the conservation servitude shall remain in full force and effect on those lands for which credits have been sold. In addition, a buffer sufficient to protect the integrity of the Bank, as determined by CEMVN in consultation with the IRT, shall be established and protected by the conservation servitude. Depending on the success level of the acreage sold as credits, additional acreage also may be required to satisfy the mitigation obligations assumed by the Sponsor. The Owner shall record any CEMVN approved and duly executed, revised conservation servitude in the Mortgage and Conveyance Office of the parish where the land is located and shall provide a copy of the recorded document to CEMVN. The conservation servitude shall remain in full force and effect on:
 - a.** that portion of the Property representing credits sold;
 - b.** that portion of the Property representing any deficit between the mitigation obligations assumed by the Sponsor (through credits sold) and the mitigation obligation satisfied by the Bank as described in 2.c. above; and
 - c.** that portion of the Property determined necessary by CEMVN in consultation with the IRT, to provide a buffer sufficient to protect the integrity of the Bank.
- 4.** In the event of the negligent or wrongful act or failure to act of the Owner, Sponsor or their respective managers, partners, employees, contractors, or agents, including but not limited to misrepresentation, misapplication, misappropriation, improper management, non-disclosure of pertinent information or non-compliance with the terms of this MBI, CEMVN and other IRT members may void their recognition of the Bank and/or terminate their future participation in this MBI. All funds in the Long-term escrow account, if any, will

be forfeited to the Holder or to a long-term Steward or a CEMVN designee. Additionally, CEMVN and the IRT reserve the right to prosecute any negligent or wrongful act or failure to act including any intentional misrepresentation, misappropriation, non-disclosure of pertinent information, or non-compliance with the terms of this MBI to the fullest extent of the law.

D. Termination of Participation

IRT members may terminate their participation upon written notification to all signatory parties without invalidating this MBI. Participation of the IRT member seeking termination will end 30 days after written notification. Termination by one member of the IRT of its involvement in this MBI shall not terminate the MBI or affect the roles of the remaining members of the IR, or the Sponsor or Owner. Remaining credits authorized solely under the authority of the withdrawing agency for use in that agency's programs will no longer be available for use to satisfy the requirements of that agency's program. Nothing in this Section is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the IRT members in the event of a threatened or actual breach of this MBI by the Sponsor.

XIII. TRANSFER OF PROPERTY OR SPONSORSHIP

All transfers of any interest in the Property or sponsorship are subject to the applicable provisions of the Conservation Servitude.

A. Transfers of Bank Property

1. The Owner may sell, assign, convey or otherwise transfer its interest in the Property at any time provided that any such transfer on or after the execution date of this MBI must be made in accordance with and subject to this MBI and the Conservation Servitude and the following conditions:

a. The transferee is able to assume and agrees to assume the obligations of the Owner as set forth in this MBI; and

b. The transferee understands and agrees to the allowed/prohibited uses of the Property as set forth in the conservation servitude.

2. Notice of Property Transfer

a. The Owner must provide notice to CEMVN and to the Sponsor (if different from the Owner) that he intends to transfer the Property at least 60 days prior to the transfer. This notice must include the proposed transferee's name and the name of its authorized representative, if different, its address and phone number, the anticipated date of the transfer, and a statement signed by the proposed transferee that the Owner has:

i). Provided to it copies of this MBI and the Conservation Servitude;

ii). Explained the allowed/prohibited uses of the Property; and

iii). Advised that any transfer of the Property is subject to the terms and conditions contained in the MBI.

b. The Sponsor also must provide notice to CEMVN of any transfer of the bank Property by the Owner at least 60 days prior to the transfer or within 5 business days of learning of such transfer, whichever is earlier. This obligation continues until the Sponsor has provided the required notice to CEMVN even after the Property has been transferred. The Owner and the Sponsor may submit a joint notice, in which case the notice shall be clearly identified as such. The Sponsor's notice must include the proposed transferee's name and the name of its authorized representative, if different, its address and phone number, the anticipated date of the transfer, and a statement signed by the proposed transferee that the Sponsor has:

i). Provided to it copies of this MBI and the Conservation Servitude;

ii). Explained the allowed/prohibited uses of the Property; and

iii). Advised that any transfer of the Property is subject to the terms and conditions contained in the MBI.

c. After receipt of the notice of transfer, CEMVN, in consultation with the IRT, may seek additional information about the proposed transferee and its fitness to assume the obligations of Owner from the current Owner, the proposed transferee, or from the Sponsor. Additionally, the Sponsor may submit any information it deems relevant to the transfer to CEMVN.

d. Any transfer of the ownership made without the required notice by Sponsor may, at the discretion of CEMVN, in consultation with the IRT, result in a suspension of credit sales until the Sponsor provides the information required in the notice.

3. At the time of the transfer of the Property, the transferee must sign this MBI as Owner and attest as follows, which statements shall be typed above the transferee's signature on the MBI:

a. That it has read and understands and agrees to the terms and conditions of the MBI and the conservation servitude; and

b. That it agrees to assume all obligations and responsibilities of the Owner contained in this MBI.

4. Upon execution of the MBI by the transferee/new owner, all obligations of the Owner pursuant to this MBI become those of the transferee/new owner.

5. From and after the date of any transfer by the Owner of its interest in the Property, the transferor shall have no further obligations hereunder and all references to the Owner in this MBI shall thereafter refer to the transferee, except that the transferor's liability for acts, omissions, breaches or other compliance issues occurring prior to the transfer shall survive the transfer.

B. Transfer of Sponsorship

1. The Sponsor may sell, assign, convey or otherwise transfer its interest in the Bank at any time provided that the Sponsor is in full compliance with all requirements of this MBI (including all financial assurance requirements) and the transferee provides a written statement agreeing to assume the obligations of the Sponsor as set forth in this MBI.

2. Notice of Change of Sponsor

a. The Sponsor must provide notice of its intent to transfer the sponsorship to the IRT, through CEMVN, and to the Owner at least 60 days prior to the transfer. This notice must include:

- i). The proposed transferee's name and the name of its authorized representative, if different, its address and phone number, and the anticipated date of the transfer;
- ii). A statement signed by the proposed transferee that: (a) the Sponsor has provided to it copies of this MBI, the conservation servitude, ledgers and financial statements; and (b) it will assume all of the obligations and responsibilities of the Sponsor as set forth in the MBI upon transfer of the bank;
- iii). The proposed transferee's qualifications (background, resources and experience) to perform the Sponsor's responsibilities;

b. The Sponsor must also provide in the notice information relative to the current condition of the Bank, which information must also be provided to the proposed transferee. This information must include:

- i). Current (*i.e.*, within 30 days) financial statements for all financial assurances issued by the providers of those assurances;
- ii). A current ledger listing all credit transactions for the Bank and the required information for each transaction; and
- iii). A monitoring report providing a description of current conditions including: (a) a discussion of the status of the restoration of wetland hydrology and remaining work (if any) necessary to fully establish hydrology; (b) the general condition of seedlings (survivorship by species) and a statement as to whether the survivability milestone will be met at the next monitoring report; and (c) an indication of the degree of

XXXXX Mitigation Bank
Mitigation Banking Instrument

exotic/invasive species density (average stems per acre) and measures required to control them.

- 3.** At the time of the transfer of the sponsorship, the transferee must sign this MBI as the Sponsor and attest as follows, which statements shall be typed above the transferee's signature on the MBI:
 - a.** That it has read and understands and agrees to the terms and conditions of the MBI and the Conservation Servitude; and
 - b.** That it agrees to assume all of the obligations and responsibilities of the Sponsor contained in this MBI.
- 4.** The new Sponsor must provide to CEMVN a copy of the executed MBI and a copy of the executed Mitigation Bank Transfer Form.
- 5.** Any transfer of the sponsorship made without the written 60-day notification to the IRT may, at the discretion of the IRT, result in suspension of credit sales until the transferee/new Sponsor provides the information required in the notice, signs the MBI as Sponsor, and provides a copy of the executed MBI to the IRT.
- 6.** From and after the date of any transfer by Sponsor of its interest in the sponsorship, the transferor shall have no further obligations hereunder and all references to Sponsor in this MBI shall thereafter refer to the transferee, except that the transferor's liability for acts, omissions, breaches or other compliance issues occurring prior to the transfer shall survive the transfer.

XIV. ESTABLISHMENT OF STEWARD

Should the Sponsor choose to designate a Long-term Steward, the Sponsor will provide CEMVN with written notice of his intent to designate one at least 60 days prior to the effective date of the Steward's assumption of the responsibilities. This notice must include the proposed Steward's name and the name of its authorized representative, if different, its address and phone number, and the anticipated date of the transfer. Once the IRT has determined the qualifications of and accepted the Long Term Steward chosen by the Sponsor, to assume the responsibilities for the stewardship over the Property, CEMVN must be provided with a statement signed by the proposed Steward that the Sponsor has:

- A.** Provided to it copies of this MBI and the Conservation Servitude;
- B.** Explained the allowed/prohibited uses of the Property; and
- C.** Transferred any remaining C&E financial assurance and Long-term Maintenance and Protection endowment funds to accounts established by the Long-term Steward and approved by CEMVN.

XV. BANK LIFE

At the point when all of the success criteria have been attained and all credits have been sold, (and at this point all construction and establishment funds of the financial assurance have been returned to the Sponsor) and long-term management has been initiated, the Sponsor will remain responsible for : 1) the compensatory mitigation requirements for any DA permit for which it sold Bank credits; and 2) the long-term management and maintenance, monitoring, and protection of the mitigation represented by those credits unless such responsibility is transferred, with prior written approval of CEMVN, to a Long-term Steward.

XVI. OTHER PROVISIONS

A. Disclaimer and Notice

This MBI does not in any manner affect statutory authorities and responsibilities of the signatory parties.

USACE approval of this Instrument constitutes the regulatory approval required for the [INSERT NAME OF THE MITIGATION BANK OR IN-LIEU FEE PROGRAM] to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the Sponsor or Property Owner and USACE or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by the Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

B. Warranties and Representations of Owner/Sponsor/Holder

Owner/Sponsor hereby represents and warrants as follows:

1. It is a limited liability company (or other legal entity) in good standing in the state of its organization and that it is qualified to do business in Louisiana and in every jurisdiction in which it is required to be qualified.
2. It has the full power and authority to enter into this MBI and that its signatories are authorized to transact business and enter contracts on its behalf; and
3. The execution and performance of its obligations under the MBI will not constitute a breach of any other agreement or a violation of any ordinance statute, law or regulation to which it is a party or by which it is bound.

C. Compliance with Laws

Owner and Sponsor and Holder and/or Third Party each represent, warrant and covenant that it is and will remain in compliance and abide with any and all statutes,

laws, ordinances, rules and regulations promulgated by any government entity which are applicable to it.

D. Non-reporting NWP

The Sponsor agrees not to utilize a non-reporting Nationwide Permit or Regional Permit under Section 404 of the Clean Water Act to impact any Waters of the United States on the Property. Notification shall be required for the use of any Nationwide Permit and/or Regional Permit in connection with this Bank.

E. Dispute Resolution

Resolution of disputes about amendments to this MBI shall be in accordance with 33 CFR § 332.8(e). If a dispute arises about the application of this MBI any party may raise the issue to CEMVN. CEMVN will convene a meeting of the IRT, or initiate another appropriate forum for communication, typically within twenty days of receipt of notice of the dispute. CEMVN will fully consider comments provided by the IRT and the Sponsor, if provided, in reaching its decision. Ultimately CEMVN is responsible for making final decisions regarding the use and performance of the Bank and the sale of its credits. Disputes related to satisfaction of success criteria may be subject to independent review from government agencies or academia that is not part of the IRT. The IRT will evaluate this input and determine whether the success criteria are met.

Any dispute arising under this Instrument will not give rise to any claim by Sponsor or Property Owner for monetary damages.

F. Overall Performance

If the IRT determines that the Bank is not performing according to the standards and criteria set forth in this MBI, credit sales will be suspended until the Sponsor in consultation with CEMVN has developed an approved remedial action plan and performed the work defined in the remedial action plan necessary to produce additional credits. The Sponsor will provide to the IRT the remedial action plan within 60 days of notification of any deficiency. Following IRT approval of the remedial action plan, the Sponsor will conduct the remedial action measures prior to the end of the nearest growing season. Subsequent adaptive management measures may be required by the IRT. Sale of credits will not resume until remedial actions have been taken. The Sponsor will continue to provide monitoring reports as specified in this document unless determined to be unnecessary by the IRT.

G. Specific Language of MBI Shall Be Controlling

The Parties intend the provisions of this MBI and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or

among them. However, if and to the extent that specific language in this MBI conflicts with specific language in any document, other than the Conservation Servitude that is incorporated into this MBI by reference, the specific language within the MBI shall be controlling.

H. Notice

Any notice required or permitted hereunder shall be deemed to have been given either (i) when delivered by hand, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) sent by Federal Express or similar next day nationwide delivery system, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

Please see list of physical addresses & contact information of the Owner, Sponsor, Servitude Holder and IRT members (including CEMVN) in the Mitigation Work Plan (Section XV. Other Information, Subsection B. Other Provisions).

I. Entire Agreement

This MBI constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.

J. Invalid Provisions

In the event any one or more of the provisions contained in this MBI are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this MBI shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

K. Headings and Captions

Any paragraph heading or captions contained in this MBI shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this MBI.

L. Counterparts

This MBI may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same instrument.

M. Binding

This MBI shall be immediately, automatically, and irrevocably binding upon the Sponsor and its heirs, successors, assigns and legal representatives upon execution by

XXXXX Mitigation Bank
Mitigation Banking Instrument

the Sponsor and the CEMVN, even though it may not, at that time or in the future, be executed by the other potential parties to this MBI. The execution of this MBI by EPA, LDWF, or the U.S. Fish and Wildlife Service, or other agency, city or county shall cause the executing agency to become a party to this MBI upon execution, even though all or any of the other potential parties have not signed the MBI. Execution does not signify the agencies' agreement with the use of credits in the Bank in connection with any specific permit or project.

N. Liability of Regulatory Agencies

The responsibility for financial success or loss and any risk to the investment undertaken by the Sponsor rests solely with the Sponsor. The regulatory agencies that are parties to this MBI administer their regulatory programs to best protect and serve the public's interest in its waterways, and not to guarantee the financial success of Banks, specific individuals, or entities. Accordingly, there is no guarantee of profitability for any individual Bank. Sponsors should not construe this MBI as a guarantee in any way that the agencies will ensure sale of credits from this Bank or that the agencies will forgo other mitigation options that may also serve the public interest. Since the agencies do not control the number of mitigation banks proposed or the resulting market impacts upon success or failure of individual banks, in depth market studies of the potential and future demand for credits are the sole responsibility of the bank proponent. Sponsor shall have no right to monetary damages and shall have no right to claim or to recover a loss of anticipated revenues based on any decision by CEMVN and/or based on CEMVN's administration of its mitigation banking program and/or this mitigation bank.

O. Authority of Each Party

By signing this Agreement, each person signing represents that he/she is authorized to enter this Agreement on behalf of the Party for which he/she signs and to bind such Party hereunder.

XVII. OTHER INFORMATION

A. Site selection parameters for the **[INSERT NAME OF THE MITIGATION BANK]** Umbrella Mitigation Bank. **[If applicable if not then delete this section]**

B. Review of Additional sites.

(If this MBI is for the establishment of an umbrella banking instrument then include the list and description of the parameters being used to make site selections for additional sites to be included as a part of this mitigation bank.)

XXXXXX Mitigation Bank
Mitigation Banking Instrument

XVIII. SIGNATURE PAGES

A. Property owner

(Property Owner's Name)
Property Owner
XXXXXX Mitigation Bank

Date

B. Sponsor

(SPONSOR NAME)
(Affiliation with Company)
XXXXXX Mitigation Bank

Date

XXXXXX Mitigation Bank
Mitigation Banking Instrument

C. CEMVN

(Chief of Regulatory for CEMVN)
CHIEF, REGULATORY BRANCH
CEMVN
XXXXXX Mitigation Bank

Date

XIX. ATTACHMENTS

Attachment- A – Mitigation Work Plan