

CONSERVATION EASEMENT

STATE OF TEXAS

COUNTY OF BOWIE

GRANTOR: Peter Couhig 108 Third Street Baton Rouge, LA 70801

GRANTEE: Mississippi River Trust P.O. Box 15 Stoneville, MS 38776

This Grant of CONSERVATION EASEMENT ("Conservation Easement") is made on this 30th day of September, 2011, by Peter Couhig ("Grantor"), with an address of 108 Third Street Baton Rouge, LA 70801, in favor of James L. Cummins of Mississippi River Trust ("Grantee"), with an address of P.O. Box 15 Stoneville, MS 38776.

RECITALS:

- A. Grantor is the sole owner in fee simple of certain real property (Property) consisting of 327.19 acres located and situated in Bowie County Texas and legally described in **Exhibit A** (Property) attached hereto and incorporated by this reference.
- B. The Grantee is qualified to hold the Conservation Easement and is either:
- (a) a governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
 - (b) a charitable, not-for-profit or educational corporation, association, or trust, as defined under the Texas Natural Resources Code, Section 183.001, et seq. and Section 170(h) of the Internal Revenue Code Section 501(c)(3), as amended, the purposes or powers of which include one or more of the Purposes described below.

The Grantee protects natural habitats of fish, wildlife, plants, and the ecosystems that support them. The Grantee also preserves open spaces, including ranches, farms, and forests, where such preservation is for scenic enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.

- C. The purpose of the Conservation Easement includes but is not limited to one or more of the following Purposes (Purposes):
- (a) retaining or protecting natural, scenic, or open-space aspects of the Property;
 - (b) ensuring the availability of the Property for recreational, educational, or open-space use;
 - (c) protecting natural resources;
 - (d) maintaining or enhancing air and water quality;
 - (e) preserving the historical, architectural, archaeological, or cultural aspects of the Property.



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

D. The preservation of the Property is a condition of the Department of the Army Nationwide Permit Number SWF-2009-00343, dated November 23, 2009 and attached hereto as **Exhibit B**. The Permit requires certain restrictions to be placed on the Property in order to provide compensation for unavoidable adverse impacts to waters of the United States. It is the intent of this Agreement and the Conservation Easement granted herein to assure that the Property will be retained and maintained forever in the vegetative and hydrologic condition described in the success criteria of the Mitigation Plan. Any activities not included in the Permit that may be conducted on the Property and that will affect the vegetative and hydrologic conditions outlined in the success criteria of the Mitigation Plan, must be approved by the USACE, Fort Worth District, Regulatory Branch, prior to initiation. The Conservation Easement granted by this Agreement is created pursuant to the Texas Uniform Conservation Easement Act of 1983 contained in Chapter 183 of the Texas Natural Resources Code.

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

Exhibit A Legal Description of the Property

Exhibit B U.S. Army Corps of Engineers Permit

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AGREEMENT

THE GRANTOR AND GRANTEE AGREE TO THE FOLLOWING:

1.0 PURPOSE AND COMMITMENT

The Grantor conveys and warrants to the Grantee this perpetual and assignable Conservation Easement over the Property in consideration of the facts recited above and of the mutual covenants, terms, conditions, and restrictions contained herein together with all other rights reasonably necessary or desirable to accomplish the objectives of the Mitigation Plan and the rights granted under this Agreement (the Conservation Easement), subject to the following terms, reservations, covenants, limitations, and exceptions:

1.1 The Grantor is the sole (fee simple) owner of the surface interest in the Property. The Grantor is committed to and agrees to confine use of the Property to activities consistent with the Purposes of this Conservation Easement. Grantor warrants that Grantor has good and sufficient title to the surface interest in the Property, free from all encumbrances that may materially and adversely affect the Purposes of the Conservation Easement of the Property as described herein, and hereby promises to defend the same against all claims that may be made against the Property. Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of this Conservation Easement.

1.2 The Conservation Easement shall be perpetual. The Conservation Easement is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, and Grantor's successors, assigns, lessees, agents, and licensees. The Conservation Easement assures that the Property will be perpetually preserved in its predominant natural, scenic, forested, undeveloped and open condition.

1.3 The Grantee is a qualified recipient of the Conservation Easement as defined by the Texas Natural Resources Code, Section 183.001, et seq. and Section 170(h) of the Internal Revenue Code or any successors thereof, and is committed to upholding the terms of this Conservation Easement.

1.4. The Grantor agrees that, other than in connection with a mitigation bank established pursuant to a Mitigation Banking Instrument or other legally binding document executed by owner in furtherance of a mitigation banking program or project authorized under the statutes referenced in Recitals Section C (f) or successor statutes thereto.

1.4.1 neither the Property nor any portion of it shall be included as part of the gross area of the other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, permissible lot yield, or open space requirement under otherwise applicable laws, regulations, or ordinances controlling land use, and building density; and,

1.4.2 no development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a



transferable development rights, scheme cluster development arrangement or otherwise.

1.5 The Conservation Easement Values of the Property include the following:

1.5.1 Public Policy. The Property is preserved pursuant to a clearly delineated federal, state, or local conservation policy, and yield a significant public benefit. Legislation, regulations, and policy statements that establish relevant public policy include, but are not limited to:

- (i) conservation easements, as stipulated in the Texas Natural Resources Code, § 183.001(1) et seq.; and
- (ii) protection of all wild animals as property of the State of Texas as stipulated in the Texas Natural Resources Code, § 1.011 et seq.; and
- (iii) conservation of water resources as stipulated in the Texas Water Code, § 16.016 et seq., § 16.053 et seq., § 16.054 et seq., § 26.003 et seq., and 26.012 et seq.

1.5.2 Wildlife Habitat. The Property:

- (i) contains significant natural habitat in which fish, wildlife, plants, or the ecosystems that support them, thrive in a relatively natural condition; and
- (ii) contains and supports sustainable habitat for a biologically diverse collection of animal and plants; and
- (iii) has a significant amount of undeveloped; and
- (iv) contains natural wetlands areas which provide habitat for; and
- (v) has valued native forestland which exists on the Property, including bottomland hardwood; and
- (vi) contains natural areas that represent examples of terrestrial, or aquatic communities; and
- (vii) contains a diversity of plant and animal life in an broad range of habitats.

2.0 PROHIBITED ACTIONS AND PROPERTY USES

2.1 Any activity on, or use of, the Property that is inconsistent with the Purposes of this Conservation Easement is expressly prohibited. The Property shall be preserved in its natural condition and restricted from any development that would impair or interfere with the Purpose of the Conservation Easement Property.

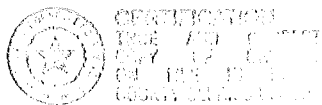


Except as provided for in Section 2 for this Conservation Easement, expressly prohibited activities and uses are described in the Mitigation Banking Instrument. This document should not be read to limit prohibited activities and uses to those listed in the document.

2.2 Neither Grantor, its agents, assigns, successors, or personal representatives, nor any purchasers, lessees, or other users of the Property may use, disturb, or allow through intent or negligence, the use or disturbance of the Property in any manner that is inconsistent with the Purposes of the Conservation Easement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted, or reserved as indicated.

Grantor and Grantee have determined that the allowed activities may be conducted in a manner that does not permanently impair the Conservation Values in Section 1.5 of the Property.

- 2.2.1 Subdivision. The Property may not be further divided, subdivided, or partitioned.
- 2.2.2 Commercial Development. Commercial or industrial use of or activity on the Property is prohibited.
- 2.2.3 Construction. There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock, or any other temporary or permanent structure or facility, or any other man-made structures on the Property except in connection with the repair, maintenance, or replacement (but not expansion) of any structures and other improvements located on the Property as of the Effective Date of this Agreement.
- 2.2.4 Maintenance of Existing Improvements. Grantor shall have the right to maintain, renovate, and repair existing buildings, structures, fences, pens, wells, dams and reservoirs, utilities, soft-surface roads, and other improvements, and in the event of their destruction, to reconstruct any such existing improvement with another of similar size, function, capacity, location, and material. Maintenance of existing roads shall be limited to removal of dead vegetation, necessary pruning or removal of obstructing trees and plants, and/or application of permeable materials (e.g., sand, gravel, and crushed stone) as necessary to correct or prevent erosion.
- 2.2.5 Biocides. There shall be no use of pesticides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except as expressly allowed in the Mitigation Plan and, unless approved in writing by Grantor, Grantee, and USACE to control problem animals or invasive species detrimental to the Purposes of the Conservation Easement and the Property.
- 2.2.6 Disturbance of Natural Habitat. There shall be no removing, destroying, cutting, trimming, mowing, shredding, clearing, altering of any vegetation, or disturbing or changing in any way the natural habitat existing on the Property, except as expressly allowed in the Mitigation Plan and in order to fulfill the objectives and standards of that plan. Grantor may remove diseased, invasive or non-native trees, shrubs, or plants; cut and mow firebreaks and existing road rights-of-way;



and remove trees, shrubs, or plants to accommodate maintenance of permitted improvements or other uses expressly permitted under the terms of this Conservation Easement. With written approval of Grantee, Grantor may remove potentially invasive plants from the Property for habitat management purposes consistent with the intent of this Conservation Easement. Except as necessary for activities expressly permitted in this Conservation Easement and with written permission from Grantee, there shall be no farming, tilling, or destruction and removal of native vegetation on the Property.

- 2.2.7 Dumping. There shall be no dumping or storing of any material, such as trash, wastes, ashes, sewage, garbage, scrap material, sediment discharges, oil and petroleum by-products, leached compounds, toxic materials or fumes, or any "hazardous substances" (as hereinafter defined). For the purposes of this paragraph, the phrase "hazardous substances" shall be defined as in the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) and/or a substance whose manufacture, processing, distribution in commerce, use, possession, or disposal is banned, prohibited, or limited pursuant to the federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.).
- 2.2.8 Vehicle Traffic. Off-road use of automobiles, trucks, vans, or other motor vehicles on the Property is prohibited, except as is necessary for inspection, construction, or maintenance of permitted improvements, and fire protection or emergency purposes.
- 2.2.9 Signage. Construction or placement of any signs, billboards, or other advertising displays on the Property is not permitted, except that signs whose placement, number, and design do not significantly diminish the scenic character of the Property may be placed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate permitted on-site activities, to advertise the Property for sale or rent, to post the Property to control unauthorized entry or use, or to identify the property as being protected by this Conservation Easement.
- 2.2.10 Invasive Species. There shall be no further planting of invasive or potentially invasive non-native plant species anywhere on the Property. Grantee will provide a list of potentially invasive species upon request.
- 2.2.11 Predator and Nuisance Species Control. Grantor, with written approval of Grantee, shall have the right to control, destroy, or trap predatory, exotic, invasive, and problem animals that pose a material threat to people, livestock, other animals, or habitat conditions in accordance with applicable state and federal laws and requirements.



- 2.2.12 Excavation and Mineral Extraction. There shall be no change in the topography of the Property except as expressly provided in the Mitigation Banking Instrument and unless approved in writing by the Grantee. There shall be no surface filling, excavating, grading, dredging, mining, drilling, exploration of minerals or mineral rights, or alteration of the Property. Surface mining or exploitation of topsoil, peat, sand, gravel, rock, minerals of the surface estate, (including near-surface lignite, iron, or coal), or other materials, is expressly prohibited.
- 2.2.13 Pollution, Disturbance to Hydrology. There shall be no pollution, alteration, depletion, or extraction of surface water, natural water courses, lakes, ponds, marshes, wetlands, or any other water bodies, nor shall activities be conducted on the Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property.
- 2.2.14 Hunting, Fishing, or Trapping. Commercial leasing for hunting, fishing or trapping is prohibited on the Property. The Grantor may allow personal or family hunting, fishing, or trapping activities in accordance with appropriate federal, state, and local laws and in accordance with restrictions properly imposed by the Mitigation Plan.

2.3 Grantee or its successors in interest may determine that a disturbance at the Property is necessary to maintain the Purposes of this Conservation Easement for the life of this Conservation Easement. Additionally, in the event of an emergency, Grantee or its successors in interest may determine that a disturbance at the Property is necessary to reduce the threat to human health or the environment. However, any such determination must be reasonable, made in writing, and signed by Grantee after effective notification and approval of the USACE or their designated representative.

Grantor or Grantor's respective agents, assigns, successors, or personal representatives, or potential or actual purchasers, lessees, or other users of the Property shall notify Grantee of any activities on the Property that are inconsistent with the intended purpose of this Conservation Easement.

3.0 BASELINE DOCUMENTATION

A Baseline Documentation Report providing specific ecological characteristics of the Conservation Easement was prepared pursuant to Treas. Reg. § 1.170A-14(g) (5) and establishes the baseline condition of the Property at the time of the grant of this Conservation Easement. The Baseline Documentation within the Mitigation Banking Instrument includes maps, depictions of existing buildings and other human-made modifications, identification of flora and fauna, land use history, distinct natural features, and photographs. The Baseline Documentation Report is intended to serve as an accurate representation of the Property at the time of this conveyance. The Baseline Documentation Report is also an objective baseline that will be used for monitoring purposes and to assure that any future change in the use of the Property will be consistent with the terms of this Conservation Easement. However, this Baseline Documentation Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.



4.0 MINERAL INTERESTS; OTHER ENCUMBRANCES

This Conservation Easement is subject and subordinate to the existing rights of certain third party mineral estate owner(s), ground leases and other encumbrances to the title of the Property. Grantor is the surface owner of the Property. Grantor herein represents that there is a waiver of the right to use any of the surface of the Property for production of oil, gas, and other minerals reserved thereby and that furthermore, Grantor has entered into an agreement with the owner of the mineral rights to waive all surface interest in mineral exploration within the Property and that any exploration, development, or production of these rights must utilize offsite drilling or extraction locations and horizontal/diagonal drilling techniques. Grantor shall not be deemed in violation of this Conservation Easement to the extent that the provisions of this Conservation Easement are, by reason of subordination, not binding upon the holder of such outstanding interest. Grantor shall ensure that the holder of any encumbrance complies with all applicable statutes and regulations and with all conditions of any applicable easement, lease, right-of-way, surface use agreement, or similar document, including any requirement to restore any adversely affected area to its pre-existing condition. Grantor shall be responsible for restoring any adversely affected area to its pre-existing condition.

5.0 GRANTOR'S RESERVED RIGHTS

5.1 Existing Uses. The Grantor expressly reserves for itself, its successors and assigns, the right of access to and the right of continued use of the Property for all purposes not expressly restricted by this Conservation Easement. Granted herein, but not limited to, the right to quiet enjoyment of the Property, the rights of ingress and egress with respect to the Property, and the right to hunt, fish, and hike on the property, the right to conduct nature observation and study, the right to fence the property, and to prohibit public access.

In addition, subject to the limitation of Section 2, the grantor reserves the activities and uses described in the Mitigation Banking Instrument, and it is expressly agreed that such uses are not in violation of this Conservation Easement or its Purposes and do not adversely affect the Conservation Values of the Property list in Section 1.5.

5.2 Transfer. The Grantor shall have the right to sell, give, mortgage, lease, or otherwise transfer or convey the Property to any third party, subject to the terms of this Conservation Easement. Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement or references hereto will be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests either the fee simple title to the Property, any possessory interest, or other interest in the Property. In the event that Grantor sells, gives, mortgages, leases, or otherwise transfers or conveys the Property to any other person, agency, or entity, Grantor shall notify Grantee in writing at least thirty (30) days prior to such transfer of the Property. The document of conveyance shall expressly refer to this Conservation Easement and have the organizational and financial resources to undertake Grantee responsibilities hereunder. Grantee shall notify the USACE upon receipt of Grantor's intent to transfer the Property as per the requirements in Section 16 of this document. Before or at the time the Grantor notifies the Grantee of the transfer, Grantor must provide documentation to Grantee and USACE that the



party taking title to the Property has been notified and agrees to accept the Conservation Easement and its requirements and restrictions.

6.0 GRANTOR'S OBLIGATIONS

The Grantor, it heirs, successors, and assigns shall comply with the terms and provisions of this Conservation Easement in perpetuity.

7.0 RIGHTS OF GRANTEE

7.1 Right to Enter. The Grantee, its employees, or its authorized representatives, successors, and assigns, shall have the right to enter the Property at all reasonable times for the purpose of inspecting the Property to determine if the Grantor or any of its successors and assigns is complying with the terms, conditions, restrictions, and Purposes of the Conservation Easement. The Grantee may not unreasonably interfere with the Grantor's permitted uses of the Property. The Grantee has no right to permit others to enter the Property. The general public is not granted access to or any other rights in the Property under this Conservation Easement.

7.2 Right to Preserve. The Grantee has the right, through the remedies set forth in Section 8, to prevent any activity on or use of the Property that is inconsistent with the Purposes of this Conservation Easement.

7.3 Right to Require Restoration. The Grantee has the right through remedies set forth in Section 8, of this document, to require the Grantor to restore the areas or features of the Property that are damaged by any activity that is inconsistent with the Purposes of this Conservation Easement. The Grantor agrees to promptly restore the damaged area or feature to its prior condition. Before undertaking the restoration work, the Grantor shall:

- 7.3.1 confer with the Grantee regarding a plan for the restoration of the Property;
- 7.3.2 prepare and provide to the Grantee a detailed restoration plan; and
- 7.3.3 obtain Grantee's written approval of proposed restoration plan, which will not be unreasonably held.

8.0 GRANTEE'S REMEMDIES

8.1 Delay in Enforcement. A delay in enforcement shall not be construed as a waiver of Grantee's right to eventually enforce the terms of this Conservation Easement. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

8.2 Acts Beyond Grantor's Control. The Grantee may not bring an action against the Grantor for modification to or damage of the Property resulting from causes beyond the Grantor's control, including but not limited to, unauthorized actions by third party (ies), natural disasters such as unintentional fires, floods, storms, or natural earth movement, provided such modification or damage does not adversely and materially affect the Purposes of the Property. In the event of such an emergency, the Grantor may respond to such an emergency in a way that is



not inconsistent with the Purposes of the Conservation Easement. The Grantee may not bring an action against the Grantor with respect to any technical violation of this Conservation Easement which results from the emergency responses. If the terms of the Conservation Easement are violated by unauthorized actions of a third party (ies), the Grantor may, but is not required to, at the Grantee's request, allow the Grantee to join in any suit, to assign the Grantor's right of action to the Grantee, or to appoint the Grantee as the Grantor's attorney-in-fact, for the purposes of pursuing an enforcement action against the responsible party (ies).

8.2 Acts Beyond Grantor's Control. The Grantee may not bring an action against the Grantor for modification to or damage of the Property resulting from causes beyond the Grantor's control, including but not limited to, unauthorized actions by third party (ies), natural disasters such as unintentional fires, floods, storms, or natural earth movement, provided such modification or damage does not adversely and materially affect the Purposes of the Property. In the event of such an emergency, the Grantor may respond to such an emergency in a way that is not inconsistent with the Purposes of the Conservation Easement. In the event of such an emergency, Grantor may respond to such emergency in a way that is not inconsistent with the goals of the Conservation Easement and the Mitigation Banking Instrument. The Grantee may not bring an action against the Grantor with respect to any technical violation of this Conservation Easement which results from the emergency responses. If the terms of the Conservation Easement are violated by unauthorized actions of a third party (ies), the Grantor may, but is not required to, at the Grantee's request, allow the Grantee to join in any suit, to assign the Grantor's right of action to the Grantee, or to appoint the Grantee as the Grantor's attorney-in-fact, for the purposes of pursuing an enforcement action against the responsible party (ies).

8.3 Notice and Demand. If the Grantee believes that the Grantor is in violation of this Conservation Easement, or that a violation is threatened, the Grantee shall provide written notice to the Grantor. The written notice will identify the alleged violation and request corrective action to cure the violation, and where the Property has been injured, to restore the Property within a reasonable timeframe. If Grantor fails to cure the violation within a reasonable timeframe, the Grantee may pursue its remedies to protect, restore, or compensate for the Purposes of the Conservation Easement.

If, at any time, the Grantee reasonably believes that the violation constitutes immediate and irreparable harm for which an immediate remedy is needed, no prior written notice is required. The Grantee may immediately pursue remedies to prevent or limit harm to the Property. If the Grantee believes that this Conservation Easement is, or is expected to be, violated, and the Grantee's good-faith and reasonable efforts to notify the Grantor are unsuccessful, the Grantee may pursue its lawful remedies to mitigate or prevent harm to the Property without prior notice and without awaiting the Grantor's opportunity to cure. The Grantor agrees to reimburse all reasonable costs, including attorneys' fees, associated with this effort in the event of an actual violation of this Conservation Easement as determined by a court of competent jurisdiction or by agreement of the Parties, subject to the provision of Section 8.2 of this Conservation Easement.

The Grantor agrees that the Grantee reserves the right to assert the following hierarchy of corrective actions to any and all material violations of this Conservation Easement (subject to the provision of Section 8.2 of this Conservation Easement):



- 8.3.1 Grantor shall restore, according to a plan approved by the Grantee, the damaged area, or feature of the Property to its condition prior to the violation; or
- 8.3.2 If the Grantee determines that restoration is not likely to be successful with regard to all of the damaged area or feature of the Property, then to the extent reasonably practicable, the Grantor shall convey, within one year of the notice of violation, a new Conservation Easement acceptable to and approved by the Grantee on a nearby parcel of land equivalent to that which existed on the damaged area, or feature of the Property prior to the violation.

If actions of the Grantor, or those of any third party authorized by the Grantor, render it impossible to fulfill the Purposes or substantially diminish the Purposes of the Conservation Easement or a portion thereof, then the Grantee shall be compensated by the Grantor for such loss with respect to the portion of the Property affected by such actions equivalent to (a) the difference between the current market value of such portion of the Property unencumbered with this Conservation Easement less the current market value of such portion of the Property encumbered with this Conservation Easement, including (b) reasonable attorneys' fees.

8.4 Failure to Act. If, within 30 days after written notice, the Grantor fails to implement corrective measures as requested by the Grantee, the Grantee may bring an action in law or in equity to enforce the terms of the Conservation Easement. In the case of immediate or irreparable harm, the Grantee may invoke these same remedies without notification and/or awaiting the expiration of the 30-day period.

The Grantee is entitled to enjoin the violation through temporary restraining order, or permanent injunctive relief, and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Grantor to restore the Property. If a court with jurisdiction determines that a violation may exist, or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring Grantor to restore the Property to its condition prior to the violation.

8.5 Actual or Threatened Non-Compliance. The Grantee's rights under this Section, (Grantee's Remedies), apply equally in the event of either actual or threatened violation of the terms of this Conservation Easement. The Grantor agrees that the Grantee's claim for monetary damages for any violation of the terms of this Conservation Easement is inadequate. The Grantee shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory.

8.6 Cumulative Remedies. The preceding remedies of the Grantee are cumulative. The Grantee may invoke any, or all, of the remedies if there is an actual or threatened violation of the Conservation Easement.



9.0 NOTIFICATION OF PERMITTED ACTIVITIES

The purpose of requiring the Grantor to notify Grantee prior to undertaking certain permitted activities is to afford the Grantee an opportunity to review and approve, conditionally approve, or object to the activities in question and enable the Grantee to ensure that any such activities are designed and will be carried out in a manner not inconsistent with the Purposes of this Conservation Easement. This notification requirements applies on to the permitted activities listed in the Mitigation Banking Instrument as requiring notice by the Grantor, unless otherwise provide herein.

Whenever notice is required, the Grantor shall notify the Grantee in writing with the time period specified in the Mitigation Banking Instrument, for such activity prior to the date the Grantor intends to undertake the activity in question. The notice shall describe the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to the proposed activity's consistency with the Purposes of this Conservation Easement. If the Grantee fails to respond within fifteen (15) days after it receives the written request, then its approval shall be deemed given.

In addition, the Grantor shall notify the Grantee in writing no less than thirty (30) days prior to the closing of the sale or gift of the Property to any other party.

10.0 REQUIREMENTS UNDER TEXAS LAW AND UNITED STATES TREASURY REGULATIONS

10.1 This Conservation Easement is created pursuant to Chapter 183 of the Texas Natural Resources Code — § 183.001 et seq.

10.2 This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulation at Title 26 C.F.R. 1.170A-14 et seq., as amended.

10.3 The Grantee is qualified to hold conservation easements pursuant to these statutes.

10.4 This Conservation Easement will be construed in accordance with Texas law, without application of its conflict of laws principles.

11.0 OWNERSHIP COSTS AND LIABILITIES

The Grantee shall have no liability or other obligation for costs, liabilities, taxes, assessments, fees, charges of whatever description, or insurance of any kind related to the Property in accepting this Conservation Easement, unless such costs or liabilities are the result of Grantee's negligence or willful misconduct. The Grantor shall provide satisfactory evidence of payment of all such costs and liabilities upon request by the Grantee. The rights of the Grantee do not include the right, in absence of a judicial decree, to enter the Property for the purpose of becoming an owner or operator of the Property or becoming an arranger with respect to the Property within the meanings of the Comprehensive Environmental Response, Compensation,



and Liability Act, or the Texas Solid Waste Disposal Act. The Grantee, its members, trustees or directors, officers, employees, and agents have no liability arising from injury or death to any person or physical damage to any personal property on the Property, except to the extent such injury or death results from Grantee's negligence or willful misconduct. The Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use allowed by this Conservation Easement, and all such activities or uses shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. The Grantor shall keep the Property free of all liens.

12.0 LIABILITY AND INDEMNIFICATION

The Grantor and the Grantee agree to release, hold harmless, defend, and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses, and fees that the indemnified Party may suffer or incur as a result of or arising out of the activities of the other Party on the Property that causes injury to a person or damage to any property, except to the extent caused or contributed to by the actions or omissions of the indemnified Party.

13.0 HAZARDOUS MATERIALS

The Grantor warrants that the Grantor has no actual knowledge of the deposit of, release, or storage of hazardous substances or hazardous wastes, as defined by any local, state, or federal law, on the Property.

14.0 LITIGATION

The Grantor warrants that the Grantor has no actual knowledge of any pending or threatened litigation relating in any way to the Property. The Grantor also warrants that the Grantor has no actual knowledge of any civil or criminal proceedings or investigations against Grantor that have at any time related to the Property.

15.0 TERMINATION OR EXTINGUISHMENT OF CONSERVATION EASEMENT

This Conservation Easement may be extinguished only by a change in condition that causes it to be impossible to fulfill the Conservation Easement's Purposes, or by exercise of eminent domain.

15.1 Eminent Domain. If the Property is taken in whole or in part by power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to render it to be impossible to fulfill any of the Purposes of this Conservation Easement, then Grantor and Grantee shall take appropriate actions at the time of the taking to recover the full value of the taking and all incidental or direct damages resulting from it, and the proceeds shall be placed in a trust account for the purpose of conducting conservation activities or acquiring alternate property. Grantor and Grantee shall be named as co-trustees on the account with rights to fund the conservation activities or acquire alternate property.



15.1 Eminent Domain. If the Property is taken, in whole or in part, by the power of eminent domain or acquired by purchase in lieu of condemnation so as to render it to impossible to fulfill the Purposes (any Purpose) of this Conservation Easement, then the Grantor and the Grantee shall act jointly to realize the action most favored by the Grantee according to the following hierarchy:

- 15.1.1 avoiding the Property and preserving it in its present condition: both the Grantor and Grantee shall jointly take actions to formally request that the intended proceeding completely avoid the taking of this Property;
- 15.1.2 minimizing and supplementing the loss to the Property: if the Property can not be wholly preserved as a result of the intended proceeding, both the Grantor and Grantee shall jointly take actions to formally request that the intended proceed minimize its taking of this Property and supplement, on at least a 1:1 acreage basis of nearby land possessing equivalent over-all value, including without limitation Conservation Values (Section 1.5) and mitigation credit values, the loss of the Property with a supplemental Conservation Easement conveyed to the Grantee within one year of notice of the intended proceeding.
- 15.1.3 mitigation the loss of the Property: if the options presented in Sections 15.1.1 and 15.1.2 are not acceptable to the Grantee, both Grantor and the Grantee shall jointly take actions to formally request that the intended proceeding mitigate its taking of this Property, on at least 1:1 acreage basis of nearby land possessing equivalent over-all value, including without limitation Conservation Values (Section 1.5) and mitigation credit values, by conveying replacement Conservation Easement to the Grantee within two (2) years of notice of intended proceeding; or
- 15.1.4 recover full value: if the options presented in Sections 15.1.1, 15.1.2 and 15.1.3 are not acceptable to the Grantee, both Grantor and Grantee shall jointly take actions to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by the Grantor and the Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered in proportion to the value of the interests taken from each party (including the value of the mitigation credits not longer able to be sold by Grantor). If the Conservation Easement is terminated and the Property is sold or taken for public use, then, as required by Treas. Reg. § 1.170A-14(g)(6), Grantee shall be entitled to a percentage of the gross sales proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Grantor) equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement.



15.2 Change of Condition. If it is determined that conditions on or surrounding the Property have changed so much that it is impossible to fulfill the Conservation Easement Purposes, this Conservation Easement may be partially or entirely terminated only by judicial proceedings following written notification and agreement by the USACE, and in a manner that complies with Treasury Regulations Section 1.170A-14(c)(2).

At the time of conveyance of this Conservation Easement to Grantee, this Conservation Easement gives rise to a real property right immediately vested in Grantee. If this Conservation Easement is extinguished and the Property is sold or taken for public use, then as required by Treasury Regulations Section 1.170A-14(g)(6), Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Grantor) equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. Grantors' said proceeds shall be placed in a trust account for the purpose of conducting conservation activities or acquiring alternate property. Grantor and Grantee shall be named as co-trustees on the account with rights to fund conservation activities or acquire alternate property.

16.0 AMENDMENT OF CONSERVATION EASEMENT

This Conservation Easement may be amended or modified only with the written consent of Grantor and Grantee with prior notification and approval of the USACE. No amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, including Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section as amended. Any such amendment shall also be consistent with Texas Natural Resources Code § 183.001 *et seq.*, or any regulations promulgated pursuant to that law. Any such amendment shall be consistent with the Purposes of this Conservation Easement and shall not affect the perpetual duration of this Conservation Easement. Grantor and Grantee have no right or power to agree to any amendment that would adversely affect the enforceability of this Conservation Easement.

This Conservation Easement may be amended or modified only with the written consent of Grantor and Grantee with prior notification and approval of the USACE. No amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, including Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section as amended. Any such amendment shall also be consistent with Texas Natural Resources Code § 183.001 *et seq.*, or any regulations promulgated pursuant to that law. Further, any amendment shall be consistent with the Purposes of this Conservation Easement, shall not diminish the Conservation Values of the Property (Section 1.5), shall not affect the ability of the Property to be used as a mitigation Bank, and shall not affect the perpetual duration of this Conservation.

17.0 LIBERAL CONSTRUCTION

This Conservation Easement shall be liberally construed in favor of maintaining the use of the Property as a mitigation bank, maintaining the Conservation Values (Section 1.5) and in



accordance with Conservation Easements, Chapter 183 of the Texas Natural Resources Code - § 183.001 *et seq.*

18.0 NOTICES

For purposes of this agreement, notices may be provided to either party by personal delivery, private courier, or by mailing a written notice to the Party (at last known address of a Party) by certified mail, return receipt requested. All notice(s) shall be deemed to be delivered and effective upon actual receipt if given personally, by private courier, or three days after deposit with the United States Postal Service, if given by mail. All notices provided to the parties shall also be provided to USACE via certified mail.

18.1 **GRANTOR: Peter Couhig 108 Third Street Baton Rouge, LA 70801**

18.2 **GRANTEE: Mississippi River Trust P.O. Box 15 Stoneville, MS 38776**

18.3. **USACE:** A copy of any notice sent by Grantor or Grantee to be sent to USACE as follows:

Regulatory Branch (CESWF-PER-R)
Fort Worth District
United States Army Corps of Engineers
P.O. Box 17300
Fort Worth, Texas, 76102-0300.
Telephone: 817-886-1731
Facsimile: 817-886-6493

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19.0 SEVERABILITY

If any portion of this Conservation Easement is determined to be invalid, the remaining provision will remain in force.

20.0 SUCCESSORS

Grantor may transfer, sell, or otherwise convey the Property to a third party, so long as conveyance is expressly made subject to the terms of this Conservation Easement. This Conservation Easement is binding upon, and inures to the benefit of, the Grantor's and the Grantee's successors in interest. All subsequent owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the Grantor.

21.0 ASSIGNING CONSERVATION EASEMENT

The Grantee may transfer this Conservation Easement to a similar entity upon consent of the Grantor and the USACE, which shall not be unreasonably withheld. The Grantee may only assign its rights and obligations under this Conservation Easement to a qualified organization as defined by the Internal Revenue Code, Section 170(h) (or any successor provision then applicable), under the Texas Natural Resources Code, Section 183 (or any successor provision then applicable), and any applicable laws of the United States.

Any assignment of this Conservation Easement shall obligate the Grantee to:

- (a) require that the Purpose(s) of this Conservation Easement continue to be carried out, and
- (b) transfer to the new holder the balance of the stewardship funds allocated to this Conservation Easement.

The Grantee agrees to give written notice and request to Grantor and the USACE at least sixty (60) days prior to the date of such proposed assignment. If Grantor or the USACE fail to respond to Grantee's request for consent within thirty (30) days of receipt of such request, Grantor and the USACE shall be deemed to have consented to such request.

22.0 TERMINATION OF RIGHTS AND OBLIGATIONS

A Party's rights and obligations under this Conservation Easement terminate upon transfer of that Party's interest in the Property. Liability for acts or omissions occurring prior to transfer will survive the transfer.

23.0 TITLE

Grantor covenants and represents that Grantor is sole owner and is seized of the surface interest in the Property in fee simple and has good right to grant and convey this Conservation Easement; that the property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the Grantee shall have use of and enjoy all benefits derived from and arising out of the Conservation Easement.



The Parties acknowledge that the Grantor is not seized of the subsurface or mineral interest in the Property, that other parties are vested with such interests pursuant to instruments recorded prior to the date of this Conservation Easement, and that this Conservation Easement is subordinate to such interests.

24.0 ACCEPTANCE AND EFFECTIVE DATE

Grantee shall file this Agreement of record with the County Clerk of Bowie County, Texas, within ten (10) days after the Effective Date of this Agreement and provide a copy of the recorded Agreement to USACE and Grantor within thirty (30) days of its return from the County Clerk of Bowie County.

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

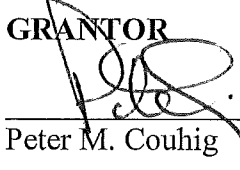
EXECUTED and DELIVERED to be effective as of the Effective Date.

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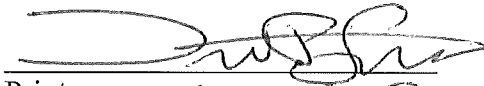


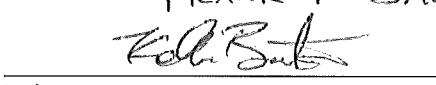
IN TESTIMONY WHEREOF, the parties hereto have signed, executed and acknowledged this instrument as their free and voluntary acts, in multiple originals, in the presence of the undersigned competent witness, and me, Notary Public, on this 30th day of September, 2011, at San Diego (City) CA (State).

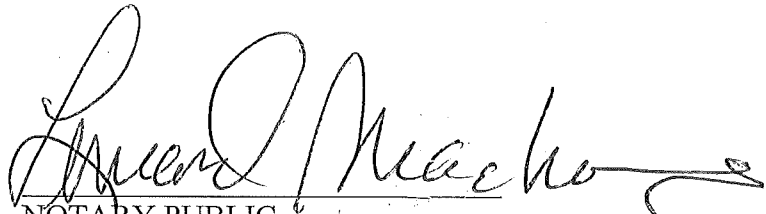
GRANTOR


Peter M. Couhig

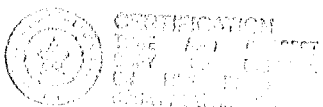
WITNESSES:


Print name: FRANK P. SANDY, II


Print name: Keller Bankston

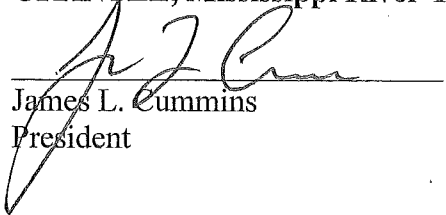

NOTARY PUBLIC
My commission expires: _____

LEONARD R. NACHMAN II
LA BAR ROLL #09879
MY COMMISSION EXPIRES
AT DEATH



IN TESTIMONY WHEREOF, the parties hereto have signed, executed and acknowledged this instrument as their free and voluntary acts, in multiple originals, in the presence of the undersigned competent witness, and me, Notary Public, on this 27th day of September, 2011, at Stonewille, Mississippi.
(City) (State)

GRANTEE, Mississippi River Trust, by:

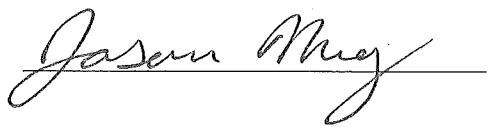

James L. Cummins
President

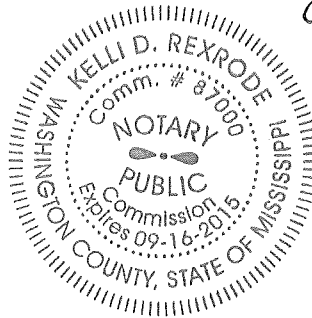
WITNESSES:

BRIAN W. BALLINGER
Print name:



Jason M. May
Print name:





Kelli D. Rexrode
NOTARY PUBLIC
My commission expires: 09-16-2015

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