

Exhibit A to Deed

RESERVATIONS AND CONDITIONS

This Exhibit A is attached to and incorporated for all purposes into the Deed from \_\_\_\_\_, a \_\_\_\_\_ (“Grantor”), to \_\_\_\_\_, a \_\_\_\_\_ (“Grantee”), dated as of \_\_\_\_\_, 201\_\_ (the “Deed”), pursuant to which Grantor conveys to Grantee the Property, subject to the reservations, terms and conditions set forth in the Deed and in this Exhibit A. Capitalized terms used but not defined in this Exhibit A shall have the meaning set forth in the Deed.

1. Conservation Instrument; Access Servitude; Notice of Mitigation Project.

(a) The Property is subject to that certain [*Conservation Easement/Deed Restriction/Declaration of Restrictions*] dated as of \_\_\_\_\_, 201\_\_, executed by Grantor in favor of \_\_\_\_\_, and recorded [at Book \_\_\_\_\_, Page \_\_\_\_\_ / as instrument no. \_\_\_\_\_] in the official property records of \_\_\_\_\_ Parish, Louisiana (as the same is amended, modified or supplemented from time to time, the “Conservation Instrument”), which places perpetual limitations and restrictions on the use and enjoyment of the Property, as more fully set forth therein.

(b) In connection with the Conservation Instrument, as contemplated by permit no. \_\_\_\_\_ issued by the [*United States Army Corps of Engineers/United States Fish and Wildlife Service, etc.*] (the “Permit”), the Property has been designated as a site for the restoration, establishment, enhancement and/or preservation of aquatic resources, as a habitat for endangered species, and/or for other natural resources in accordance with applicable local, state and/or federal law (the “Mitigation Project”). This Exhibit shall be deemed to give notice to all third parties of the existence of the Mitigation Project and the Permit, the terms of this Exhibit, and Grantor’s rights and remedies hereunder.

(c) Pursuant to the Deed, Grantor conveys to Grantee and its successors and assigns, the Property subject to a perpetual, non-exclusive reservation of an access servitude in favor of Grantor, its affiliates and any third parties designated by Grantor, and their respective successors, heirs, assigns, contractors, agents and employees (collectively, the “Access Parties”), for ingress and egress on, over, under, through and across the Property (and any adjacent immovable property now or hereafter owned by Grantee) for all purposes relating to the Mitigation Project, including without limitation (i) constructing, maintaining and inspecting the Mitigation Project and compliance with the Conservation Instrument, the Permit and this Exhibit, and (ii) sale by Grantor and its affiliates of mitigation offsets and/or provision of mitigation services relating to the Mitigation Project. The servitude reserved hereunder shall run in favor of the Access Parties, and shall be effective as of the date hereof regardless of the date on which the Conservation Instrument is executed and/or recorded or the date(s) on which the Mitigation Project is approved by necessary regulatory authorities. In addition, Grantee hereby agrees that the Access Parties and their agents, contractors and invitees shall be entitled to the same access and entry rights with respect to the Property and other adjacent real property now or hereafter owned by Grantee that are granted to

the grantee and/or holder under the Conservation Instrument and/or any access servitude or similar instrument executed in connection with the Conservation Instrument; provided, that such access and entry rights by the Access Parties shall be subject to the terms and conditions of the Conservation Instrument and such other access servitudes and similar instruments.

(d) Grantee acknowledges and agrees that strict compliance with the terms of the Conservation Instrument, the Permit, this Exhibit, and any and all applicable laws and regulations relating to Mitigation Project or associated natural resources, is essential to the success of the Mitigation Project and/or Grantor's ability to provide mitigation services and/or sell mitigation offsets related thereto. Grantee hereby agrees to comply in all respects with the terms of the Conservation Instrument, the Permit, this Exhibit, and any and all applicable laws and regulations relating to restoration, establishment, enhancement and/or preservation of any Mitigation Project or associated natural resources, and Grantee agrees that it shall not jeopardize or allow to be jeopardized the continued compliance of the Mitigation Project with any and all applicable rules, regulations, ordinances, statutes or other laws. Grantee acknowledges and agrees that Grantor and its affiliates may suffer damages (financial and otherwise) and irreparable harm from the failure to strictly comply with the Conservation Instrument, the Permit and this Exhibit, and Grantor and its affiliates therefore shall be permitted to pursue against Grantee, and all parties claiming by, through or under Grantee, such remedies as are available at law and/or equity to enforce such compliance or that arise by virtue of non-compliance, including, without limitation, direct, indirect and/or consequential damages suffered and/or incurred by Grantor and its affiliates as a result of such non-compliance.

2. Conveyance Subject to Resolatory Condition: Re-Entry. If any term, condition or provision of the Conservation Instrument, Permit or this Exhibit is ever breached or violated in any respect, whether by Grantee, any of its successors and assigns, any party acting by, through or under Grantee or its successors and assigns, or otherwise, then Grantor shall have the express right to re-enter and retake ownership of the Property, but only after (a) a final, executory judgment is rendered in favor of Grantor and against the breaching or violating party(ies) by a court of proper venue and jurisdiction in a proceeding brought for that purpose, and (b) the repayment by Grantor of the purchase price paid to it by Grantee in the Deed. All interests in the Property created after the date hereof shall be expressly subject and subordinate to the rights of Grantor hereunder.

3. Miscellaneous.

(a) This Exhibit, and the terms, covenants, and obligations hereof, shall be deemed to be covenants running with the land and, as such, shall extend to, bind, and inure to the benefit of the parties hereto, their heirs, administrators, executors, personal representatives, successors, and assigns, and the obligations hereunder may only be amended by written instrument executed by Grantor and Grantee or Grantee's successors and assigns.

(b) This Exhibit shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the state in which the Property is located without giving effect to its choice of law provisions.

(c) Grantor may, in its discretion, assign to any third party all or any portion of its rights under this Exhibit.

(d) If any portion of this Exhibit is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Exhibit shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by any party to enforce against the other any term or provision of this Exhibit shall not be deemed to be a waiver of such party's right to enforce the same or any other such term or provision in the future.

(e) Grantee acknowledges and agrees that any economic benefits arising from the Mitigation Project shall inure solely to the benefit of Grantor.

(f) From time to time, upon Grantor's request, Grantee shall execute and deliver such further instruments, documents and agreements as are reasonably necessary to accommodate or further the purposes hereof.

[Name of Mitigation Bank]

[USACE Abbreviation]-[XXXX-XXXXX]

Transfer of Ownership

**Exhibit D**

**Mitigation Bank Property Owner Transfer and Addendum to Mitigation Banking  
Agreement Form**

[Follows this page.]

[Name of Mitigation Bank]  
[USACE Abbreviation]-[XXXX-XXXX]  
Transfer of Ownership

**U.S. Army Corps of Engineers**  
**[Insert District Name] District**  
**Mitigation Bank Property Owner Transfer**

**Mitigation Bank: [Name of Mitigation Bank] [{USACE Abbreviation}-XXXX-XXXX]**

When the work and/or mitigation authorized and required by the Mitigation Banking Instrument (MBI), which is attached hereto and made a part hereof, for the above referenced [Name of Mitigation Bank] are still in existence at the time ownership of the bank property is transferred, all terms and conditions of the MBI become binding on the Transferee who becomes the new Property Owner of the [Name of Mitigation Bank] site. To effect the transfer of the Mitigation Bank Property Owner's obligations under the MBI to a new Property Owner, the Transferee and Transferor will sign and date below.

Upon transfer, the Transferor shall not have further obligations as Property Owner under the MBI and all references to Property Owner shall hereafter refer to the Transferee, except that the Transferor's liability under law and Corps' regulations for acts, omissions, breaches, or other compliance issues occurring prior to this transfer shall survive the transfer. Upon assumption of Property Ownership, Transferee undertakes full responsibility for the duties as defined in the attached MBI for Owner notwithstanding any continuing liability for Property Ownership of the Transferor.

By signing this Mitigation Bank Property Owner Transfer, Transferee agrees to assume all of the above obligations and responsibilities of the Property Owner contained within the MBI for the above referenced Mitigation Bank. The Transferee also acknowledges the Conservation Servitude over the property composing the Mitigation Bank, a copy of which is attached hereto and made a part hereof.

Transferor hereby transfers the MBI's obligations regarding Property Ownership of the above-referenced Mitigation Bank to Transferee who hereby assumes the obligations of the Property Owner as set forth in the MBI.

\_\_\_\_\_  
Transferee (New Owner)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Transferee's Signature

[Transferee Address]

[Transferee Phone Number]

[Transferee Email Address]

\_\_\_\_\_  
Transferor (Former Property Owner)

\_\_\_\_\_  
(Date)

[Name of Mitigation Bank]  
[USACE Abbreviation]-[XXXX-XXXXX]  
Transfer of Ownership

\_\_\_\_\_  
Transferor's signature

[Transferor Address]  
[Transferor Phone Number]  
[Transferor Email Address]

Once completed, it is the responsibility of the Sponsor to mail the original of this signed Mitigation Bank Transfer to:

U.S. Army Corps of Engineers  
ATTN: [Insert USACE Abbreviation]-ODR  
[Insert Street Address]  
[Insert City, ST Zip]

The Transferor and Transferee shall be provided copies of an approved Mitigation Bank transfer by the Corps of Engineers.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BY: \_\_\_\_\_  
[Insert USACE Abbreviation]-ODR



[Name of Mitigation Bank]  
[USACE Abbreviation]-[XXXX-XXXXX]

Transfer of Ownership

ADDENDUM TO MITIGATION BANKING AGREEMENT

TRANSFER OF PROPERTY OWNERSHIP

Recognizing that [Name of Transferor] has transferred its interest in ownership of the [Name of Mitigation Bank] to [Name of Transferee] and in accordance with the attached and incorporated Mitigation Banking Instrument (MBI),

I the Transferee am signing this MBI (attached) as recorded in the Clerk of Court's Office for [Name of Parish] on [Date of Recording] Inst. Number: [Parish Instrument #], as Owner and attest as follows:

I. I have read and understand and agree to the terms and conditions of this [Name of Mitigation Bank] [{USACE Abbreviation}-XXXX-XXXXX] MBI and the conservation servitude; and

II. I agree to assume all obligations and responsibilities of the Owner contained in this [Name of Mitigation Bank] MBI.

**Property owner (Transferee)**

\_\_\_\_\_

\_\_\_\_\_  
[Name of Transferee]

[Title of Transferee]

Date: \_\_\_\_\_

[Transferee Address]

[Transferee Phone Number]

[Transferee Email Address]

**PURCHASE AND SALE AGREEMENT**  
*(Property in Mitigation)*

This Purchase and Sale Agreement (this "Agreement") is entered into effective as of the Effective Date, by and between [RES ENTITY] ("Seller"), and [fill in buyer entity/person] ("Buyer").

1. **Definitions.** The following terms, as used herein, have the following meanings:

(a) "Effective Date" means the latest date set forth on the signature pages hereto (or if there is no such date, the date on which Seller executes this Agreement, as set forth on the Seller's signature page).

(b) "Property" means, collectively, certain real property located in [fill in county/parish] County/Parish, [fill in state], as more particularly described and/or depicted on Exhibit A attached hereto, together with all improvements, fixtures, rights, easements benefitting the Property, and benefits appurtenant thereto or affixed thereon, and any land lying in the bed of any street, road or avenue, opened or proposed, adjoining the property. *[Notwithstanding the foregoing, the term "Property" shall not include any oil, gas and other minerals on, under and beneath the Property which Seller reserves unto itself, its heirs and assigns, together with the right to grant leases and/or to enter into agreements for the exploration and production of all said minerals. Seller shall release its right to use the surface of the Property for drilling, mining or exploration of minerals. Drilling and/or production on any unit located off of the Property that includes any portion of the Property however small, shall constitute use of the entire mineral servitude underlying the Property.]*

(c) "Purchase Price" means [fill in written price] and 00/100 Dollars (\$[fill in numerical price]), which shall be payable in immediately available funds at the Closing.

(d) "Deposit" means [fill in written amount] and 00/100 Dollars (\$[fill in numerical amount]).

(e) "Closing Date" means the earlier of (i) the date which is forty-five (45) days after the Inspection Period ends, or (ii) such other date as mutually agreed upon by Seller and Buyer in writing.

(f) "Inspection Period" means a period starting on the Effective Date and ending fifteen (45) days after the Effective Date.

(g) "Conservation Instrument" means that certain [Conservation Easement/Deed Restriction/Declaration of Restrictions] dated as of \_\_\_\_\_, 201\_\_, executed by Seller in favor of \_\_\_\_\_, and recorded [at Book \_\_\_\_\_, Page \_\_\_\_\_ / as instrument no. \_\_\_\_\_] in the official property records of \_\_\_\_\_ Parish, Louisiana, as the same is amended, modified or supplemented from time to time, which places perpetual limitations and restrictions on the use and enjoyment of the Property, as more fully set forth therein.



(h) "Permit" means permit no. \_\_\_\_\_ issued by the [United States Army Corps of Engineers/United States Fish and Wildlife Service, etc.].

(i) "Sale Reservations" means the provisions, terms and conditions set forth in Exhibit A to the Deed (defined below), including, without limitation, the perpetual right of Seller and certain third parties to access the Property for the purposes set forth therein.

2. **Purchase and Sale.** For the Purchase Price and on the terms and subject to the conditions described herein, Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer, without warranty of title, except for acts arising by, through or under Seller, and subject to the Permitted Exceptions, as defined below.

3. **Deposit and Acknowledgment of Mitigation Bank.**

(a) No later than two (2) business days after the Effective Date, Buyer shall deposit the Deposit with [fill in escrow agent], Attn: [fill in escrow agent contact] ("Escrow Agent"). Upon the expiration of the Inspection Period and provided Buyer has not terminated this Agreement during the Inspection Period, the Deposit shall become non-refundable, except as otherwise provided herein. The Deposit shall be applied to the payment of the Purchase Price at Closing, or in the event of a default by either Seller or Buyer, or in the event of a termination, then in accordance with this Agreement. If Buyer fails timely to deposit the Deposit, Seller may terminate this Agreement by delivering written notice thereof to Buyer before the Deposit is deposited with the Escrow Agent. In the event of any termination of this Agreement that would permit Buyer to obtain the Deposit, Seller shall be entitled to retain \$100 of the Deposit, which Seller and Buyer stipulate is sufficient independent consideration to support this Agreement.

(b) On the Effective Date Buyer shall sign the Acknowledgment by Buyer attached hereto as Exhibit B, acknowledging that Seller has (i) provided Buyer with copies of the [fill in bank name] (the "MBI") and any Conservation Instruments encumbering the Property, (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 and any Conservation Instruments affecting the Property. Notwithstanding the foregoing, Seller assumes that Buyer has consulted an attorney to further explain to Buyer the terms and conditions of the MBI and the Conservation Instruments and has sought legal advice from such attorney as to whether Buyer's intended use of the Property is prohibited by such documents.

4. **Closing.** The closing of the transaction contemplated hereby (the "Closing") shall occur on the Closing Date or on such earlier date as is mutually acceptable to Buyer and Seller. All Closing charges and expenses not described below shall be paid at Closing by the party incurring the same. The Closing shall take place by mail or overnight courier through the offices of the Escrow Agent. At the Closing, the following shall occur:

(a) **Payment of Purchase Price.** Buyer shall deliver to Escrow Agent for disbursement to Seller an amount equal to the Purchase Price (i) minus the Deposit, and (ii) credited and/or debited with any applicable prorations as set forth in Section 10.

(b) Possession. Seller shall deliver to Buyer possession of the Property, subject to Permitted Exceptions.

(c) Document Delivery. Seller shall deliver to Buyer the following documents, in each case in form and substance acceptable to Buyer: (i) a fully executed, witnessed and notarized Deed in substantially the form of Exhibit C attached hereto (the “Deed”), conveying the Property to Buyer without warranty of title, except for acts arising by, through or under Seller, and subject to the Permitted Exceptions, as defined below; (ii) written evidence of authority for Seller to convey the Property to Buyer; (iii) a FIRPTA affidavit; (iv) a settlement statement; (v) such possession and lien affidavits if and as reasonably required by the Title Company; provided, however, that no such affidavits shall require Seller to indemnify Buyer or the Title Company for any matters relating to the title of the Property; and (vi) such additional documents as are customary in such transactions, provided such documents are in form and substance acceptable to Seller, including but not limited to the Mitigation Bank Property Owner Transfer and Addendum to Mitigation Banking Agreement form attached hereto as Exhibit D (the “Mitigation Bank Property Owner Transfer and Addendum to Mitigation Banking Agreement Form”), incorporated herein by reference. *[The Deed shall also include a reservation by Seller of all oil, gas and other minerals in, on, or under the Property, as set forth in the Deed attached as Exhibit C.]*<sup>1</sup>

(d) Seller's Costs. Seller shall bear the following costs: (i) documentary stamp taxes or transfer fees that are customarily borne by the Seller in the jurisdiction where the Property is located; (ii) any seller transfer taxes; (iii) recording fees for the release of any mortgage or other monetary liens recorded against the Property that were created by, through or under Seller; (iv) any title curative work that Seller elects to perform; (v) its own attorneys' fees, including the costs of drafting the Deed; (vi) one-half (1/2) of the escrow and closing fees charged by Escrow Agent, if any; and (vii) brokerage commissions, if any, as provided in Section 13.

(e) Buyer's Costs. Buyer shall bear the following costs: (i) documentary stamp taxes or transfer fees that are customarily borne by the Buyer in the jurisdiction where the Property is located; (ii) title insurance premiums for any owner's or lender's title insurance policies that Buyer may elect to obtain, including any endorsements thereto; (iii) its own attorneys' fees; (iv) recording fees for the Deed; (v) any buyer transfer taxes; and (vi) one-half (1/2) of the escrow and closing fees charged by the Escrow Agent, if any.

(f) All other Closing charges and expenses shall be paid at Closing by the party incurring the same.

(g) Conditions to Closing. Seller's obligation to close the transaction is conditioned by the approval by the U.S. Army Corps of Engineers of the proposed transfer of the Property from Seller to Buyer.

## 5. Inspection Period.

(a) Seller shall not be obligated to deliver to Buyer any documents or instruments relating to the Property to assist Buyer in its diligence efforts or otherwise; provided, that, to the

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<sup>1</sup> NTD – Include bracketed language if reserving minerals.

extent Seller does deliver any such documents or instruments to Buyer (collectively, "Due Diligence Documents"), Buyer acknowledges that Seller has not made and does not make any warranty or representation regarding the truth, accuracy or completeness of the Due Diligence Documents or the source(s) thereof. Buyer further acknowledges that, in some cases, the Due Diligence Documents may have been prepared by third parties other than Seller. Seller expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such Due Diligence Documents, or for omissions from the Due Diligence Documents, or in any other written or oral communications transmitted or made available to Buyer. Buyer shall rely solely upon its own investigation with respect to the Property, including, without limitation, the Property's physical, environmental or economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto. Seller shall not undertake any independent investigation as to the truth, accuracy or completeness of the Due Diligence Documents and, to the extent Seller provides any such Due Diligence Documents, the same shall be provided solely as an accommodation to Buyer.

(b) During the Inspection Period, Seller shall permit and enable Buyer and its agents to conduct such inspections that are customary for buyers of similarly situated properties, including title examination, environmental, engineering studies, legal, financial and other inspections and evaluations of the Property and the transaction contemplated hereby (the "Inspection"); provided, that, with respect to any intrusive inspection or test (i.e., core sampling or water quality sampling), Buyer must obtain Seller's prior written consent, which consent may be given, withheld or conditioned in Seller's sole discretion. Seller hereby authorizes Buyer and its agents, engineers, representatives and contractors to enter the Property at any reasonable time upon two business days' advance written notice to Seller to conduct the Inspection, and upon request from Buyer and/or Buyer's authorized representatives shall cooperate with such parties to coordinate such entry. Prior to entering the Property, Buyer must deliver a certificate of insurance to Seller evidencing that Buyer and its contractors, agents and representatives have in place (and Buyer and its contractors, agents and representatives shall maintain during the pendency of this Agreement) commercial general liability insurance with limits of at least One Million Dollars (\$1,000,000) for damages to the Property, bodily or personal injury or death.

(c) Buyer and its agents and representatives shall: (i) not interfere with the operation and maintenance of the Property or activities thereon; (ii) not damage any part of the Property or any personal property owned or held by any Seller or any third party; (iii) not injure or otherwise cause bodily harm to Seller, its agents, contractors and employees or any tenant of the Property; (iv) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (v) not permit any liens to attach to the Property; (vi) restore the Property to the condition in which the same was found before any such inspection or tests were undertaken; (vii) not reveal or disclose any information obtained during the Inspection Period concerning the Property to anyone outside Buyer's organization, except its attorneys, consultants, lenders or investors; and (viii) comply in all respects with the terms of any Conservation Instruments, Permits, and all applicable local, state and federal laws with respect to their activities on the Property. Buyer shall indemnify, defend, and hold Seller, its affiliates, agents, members, managers, officers, directors, customers, licensees and tenants harmless from and against any and all liens, claims, liabilities, causes of action, and expenses (including reasonable attorneys' fees)

arising out of its inspections of the Property or any violation of the provisions of this Section 5(c).

(d) If Buyer is not satisfied with the outcome of the Inspection for any reason in Buyer's sole discretion, or for any reason or no reason, Buyer may terminate this Agreement by written notice to Seller on or before the expiration of the Inspection Period and Section 9 shall apply in respect of the Deposit.

6. **Sale "AS-IS, WHERE IS"**. Buyer acknowledges that Buyer will have the opportunity to independently and personally inspect the Property and that Buyer has entered into this Agreement based upon its ability to make such examination and inspection. The Property is conveyed "as is, where is", with all faults, and without any warranties, express or implied, including but not limited to warranties of condition, fitness for a particular purpose or habitability. Purchaser acknowledges that Seller has made no representation, warranty or guaranty, express or implied, oral or written, past, present or future, of, as to, or including: (i) the condition or state of repair of the Property, including, without limitation, any condition arising in substances (which includes all substances listed as such by applicable law, all pollutants, or asbestos and naturally-occurring but harmful substances such as methane or radon) on, in, under, above, upon or in the vicinity of the Property; (ii) the quality, nature, adequacy, and physical condition of the Property, including, but not limited to, the structural elements, environmental issues, appurtenances, access; (iii) the quality, nature, adequacy and physical condition of soils and geology and the existence of ground water; (iv) the existence, quality, nature, adequacy and physical conditions of utilities serving the Property; and (v) the developmental potential of the Property, its habitability, merchantability, or the fitness, suitability or adequacy of Property for any particular purpose. Purchaser hereby acknowledges and declares reliance solely on its own examination, inspection and evaluation of the Property, and not on any warranties or representation, whether express or implied or written or oral, from Seller. Purchaser shall have absolutely no right or cause of action against Seller, whether in tort, contracts, quasi-contract or otherwise, to assert in any controversy or litigation any claim or demand arising from the sale or purchase of, or in any way related to or in connection with, the Property. Purchaser hereby expressly waives and renounces, any and all rights in redhibition pursuant to Louisiana Civil Code Article 2520, *et seq.*, the warranty imposed by Louisiana Civil Code 2475 (except for warranty regarding title), and its ability to rescind the sale of the Property or seek a reduction in the Purchase Price for any reason whatsoever, and the Purchaser hereby releases Seller from any and all liability whatsoever in connection therewith. All implied warranties with respect to the Property, including those related to fitness for a particular purpose, will be, and are hereby disclaimed by Seller in any controversy, claim, demand, or litigation arising from or in connection with the Property.

**THE PROVISIONS OF THIS SECTION 6 ARE A MATERIAL PART OF THE CONSIDERATION FOR SELLER'S ENTERING INTO THIS AGREEMENT. THIS SECTION 6 SHALL SURVIVE THE CLOSING AND SHALL BE INCORPORATED INTO THE DEED.**

7. **Acknowledgments Regarding Property**. Buyer acknowledges and agrees as follows: (a) the Property is subject to one or more Conservation Instruments; (b) in connection with the Permit, all or a portion of the Property has been designated as a site for the restoration, establishment, enhancement and/or preservation of aquatic resources, as a habitat for endangered species, and/or for other natural resources in accordance with applicable local, state and/or federal law; (c) at Closing, Seller will reserve in favor of itself, its affiliates and certain third parties access



rights on and through the Property in connection with the foregoing; (d) the foregoing, and certain other restrictions and covenants, shall at Closing be more fully set forth in the Sale Reservations; (e) that the sale of the Property shall be structured as a sale of a fee simple interest subject to satisfaction of conditions subsequent, and that Seller will be permitted to take certain remedies against Buyer, its successors and assigns, and other parties claiming by, through or under Buyer and its successors and assigns, in connection with any breach or violation of the Sale Reservations, Permits and/or Conservation Instruments, including equitable and legal remedies, and including the right to re-enter and retake ownership of the Property; (f) the foregoing may have a material adverse effect on Buyer's ability to sell, lease, convey or finance the Property and/or any interest therein; and (f) notwithstanding the foregoing or any contrary provision hereof, the Purchase Price represents a fair and reasonable price to be paid for the Property.

**8. Title Insurance and Survey.**

(a) Not less than five business days prior to the expiration of the Inspection Period, Buyer may examine title to the Property and specify to Seller in writing those items to which Buyer objects (the "Exceptions"); provided that Buyer shall not be permitted to object to any of the following: (i) all rights-of-way, easements, servitudes, utilities, and restrictive covenants that do not materially interfere with the existing use of the Property; (ii) zoning and other governmental restrictions; (iii) taxes, assessments and other public charges not due as of the Closing Date; (iv) any Conservation Instruments and Permits; (v) the Sale Reservations; and (vi) all matters that would be shown on a current, accurate survey of the Property. The foregoing, and any matters to which Buyer does not object during the Inspection Period or to which Buyer otherwise consents, shall constitute "Permitted Exceptions" hereunder. In addition, if Buyer does not deliver to Seller a written notice specifying those items which are Exceptions within the Inspection Period, then Buyer shall be deemed to have accepted and approved title to the Property and any overlaps, encroachments, easements, servitudes, liens, or encumbrances shown on the public records or survey shall be considered to be Permitted Exceptions.

(b) Seller may, but shall not be obligated to, at its cost, cure or remove the Exceptions. If Seller so elects to attempt to cure any Exceptions, Seller shall deliver written notice thereof within five business days after receipt of Buyer's title objections ("Seller's Title Response"). If Seller does not deliver a Seller's Title Response, then Seller shall be deemed to have elected not to cure such Exceptions. If Seller does not agree to cause such Exceptions to be removed or cured, then Buyer may, as its sole and exclusive remedy, either (a) terminate this Agreement by delivering notice to Seller prior to the expiration of the Inspection Period, or (b) purchase the Property without any reduction in the Purchase Price, subject to the Exceptions, in which case, such Exceptions shall be Permitted Exceptions. If Buyer does not elect to terminate this Agreement hereunder, Buyer will be deemed to have waived any objections and all such items shall be deemed to be Permitted Exceptions.

(c) Buyer may, at Buyer's expense, obtain a survey (with written legal description and acreage of the Property) (the "Survey"), a copy of which shall be provided to Seller and Escrow Agent. Not less than ten days prior to the expiration of the Inspection Period, Buyer may object in writing to any matters shown on the Survey, in which case such survey objections shall be considered Exceptions for purposes of Section 8(b).

9. **Termination.** If this Agreement is terminated by Buyer during the Inspection Period pursuant to Section 5(c) or Section 8(b), or (ii) pursuant to Section 11, then the Deposit shall be released to Buyer. If Seller fails to timely close on the Property for any reason other than default by Buyer, Buyer may, following not less than ten (10) business days' written notice to Seller, terminate this Agreement and receive the Deposit from the Escrow Agent as Buyer's sole and exclusive remedy. If Buyer breaches this Agreement in any respect, then Seller may elect to terminate this Agreement and receive the Deposit from the Escrow Agent or pursue such other remedies as may be available hereunder, at law, or in equity. Upon the termination of this Agreement the parties shall be released from all further obligations hereunder, except those that expressly survive termination of this Agreement as provided herein.

10. **Prorations.** Real and personal property taxes, water rates and utility charges (if any) shall be prorated and adjusted to the Closing Date, with the Closing Date itself attributed to Buyer. If the Closing shall occur before the property tax statements are issued for the calendar year in which the Closing occurs, the apportionment of taxes shall be upon the property taxes for the preceding year, which shall be a final proration.

11. **Condemnation.** If all or a part of the Property is condemned or taken by eminent domain or purchase in lieu thereof prior to the Closing Date, Buyer shall take title to the remaining Property and the Purchase Price shall be calculated based on the total square footage of the Property less the amount condemned or taken. Seller shall be entitled to receive all condemnation proceeds theretofore paid to Seller and to any unpaid condemnation proceeds.

12. **Notices.** Any notice required by this Agreement shall be hand-delivered, or sent in writing, postage prepaid by U.S. mail, by nationally recognized overnight courier, by hand delivery, by facsimile (receipt confirmed) or by electronic mail, addressed to Buyer or Seller (and such other notice parties as may be listed for either Buyer or Seller, as the case may be), to the address of the party set forth on the signature page of this Agreement. Such notice shall be deemed given (a) upon hand delivery, (b) three (3) business days after it is mailed, (c) one (1) business day after sending by overnight courier, (d) upon transmission by facsimile (once receipt is confirmed), and (e) upon transmission by electronic mail upon entry into the recipient's electronic mail server. Notices sent by facsimile or electronic mail must be promptly followed by notice sent pursuant to one of the other methods set forth above.

13. **Brokerage Commissions.** Seller and Buyer hereby represent and warrant to each other that neither party has engaged the services of a real estate broker or real estate brokerage firm in connection with the transaction contemplated by this Agreement[ *other than: Buyer's Agent: \_\_\_\_\_, and Seller's Agent: \_\_\_\_\_, whose commissions of \_\_\_\_\_ percent (\_\_\_\_ %) for Buyer's Agent and \_\_\_\_\_ percent (\_\_\_\_ %) for Seller's Agent, shall each be paid by Seller*].

14. **Other Matters.**

(a) Time is of the essence in the performance of each and every obligation and covenant contained in this Agreement.



(b) Both parties agree and confirm that neither party is hereby making any representation to the other as to the tax consequences (including gains, losses, rollback taxes, depreciation or "Like-Kind Exchange") of this Agreement's contemplated transactions. Each party agrees that it will seek that party's own separate tax and accounting advice related to this Agreement.

(c) Buyer shall not record this Agreement or any memorandum hereof.

(d) In the event either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such transaction.

(e) This Agreement shall be governed by the law of the state in which the Property is located, without reference to its choice of law provisions. Any warranties, representations, or covenants by the parties agreed to herein shall survive the Closing and transfer of title to Buyer and shall not be merged into the Deed.

(f) This Agreement including its exhibits shall constitute the entire agreement between Seller and Buyer and supersedes any other written or oral agreements between Seller and Buyer. This Agreement may be modified only by the written agreement of both parties.

(g) This Agreement shall inure to the benefit of and bind the parties hereto and their respective successors and assigns. Buyer may assign this Agreement upon written notice to Seller; Seller shall not assign this Agreement without the prior written consent of Buyer.

(h) This Agreement may be executed in multiple counterparts, including a facsimile or .pdf scanned version thereof, each of which shall be considered to be an original thereof. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement and to the public.

(i) Each party agrees, and advises the other, to seek their own legal advice with respect to entering into this Agreement, and any particular issue or term related thereto and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

(j) If the day for performance of any obligation hereunder, or the last day of a particular time period provided for herein, falls on a Saturday, Sunday, or legal holiday recognized by national banks in the county and/or parish where the Property is located, such day for performance, and the expiration of such time period, as the case may be, shall be the next day which is not a Saturday, Sunday or such legal holiday.

(k) If one or more counterparts of this Agreement have been executed by Seller in advance of execution and delivery by Buyer, the same shall constitute an offer to proceed with the

transactions described herein on the terms and conditions described herein; provided, however, that (i) such offer may only be accepted by Buyer by countersigning the counterpart of the Agreement signed by Seller and delivering the same to Seller, and until such time may be revoked by Seller in writing at any time and for any reason in its sole discretion, and (ii) such offer shall automatically expire without further action or notice at 5:00 p.m., Houston, Texas time on the date which is three (3) business days following the date inserted below Seller's signature below (or, if no such date is inserted, then on the third (3rd) business day following Seller's delivery of its signed counterpart to Buyer), unless Buyer shall have countersigned and delivered such counterparts as provided in clause (h).

(l) The parties agree that in discussing, negotiating, and entering into this Agreement, neither party is relying on representations of the other party except as to the party's authority to enter in and perform under the Agreement, the specific representations made in the Agreement, and Seller's limited warranty of title to the Property.

(m) If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by any party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

(n) Section headings are included for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement and should not be used to construe or interpret this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import.

(o) Any amount required to be delivered hereunder shall be delivered by wire transfer or other form of immediately available funds.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

[INSERT NAME OF SELLER]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: *[P.O. Box not permitted]*

c/o Resource Environmental Solutions, LLC

6575 West Loop South, Suite 300

Bellaire, Texas 77401

Attn: Stephen C. Colomb

E-Mail: stephen@res.us

BUYER:

[INSERT NAME OF BUYER]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: *[P.O. Box not permitted]*

\_\_\_\_\_

\_\_\_\_\_

E-Mail: \_\_\_\_\_

### JOINDER BY ESCROW AGENT

Escrow Agent has executed this Agreement in order to confirm that Escrow Agent has received and shall hold the Deposit required to be deposited under this Agreement, in escrow, and shall disburse the Deposit, and any interest earned thereon, pursuant to the provisions of this Agreement. The following provisions shall control with respect to the rights, duties and liabilities of Escrow Agent:

- (i) Escrow Agent acts hereunder as a depository only and is not responsible or liable in any manner whatsoever for the (A) sufficiency, correctness, genuineness or validity of any written instrument, notice or evidence of a party's receipt of any instruction or notice which is received by Escrow Agent, or (B) identity or authority of any person executing such instruction, notice or evidence.
- (ii) Escrow Agent shall have no responsibility hereunder except for the performance by it in good faith of the acts to be performed by under this Agreement, including this Joinder by Escrow Agent.
- (iii) Escrow Agent shall not be responsible for the solvency or financial stability of the financial institution with which the Escrow Agent deposits the Deposit to be escrowed hereunder so long as the same is government insured interest-bearing account.
- (iv) All attorneys' fees and costs and Escrow Agent's costs and expenses incurred in connection with a dispute with respect to the Deposit shall be assessed against the party that is not awarded the Deposit, or if the Deposit is distributed in part to both parties, then in the inverse proportion of such distribution.
- (v) In the event of a dispute between the parties hereto with respect to the disposition of the Deposit, Escrow Agent may interplead the Deposit into a court of competent jurisdiction in the county in which the Deposit has been deposited.
- (vi) In the event of any conflict between the Escrow Agent's rights and obligations regarding the Deposit as set forth herein, and the terms and conditions of any separate agreement or instrument specifying Escrow Agent's rights and obligations with respect to the Deposit, this Agreement shall prevail.

Date Executed by Escrow Agent:

[NAME OF ESCROW AGENT]

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

E-Mail: \_\_\_\_\_