

STATE OF ALABAMA

DECLARATION OF
RESTRICTIVE COVENANTS

COUNTY OF SHELBY

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this 30 day of Dec, 2009, by Bent River, LLC ("Covenantor").

RECITALS

WHEREAS, Covenantor is the owner of certain real property located in Shelby County, State of Alabama, more particularly described on **Exhibit A** attached hereto and made a part hereof ("Property"); and

WHEREAS, the said Property possesses significant ecological values of aesthetic and environmental benefit to the people of the State of Alabama and the United States; and

WHEREAS, in consideration of the issuance of Permit Number SAM-2008-1260-SBC ("Permit") by the U.S. Army Corps of Engineers, Mobile District ("Corps" or "Mobile District," to include any successor agency) pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act authorizing certain activities in waters of the United States, and in recognition of the continuing benefit to the property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Covenantor has agreed to perform certain mitigation and to place certain restrictive covenants on the Property, in order that the Property shall remain substantially in its natural condition forever;

WHEREAS, the natural condition of the Property will be restored, enhanced and preserved pursuant to the Mitigation Plan ("Mitigation Plan") as referenced in the Permit; and the term "natural condition" shall mean the condition of the Property at the time of this grant and as restored, enhanced, and preserved pursuant to the Mitigation plan of the Permit;

NOW THEREFORE, Covenantor hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on all heirs, successors, assigns (they are included in the term, "Covenantor," below), lessees, or other occupiers and users.

1. **Prohibitions & Restrictions.**

- a. **General.** There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials; and no

alteration of the topography in any manner except as specifically provided for in the Mitigation Plan of the Permit.

- b. **Waters and Wetlands**. There shall be no draining, dredging, damming, or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations except as specifically provided for in the Mitigation Plan of the Permit.
- c. **Trees/Vegetation**. There shall be no clearing, burning, cutting or destroying of trees or vegetation, except as expressly authorized in the Reserved Rights; there shall be no planting or introduction of non-native or exotic species of trees or vegetation except as specifically provided for in the Mitigation Plan of the Permit.
- d. **Uses**. No agricultural, industrial, or commercial activity shall be undertaken or allowed.
- e. **Structures**. There shall be no construction, erection, or placement of buildings, billboards, or any other structures, nor any additions to existing structures.
- f. **New Roads**. There shall be no construction of new roads or trails without the prior written approval of the Mobile District Engineer, including the manner in which they are constructed.
- g. **Use of Off Road Vehicles**. There shall be no use of off road vehicles, 4 wheel drive vehicles, all terrain vehicles or similar vehicles except on existing roads and trails and except as necessary to manage the Property.
- h. **Utilities**. There shall be no construction or placement of utilities or related facilities without the prior approval of the Mobile District Engineer.
- i. **Pest Control**. There shall be no application of pesticides or biological controls, including for problem vegetation, without prior written approval from the Mobile District Engineer.
- j. **Other Prohibitions**. Any other use of, or activity on, the protected property which is or may become inconsistent with the purposes of this grant, the preservation of the protected property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

2. **Amendment**. After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps and Covenantor. Amendment shall be allowed at the discretion of the Corps, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Mitigation for amendment impacts will be required at the time of amendment. There shall be no obligation to allow an amendment.

3. **Notice to Government**. Any permit application, or request for certification or modification, which may affect the Property, made to any governmental entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.



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4. **Reserved Rights.** It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Property. These restrictive covenants are created solely for the protection of the Property, and for the consideration and values set forth above. The Covenantor reserves the right to engage in all acts or uses not prohibited by the Restrictions and which are not inconsistent with the conservation purposes of this covenant, that is to preserve the protected property substantially in its natural condition, and to protect its environmental systems. Notwithstanding the foregoing Restrictions, Covenantor reserves for itself, its heirs, successors, administrators, and assigns the following Reserved Rights, which may be exercised upon providing prior written notice to the Mobile District Engineer, except where expressly provided otherwise:

- a. **Landscape Management.** Landscaping by the Covenantor to prevent severe erosion or damage to the protected property or portions thereof, or significant detriment to existing or permitted uses, is allowed, provided that such landscaping is generally consistent with preserving the natural condition of the protected property.
- b. **Wildlife and Forestry Management.** The Covenantor will naturally manage these lands to preserve and improve the existing forest and wildlife resources. Timber harvesting and management by Covenantor is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects or infectious organisms. Such timber harvest and/or management shall be carried out only after approval by the Mobile District Engineer.
- c. **Recreation.** Covenantor reserves the right to engage in any outdoor, non-commercial recreational activities, including hunting (excluding planting or burning) and fishing, with cumulatively very small impacts, and which are consistent with the continuing natural condition of the protected property. No written notice required.
- d. **Mineral Interests.** Covenantor specifically reserves a qualified mineral interest in subsurface oil, gas, or other minerals and the right to access such minerals. However, there shall be no extraction or removal of, or exploration for, minerals by any surface mining method, nor by any method which results in subsidence or which otherwise interferes with the continuing natural condition of the protected property.
- e. **Road Maintenance.** Covenantor reserves the right to maintain existing roads or trails. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel, crushed) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and, maintenance or roadside ditches.
- f. **Other Reserved Rights.** Covenantor reserves the right to engage in all acts or uses not prohibited by the Restrictions and which are not inconsistent with the conservation purposes of this covenant, the preservation of the protected property substantially in its natural condition, and the protection of its environmental systems.

5. **Compliance Inspections.** The Corps, and its authorized agents shall have the right to enter and go upon the lands of Covenantor, to inspect the Property and take actions necessary to verify compliance with these restrictive covenants.

6. **Enforcement.** The Covenantor grants to the Corps and/or the U.S. Department of Justice, a discretionary right to enforce these restrictive covenants in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. These enforcement rights are cumulative, in addition to, and shall not limit enforcement rights available under other provisions of law or equity, or under any permit or certification.

7. **Property Transfers.** Covenantor shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property (failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants):

NOTICE: This Property Subject to Declaration of Restrictive
Covenants Recorded at

[insert book and page references, county(ies), and date of recording].

8. **Marking of Property.** The perimeter of the Property shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

9. **Recording of Plat.** A plat depicting the boundaries of the Property subject to these restrictive covenants shall be recorded in the deed records office for each county in which the Property is situated prior to the recording of these restrictive covenants. The plat is recorded at: Map Book 41, Page 64-A and 64-B in the Office of the Judge of Probate, Shelby County, Alabama

10. **Separability Provision.** Should any separable part of these restrictive covenants be held contrary to law, the remainder shall continue in full force and effect.


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IN WITNESS WHEREOF, the Covenantor has duly executed this Declaration of Restrictive Covenants the date written above.

IN THE PRESENCE OF:

[type name of witness under signature line]

[type name of witness under signature line]

Covenantor

By:

[type name of individual under signature line]

Its:

Alan Howard, Manager
[title of signing individual, where applicable]

STATE OF ALABAMA

COUNTY OF SHELBY

PERSONALLY appeared before me Bethany David, the undersigned witness, and made oath that he/she saw the within named
[, by Alan Howard, its manager,] sign, seal and as his/her/its act and deed, deliver the within named Declaration of Restrictive Covenants; and that he/she with the other witness named above witnessed the execution thereof.

SWORN to and subscribed before me
this 30 day of December, 2009.

NOTARY PUBLIC FOR

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Feb 8, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Bethany Snodgrass David
[type name of witness under signature line]
Bethany Snodgrass David


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**LEGAL DESCRIPTION
FOR
MITIGATION EASEMENT**

Being a portion of Area "D", according to the Final Plat for Bent River — Phase IV, as recorded in Map Book 41, Page 64-A and 64-B in the Office of the Judge of Probate, Shelby County, Alabama and also being located in a portion of the Northwest ¼ of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest Corner of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama; thence S 88°38'14" E along the North line of said Section 20 a distance of 122.49 feet to a point on the Easterly right-of-way line of U.S. Interstate No. 65; thence S 16°50'24" E along said Easterly right-of-way line a distance of 125.48 feet to the Northwest Corner of Lot 22 of said Bent River — Phase IV; thence S 17°15'41" E along said Easterly right-of-way line and along the Southwest line of said Lot 22 and Lots 23 through 28 of said Bent River — Phase IV a distance of 617.49 feet to a point; thence S 12°06'51" E along said Easterly right-of-way line and along the Southwest line of said Lot 28 and Lots 29 through 33 of said Bent River — Phase IV a distance of 293.80 feet to a Southwest corner of said Lot 33, said point being the Point of Beginning of the herein described Mitigation Easement; thence S 72°10'56" E (leaving said Easterly right-of-way line) along the Southerly line of said Lot 33 a distance of 31.06 feet to the point of intersection of said Southerly line and the Southwesterly line of a 25-foot wide Easement for Slope and Maintenance; thence S 31°07'06" E (leaving said Southerly line of Lot 33) along said Southwesterly line of Easement for the next four courses a distance of 565.19 feet to a point; thence S 46°33'05" E a distance of 527.08 feet to a point; thence S 21°58'19" E a distance of 63.99 feet to a point; thence S 35°25'21" E a distance of 45.69 feet to the point of intersection of said Southwesterly line of Easement and the Southwesterly line of Common Area "A", according to said Bent River — Phase IV; thence S 05°15'04" E (leaving said Southwesterly line of Easement) along said Southwesterly line of Common Area "A" a distance of 29.88 feet to a point; thence S 52°40'52" E along said Southwesterly line of Common Area "A" a distance of 99.15 feet to the Southernmost corner of said Common Area "A"; thence N 83°51'50" E along the Southerly line of said Common Area "A" a distance of 88.10 feet to a point; thence N 48°15'23" E along the Southeasterly line of said Common Area "A" a distance of 169.00 feet to the Easternmost corner of said Common Area "A"; thence N 70°37'00" W along the Northerly line of said Common Area "A" a distance of 80.00 feet to a point; thence N 19°23'00" E along the Easterly line of said Common Area "A" a distance of 65.00 feet to a point; thence N 70°37'00" W along the Northerly line of said Common Area "A" a distance of 18.95 feet to a P.O.C. (Point on Curve) of a curve to the left having a radius of 50.00 feet, a chord bearing of N 8°38'15" E, a chord distance of 9.84 feet and a central angle of 11°17'27", said curve being on the Easterly right-of-way line of Cahaba River Boulevard; thence along said Easterly right-of-way line and along the arc of said curve a distance of 9.85 feet to a P.O.C. (Point on Curve) being the point of intersection of said Easterly right-of-way line and the Southeasterly line of a 25-foot Easement for Slope and Maintenance; thence N 50°28'56" E (leaving said Easterly right-of-way line) along said



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Southeasterly line of Easement for the next ten courses a distance of 74.57 feet to a point; thence N 29°43'04" E a distance of 69.65 feet to a point; thence N 09°27'29" E a distance of 63.00 feet to a point; thence N 27°39'10" E a distance of 558.62 feet to a point; thence N 10°37'35" E a distance of 89.01 feet to a point; thence N 03°21'43" E a distance of 86.96 feet to a point; thence N 07°13'47" W a distance of 87.71 feet to a point; thence N 17°49'21" W a distance of 87.56 feet to a point; thence N 27°45'10" W a distance of 79.33 feet to a point; thence N 30°41'51" W a distance of 106.17 feet to a point; thence N 87°24'08" E (leaving said Easterly line of Easement) a distance of 123.85 feet to a point on the Westerly line of a 20-foot wide Pedestrian Easement along the Cahaba River; thence S 04°25'27" E along said Westerly line of Pedestrian Easement for the next thirteen courses a distance of 155.00 feet to a point; thence S 21°18'04" E a distance of 212.77 feet to a point; thence S 16°41'57" E a distance of 104.05 feet to a point; thence S 19°17'24" E a distance of 105.95 feet to a point; thence S 16°41'57" E a distance of 97.95 feet to a point; thence S 16°41'57" W a distance of 94.52 feet to a point; thence S 38°39'35" W a distance of 122.59 feet to a point; thence S 47°43'35" W a distance of 225.14 feet to a point; thence S 26°33'54" W a distance of 58.87 feet to a point; thence S 30°57'50" W a distance of 117.90 feet to a point; thence S 19°17'24" W a distance of 214.86 feet to a point; thence S 14°02'10" W a distance of 103.23 feet to a point; thence S 18°26'06" W a distance of 85.28 feet to a point; thence S 66°02'15" W (leaving said Westerly line of Pedestrian Easement) along the Northerly line of said Pedestrian Easement for the next three courses a distance of 40.04 feet to a point; thence S 68°11'55" W a distance of 105.49 feet to a point; thence S 78°41'24" W a distance of 143.40 feet to a point; thence N 59°02'10" W (leaving said Northerly line of Pedestrian Easement) along the Easterly line of said Pedestrian Easement for the next thirteen courses a distance of 46.32 feet to a point; thence N 34°59'31" W a distance of 56.43 feet to a point; thence N 33°01'26" W a distance of 118.57 feet to a point; thence N 30°57'50" W a distance of 117.29 feet to a point; thence N 36°52'12" W a distance of 126.34 feet to a point; thence N 38°39'35" W a distance of 128.06 feet to a point; thence N 36°52'12" W a distance of 123.66 feet to a point; thence N 30°57'50" W a distance of 114.82 feet to a point; thence N 26°33'54" W a distance of 112.84 feet to a point; thence N 36°52'12" W a distance of 125.77 feet to a point; thence N 30°57'50" W a distance of 116.62 feet to a point; thence N 36°52'12" W a distance of 124.09 feet to a point; thence N 25°45'38" W a distance of 129.07 feet to a point; thence N 16°57'26" E (leaving said Easterly line of Pedestrian Easement) a distance of 62.05 feet to the Point of Beginning.

Containing 9.5 acres *more or less*.



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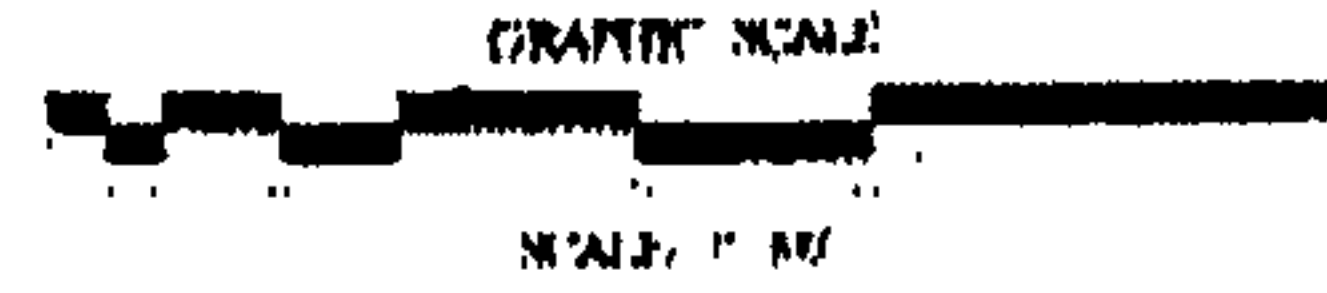


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WALTER SCHOEL ENGINEERING COMPANY, INC.
CONSULTING ENGINEERS
1001 2ND STREET SOUTH
BIRMINGHAM, ALABAMA 35205
(205) 271-6166

MITIGATION EASEMENT
EXHIBIT

RECORDER'S MEMORANDUM
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction.



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MITIGATION EASEMENT EXHIBIT

RIVER - PLANE 10
100 FEET WIDEWALTER SCHOEL ENGINEERING COMPANY, INC.
CONSULTING ENGINEERS

100 FEET WIDE

100 FEET WIDE

100 FEET WIDE