

**STATE OF FLORIDA  
MITIGATION BANK TRUST FUND AGREEMENT  
TO DEMONSTRATE PERPETUAL MANAGEMENT  
FINANCIAL ASSURANCE**

THIS TRUST AGREEMENT, the "Agreement," is entered into as of \_\_\_\_\_ by and between  
Date

\_\_\_\_\_  
Name of Mitigation Banker a \_\_\_\_\_  
Name of State  
\_\_\_\_\_  
(the Grantor,) and  
Insert "corporation, partnership, association, or proprietorship",

\_\_\_\_\_  
Name and Address of Corporate Trustee  
(the Trustee.)  
Insert "incorporated in the State of \_\_\_\_\_" or "a national bank"

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

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

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

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

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

Section 1. Definitions. As used in this Agreement:

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

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

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

(d) The term "investment obligations" means:

*Incorporated by reference in paragraph 40E-4.091(1)(a), F.A.C..*

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

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

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

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

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

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

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

Section 2. Identification of Financial Mechanism to Pay into Fund. This Agreement pertains to the \_\_\_\_\_ identified in Attachment A hereto.

\_\_\_\_\_  
identify the financial assurance mechanism, either surety bond or letter of credit

Section 3. Identification of Cost Estimates. This Agreement pertains to the cost estimate for perpetual management of the \_\_\_\_\_ Mitigation Bank identified in Attachment A hereto.

Section 4. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund (the Fund), for the benefit of the District. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established by the Grantor's deposit of \$ \_\_\_\_\_ into the Fund. Such monies and other monies subsequently placed in the Fund are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, for the benefit of the District as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the District.

Section 5. Payment for Undertaking Perpetual Management Activities. The Trustee shall make payments from the Fund as the Grantor or the Environmental Resource Permitting Bureau Chief, or designee, shall direct in writing to provide for the payment of the costs of undertaking activities to provide for the perpetual management of the mitigation bank covered by this Agreement pursuant to the requirements of the mitigation bank permit. The Trustee shall reimburse persons specified by the Grantor or the District from the Fund for perpetual management expenditures in such amounts as the Grantor or the District shall direct in writing. In the event of conflicting instructions from the Grantor and the District, the District's instructions shall prevail. The Trustee shall not make any payments from the principal of the Fund pursuant to the Grantor's direction without the District's written consent. The Trustee shall cease honoring Grantor's instructions if so directed by the District in writing. In addition, the Trustee shall refund to the Grantor such amounts as the District specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

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

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

Section 6. Additional Payments Into the Fund. After the initial deposit of principal into the Fund, the Grantor shall increase the principal if so required by the District pursuant to its administrative regulations and the requirements of the mitigation bank permit. Such deposit may be in cash or securities acceptable under Section 1(d) hereof.

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

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

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

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

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

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or a State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Title

Attest:

\_\_\_\_\_  
Title

Attest:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Seal

Seal

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a Florida corporation, on behalf of the corporation. Such person did not take an oath and:

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

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

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

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

(Notary Seal)

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

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_

Bank, on behalf of the corporation. Such person did not take an oath and:

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

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

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

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

(Notary Seal)

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

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

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

**ATTACHMENT A**

PERPETUAL MANAGEMENT COST ESTIMATE