

MITIGATION COVENANT

STATE OF LOUISIANA
PARISH OF ST. LANDRY

BE IT KNOWN, that on the day, month and year hereinafter set forth, before me, the undersigned authority, and in and for the presence of the undersigned competent witnesses, personally came and appeared:

LIVE OAK GARDENS, LTD., (TIN 61-0849849), a corporation organized and existing under the laws of Kentucky, duly authorized to do and doing business in the State of Louisiana, herein represented by **MICHAEL A. RICHARD**, its president, by virtue of Resolution of the Board of Directors of the Corporation, a copy of which is attached hereto and made a part hereof, and whose mailing address is declared to be 10106 Jefferson Island Road, New Iberia, LA 70560;

hereinafter referred to as "Area Sponsor", who declares that:

WHEREAS, Area Sponsor is the owner of the tract of land described in "Exhibit A"; and

WHEREAS, Area Sponsor has entered into a Mitigation Area Agreement with the U.S. Army Corps of Engineers ("Corps"), etal for the establishment of a mitigation area; and

WHEREAS, in connection with such area, Area Sponsor desires to place certain restrictions upon the use of the land described as "Exhibit A", and agrees to all special conditions as set forth in the above referenced agreement:

NOW THEREFORE, in consideration of the foregoing, Area Sponsor does hereby covenant as follows:

1. **Land Subject to Covenant.** The land owned by Area Sponsor which is the subject of this Mitigation Covenant is described in "Exhibit A" attached hereto, which is hereinafter referred to as the "Property".
2. **Servitude of Restrictive Use.** In consideration of the benefits to be obtained by Area Sponsor from Wetlands Mitigation Area, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Area Sponsor does hereby grant to the Corps, and in favor of all future owners of the Property, a negative right of use of servitude restricting the use of portions of the Property which have been contracted for use as mitigation. Restrictions on use are as follows, to-wit:
 - a. There shall be no placing, filling, storing or dumping on the property of refuse, trash, vehicle body parts, rubbish, debris, junk, waste, or other such substances.

- b. There shall be no commercial, industrial, agricultural or residential uses of the property without written authorization from the Corps of Engineers.
- c. There shall be no mechanized land clearing or deposition of soil, shell, rock or other fill on the property without written authorization from the Corps of Engineers.
- d. There shall be no cutting, removal or destruction of vegetation on the property except in accordance with a timber management plan approved by the Corps and the conditions specified below.
- e. All other activities, which are inconsistent with the establishment, maintenance and protection of wetlands within the mitigation area and which are not subject to the Corps of Engineers regulatory authority, are prohibited.

These restrictions are made for the benefit of the Corps, as well as all subsequent owners of the Property, shall run with the land and be binding on all future owners or users of portions of the Property which have been contracted for use as mitigation. The Corps, or its successors in title shall have the right to judicially enforce the restrictions herein imposed or to modify the restrictions herein imposed to reflect the management plan of a larger state or federal resource management area, such as a wildlife management area or refuge, if the Property were to become a part of that management area or refuge. Failure to enforce the restrictions at any particular time shall, in no event, be deemed a waiver of the right to do so thereafter.

- 3. **Reserved Rights.** These restrictions shall not prevent the continuation of preexisting uses of the Property that do not conflict with (and in fact may be in furtherance of) the conservation purposes of the Covenant and shall permit certain future uses of the Property, including commercial timber harvesting activities and commercial hunting and fishing operations. Notwithstanding the provisions of Paragraph 2, the following shall not be prohibited by this Covenant and shall be deemed consistent with this Covenant;
 - a) **Timber Harvesting.** If Area Sponsor elects to manage the area lands for selective timber harvest, it shall be conducted in accordance with the approved timber management plan specified in the interagency agreement and the conditions set forth below:
 - 1) Timber harvests shall be accomplished by using and maintaining existing woods roads and by removing harvested trees to a log loading deck located outside of the area.
 - 2) In no case will an entire stand comprising the mitigation area be clearcut.

- 3) Selective thinning may be performed to maintain and improve timber stand quality. As a general guideline, trees averaging 6 inches diameter at breast height (dbh) should not be thinned below 30 square feet of basal area per acre, and stands averaging 8 inches dbh should not be thinned below 40 square feet of basal area per acre. The species composition of the residual stand must be similar to that of the pre-harvest stand.
- 4) After year 60 following the final planting, timber harvesting shall be performed on a rotational basis, whereby the mitigation area is divided into compartments and small patch clearcuts or group selection cuts are conducted in a maximum of two noncontiguous compartments on a 60 year cycle. For instance, if compartments 1 and 5 are cut in year 60, they will not be cut again until year 120. A minimum 15 year interval shall be maintained between subsequent harvests in the remaining compartments. Supplemental tree planting will likely be necessary to maintain desired tree composition after the rotational timber harvesting has occurred. Replanted areas may be thinned in accordance with the above thinning specifications. The rotational cutting/planting/thinning cycle ensures desirable tree species composition, uneven-age habitat management, and a perpetual forested wetland.
- 5) Areas where timber harvesting should not occur shall be identified in the timber management plan. These areas should be managed consistent with applicable state BPMs and shall include a minimum 50 foot buffer along permanent streams and waterways. Buffers may be widened to accommodate slopes or highly erodible soils. Circumstances may warrant select tree removal in the buffer areas to control insect or disease problems, or improve timber stand or habitat quality.
- 6) Area Sponsor will conduct a post-harvest inspection to verify timber contractor compliance with the plan. Area Sponsor will report these findings in the annual area report (see Section of the Mitigation Area Agreement).

If Area Sponsor elects to manage or harvest timber in manner different than that specified above and in the interagency agreement, a timber management plan must be submitted to the Corps of Engineers and other signatory agencies to the mitigation area agreement for review and approval a minimum of 45 days prior to conducting any harvesting activities.

- b) **Outdoor Recreational Activities.** The right to engage in any outdoor activities, or to conduct any commercial outdoor recreational activities, including but not limited to, hunting, fishing, and trapping, not inconsistent with the purposes of this Covenant and in compliance with all applicable State and Federal statutes and regulations; and
- c) **Stands and Blinds.** The right to construct deer stands, duck blinds, and similar wildlife observation platforms.

4. Subsurface Mineral Extraction. Area Sponsor reserves the right to explore for and develop subsurface mineral (with the exception of gravel, sand and salt) including oil, gas and geothermal energies and pressures from the Property. Such subsurface exploration or development may be carried only in such manner and with the use of such methods so that any impact on the surface of the Property will not be greater than a limited, localized impact, and no permanent destruction of any of the conservation values of the Property may occur. Surface mining and any other mining techniques that will significantly harm the conservation values protected by this Covenant are prohibited.
5. Nature of the Grant. The servitude herein granted is a negative right of use servitude and shall be in the nature of and regulated by the rules governing predial servitudes, including, but not limited to, Article 706 of the Civil Code.
6. Modification. This mitigation covenant may be modified by Area Sponsor and the Corps due to unforeseen circumstances.

THUS DONE AND SIGNED at Opelousas, St. Landry Parish, Louisiana, on the 14th day of August, 1997, before me the undersigned authority and competent witnesses after due reading of the whole.

WITNESSES:

Kyle Huppl
Cynthia V. Fortner

AREA SPONSOR:

LIVE OAK GARDENS, LTD.

BY: *Michael A. Richard, Pres.*
Michael A. Richard, Pres.

Sindy J. Nozot
NOTARY PUBLIC

"EXHIBIT A"

A certain tract or parcel of land, together with any buildings or improvements thereon, situated in Section 34, Township 2 South, Range 4 East, and in Section 4, Township 3 South, Range 4 East, St. Landry Parish, Louisiana, containing 210.053 acres, as shown and identified on a Plat of Survey by Morgan Goudeau & Associates, Robert L. Wolfe, Jr., P.R.L.S., dated June 30, 1997, a copy of which is attached hereto and made a part hereof and recorded with a Partial Release under Act No. 817998, in Mortgage Book 963, page 603, records of St. Landry Parish, Louisiana.

Said property is more fully described as follows: Beginning at a point where the Southeast corner of Section 34, Township 2 South, Range 4 East, the Southwest corner of Section 35, Township 2 South, Range 4 East, the Northeast corner of Section 4, Township 3 South, Range 4 East and the Northwest corner of Section 3, Township 3 South, Range 4 East intersect or come together and from said **Point of Beginning** proceeding South 00 degrees, 38 minutes, 23 seconds West a distance of 769.74 feet to a point; thence North 89 degrees, 21 minutes, 37 seconds West a distance of 2,150.11 feet to a point; thence North 00 degrees, 48 minutes, 45 seconds East a distance of 273.12 feet to a point; thence North 87 degrees, 32 minutes, 44 seconds West a distance of 538.98 feet to a point; thence North 00 degrees, 36 minutes, 17 seconds East a distance of 113.86 feet; thence North 01 degrees, 50 minutes, 56 seconds West a distance of 1,769.31 feet; thence North 01 degrees, 04 minutes, 51 seconds West a distance of 1,222.10 feet to a point; thence South 82 degrees, 22 minutes, 53 seconds East a distance of 112.53 feet; thence South 89 degrees, 53 minutes, 40 seconds East a distance of 2,690.00 feet to a point; thence South 00 degrees, 38 minutes, 23 seconds West a distance of 2,634.90 feet back to Point of Beginning.