

**NOTE: The following Property Assessment and Warranty is provided by the U.S. Army Corps of Engineers, Nashville District, as a standard template document for compensatory mitigation projects. The Property Assessment and Warranty must be completed and returned to the Corps with all attachments included after a public notice has been issued for the permit application, mitigation bank prospectus or in-lieu fee project proposal, or, if public notice is not required, upon receipt of a proposed detailed mitigation plan. The Property Assessment and Warranty, including the attachments and documents incorporated by reference in it and any amendments thereto, must be attached as an exhibit to the final mitigation plan or mitigation banking instrument, as applicable. Any modifications to this template must be identified using track changes or other electronic comparison and explained in an attached addendum. This template should not be construed or relied upon as legal advice or opinion on any specific facts or circumstances. (Template Version Date: January 29, 2018)**

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## PROPERTY ASSESSMENT AND WARRANTY

This Property Assessment and Warranty (“Property Assessment”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by *[insert full legal name(s) of property owner(s)]* (“Property Owner”), for the benefit of the *[insert if an in-lieu fee program or mitigation bank: Interagency Review Team (“IRT”) chaired by the]* Nashville District of the U.S. Army Corps of Engineers (“Corps”). Property Owner acknowledges that this Property Assessment and the statements in it may be conclusively relied upon by *[choose the former if permittee-responsible mitigation; the latter if an ILF program or mitigation bank: the Corps or the IRT]* in approving *[choose one: the permit application for the \_\_\_\_\_ Project or the Department of the Army Permit No. \_\_\_\_\_ or the \_\_\_\_\_ Project as an amendment to the \_\_\_\_\_ In-Lieu Fee (Stream/Wetland) Mitigation Program or the Mitigation Banking Instrument (“MBI”) for the \_\_\_\_\_ Bank].*

This Property Assessment provides a summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, the Protected Property (as defined below), including, without limitation, each exception listed in the Preliminary Report issued by *[insert title company name]*, *[insert title report date]*, *[insert title report number]* (the “Preliminary Report”), covering the Protected Property, as described in **Attachments 1 and 2** attached hereto and incorporated by this reference. Specifically, this Property Assessment includes a narrative explaining each lien, encumbrance, interest or other exception to title and the manner in which it may affect the conservation easement to be recorded against the Protected Property (the “Conservation Easement”) pursuant to the *[choose one: approved mitigation plan or MBI]*.

Property Owner covenants, represents, and warrants to *[choose one: the Corps or each of the IRT members]* as follows:

1. Property Owner is the sole owner in fee simple of certain real property containing approximately \_\_\_\_\_ acres located at *[insert address]* in \_\_\_\_\_ County, State of \_\_\_\_\_, designated as Assessor’s Parcel Number(s) *[insert parcel number(s)]* (the

“Protected Property”), as legally described in the Preliminary Report. Property Owner has, and, upon the recordation of the Conservation Easement, Property Owner will have, good, marketable and indefeasible fee simple title to the Protected Property subject only to any exceptions approved in advance of recordation, in writing, by the *[choose one: the Corps or the IRT]*.

2. The Protected Property is available to be burdened by the Conservation Easement for the conservation purposes identified in the Conservation Easement, in accordance with the *[choose one: approved mitigation plan or MBI]*.
3. The Protected Property includes legal access to and from *[insert name of public street or road]*. *[Note: if special access rights are required to reach the Protected Property, those access rights must also be addressed in this Property Assessment.]*
4. A true, accurate and complete listing and explanation of each recorded or unrecorded lien or encumbrance on, or possessory or non-possessory interest in, the Protected Property is set forth in **Attachment 3**, attached to and incorporated by reference in this Property Assessment. Except as disclosed in **Attachment 3**, there are no outstanding mortgages, liens, encumbrances or other interests in the Protected Property (including, without limitation, mineral interests). **Attachment 4**, attached hereto and incorporated in this Property Assessment by reference, depicts all relevant and plottable property lines, easements, dedications, etcetera, on the Protected Property.
5. Prior to recordation of the Conservation Easement, Property Owner will certify to the *[choose one: the Corps or the IRT]* in writing that this Property Assessment remains true, accurate and complete in all reports.
6. Property Owner has no knowledge or notice of any legal or other restrictions upon the use of the Protected Property for conservation purposes, or affecting its Conservation Values, as described in the Conservation Easement, or any other matters that may adversely affect title to the Protected Property or interfere with the establishment of a mitigation *[choose one: project or bank]* thereon.
7. Property Owner has not granted any options, or committed or obligated to sell the Protected Property or any portion thereof, except as disclosed in writing to and agreed upon in writing by the *[choose one: the Corps or the IRT]*.
8. The following attachments are incorporated by reference in this Property Assessment.
  - a. Attachment 1 – Preliminary Report;
  - b. Attachment 2 – Encumbrance Documents;
  - c. Attachment 3 – Summary and Explanation of Encumbrances; and
  - d. Attachment 4 – Map(s)

***[Note: Attachment 2 must include copies from the official records of the office of the county register of deeds setting forth all recorded exceptions to title (e.g., leases or easements). Attachment 4 must include (a) map(s) illustrating the area of the Protected Property affected by each exception to title.]***

PROPERTY OWNER

\_\_\_\_\_

\_\_\_\_\_

***[Insert property owner full legal name(s)]***

Date

***[Include notary information, stamp and signature.]***

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## ATTACHMENT 3

### *Sample format for the Summary and Explanation of Encumbrances*

#### MONETARY LIENS

*Note: Any deeds of trust or other monetary lien(s) must be released or subordinated to the Conservation Easement by a recorded subordination agreement approved by the Corps for permittee-responsible mitigation or the IRT for an in-lieu fee project or mitigation bank.*

- Preliminary Report Exception or Exclusion No.:
- Amount or obligation secured:
- Term:
- Date:
- Trustor:
- Trustee:
- Beneficiary:
- Description:
- \_\_\_\_\_ acres of Protected Property subject to lien
- \_\_\_\_\_ acres of Protected Property *not* subject to lien

#### EASEMENTS AND RIGHTS OF WAY

- Preliminary Report Exception or Exclusion No.:
- Date:
- Grantor:
- Grantee:
- Holder (if different than Grantee):
- Description:
- Analysis: [*whether or how this exception will affect the Conservation Easement or the Conservation Values of the Protected Property*]
- \_\_\_\_\_ acres of Protected Property subject to easement
- \_\_\_\_\_ acres of Protected Property *not* subject to easement

#### LEASES

- Preliminary Report Exception or Exclusion No.:
- Date:
- Landlord/Lessor:
- Tenant/Lessee:
- Premises:
- Term:
- Description:
- Analysis: [*whether or how this exception will affect the Conservation Easement or the Conservation Values of the Protected Property*]
- \_\_\_\_\_ acres of Protected Property subject to lease

- \_\_\_\_ acres of Protected Property *not* subject to lease

#### COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS

- Preliminary Report Exception or Exclusion No.:
- Dated:
- Grantor or Declarant:
- Grantee (if applicable):
- Description:
- Analysis: [*whether or how this exception will affect the Conservation Easement or the Conservation Values of the Protected Property*]
- \_\_\_\_ acres of Protected Property subject to exception/exclusion
- \_\_\_\_ acres of Protected Property *not* subject to exception/exclusion

#### OTHER INTERESTS (INCLUDING MINERAL OR OTHER SEVERED INTERESTS)

- Holder:
- Description: [*must address whether or not the interest includes any surface rights and, if applicable, a description of those rights*]
- Analysis: [*whether or how this exception will affect the Conservation Easement or the Conservation Values of the Protected Property*]
- \_\_\_\_ acres of Protected Property subject to interest
- \_\_\_\_ acres of Protected Property *not* subject to interest