


Department of Engineering
Dan Gaillet, P.E., County Engineer

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MEMORANDUM

August 27, 2018

To: Sheila Jones, Supervisor, District I
Trey Baxter, Supervisor, District II
Gerald Steen, Supervisor, District III
David Bishop, Supervisor, District IV
Paul Griffin, Supervisor, District V

From: Dan Gaillet, P.E. 
County Engineer

Re: Madison County & St. Dominic Health Services Agreement
Mitigation of Wetlands
Reunion Parkway, Phase III

Due to the realignment of Reunion Parkway, Phase III, the County is exchanging 1.61 acres of wetland for the creation of 1.82 acres of wetland in order to insure that the Parkway's construction minimizes the impact on the environment.

Therefore, it is the recommendation of the Engineering Department to authorize the Board President to sign the agreement between the County and St. Dominic Health Services as part of the Corps of Engineers requirements.

Space Above Line For Official Use Only

Instrument Prepared By and Return To: Butler Snow LLP Attn: John A. Brunini MS Bar No.: 100065 Suite 1400 1020 Highland Colony Parkway Ridgeland, MS 39157 (601) 948-5711	Owner's Name, Address and Phone Number: St. Dominic Health Services, Inc. c/o President 969 Lakeland Drive Jackson, MS 39216 (601) 200-2000	Permittees's Name, Address and Phone Number: Madison County Board of Supervisors c/o President Post Office Box 608 Canton, MS 39046 (601) 855-5500
To the Chancery Clerk of Madison County, Mississippi: The real property described herein is situated in the Southeast Quarter of Section 32, Township 8 North, Range 2 East, Madison County, Mississippi.		
Marginal Notation: Book 3423 at Page 736		

**MODIFICATION OF DECLARATION OF LAND USE RESTRICTION AND
MITIGATION COVENANT
AND
TERMINATION OF MITIGATION COVENANT**

This Modification of Declaration of Land Use Restriction and Mitigation Covenant and Termination of Mitigation Covenant (the "Agreement") is made as of the 1st day of August 2018 (the "Effective Date") by and between the Madison County Board of Supervisors (the "Permittee") and St. Dominic Health Services, Inc. (the "Owner").

WITNESSETH:

WHEREAS, Owner is the owner of certain real property lying and being situated in Madison County, Mississippi, being more particularly described on Exhibit A attached hereto (the "Mitigation Covenant Property");

WHEREAS, Owner is also the owner certain real property lying and being situated in Madison County, Mississippi, being more particularly described on Exhibit B attached hereto (the "Removal Property");

WHEREAS, there was previously a mitigation covenant placed on the Mitigation Covenant Property as set forth in that certain Mitigation Covenant (the "First Mitigation");

Covenant”) executed by Dudley R. Bozeman and Parkway East, a Public Improvement District on May 6, 2006 and filed of record in the office of the Chancery Clerk of Madison County, Mississippi in **Book 2058 at Page 0770**;

WHEREAS, the Owner terminated the First Mitigation Covenant on the Mitigation Covenant Property and placed a land use restriction and mitigation covenant (the “Second Mitigation Covenant”) on the Removal Property by virtue of that certain Declaration of Land Use Restriction and Mitigation Covenant and Termination of Mitigation Covenant dated December 13, 2016 and filed of record in the office of the Chancery Clerk of Madison County, Mississippi on December 13, 2016 in **Book 3423 at Page 736**; and

WHEREAS, the Mitigation Covenant Property will now be used to mitigate for the loss of wetlands functions and values associated with the work done by the Permittee and permitted by the Department of the Army Permit Number KNG-MVK-2006-051 (the “Project”), and the Owner desires to terminate Second Mitigation Covenant placed on the Removal Property and replace a mitigation covenant and land use restriction on the Mitigation Covenant Property.

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, the undersigned parties hereby agree as follows:

- 1) Owner does hereby terminate, vacate, waive, remove, and release the Second Mitigation Covenant from the Removal Property.
- 2) Owner does hereby place a land use restriction and mitigation covenant (the “Replaced Mitigation Covenant”) on the Mitigation Covenant Property. The Replaced Mitigation Covenant includes the following restrictions:
 - A. Vegetation – After vegetation is established, as defined by the above referenced permit, there shall be no removal, destruction, cutting, mowing, application of biocides, or disturbance or other change in vegetation on the mitigation property not specifically recommended and approved in the management plan. Site management recommendations by a certified/registered forester must be approved by the Corp of Engineers prior to implementation.
 - B. Uses – There shall be no agricultural (to include grazing by domestic livestock), commercial or industrial activities allowed on the mitigation site. This restriction does not apply to hunting and fishing activities in accordance with state law.
 - C. Buildings – There shall be no construction or placement of buildings or other structures on the mitigation site.
 - D. Roads – There shall be no construction of roads on the mitigation site.

- 3) Upon mutual agreement between the Owner, the Permittee, and the U.S. Army Corps of Engineers, this Agreement and the Replaced Mitigation Covenant may be modified due to unforeseen circumstances.
- 4) The Replaced Mitigation Covenant shall remain in effect for the life of the Project or for as long as the permitted discharge is present on the Project site. Following Project life, or if the Project is abandoned, the Project site shall be restored to pre-construction conditions or to other conditions approved by the United States Army Corps of Engineers. If the site is properly restored, as verified by a compliance inspection by the United States Army Corps of Engineers, the Replaced Mitigation Covenant shall be released, and a document so indicating shall be furnished to the Permittee (or property owner) for recording. If the Project site is not restored, the Replaced Mitigation Covenant shall remain in effect.
- 5) This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes.

[Signature Pages Follow]

WITNESS THE EXECUTION hereof by the parties, to be effective as of the Effective Date, although actually executed on the dates set forth in the acknowledgements below.

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OWNER

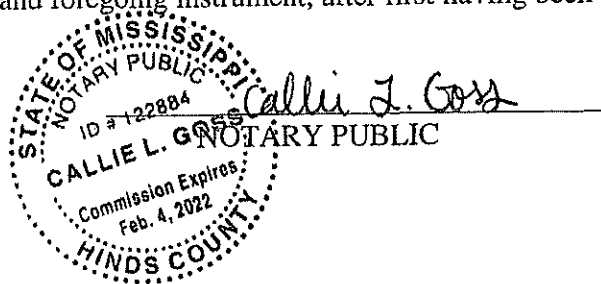
St. Dominic Health Services, Inc.

By: Claude W. Harbarger
Printed Name: Claude W. Harbarger
Its: President

STATE OF MISSISSIPPI

COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of August, 2018, within my jurisdiction, the within named Claude W. Harbarger, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed in the above and foregoing instrument and acknowledged that he executed the same in his representative capacity, and that by his signature on the instrument, and as the act and deed of the person or entity upon behalf of which he acted, executed the above and foregoing instrument, after first having been duly authorized so to do.



My Commission Expires:

February 4, 2022
(Notary Seal Required)

PERMITTEE

Madison County Board of Supervisors

By: _____

Printed Name: _____

Its: _____

STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 2018, within my jurisdiction, the within named _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed in the above and foregoing instrument and acknowledged that he/she/they executed the same in his/her/their representative capacity(ies), and that by his/her/their signature(s) on the instrument, and as the act and deed of the person(s) or entity(ies) upon behalf of which he/she/they acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

NOTARY PUBLIC

My Commission Expires:

(Notary Seal Required)

EXHIBIT A

**LEGAL DESCRIPTION OF MITIGATION COVENANT PROPERTY
[REPLACED MITIGATION COVENANT TO BE REPLACED HEREON]**

KNG-MVK-2006-051 PRM

The following describes a parcel of land containing approximately 1.61 acres, situated entirely within Section 32, Township 8 North, Range 2 East, Madison County, Mississippi, more particularly described as follows:

BEGINNING at the NW corner of the SE ¼ of Section 32, Township 8 North, Range 2 East, Madison County, Mississippi, also being the SW corner of the NE ¼ of Section 32, Township 8 North, Range 2 East, Madison County, Mississippi, proceed S 45° 40' 29" E a distance of 910.9 feet to the POINT OF BEGINNING of the parcel.

From the POINT OF BEGINNING, run S 61° 7' 56" E a distance of 333.6 feet, thence run S 70° 21' 57" W a distance of 199.1 feet, thence run S 66° 28' 27" W a distance of 190.5 feet, thence run N 61° 7' 56" W a distance of 131.0 feet, thence run N 30° 47' 44" E a distance of 27.9 feet, thence run N 33° 13' 36" E a distance of 54.6 feet, thence run N 35° 39' 27" E a distance of 54.6 feet, thence run N 38° 5' 19" E a distance of 54.6 feet, thence run N 40° 31' 10" E a distance of 54.6 feet, thence run N 42° 57' 2" E a distance of 54.6 feet, thence run N 45° 22' 53" E a distance of 3.2 feet to the POINT OF BEGINNING.

The above described parcel of land contains approximately 1.61 acres, situated entirely within Section 32, Township 8 North, Range 2 East, Madison County, Mississippi.

EXHIBIT B

**LEGAL DESCRIPTION OF REMOVAL PROPERTY
[SECOND MITIGATION COVENANT TO BE REMOVED THEREFROM]**

KNG-MVK-2006-051 PRM

The following describes a parcel of land containing approximately 1.82 acres, situated entirely within Section 32, Township 8 North, Range 2 East, Madison County, Mississippi, more particularly described as follows:

BEGINNING at the NW corner of the SE ¼ of Section 32, Township 8 North, Range 2 East, Madison County, Mississippi, also being the SW corner of the NE ¼ of Section 32, Township 8 North, Range 2 East, Madison County, Mississippi, proceed S 87° 2' 30" E a distance of 1,348.9 feet to the POINT OF BEGINNING of the parcel.

From the POINT OF BEGINNING, run N 51° 27' 32" E a distance of 552.4 feet, thence run S 11° 57' 35" E a distance of 40.4 feet, thence run S 5° 30' 41" E a distance of 55.4 feet, thence run S 4° 55' 15" E a distance of 100.3 feet, thence run S 0° 27' 1" E a distance of 73.5 feet, thence run S 22° 51' 3" W a distance of 50.3 feet, thence run S 89° 54' 39" W a distance of 358.9 feet, thence run S 1° 55' 50" W a distance of 155.9 feet, thence run S 58° 4' 40" W a distance of 78.5 feet, thence run N 5° 14' 53" W a distance of 46.3 feet, thence run N 0° 12' 29" W a distance of 122.1 feet to the POINT OF BEGINNING.

The above described parcel of land contains approximately 1.82 acres, situated entirely within Section 32, Township 8 North, Range 2 East, Madison County, Mississippi.